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# Federal Register

Thursday
March 6, 1997

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# Presidential Documents

Title 3—

The President

Executive Order 13037 of March 3, 1997

## Commission To Study Capital Budgeting

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

Section 1. *Establishment.* There is established the Commission to Study Capital Budgeting (''Commission''). The Commission shall be bipartisan and shall be composed of 11 members appointed by the President. The members of the Commission shall be chosen from among individuals with expertise in public and private finance, government officials, and leaders in the labor and business communities. The President shall designate two co-chairs from among the members of the Commission.

Sec. 2. *Functions.* The Commission shall report on the following:

(a) Capital budgeting practices in other countries, in State and local governments in this country, and in the private sector; the differences and similarities in their capital budgeting concepts and processes; and the pertinence of their capital budgeting practices for budget decisionmaking and accounting for actual budget outcomes by the Federal Government;

(b) The appropriate definition of capital for Federal budgeting, including: use of capital for the Federal Government itself or the economy at large; ownership by the Federal Government or some other entity; defense and nondefense capital; physical capital and intangible or human capital; distinctions among investments in and for current, future, and retired workers; distinctions between capital to increase productivity and capital to enhance the quality of life; and existing definitions of capital for budgeting;

(c) The role of depreciation in capital budgeting, and the concept and measurement of depreciation for purposes of a Federal capital budget; and

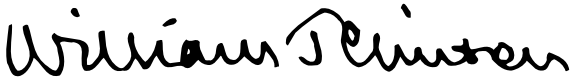
(d) The effect of a Federal capital budget on budgetary choices between capital and noncapital means of achieving public objectives; implications for macroeconomic stability; and potential mechanisms for budgetary discipline.

Sec. 3. *Report.* The Commission shall adopt its report through majority vote of its full membership. The Commission shall report to the National Economic Council by March 15, 1998, or within 1 year from its first meeting.

Sec. 4. *Administration.* (a) Members of the Commission shall serve without compensation for their work on the Commission. While engaged in the work of the Commission, members appointed from among private citizens of the United States may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(b) The Department of the Treasury shall provide the Commission with funding and administrative support. The Commission may have a paid staff, including detailees from Federal agencies. The Secretary of the Treasury shall perform the functions of the President under the Federal Advisory Committee Act, as amended (5 U.S.C. App.), except that of reporting to the Congress, in accordance with the guidelines and procedures established by the Administrator of General Services.

Sec. 5. *General Provisions.* The Commission shall terminate 30 days after submitting its report.



THE WHITE HOUSE,
*March 3, 1997.*

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# Rules and Regulations

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**DEPARTMENT OF AGRICULTURE**

**Food and Consumer Service**

**7 CFR Parts 210, 220, 225 and 226**

**RIN 0584–AC15**

## National School Lunch Program, School Breakfast Program, Summer Food Service Program for Children and Child and Adult Care Food Program: Meat Alternates Used in the Child Nutrition Programs

**AGENCY:** Food and Consumer Service, USDA.

**ACTION:** Final Rule.

**SUMMARY:** The Food and Consumer Service of the Department of Agriculture (Department) is amending the regulations governing the meal pattern requirements for the National School Lunch Program (NSLP), the School Breakfast Program (SBP), the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program for Children (SFSP) to allow yogurt to be credited as a meat alternate for all meals. Formerly, yogurt could be credited as a meat alternate only for the supplement (snack) meal patterns of the Child Nutrition Programs. Under this final rule, four ounces of yogurt satisfies one ounce of the meat/meat alternate requirement for breakfasts, lunches and suppers served under any of the Child Nutrition Programs. This final rule responds to numerous recommendations for additional meat alternates and provides local food service operations with greater flexibility in planning and preparing meals using lowfat meat alternates.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Consumer Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; by telephone (703) 305–2620.

**SUPPLEMENTARY INFORMATION:**

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Consumer Service (FCS) has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides greater flexibility to schools, institutions and homes participating in the NSLP, SBP, CACFP and SFSP rather than imposing more restrictive requirements upon them. The overall types and frequency of service of foods used in the meals served in these programs will not be significantly affected by this rule, and thus, this rule will not have a significant economic impact.

Catalog of Federal Assistance

The NSLP, SBP, SFSP and CACFP are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.553, 10.559 and 10.558, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 (FR) 29112, June 24, 1983.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have 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 final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP and SBP, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q) and 220.14(e); (2) school food authority appeals of FCS findings as a result of an administrative review must follow FCS hearing procedures as established pursuant to 7 CFR 210.30(d)(3) and 220.14(g); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FCS Administrative Review Process as established pursuant to 7 CFR 235.11(f). In the SFSP, (1) Program sponsors and food service management companies must follow State agency hearing procedures issued pursuant to 7 CFR 225.13; and (2) disputes involving procurement by State agencies and sponsors must follow administrative appeal procedures to the extent required by 7 CFR 225.17 and 7 CFR part 3015. In the CACFP, (1) institution appeal procedures are set forth in 7 CFR 226.6(k); and (2) disputes involving procurement by State agencies and institutions must follow administrative appeal procedures to the extent required by 7 CFR 226.22 and 7 CFR part 3015.

Information Collection

This final rule does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. The programs being amended are approved by OMB under the following control numbers: NSLP, 0584–0006; SBP, 0584–0012; SFSP, 0584–0280; and CACFP, 0584–0055.

Background

On July 5, 1996, the Department published a proposed rule to authorize the crediting of yogurt as a meat/meat alternate for all meals served under the NSLP, SBP, CACFP and SFSP (61 FR 35152–35157). Under this proposal, local food services would have the option of offering yogurt as a meat alternate with four ounces of yogurt equaling one ounce of meat. The Department proposed the four-to-one ratio of yogurt to meat in order to allow adequate levels of iron and niacin to continue being provided. The proposal also stipulated that the crediting change

would apply only to commercially prepared products which meet the definition and standard of identity for yogurt as established by the Food and Drug Administration (FDA) for yogurt, low fat yogurt and nonfat yogurt. (See 21 CFR 131.200, 131.203 and 131.206.) The proposal would not apply to the yogurt found on or in noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruits and/or nuts or similar products. Finally, as a practical matter, the Department noted that the proposed regulation would apply only to meals planned and prepared using a food-based menu planning system, because schools planning and preparing meals on the basis of nutrient analysis do not have to observe specific component/quantity requirements and, therefore, are not subject to crediting requirements. For a complete discussion of the background to the proposed rule and the issues surrounding its provisions, interested parties should refer to the preamble of the proposal.

The Department issued the proposed rule as part of the School Meals Initiative for Healthy Children, a comprehensive, integrated plan to provide school children with varied, nutritious, healthful and appealing meals. As the first step in the School Meals Initiative for Healthy Children, the Department published a final rule on June 13, 1995, which established updated nutrition requirements for school lunches and breakfasts and provided local food service professionals with unprecedented flexibility to plan and prepare meals using a menu planning system that best meets their needs (60 FR 31188). Beginning July 1, 1996, schools are required to serve lunches that, over a week's time, provide one-third of the Recommended Dietary Allowances (RDA) for key nutrients and one-third of the calories needed by children of different ages. School breakfasts must provide one-fourth of the RDA for key nutrients and calories. In addition, school meals must comply with the recommendations of the Dietary Guidelines for Americans, including the limitations on calories from fat (no more than 30 percent of total calories) and saturated fat (less than 10 percent of total calories). The only exceptions to these standards are for schools that have been authorized by the State agency to delay implementation for not more than two years.

To achieve compliance with these requirements, school meal planners may select one of four menu planning options. Schools may elect to use Nutrient Standard Menu Planning, under which they conduct a nutrient analysis of the foods being prepared and make adjustments as needed. A second option is a variant of Nutrient Standard Menu Planning called Assisted Nutrient Standard Menu Planning, under which the analysis and subsequent development of recipes and menus are conducted by an outside party. In addition, there are two food-based menu planning systems from which to choose: The traditional meal pattern, consisting of the same component and quantity requirements that were in effect on July 1, 1995, and the enhanced meal pattern, that is based on the traditional pattern but has increased amounts of fruits/vegetables and grains/breads.

Because local planners using nutrient analysis do not have to satisfy specific component/quantity requirements or meet crediting standards, they are able to select various lowfat and nonfat sources of protein for their meals. To provide planners using food-based systems with similar flexibility, State agencies and local food service professionals requested the Department to reevaluate the use of yogurt as a meat/meat alternate for these menu planning systems. They also requested the Department to extend this consideration to the CACFP and the SFSP. Based on this reevaluation, the Department issued the July 5, 1996, proposed rule.

During the official comment period, which ended on September 3, 1996, the Department received 2077 comments. The following groups generated the greatest number of responses: general public (857), local food service personnel (528), other local agency personnel (534) and industry (90). Over 1900 of the comments supported the proposal, generally on the grounds that it would provide greater flexibility for local food services to reduce fat content. Some commenters also noted that the crediting of yogurt would enhance the ability of local planners to meet the nutrition needs of children who are lactose intolerant or who are vegetarians. Commenters who disapproved of the proposed rule essentially raised three objections. First, they voiced concern that the Department was attempting to eliminate meat products from meals served under the Child Nutrition Programs. Second, they maintained that it would be inappropriate to use a dairy product as a substitute for meat. Third, they noted that yogurt is inherently low in iron and niacin, both of which are generally provided by the meat/meat alternate. The remainder of this preamble discusses these issues.

Elimination of Meat Products

The Department emphasizes that the proposed rule was not intended as an endorsement of yogurt at the expense of meat products or other meat alternates. On the contrary, the proposal simply provides local food services with an additional option for meeting a variety of the needs and tastes of children. In fact, the Department does not envision any significant reduction in meat offerings given the traditional popularity of meat products. Moreover, it should be noted that even when yogurt is served, it would not necessarily replace meat entirely. For example, a school might serve a four ounce portion of yogurt in combination with a half sandwich, a cup of soup or salad containing a one ounce or equivalent portion of meat/meat alternate. Finally, some children who could benefit from this rule would not consume meat even if there were no alternative, because they are vegetarians or otherwise are not permitted to eat certain kinds of meat. For these reasons, the Department does not believe that the meat industry will be adversely affected by providing local food services with the option of serving yogurt.

Inappropriate Substitution

The purpose of the meat/meat alternate component in food-based menu planning systems is to ensure that an adequate source of protein is available as part of the meal. This specific requirement is not necessary in meal planning systems based on nutrient analysis because protein is one of the nutrients automatically measured as the meal is planned. However, the Department has long recognized that some non-meat products can provide the protein and other nutrients normally supplied by meat. Nuts and seeds as well as cheese/cheese alternates have been available as meat alternates for years. The Department also notes that yogurt is already credited as a meat alternate for snacks in the Child Nutrition Programs. Finally, allowing yogurt as a meat alternate would enable local food services to better serve children who, for religious or other reasons, are unable to eat meat.

Inadequacy of Certain Key Nutrients

A number of commenters were concerned that yogurt is inherently low in two key nutrients—iron and niacin—generally provided by the meat/meat alternate component. The Department recognizes this shortcoming and shares commenters' concern for the nutritional

adequacy of meals served to children. The nutritional contributions of yogurt were carefully considered when the Department proposed to credit yogurt at the ratio of four ounces of yogurt to one ounce of meat. The Department notes, however, that children will continue to obtain key nutrients from a variety of foods. For example, when averaged over a week, other foods such as lean meats, beans, eggs and grains will be able to supplement the nutrients available in yogurt. Moreover, meal planners can also serve yogurt in combination with other foods. For example, as noted above, a local meal planner could offer children four ounces of yogurt along with a half sandwich, a cup of soup or salad. Finally, in response to requests from the school food service and nutrition advocacy communities, the Department intends to provide guidance material to assist local meal planners.

Definition and Standard of Identity

In the proposed rule, the Department stipulated that, to be credited, a yogurt product would have to meet the standard of identity for yogurt established by the FDA. However, the current definition and standard of identity includes yogurt products that contain no live bacteria cultures because the extremely high temperatures at which the products are processed to remove the tartness kill the bacteria. In response, the National Yogurt Association has petitioned to FDA to have yogurt products without live and active cultures excluded from the definition and standard of identity of yogurt. A large number of comments recommended that the Department follow the Association's recommendation and stipulate in the final rule that only yogurt containing live and active bacterial cultures be credited in the Child Nutrition Programs.

The Department appreciates commenters' position on this issue. However, the FDA is the Federal agency responsible for making decisions about product definitions and standards of identity, and it would be inappropriate for the Department to anticipate whether or not the FDA will adopt the recommendation of the National Yogurt Association's petition to exclude products which do not contain active live bacteria cultures from the definition and standard of identity of yogurt. It should also be noted that any amendments to the FDA definition and standard of identity for yogurt will be automatically implemented in the Child Nutrition Programs by virtue of the cross reference in this regulation to the FDA regulations. Moreover, the Department will make any other amendments as necessary. Finally, this final rule makes a technical change to the proposed rule to change the phrase ''standard of identity'' to read ''definition and standard of identity.''

Conclusion

For the reasons described above, the Department is adopting the July 5, 1996, proposal without change. The Department emphasizes, however, that it is aware that many of the yogurt products that could satisfy the regulatory requirements as the meat/meat alternate component of the meal are actually more like dessert items. The Department continues to expect that schools and institutions will exercise good judgment in selecting yogurt products for their meals. The Department also notes that this crediting policy does not extend to noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covering on fruit and/or nuts and similar products.

List of Subjects

*7 CFR Part 210*

Children, Commodity School Program, Food assistance programs, Grants programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

*7 CFR Part 220*

Children, Food assistance programs, Grants programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

*7 CFR Part 225*

Food assistance programs, Grant programs—health, infants and children, Reporting and Recordkeeping requirements.

*7 CFR Part 226*

Day care, Food assistance programs, Grant programs—health, infants and children, Surplus agricultural commodities.

Accordingly, the Department is amending 7 CFR part 210, 220, 225 and 226 as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.2 a definition for *Yogurt* is added in alphabetical order to read as follows:

**§ 210.2 Definitions.**

* * * * *

*Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

3. In § 210.10:

a. The meat or meat alternate section in the first column of the table in paragraph (k)(2) is amended by adding a new entry for yogurt after the entry for ''Peanut butter or other nut or seed butters'';

b. New paragraph (k)(3)(iii) is added;

c. Paragraph (n)(3)(iv) is amended by removing the words ''in the snack only'' from the first sentence of footnote 4 in the ''Meal Supplement Chart for Children''.

The additions read as follows:

**§ 210.10 Nutrition standards for lunches and menu planning methods.**

* * * * *

(k) *Food-based menu planning.* * * *

(2) *Minimum quantities.* * * *

| Meal component | Minimum quantities required for | | | | Option for grades K–3 |
|---|---|---|---|---|---|
| | Ages 1–2 | Preschool | Grades K–6 | Grades 7–12 | |
| * | * | * | * | * | * |
| Meat or Meat Alternate (quantity of the edible portion as served). * * * | | | | | |

| Meal component | Minimum quantities required for Ages 1–2 | Preschool | Grades K–6 | Grades 7–12 | Option for grades K–3 |
|---|---|---|---|---|---|
| Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup ..... | 6 oz. or ¾ cup ..... | 8 oz. or 1 cup ..... | 8 oz. or 1 cup ..... | 6 oz. or ¾ cup. |
| * | * | * | * | * | * | * |

* * * * *

(3) * * *

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

4. In § 210.10a:

a. the meat or meat alternate section in the first column of the table in paragraph (c) is amended by adding a new entry for yogurt after the entry for ''Peanut butter or other nut or seed butters'';

b. new paragraph (d)(2)(iii) is added;

c. paragraph (j)(3) is amended by removing the words ''in the snack only'' from the first sentence of footnote 4 in the ''Meal Supplement Chart for Children.''

The additions read as follows:

**§ 210.10a Lunch components and quantities for the meal pattern.**

* * * * *

(c) Minimum required lunch quantities. * * *

SCHOOL LUNCH PATTERN-PER LUNCH MINIMUMS

| Food components and food items | Minimum quantities Group I, age 1–2, (preschool) | Group II, age 3–4 (preschool) | Group III, age 5–8 (K–3) | Group IV, age 9 and older (4–12) | Recommended quantities: group V, 12 years and older (7–12) |
|---|---|---|---|---|---|
| * | * | * | * | * | * | * |
| Meat or Meat Alternate (quantity of the edible portion as served): * * * | | | | | |
| Yogurt, plain or flavored, unsweetened or sweetened.. | 4 oz. or ½ cup ..... | 6 oz. or ¾ cup ..... | 6 oz. or ¾ cup ..... | 8 oz. or 1 cup ..... | 12 oz. or 1½. |
| * | * | * | * | * | * | * |

(d) *Lunch components.* * * *

(2) *Meat or meat alternate.* * * *

(iii) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

## PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.2 a new paragraph (bb) is added to read as follows:

**§ 220.2 Definitions**

* * * * *

(bb) *Yogurt* means commercially prepared coagulated milk products obtained by the fermentation of specific bacteria, that meet milk fat or milk solid requirements and to which flavoring foods or ingredients may be added. These products are covered by the Food and Drug Administration's Definition and Standard of Identity for yogurt, lowfat yogurt, and nonfat yogurt, 21 CFR 131.200, 21 CFR 131.203, and 21 CFR 131.206, respectively.

3. In § 220.8, the meat or meat alternates section in the first column of the table in paragraph (g)(2) is amended by adding a new entry for yogurt after the entry for ''Nut and/or seeds'' to read as follows:

**§ 220.8 Nutrition standards for breakfast and menu planning alternatives.**

* * * * *

(g) Food-based menu planning. * * *

(2) Minimum quantities. * * *

| Meal component | Minimum quantities required for Ages 1–2 | Preschool | Grades K–12 | Option for grades 7–12 |
|---|---|---|---|---|
| * | * | * | * | * | * |
| Meat or Meat Alternates: * * * | | | | |
| Yogurt, plain or flavored, unsweetened or sweetened. | 2 oz. or ¼ cup ..... | 2 oz. or ¼ cup ..... | 4 oz. or ½ cup ..... | 4 oz. or ½ cup |

* * * * *

4. In § 220.8a, the meat or meat alternates section in the first column of the table in paragraph (a)(2) is amended by adding a new entry for yogurt after the entry for ''Nuts and/or seeds'' to read as follows:

**§ 220.8a Breakfast components and quantities for the meal pattern.**

(a) (1) Food components. * * *

(2) Minimum required breakfast quantities. * * *

SCHOOL BREAKFAST PATTERN

[Required minimum serving sizes]

| Food components/items | Ages 1 and 2 | Ages 3, 4, and 5 | Grades K–12 |
|---|---|---|---|
| * * * * * * * | | | |
| Meat/Meat Alternates: * * * | | | |
| Yogurt, plain or flavored, unsweetened or sweetened | 2 oz. or ¼ cup | 2 oz. or ¼ cup | 4 oz. or ½ cup. |

* * * * *

## PART 225—SUMMER FOOD SERVICE PROGRAM

1. The authority citation for Part 225 continues to read as follows:

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

2. In § 225.16:

a. the Meat and Meat Alternates (Optional) section of the table in paragraph (d)(1) is amended by adding a new entry for yogurt after the entry for ''Peanut butter or an equivalent quantity of any combination of meat/meat alternate'';

b. the Meat and Meat Alternates section of the table in paragraph (d)(2) is amended by adding a new entry for yogurt after the entry for ''Peanuts or soynuts or tree nuts or seed''.

The additions read as follows:

**§ 225.16 Meal service requirements.**

* * * * *

(d) *Meal patterns.* * * *

BREAKFAST

(1) * * *

| Food components | Minimum amount |
|---|---|
| * * * * * * * | |
| Meat and Meat Alternates (Optional) * * * or | |
| Yogurt, plain or flavored, unsweetened or sweetened | 4 oz. or ½ cup. |

* * * * *

LUNCH OR SUPPER

(2) * * *

| Food components | Minimum amount |
|---|---|
| Meat and Meat Alternates * * * or | |
| Yogurt, plain or flavored, unsweetened or sweetened | 8 oz. or 1 cup. |
| * * * * * * * | |

* * * * *

## PART 226—CHILD AND ADULT CARE FOOD PROGRAM

1. The authority citation for Part 226 continues to read as follows:

Authority: Secs. 9, 11, 14, 16, and 17, National School Lunch Act, as amended (42 U.S.C. 1758, 1759a, 1762a, 1765 and 1766).

2. In § 226.20:

a. new paragraph (a)(2)(ii)(C) is added;

b. the Meat and Meat Alternates section in the first column of the tables in paragraphs (c)(2) and (c)(3) are amended by adding a new entry for yogurt after the entries for ''Peanuts or soynuts or tree nuts or seeds'';

c. paragraph (d)(1) is amended by adding a semicolon and the words ''or 4 oz of yogurt;'' after the words ''peanut butter''.

The additions read as follows:

**§ 226.20 Requirements for meals.**

(a) * * *

(2) * * *

(ii) * * *

(C) Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt served may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products shall not be credited. Four ounces (weight) or ½ cup (volume) of yogurt fulfills the equivalent of one ounce of the meat/meat alternate requirement in the meal pattern.

* * * * *

(c) *Meal patterns for children age one through 12 and adult participants.*

* * *

LUNCH

(2) * * *

| Food components | Age 1 and 2 | Age 3 through 5 | Age 6 through 12 [1] | Adult participants |
|---|---|---|---|---|
| * * * * * * * | | | | |
| Meat and Meat Alternates * * * or Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup ..... | 6 oz. or ¾ cup ..... | 8 oz. or 1 cup ..... | 8 oz. or 1 cup. |
| * * * * * * * | | | | |

[1] The text is unchanged.

* * * * *

(3) * * * SUPPER

| Food components | Children ages 1 and 2 | Children ages 3 through 5 | Children ages 6 through 12 | Adult participants |
|---|---|---|---|---|
| * * * * * * * | | | | |
| Meat and Meat Alternates * * * or. Yogurt, plain or flavored, unsweetened or sweetened. | 4 oz. or ½ cup ..... | 6 oz. or ¾ cup ..... | 8 oz. or 1 cup ..... | 8 oz. or 1 cup. |
| * * * * * * * | | | | |

* * * * *

Dated: February 28, 1997.

William E. Ludwig,

*Administrator, Food and Consumer Service.*

[FR Doc. 97–5537 Filed 3–5–97; 8:45 am]

**BILLING CODE 3410–30–P**

## Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 97–009–1]**

## Brucellosis in Cattle; State and Area Classifications; Tennessee

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Tennessee from Class A to Class Free. We have determined that Tennessee meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Tennessee.

**DATES:** Interim rule effective February 28, 1997. Consideration will be given only to comments received on or before May 5, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 97–009–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–009–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7708; or e-mail: mgilsdorf@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.*

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Tennessee was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of

the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Tennessee, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Tennessee from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Tennessee.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Tennessee.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the Federal Register. After the comment period closes, we will publish another document in the Federal Register. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Tennessee from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Tennessee, as well as buyers and importers of cattle from this State.

There are an estimated 66,000 cattle herds in Tennessee that would be affected by this rule. All of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all herds affected by this rule, Class Free status would save approximately $5 to $10 per head.

Therefore, we believe that changing the brucellosis status of Tennessee will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

## PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

**§ 78.41 [Amended]**

2. In § 78.41, paragraph (a) is amended by adding ''Tennessee,'' immediately after ''South Carolina,'.

3. In § 78.41, paragraph (b) is amended by removing ''Tennessee''.

Done in Washington, DC, this 28th day of February 1997.

Terry L. Medley,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 97–5519 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–34–P

## FEDERAL RESERVE SYSTEM

## 12 CFR Part 226

**[Regulation Z; Docket No. R–0942]**

## Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule; official staff interpretation.

**SUMMARY:** The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The update provides guidance on issues relating to the treatment of certain fees paid in connection with mortgage loans. It addresses new tolerances for accuracy in disclosing the amount of the finance charge and other affected cost disclosures. In addition, the update discusses issues such as the treatment of debt cancellation agreements and a creditor's duties if providing periodic statements via electronic means.

**DATES:** This rule is effective February 28, 1997. Compliance is optional until October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Ahrens or James A. Michaels, Senior Attorneys, or Sheilah A. Goodman or Manley Williams, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) only, contact Dorothea Thompson at (202) 452–3544.

**SUPPLEMENTARY INFORMATION:**

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as

a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. The TILA requires additional disclosures for loans secured by a consumer's home and permits consumers to rescind certain transactions that involve their principal dwelling. The act is implemented by the Board's Regulation Z (12 CFR Part 226). The Board's official staff commentary (12 CFR Part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is updated periodically to address significant questions that arise; it is a substitute for individual staff interpretations.

In November, the Board published proposed amendments to the commentary to Regulation Z (61 FR 60223, November 27, 1996). The Board received about 30 comments. Most of the comments were from financial institutions, mortgage lenders, insurance providers, and other creditors (or their representatives); about a half dozen were from consumer representatives and lawyers. Overall, commenters generally supported the proposed amendments. Views were mixed on a few comments, and some commenters expressed concerns about issues not addressed in the proposal. Except as discussed below, the commentary is being adopted as proposed; some technical suggestions or concerns raised by commenters are addressed. Compliance is optional until October 1, 1997, the effective date for mandatory compliance.

The revisions mainly incorporate guidance given in the supplementary information that accompanied September 1996 amendments to Regulation Z implementing the Truth in Lending Act Amendments of 1995 (Pub. L. 104–29, 109 Stat. 271). The rulemaking clarified the treatment of fees typically associated with real estate-related lending, and revised tolerances for finance charge calculations for loans secured by real estate or dwellings (61 FR 49237, September 19, 1996). It also addressed the treatment of fees charged in connection with debt cancellation agreements.

## II. Commentary Revisions

*Supplement I—Official Staff Interpretations*

*Subpart A—General*

*Section 226.4—Finance Charge*

*4(a) Definition*

*4(a)(1) Charges by Third Parties*

Comment 4(a)(1)–1 illustrates the general rule that amounts charged by a third party are included in the finance charge if the creditor requires the use of a third party, even if the consumer may choose the service provider.

Comment 4(a)(1)–2 addresses the treatment of annuity premiums associated with some reverse mortgages. The proposal treated the cost of the premiums as a finance charge when the purchase of an annuity is effectively required incident to the credit. Commenters expressed concern about uncertainties that could result from such a test; the ''effectively required'' standard has been deleted for clarity.

*4(a)(2) Special Rule; Closing Agent Charges*

Comment 4(a)(2)–1 is revised and a new comment 4(a)(2)–2 is added to address commenters requests for further guidance about the treatment of charges by third-party closing agents when the creditor requires the use of a closing agent. Comment 4(a)(2)–2 provides examples of the types of fees charged by a closing agent that may be excluded from the finance charge, even though the creditor requires the use of a closing agent.

*4(a)(3) Special Rule; Mortgage Broker Fees*

Two comments addressing the treatment of mortgage broker fees were proposed. These comments are adopted with some modification for clarity, and a third comment is added. Under the 1995 Amendments, mortgage broker fees paid by the borrower are finance charges unless otherwise excluded. Comment 4(a)(3)–1 clarifies that mortgage brokers fees may be excluded from the finance charge if the fee would be excluded when charged by the creditor. To illustrate the rule, the comment discusses certain application fees as an example of fees charged by mortgage brokers that could be excluded from the finance charge.

New comment 4(a)(3)–2 addresses the scope of the special rule for mortgage broker fees. Commenters requested that the scope be clarified; some suggested defining the term ''mortgage broker.'' Instead, the Board has clarified that the special rule for mortgage broker fees applies to consumer credit transactions secured by real property or a dwelling. The Board believes this interpretation carries out the purposes of the 1995 Amendments, and simplifies compliance by using existing definitions in the regulation rather than adding a new one.

Comment 4(a)(3)–3, redesignated from the proposal and revised for clarity, addresses the treatment of compensation paid by the creditor to a mortgage broker.

*4(c) Charges Excluded From the Finance Charge*

*Paragraph 4(c)(5)*

Comment 4(c)(5)–2, adopted substantially as proposed, addresses the treatment of finance charges paid by a noncreditor seller on a consumer's behalf before loan closing; it clarifies that disclosures should reflect the payment if the consumer is not legally bound to the creditor for the amount paid.

*4(d) Insurance and Debt Cancellation Coverage*

*4(d)(3) Voluntary Debt Cancellation Fees*

The comments are adopted as proposed, with minor revisions for clarity. Several commenters, including a credit insurance provider, disagreed with the Board's interpretation of section 226.4(d)(3), which in their view is not consistent with the TILA. These commenters objected to the proposed comments on the same grounds.

Comment 4(d)(3)–2 clarifies that although debt cancellation coverage and credit insurance are treated similarly for purposes of cost disclosures under the TILA, state law governs whether a creditor may represent that debt cancellation coverage is insurance. A provider of credit insurance commented that creditors should be permitted to disclose debt cancellation fees as insurance premiums only if the coverage is regulated by the state as insurance. Regulation Z does not provide a definition of insurance for purposes of the TILA, and under § 226.2(b)(3) the term's meaning is determined by state law—which may or may not take account of the extent to which the particular product is regulated by the state. Consequently, the comments are adopted substantially as proposed.

*4(e) Certain Security Interest Charges*

Section 226.4(e) excludes certain security interest charges paid to public officials from the finance charge if the amounts are itemized and disclosed. A

new § 226.4(e)(3) was added to implement a provision in the 1995 Amendments which excludes from the finance charge taxes levied on security instruments or on documents evidencing indebtedness that must be paid to record the security instrument. Comments 4(e)–1 (adopted substantially as proposed) and –2 are revised to reflect the recent amendment to § 226.4(e)(3).

*Subpart B—Open-end Credit*

*Section 226.5—General Disclosure Requirements*

*5(b) Time of Disclosures*

*5(b)(2) Periodic Statements*

*Paragraph 5(b)(2)(ii)*

An addition to comment 5(b)(2)(ii)–3 is made to clarify that periodic statements may be provided electronically, for example, via home banking systems. Commenters generally supported the proposal and encouraged the Board to provide further guidance on how to adapt current rules to the way electronic disclosures may be used. A review is now underway that will seek to adapt current rules under the Board's Truth in Lending and other consumer protection regulations to the way electronic disclosures may be provided and retained, responding to technological developments in the way financial service transactions are conducted via electronic means.

*Subpart C—Closed-end Credit*

*Section 226.17—General Disclosure Requirements*

*17(c) Basis of Disclosures and Use of Estimates*

*Paragraph 17(c)(2)(ii)*

Comment 17(c)(2)(ii)–1 addresses the new rule applicable to the disclosure of per-diem interest charges. Under the rule, the disclosure of any numerical amount affected by the per-diem interest charge is considered accurate if it is based on the information known to the creditor at the time the disclosure is prepared, whether or not the disclosure of per-diem interest is accurate when it is received by the consumer. The comment clarifies that, in such cases, the resulting finance charge is considered accurate without regard to the tolerance for errors under § 226.18(d)(1). In response to requests for guidance, the comment clarifies that disclosures may be considered accurate under this rule without regard to whether they were labeled as estimates.

*Section 226.18—Content of Disclosures*

*18(c) Itemization of Amount Financed*

Comment 18(c)–4 is adopted substantially as proposed. Some commenters expressed concern that this comment imposed additional disclosure requirements. This is not the case. The comment is meant to streamline disclosure requirements for transactions that are also covered by Real Estate Settlement Procedures Act (RESPA) by allowing—not requiring—creditors to substitute the good faith estimate or the HUD–1 settlement statement for the itemization of the amount financed. Guidance is added regarding the format requirements for these disclosures.

A proposed revision to comment 18(c)(1)(iv)–2 responded to a proposal by the Department of Housing and Urban Development (HUD) to change the way that the amount collected at closing for escrow items is reflected on the HUD–1 for RESPA purposes (61 FR 46511, September 3, 1996). The Board is withdrawing the proposed revision given that HUD has not yet taken final action on its proposal.

*Section 226.22—Determination of the Annual Percentage Rate*

*22(a) Accuracy of the Annual Percentage Rate*

*Paragraphs 22(a)(4) and 22(a)(5)*

Section 226.22(a)(4) and 22(a)(5) provide APR tolerances for mortgage loans when the finance charge has been misstated but is considered accurate. The comments provide specific examples of these tolerances. Minor revisions have been made for clarity.

*Section 226.23—Right of Rescission*

*23(h) Special rules for foreclosures*

*Paragraph 23(h)(1)(i)*

Section 226.23(h), which implements section 125(i) of the TILA, contains special rescission rules that apply after a foreclosure action has been initiated. Section 226.23(h)(1) allows a consumer to rescind a loan in foreclosure if a mortgage broker fee that should have been included in the finance charge under the laws in effect at consummation was not included. Section 226.23(h)(2) contains a separate finance charge tolerance of $35 for loans in foreclosure; such loans may be rescinded if the finance charge was understated by more than $35. Comment 23(h)(1)(i)–1 is intended to clarify the relationship between these two provisions.

As proposed, the comment interpreted § 226.23(h)(1) to allow rescission if a mortgage broker fee was omitted from the finance charge entirely or if it was understated, without regard to the dollar amount involved. Under that interpretation, any finance charge understatement traceable to a misstatement of a mortgage broker fee would allow rescission of a loan in foreclosure; the $35 finance charge tolerance in § 226.23(h)(2) would not apply. Several commenters objected to this interpretation and expressed the view that the $35 finance charge tolerance should also apply to the rescission rights granted under § 226.23(h)(1)(i). They believed that the $35 tolerance in § 226.23(h)(2) provides the applicable rule for determining whether a mortgage broker fee has been included ''in accordance with the laws and regulations in effect'' at the time the loan was consummated. They noted that otherwise, creditors would be liable for inadvertent and technical errors—for example, if a mortgage broker fee was rounded down from fractional to whole dollar amounts. The commenters argued that this would be inconsistent with the purpose of the 1995 Amendments as a whole, which was to reduce lender liability for small technical errors.

Upon further analysis and after consideration of the comments received, a narrower interpretation of § 226.23(h)(1)(i) has been adopted. The Board believes that this narrower interpretation is consistent with the intent of section 125(i) of the TILA. The $35 tolerance in § 226.23(h)(2) reduces creditors' potential liability by replacing the $10 tolerance that applied before the 1995 Amendments became effective. Accordingly, comment 23(h)(1)(i)–1 clarifies that for loans in foreclosure, a right of rescission exists under § 226.23(h)(1)(i) only if the entire mortgage broker fee has been omitted from the finance charge. If the amount of a mortgage broker fee is misstated, the consumer's right to rescind is based on the rule in § 226.23(h)(2). A new comment 23(h)(2)-1 has been added to clarify that the $35 tolerance is based on the total finance charge and not its component charges.

*Subpart E—Special Rules for Certain Home Mortgage Transactions*

*Section 226.31—General Rules*

*31(d) Basis of Disclosures and Use of Estimates*

*31(d)(3) Per-diem Interest*

Several commenters noted that a comment to paragraph 31(d)(3) like the comment to 17(c)(2)(ii) would be useful; a conforming comment has been added.

*Section 33—Requirements for Reverse Mortgages*

*33(a) Definition*

*Paragraph 33(a)(2)*

Comment 33(a)(2)–2, which addresses reverse mortgages, is adopted substantively as proposed.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR Part 226 as follows:

## PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. In Supplement I to Part 226, under *Introduction,* the last sentence in paragraph 5. is revised to read as follows:

Supplement I—Official Staff Interpretations

*Introduction*

* * * * *

5. *Comment designations.* * * * Comments to the appendices may be cited, for example, as Comment app. A–1.

* * * * *

3. Supplement I to Part 226, under *§ 226.2—Definitions and Rules of Construction, paragraph 2(a)(25)* is amended by removing the last two sentences of the second paragraph of paragraph 6.

4. In Supplement I to Part 226, under *§ 226.4—Finance Charge,* the following amendments are made:

a. Under *4(a) Definition.,* paragraphs 3. and 4. are removed and paragraphs 5. through 7. are redesignated as paragraphs 3. through 5., respectively, and new paragraphs 4(a)(1), 4 (a)(2), and 4(a)(3) are added after the end of the text of 4(a);

b. Under *4(b) Examples of finance charges.*, a new paragraph 4(b)(10) is added;

c. Under *4(c) Charges excluded from the finance charge.*, under paragraph 4(c)(5)., paragraph 2. is revised;

d. Under 4(d), the heading is revised, and a new paragraph 4(d)(3) is added; and

e. Under *4(e) Certain security interest charges.*, paragraphs 1.i. and 2. are revised.

The additions and revisions read as follows:

* * * * *

*Subpart A—General*

* * * * *

*§ 226.4—Finance Charge*

*4(a) Definition.*

* * * * *

*4(a)(1) Charges by third parties.*

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

*4(a)(2) Special rule; closing agent charges.*

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party closing agent may be otherwise excluded from the finance charge under § 226.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under § 226.4(a); a lump-sum fee for real-estate closing costs may be excluded under § 226.4(c)(7).

*4(a)(3) Special rule; mortgage broker fees.*

1. *General.* A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under § 226.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage.* This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender.* The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

*4(b) Examples of finance charges.*

* * * * *

*4(b)(10) Debt cancellation fees.*

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term includes guaranteed automobile protection or ''GAP'' agreements, which pay or satisfy the remaining debt after property insurance benefits are exhausted.

*4(c) Charges excluded from the finance charge.*

* * * * *

*Paragraph 4(c)(5).*

* * * * *

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

* * * * *

*4(d) Insurance and debt cancellation coverage.*

* * * * *

*4(d)(3) Voluntary debt cancellation fees.*

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (''GAP'') agreements must be disclosed according to § 226.4(d)(3) rather than according to § 226.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 226.4(d)(3) by providing a disclosure that refers to debt cancellation coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

*4(e) Certain security interest charges.*

1. *Examples.*

i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under § 226.4(e) (1) and (3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security interest). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

* * * * *

2. *Itemization.* The various charges described in § 226.4(e) (1) and (3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

* * * * *

5. In Supplement I to Part 226, under *§ 226.5—General Disclosure Requirements,* under *Paragraph 5(b)(2)(ii).,* paragraph 3. is revised to read as follows:

* * * * *

*Subpart B—Open-End Credit*

*§ 226.5—General Disclosure Requirements*

* * * * *

*5(b) Time of disclosures.*

* * * * *

*5(b)(2) Periodic statements.*

* * * * *

*Paragraph 5(b)(2)(ii).*

* * * * *

3. *Calling for periodic statements.* The creditor may permit consumers to call for their periodic statements, but may not require them to do so. If the consumer wishes to pick up the statement and the plan has a free-ride period, the statement (including a statement provided by electronic means) must be made available in accordance with the 14-day rule.

* * * * *

6. In Supplement I to Part 226, under *§ 226.17—General Disclosure Requirements,* the following amendments are made:

a. Under *17(c) Basis of disclosures and use of estimates.*, text is added under paragraph 17(c)(2)(ii); and

b. Under *17(f) Early disclosures.*, paragraphs 1. introductory text, 1.i., the last sentence of 1.ii. and 1.iii. are revised and a heading is added to paragraph 1.ii; and a new paragraph 17(f)(2) is added preceding 17(g).

The additions and revisions read as follows:

* * * * *

*Subpart C—Closed-End Credit*

*§ 226.17—General Disclosure Requirements*

* * * * *

*17(c) Basis of disclosures and use of estimates.*

* * * * *

*Paragraph 17(c)(2)(ii).*

1. *Per-diem interest.* This paragraph applies to any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures are not labeled as estimates. For example, if the amount of per-diem interest used to prepare disclosures is less than the amount of per-diem interest charged at consummation, and as a result the finance charge is understated by $200, the disclosed finance charge is considered accurate even though the understatement is not within the $100 tolerance of § 226.18(d)(1), and the finance charge was not labeled as an estimate. In this example, if in addition to the understatement related to the per-diem interest, a $90 fee is incorrectly omitted from the finance charge, causing it to be understated by a total of $290, the finance charge is considered accurate because the $90 fee is within the tolerance in § 226.18(d)(1).

* * * * *

*17(f) Early disclosures.*

1. *Change in rate or other terms.* Redisclosure is required for changes that occur between the time disclosures are made and consummation if the annual percentage rate in the consummated transaction exceeds the limits prescribed in this section, even if the initial disclosures would be considered accurate under the tolerances in §§ 226.18(d) or 226.22(a). To illustrate:

i. *General.* A. If disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures before consummation. Redisclosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

B. In a regular transaction, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

ii. *Nonmortgage loan.* * * * (See § 226.18(d)(2) of this part.)

iii. *Mortgage loan.* At the time TILA disclosures are prepared in July, the loan closing is scheduled for July 31 and the creditor does not plan to collect per-diem interest at consummation. Consummation actually occurs on August 5, and per-diem interest for the remainder of August is collected as a prepaid finance charge. Assuming there were no other changes requiring redisclosure, the creditor may rely on the disclosures prepared in July that were accurate when they were prepared. However, if the creditor prepares new disclosures in August that will be provided at consummation, the new disclosures must take into account the amount of the per-diem interest known to the creditor at that time.

* * * * *

*Paragraph 17(f)(2).*

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be ''irregular'' according to the definition in footnote 46 of § 226.22(a)(3).

* * * * *

7. In Supplement I to Part 226, under *§ 226.18—Content of Disclosures,* the following amendments are made:

a. Under *18(c) Itemization of amount financed.*, paragraph 4. is revised;

b. Under *18(d) Finance charge.*, a new paragraph 18(d)(2) is added; and

c. *18(n)* is amended by revising the heading and adding a new paragraph 2.

The additions and revisions read as follows:

* * * * *

*§ 226.18—Content of Disclosures*

* * * * *

*18(c) Itemization of amount financed.*

* * * * *

4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Transactions subject to RESPA are exempt from the requirements of § 226.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§ 226.18(c) and 226.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under § 226.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§ 226.18(c) and 226.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of § 226.17(a) are met.

* * * * *

*18(d) Finance charge.*

* * * * *

*18(d)(2) Other credit.*

1. *Tolerance.* When a finance charge error results in a misstatement of the amount financed, or some other dollar amount for which the regulation provides no specific tolerance, the misstated disclosure does not violate the act or the regulation if the finance charge error is within the permissible tolerance under this paragraph.

* * * * *

*18(n) Insurance and debt cancellation.*

* * * * *

2. *Debt cancellation.* Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law. Otherwise, they may provide a parallel disclosure that refers to debt cancellation coverage.

* * * * *

8. In Supplement I to Part 226, under *§ 226.19—Certain Residential Mortgage and Variable-Rate Transactions,* under *19(a)(2) Rediscloure required.*, the first sentence of paragraph 1. is revised to read as follows:

* * * * *

*§ 226.19—Certain Residential Mortgage and Variable-Rate Transactions*

* * * * *

*Paragraph 19(a)(2) Redisclosure required.*

1. *Conditions for redisclosure.* Creditors must make new disclosures if the annual percentage rate at consummation differs from the estimate originally disclosed by more than ⅛ of 1 percentage point in regular transactions or ¼ of 1 percentage point in irregular transactions, as defined in footnote 46 of § 226.22(a)(3). * * *

* * * * *

9. In Supplement I to Part 226, § 226.22—Determination of the Annual Percentage Rate, is amended by adding new paragraphs 22(a)(4) and 22(a)(5) to read as follows:

* * * * *

*§ 226.22—Determination of the Annual Percentage Rate*

*22(a) Accuracy of the annual percentage rate.*

* * * * *

*22(a)(4) Mortgage loans.*

1. *Example.* If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under § 226.18(d)(1), and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under § 226.22(a)(2). Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

*22(a)(5) Additional tolerance for mortgage loans.*

1. *Example.* This paragraph contains an additional tolerance for a disclosed annual percentage rate that is incorrect but is closer to the actual annual percentage rate than the rate that would be considered accurate under the tolerance in § 226.22(a)(4). To illustrate: in an irregular transaction subject to a ¼ of 1 percentage point tolerance, if the actual annual percentage rate is 9.00 percent and a $75 omission from the finance charge corresponds to a rate of 8.50 percent that is considered accurate under § 226.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in § 226.22(a)(5). In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 or above 9.25 percent will not be considered accurate.

* * * * *

10. In Supplement I to Part 226, *§ 226.23—Right of Rescission* is amended by adding new 23(g) and 23(h) preceding the References to read as follows:

* * * * *

*§ 226.23—Right of Rescission*

* * * * *

*23(g) Tolerances for accuracy.*

*23(g)(2) One percent tolerance.*

1. *New advance.* The phrase ''new advance'' has the same meaning as in comment 23(f)–4.

*23(h) Special Rules for Foreclosures.*

1. *Rescission.* Section 226.23(h) applies only to transactions that are subject to rescission under § 226.23(a)(1).

*Paragraph 23(h)(1)(i).*

1. *Mortgage broker fees.* A consumer may rescind a loan in foreclosure if a mortgage broker fee that should have been included in the finance charge was omitted, without regard to the dollar amount involved. If the amount of the mortgage broker fee is included but misstated the rule in § 226.23(h)(2) applies.

*23(h)(2) Tolerance for disclosures.*

1. *General.* This section is based on the accuracy of the total finance charge rather than its component charges.

* * * * *

11. In Supplement I to Part 226, under *§ 226.31—General Rules,* the following amendments are made:

a. Under *Paragraph 31(c)(1)* paragraph 1. is redesignated as paragraph 1. under *Paragraph 31(c).,* and paragraph 2., under *Paragraph 31 (c)(1)* is redesignated as paragraph 1; and

b. Under *31(d),* a new paragraph *31(d)(3),* is added.

The revisions and additions read as follows:

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

*§ 226.31—General Rules*

* * * * *

*31(d) Basis of disclosures and use of estimates.*

* * * * *

*31(d)(3) Per-diem interest.*

1. *Per-diem interest.* This paragraph applies to the disclosure of any numerical amount (such as the finance charge, annual percentage rate, or payment amount) that is affected by the amount of the per-diem interest charge that will be collected at consummation. If the amount of per-diem interest used in preparing the disclosures for consummation is based on the information known to the creditor at the time the disclosure document is prepared, the disclosures are considered accurate under this rule, and affected disclosures are also considered accurate, even if the disclosures were not labeled as estimates. (See comment 17(c)(2)(ii)–1 generally.)

* * * * *

12. In Supplement I to Part 226, under *§ 226.32—Requirements for Certain Closed-End Home Mortgages,* the following amendments are made:

a. Under *Paragraph 32(b)(1)(i).,* paragraph 1. is revised; and

b. Under *Paragraph 32(c)(3).,* a new paragraph 2. is added.

The revisions and additions read as follows:

* * * * *

*§ 226.32—Requirements for Certain Closed-End Home Mortgages*

* * * * *

*32(b) Definitions.*

*Paragraph 32(b)(1)(i).*

1. *General.* Section 226.32(b)(1)(i) includes in the total ''points and fees'' items defined as finance charges under §§ 226.4(a) and 226.(4)(b). Items excluded from the finance charge under other provisions of § 226.4 are not included in the total ''points and fees'' under paragraph 32(b)(1)(i), but may be included in ''points and fees'' under paragraphs 32(b)(1)(ii) and 32(b)(1)(iii). Interest, including per-diem interest, is excluded from ''points and fees'' under § 226.32(b)(1).

* * * * *

*32(c) Disclosures.*

* * * * *

*Paragraph 32(c)(3) Regular payment.*

* * * * *

2. *Balloon payments.* If a loan with a term of five years or more provides for a balloon payment, the balloon payment must be disclosed. For a loan with a term of less than five years, a balloon payment is prohibited.

* * * * *

13. In Supplement I to Part 226, under *§ 226.33—Requirements for Reverse Mortgages,* under *Paragraph 33(a)(2),* in paragraph 2., the third and fourth sentences are revised and a new sentence is added at the end of the paragraph to read as follows:

* * * * *

*§ 226.33—Requirements for Reverse Mortgages*

*33(a) Definition.*

* * * * *

*Paragraph 33(a)(2).*

* * * * *

2. *Definite term or maturity date.* * * * An obligation may state a definite maturity date or term of repayment and still meet the definition of a reverse-mortgage transaction if the maturity date or term of repayment used would not operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation. For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible.

* * * * *

14. In Supplement I to Part 226, under *Appendices G and H—Open-End and Closed-End Model Forms and Clauses,* a new paragraph 2. is added to read as follows:

* * * * *

Appendices G and H—Open-End and Closed-End Model Forms and Clauses

* * * * *

2. *Debt cancellation coverage.* This regulation does not authorize creditors to characterize debt cancellation fees as insurance premiums for purposes of this regulation. Creditors may provide a disclosure that refers to debt cancellation

coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

* * * * *

15. In Supplement I to Part 226, under *Appendix H—Closed-End Model Forms and Clauses,* a new sentence is added to the end of paragraph 11. to read as follows:

* * * * *

Appendix H—Closed-End Model Forms and Clauses

* * * * *

11. *Models H–8 and H–9.* * * * The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, February 28, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board.*

[FR Doc. 97–5447 Filed 3–5–97; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 350

**RIN 3064–AB98**

### Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks

**AGENCY:** Federal Deposit Insurance Corporation (FDIC or Corporation).

**ACTION:** Final rule.

**SUMMARY:** As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), the FDIC is revising its regulation entitled ''Disclosure of Financial and Other Information by FDIC-Insured State Nonmember Banks'' (the Rule). The revision removes references to the obsolete savings bank Call Report. It also permits the annual report required by the Corporation's regulation on annual independent audits and reporting requirements to be used as the annual disclosure statement in certain circumstances, and updates and clarifies certain other references in the Rule.

**EFFECTIVE DATE:** April 7, 1997.

**FOR FURTHER INFORMATION CONTACT:** Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898–8905; or Sandra Comenetz, Counsel, Legal Division, (202) 898–3582, FDIC, 550 17th Street N.W., Washington, DC 20429.

**SUPPLEMENTARY INFORMATION:**

Background

The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI (12 U.S.C. 4803(a)) requires each federal banking agency to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires each federal agency to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies. Part 350 contains outdated and unnecessary language that needs to be revised or removed.

Part 350 was adopted by the FDIC Board of Directors on December 17, 1987, and published on December 31, 1987, 52 FR 49379, effective February 1, 1988. The Rule requires FDIC-supervised banks and branches of foreign banks to prepare, and make available on request, annual disclosure statements consisting of: (1) Required financial data comparable to specified schedules in Call Reports filed for the previous two year-ends; (2) information that the FDIC may require of particular organizations; and (3) other optional information. The annual disclosure statement must be prepared by March 31 of the following year, or the fifth day after an organization's annual report covering the year is sent to shareholders, whichever occurs first. In place of Call Report data, a bank may use audited financial statements or reports prepared pursuant to other regulations by the bank or a parent one-bank holding company.

Discussion

The contents of the annual disclosure statement listed in § 350.4(a)(1)(iv) and (v) refer in part to schedules in the Call Report for FDIC-supervised savings banks. The FDIC eliminated the separate savings bank Call Report in 1989. Therefore, these outdated references are being deleted.

The FDIC has proposed amending 12 CFR part 335 by incorporating by reference the rules and regulations promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 rather than having its own detailed rules and regulations. (61 FR 33696) Therefore, § 350.5(a) is revised to refer simply to part 335 rather than to specific subsections of this regulation.

The Federal Deposit Insurance Corporation Improvement Act of 1991 added section 36 to the Federal Deposit Insurance Act. Section 36 and its implementing regulation, 12 CFR part 363, require all insured depository institutions with $500 million or more in total assets at the beginning of their fiscal year to have an annual audit of their financial statements performed by an independent public accountant. The audited financial statements are part of an annual report that institutions subject to section 36 must prepare and submit to the FDIC. A new paragraph (d) is added to § 350.5 permitting the use of these annual reports as annual disclosure statements in certain situations.

In addition, several other wording changes have been made to improve the clarity of the regulations.

Public Comment Waiver and Effective Date

This regulation is being issued as a final rule. The Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (APA) requires that general notice of a proposed rulemaking be published in the Federal Register. 5 U.S.C. 553(b). However, the revision of part 350 is exempt from the Federal Register publication requirement pursuant to subsection 553(b)(B). This section of the APA creates a publication exemption ''when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). The revisions to part 350 are minor and technical; therefore the notice and public comment requirements of section 553(b) are unnecessary. *Id.* In addition, the APA provides that the required publication of a substantive rule in the Federal Register shall be made not less than 30 days before its effective date. 5 U.S.C. 553(d). Part 350 would be exempt from this requirement also for good cause. The amendments are of such a nature that the public does not need a delayed period of time to conform or adjust to them. 5 U.S.C. 553(d)(3).

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is required by the amendments. Therefore, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Because the revisions to part 350 are published in final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for Congressional review of final agency rules. The reporting requirement is triggered when agencies issue a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget has determined that the revision of part 350 does not constitute a ''major rule'' as defined by SBREFA.

List of Subjects in 12 CFR Part 350

Accounting, Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board of Directors of the FDIC hereby amends part 350 of chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 350—DISCLOSURE OF FINANCIAL AND OTHER INFORMATION BY FDIC-INSURED STATE NONMEMBER BANKS

1. The authority citation for part 350 continues to read as follows:

Authority: 12 U.S.C. 1817(a)(1), 1819 ''Seventh'' and ''Tenth''.

2. Section 350.3 is revised to read as follows:

### § 350.3 Requirement for annual disclosure statement.

(a) *Contents.* Each bank shall prepare as of December 31 and make available on request an annual disclosure statement. The statement shall contain information required by § 350.4(a) and (b) and may include other information that bank management believes appropriate, as provided in § 350.4(c).

(b) *Availability.* A bank shall make its annual disclosure statement available to the public beginning not later than the following March 31 or, if the bank mails an annual report to its shareholders, beginning not later than five days after the mailing of such reports, whichever occurs first. A bank shall make a disclosure statement available continuously until the disclosure statement for the succeeding year becomes available.

3. Section 350.4 is revised to read as follows:

### § 350.4 Contents of annual disclosure statement.

(a) *Financial reports.* The annual disclosure statement for any year shall reflect a fair presentation of the bank's financial condition at the end of that year and the preceding year and, except for state-licensed branches of foreign banks, the results of operations for each such year. The annual disclosure statement may, at the option of bank management, consist of the bank's entire Call Report, or applicable portions thereof, for the relevant dates and periods. At a minimum, the statement must contain information comparable to that provided in the following Call Report schedules:

(1) For insured state-chartered organizations that are not members of the Federal Reserve System:

(i) Schedule RC (Balance Sheet);

(ii) Schedule RC-N (Past Due and Nonaccrual, Loans, Leases, and Other Assets—column A covering financial instruments past due 30 through 89 days and still accruing and Memorandum item 1 need not be included);

(iii) Schedule RI (Income Statement);

(iv) Schedule RI-A (Changes in Equity Capital); and

(v) Schedule RI-B, Part II (Changes in Allowance for Loan and Lease Losses).

(2) For insured state-licensed branches of foreign banks:

(i) Schedule RAL (Assets and Liabilities);

(ii) Schedule E (Deposit Liabilities and Credit Balances); and

(iii) Schedule P (Other Borrowed Money).

(b) *Other required information.* The annual disclosure statement shall include such other information as the FDIC may require of a particular bank. This could include disclosure of enforcement actions where the FDIC deems it in the public interest to do so.

(c) *Optional information.* A bank may, at its option, provide additional information that bank management considers important to an evaluation of the overall condition of the bank. This information could include, but is not limited to, a discussion of the financial data; information relating to mergers and acquisitions; the existence of and facts relating to regulatory enforcement actions; business plans; and material changes in balance sheet and income statement items.

(d) *Disclaimer.* The following legend shall be included in every annual disclosure statement to advise the public that the FDIC has not reviewed the information contained therein: ''This statement has not been reviewed, or confirmed for accuracy or relevance, by the Federal Deposit Insurance Corporation.''

4. Section 350.5 is revised to read as follows:

### § 350.5 Alternative annual disclosure statements.

The requirements of § 350.4(a) may be satisfied:

*(a) In the case of a bank having a class of securities registered pursuant to section 12 of the Securities Exchange Act of 1934,* by the bank's annual report to security holders for meetings at which directors are to be elected or the bank's annual report (see 12 CFR part 335);

*(b) In the case of a bank with independently audited financial statements,* by copies of the audited financial statements and the certificate or report of the independent accountant to the extent that such statements contain information comparable to that specified in § 350.4(a); and

*(c) In the case of a bank subsidiary of a one-bank holding company,* by an annual report of the one-bank holding company prepared in conformity with the regulations of the Securities and Exchange Commission or by sections in the holding company's consolidated financial statements on Form FR Y–9C pursuant to Regulation Y of the Federal Reserve Board (12 CFR part 225) that are comparable to the Call Report schedules enumerated in § 350.4(a)(1), provided that in either case not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

*(d) In the case of a bank covered by 12 CFR part 363,* by an annual report prepared pursuant to 12 CFR 363.4. However, if the annual report is for a bank subsidiary of a holding company which provides only the consolidated financial statements of the holding company, this annual report may be used to satisfy the requirements of this part only if it is the report of a one-bank holding company and provided that not less than 95 percent of the holding company's consolidated total assets and total liabilities are assets and liabilities of the bank and the bank's consolidated subsidiaries.

5. Section 350.6 is revised to read as follows:

### § 350.6 Signature and attestation.

An authorized officer of the bank shall sign the annual disclosure statement. The officer shall also attest to

the correctness of the information contained in the statement if the financial reports are not accompanied by a certificate or report of an independent accountant.

6. Section 350.12 is revised to read as follows:

**§ 350.12 Disclosure required by applicable banking or securities law or regulations.**

The requirements of this part are not intended to replace or waive any disclosure required to be made under applicable banking or securities law or regulations.

By order of the Board of Directors.

Dated at Washington, D. C. this 4th day of February, 1997.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

*Deputy Executive Secretary.*

[FR Doc. 97–5510 Filed 3–5–97; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 96–ANE–08; Amendment 39–9926; AD 97–04–03]**

**RIN 2120–AA64**

## Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that requires removal from service of certain first stage low pressure turbine (LPT) seal plates prior to accumulating the new, reduced cyclic life limit, and replacement with serviceable LPT seal plates. This amendment is prompted by a report that the machined LPT seal plate geometry did not meet the design intent due to drawing ambiguity. The actions specified by this AD are intended to prevent fatigue cracking and subsequent uncontained failure of an LPT seal plate.

**DATES:** Effective May 5, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 1997.

**ADDRESSES:** The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (310) 627–5246; fax (310) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to AlliedSignal Inc. TFE731 series turbofan engines was published in the Federal Register on July 10, 1996 (61 FR 36310). That action proposed to require removing from service first stage LPT seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1, prior to accumulating the new, reduced cyclic life limit of 3,700 cycles since new (CSN), and replacement with serviceable parts. The actions would be required to be accomplished in accordance with AlliedSignal Inc. Service Bulletin (SB) No. TFE731–72–3573, dated August 15, 1995. AlliedSignal Inc. SB No. TFE731–72–3001, Service Life Limits of Critical Life Limited Components, Revision 42, dated July 17, 1995, incorporates the new cyclic life limit of 3,700 CSN.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has added a new paragraph (c) to clarify that operators may seek FAA-approval of modifications to the new life limits only through the alternative method of compliance procedure described in the AD. The FAA has determined that air safety and the public interest require the adoption of the rule with this change.The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 268 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $5,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,356,080.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [AMENDED]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

97–04–03 AlliedSignal Inc.: Amendment 39–9926. Docket 96–ANE–08.

*Applicability:* AlliedSignal Inc. Models TFE731–2A, –3C and –3CR series turbofan engines, with first stage low pressure turbine (LPT) seal plates, Part Number (P/N) 3073552–2 and P/N 3074053–1, installed on but not limited to the following aircraft: Cessna Model 650 Citation III and Israel Aircraft Industries Model 1125 Westwind Astra aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless

of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent fatigue cracking and subsequent uncontained failure of a first stage LPT seal plate, accomplish the following:

(a) Prior to accumulating 3,700 cycles since new (CSN) on LPT seal plates, P/Ns 3073552–2 and 3074053–1, remove from service these first LPT seal plates, and replace with serviceable parts, in accordance with the Accomplishment Instructions of AlliedSignal Inc. Service Bulletin (SB) No. TFE731–72–3573, dated August 15, 1995.

(b) This action establishes a new, reduced cyclic life limit of 3,700 CSN for first stage LPT seal plates, P/N 3073552–2 and P/N 3074053–1.

(c) Except as provided in paragraph (d) of this AD, no alternative replacement times may be approved for LPT seal plates, P/N 3073552–2 and 3074053–1.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. SB:

| Document No. | Pages | Date |
|---|---|---|
| TFE731–72–3573. | 1–6 | August 15, 1995 |

Total Pages: 6.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 5, 1997.

Issued in Burlington, Massachusetts, on February 26, 1997.

James C. Jones,

*Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 97–5512 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 95

**[Docket No. 28833; Amdt. No. 401]**

## IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, March 27, 1997.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 267–8277.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that his amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on February 21, 1997.

Thomas C. Accardi,

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, March 27, 1997.

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 401 effective date, March 27, 1997]

| From | To | MEA |
|---|---|---|
| **§ 95.1001 Direct Routes—U.S.** | | |
| **§ 95.637 Blue Federal Airway 37 is Amended to Read in Part** | | |
| Elephant, AK NDB<br>*5100–MOCA | Sparl, AK FIX | *6000 |
| **§ 95.1001 Direct Routes—U.S. is Amended to Delete** | | |
| Dallas/Fort Worth, TX Vortax<br>*2600–MOCA<br>VIA DFW VORTAC 275& SPS VORTAC 140<br>*3000–MOCA | Duncan, OK VOR/DME | *5000 |
| **§ 95.6050 VOR Federal Airway 50 is Amended To Read in Part** | | |
| Pawnee City, NE VORTAC | St. Joseph, MO VORTAC | 4000 |
| **§ 95.6069 VOR Federal Airway 69 is amended to read in Part** | | |
| Pine Bluff, AR VOR/DME<br>Billi, AR FIX<br>*6000–MRA<br>**1500–MOCA | Billi, AR FIX<br>*Hille, AR FIX | *2000<br>**6000 |
| Hille, AR FIX<br>*3000–MOCA | Walnut Ridge, AR VORTAC | *4000 |
| **§ 95.6153 VOR Federal Airway 153 is Amended to Read in Part** | | |
| Lake Henry, PA VORTAC<br>*4200–MOCA | Grows, NY FIX | *5000 |
| Grows, NY FIX<br>*3700–MOCA | Georgetown, NY VORTAC | *–6000 |
| **§ 95.6210 VOR Federal Airway 210 is Amended to Read in Part** | | |
| Rolls, OK FIX<br>*4400–MRA<br>**3500–MOCA | *Waxey, OK FIX | **8400 |
| **§ 95.6223 VOR Federal Airway 223 is Amended to Read in Part** | | |
| Haney, VA FIX<br>*1000–MRA | *Fluky, VA FIX | 2600 |
| **§ 95.6375 VOR Federal Airway 375 is amended to Read in Part** | | |
| Gordonsville, VA VORTAC<br>*7000–MRA | *Haney, VA FIX | 2800 |
| Haney, VA FIX<br>*1000–MRA | Fluky, VA FIX | 2600 |
| **§ 95.6488 VOR Federal AIrway 488 is Amended to Read in Part** | | |
| Akelt, AK FIX<br>*4000–MOCA | Almot, AK FIX | *10000 |
| **§ 95.6491 VOR Federal Airway 491 is amended to Read in Part** | | |
| Rapid City, SD VORTAC<br>*5000–MOCA | Dickinson, ND VORTAC | *8000 |
| **§ 95.6507 VOR Federal Airway 507 is Amended to Read in Part** | | |
| Waxey, OK FIX<br>*3500–MOCA | Rolls, OK FIX | *8400 |

| From | To | MEA | MAA |
|---|---|---|---|
| **§ 95.7532 Jet Route No. 532 is Amended to Delete** | | | |
| Humboldt, MN VORTAC | U.S. Candian Border | 18000 | 45000 |

**§ 95.8003 VOR Federal Airways Changeover Points Airway Segment V–76 Is Amended to Delete**

| From | To | Changeover points | |
|---|---|---|---|
| | | Distance | From |
| Lubbock, TX VORTAC | Big Spring, TX VORTAC | 71 | Lubbock |
| **V–81 is Amended to Delete** | | | |
| Lubbock, TX VORTAC | Midland, TX VORTAC | 71 | Lubbock |

[FR Doc. 97–5549 Filed 3–5–97; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 284

**[Docket Nos. RM91–11–006 and RM87–34–072; Order No. 636–C]**

## Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued February 27, 1997.

**AGENCY:** Federal Energy Regulatory Commission. Energy.

**ACTION:** Final rule; order on remand.

**SUMMARY:** In *United Distribution Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *petitions for cert. filed*, 65 U.S.L.W. 3531–32 (U.S. Jan. 27, 1997) (No. 96–1186, *et al.*) (*UDC*), the Court of Appeals for the District of Columbia Circuit affirmed the Commission's restructuring of the natural gas industry in the Commission's Order No. 636. (Final rule published at 57 FR 13267, April 16, 1992). In UDC, the Court remanded six issues to the Commission for further explanation or consideration. This order complies with the Court's remand.

**FOR FURTHER INFORMATION CONTACT:**

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Note: Appendix A, containing Tables 1 and 2, and Appendix B, containing Tables 1 through 5 are not being published in the Federal Register but are available from the Commission's Public Reference Room.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

Pipeline Service Obligations and Revisions to Regulations to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Docket Nos. RM91–11–006 and RM 87–34–072; Order No. 636–C)

### Order on Remand

Issued February 27, 1997.

In *United Distribution Companies* v. *FERC* (*UDC*),[1] the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's Order No. 636[2] ''in its broad contours and in most of its specifics.''[3] In so doing, the Court affirmed the Commission's restructuring of the natural gas industry, but remanded six issues to the Commission for further explanation or consideration. This order complies with the Court's remand.

In light of the Court's remand, the Commission has reexamined Order No. 636, and of necessity, the changes in the natural gas industry that have occurred since restructuring. Based on reconsideration of the remanded issues, the Commission reaffirms certain of its previous rulings and reverses others.

### I. Introduction

In Order No. 636 the Commission required interstate pipelines to restructure their services in order to improve the competitive structure of the natural gas industry. The regulatory changes were designed ''to ensure that all shippers have meaningful access to the pipeline transportation grid so that willing buyers and sellers can meet in

[1] *United Distrib. Cos.* v. *FERC*, 88 F.3d 1105 (D.C. Cir. 1996), *petitions for cert. filed*, 65 U.S.L.W. 3531–32 (U.S. Jan. 27, 1997) (No. 96–1186, *et al.*) (*UDC*).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993).

[3] *UDC*, 88 F.3d at 1191.

a competitive, national market to transact the most efficient deals possible.''[4] To achieve this goal, the Commission required pipelines to restructure their services to separate the transportation of gas from the sale of gas, and to change the design of their transportation rates. The Commission also required pipelines to permit firm shippers to resell their capacity rights, creating national procedures for trading transmission capacity. The Commission adopted a new flexible delivery point policy and took various other actions in order to promote the growth in market centers. In addition, the Commission adopted policies to govern the pipelines' recovery of transition costs that would arise from the restructuring.

In *UDC*, the Court affirmed the major elements of the restructuring rule—the unbundling of sales and transportation,[5] the use of an SFV rate design, the capacity release rules, the curtailment provisions, the right-of-first refusal mechanism, and the recovery of transition costs. Specifically, the Court affirmed the Commission's regulation of capacity release including restrictions on non-pipeline releases,[6] its ban on buy/sell transactions,[7] and its adjustments to pipelines' rates, including the authority to increase those rates under section 5 of the Natural Gas Act (NGA) in the circumstances presented.[8] The Court further held that the Commission has jurisdiction over the curtailment of third-party supplies.[9]

The Court remanded six aspects of the rule for further explanation or consideration, although the Court permitted the rule to stand as formulated pending the Commission's final action on remand.[10] First, the Court remanded the issue of no-notice transportation eligibility, particularly the Commission's restriction on the entitlement to no-notice transportation service to those customers who received bundled firm-sales service on May 18, 1992.[11] The Court found that the Commission had not adequately explained the ''disadvantaging of former bundled firm-sales customers who converted under Order No. 436.''[12] Second, while the Court upheld the basic right-of-first-refusal mechanism, with its matching conditions of rate and contract term,[13] it remanded as to the Commission's selection of a twenty-year term-matching cap.[14] Specifically, the Court found that the Commission had not adequately explained how the twenty-year cap protects against pipelines' market power, and the failure to explain why it looked at new-construction contracts in arriving at the twenty-year figure.[15]

Third, the Court remanded the issue of SFV rate mitigation for further explanation of the requirement that initial rate mitigation measures must be applied on a customer-by-customer basis, and the phased-in measures must be applied on a customer-class basis.[16] The Court found that the Commission had not adequately justified its preference for customer-by-customer mitigation over customer-class mitigation.[17] The Court was particularly concerned by arguments of the pipelines that customer-by-customer mitigation would increase the risks that a pipeline will fail to collect its costs.[18] Fourth, the Court remanded the Commission's deferral to individual restructuring proceedings the eligibility of small customers on downstream pipelines for a one-part small-customer rate.[19] The Court found that the Commission made an arbitrary distinction between former indirect small customers of an upstream pipeline who are now direct customers, and small customers who have always been direct customers of the same upstream pipeline.[20]

Fifth, the Court found that the Commission had not adequately explained the requirement that pipelines allocate ten percent of Gas Supply Realignment (GSR) costs to interruptible customers.[21] The Court's principal concern was the lack of justification for the allocation figure of ten percent, as opposed to another percentage or allocation method.[22] Finally, the Court remanded the Commission's decision to exempt pipelines from sharing in GSR costs.[23] The Court required further explanation of why the Commission used ''cost spreading'' and ''value of service'' principles to allocate costs to the pipelines' customers, but reverted to traditional ''cost causation'' principles to justify exempting pipelines from those costs.[24]

Pipelines began implementing the requirements of Order No. 636 in 1993, and restructured services now have been in effect for three heating seasons. Significant changes have occurred in the natural gas industry since the development of the record in the Order No. 636 proceeding, many of which are a direct result of restructuring. Thus, the Commission's actions on remand necessarily will reflect the insight gained from restructuring.

Since Order No. 636, substantial progress has been made toward realizing the Commission's goal of opening up the pipeline grid to form a national gas market for gas sellers and gas purchasers to meet in the most efficient manner. Today, there are 38 operating market centers as compared to only six when Order No. 636 issued.[25] These market centers provide a variety of services that increase the flexibility of the system and facilitate connections between gas sellers and buyers. These services commonly include wheeling, parking, loaning, and storage.[26] In addition, electronic trading of gas and capacity rights, which did not exist at the time of Order No. 636, is now offered at over 20 market centers and other transaction points throughout North America. Electronic trading systems enable buyers and sellers to discover the price and availability of gas at transaction points, submit bids, complete legally binding transactions, and prearrange capacity release transactions.

In addition to the information provided by electronic trading services, electronic information services offer capacity release and tariff information

[4] Order No. 636, [Regs. Preambles Jan. 1991—June 1996] FERC Stats. & Regs. at 30,393.

[5] The mandatory unbundling remedy itself was not challenged; however, appellants challenged four peripheral aspects of the remedy which were addressed by the Court. First, the Court upheld the rule that customers must retain contractual firm-transportation capacity for which the pipeline receives no other offer. Second, the Court deferred to individual proceedings the issue of pipelines' ability to modify storage contracts without NGA section 7(b) abandonment proceedings. Third, the Court declared moot the challenge to the Commission's rule that transportation-only pipelines may not acquire capacity on other pipelines. Fourth, as discussed further in this order, the Court remanded for further consideration the Commission's decision that only those customers who received bundled firm-sales service on May 18, 1992, are entitled to no-notice transportation service.

[6] *UDC*, 88 F.3d at 1152–54.

[7] *Id*. at 1157.

[8] *Id*. at 1166.

[9] *Id*. at 1148.

[10] *Id*. at 1191.

[11] *Id*. at 1137.

[12] *Id*.

[13] *Id*. at 1139–40.

[14] *Id*. at 1141.

[15] *Id*.

[16] *Id*. at 1174.

[17] *Id*.

[18] *Id*.

[19] *Id*. at 1175.

[20] *Id*. at 1174–75.

[21] *Id*. at 1188.

[22] *Id*. at 1187.

[23] *Id*. at 1190.

[24] *Id*. at 1189.

[25] Energy Info. Agency, DOE, No. DOE–EIA–0560(96), Natural Gas Issues and Trends (Dec. 1996).

[26] Wheeling, offered at 33 market centers, is the transfer of gas from one interconnected pipeline to another. Parking, offered at 29 market centers, is when the market center holds the shipper's gas for a short time for redelivery within approximately 15 days. Loaning, offered at 20 market centers, is a short-term advance to a shipper by the market center operator which is repaid in kind by the shipper. Storage is offered at 16 market centers.

aggregated from pipeline electronic bulletin boards, gas futures pricing information,[27] weather information, and determination of least cost routing. Such information was not widely available electronically before Order No. 636.

Capacity release is also playing an increasingly significant role in permitting the reallocation of firm pipeline capacity to customers most desiring it. For example, in October 1996, the Commission estimates that released capacity held by replacement shippers accounted for about 23 percent of firm transportation contract demand, for a group of 30 pipelines for which capacity release data was obtained.[28] Capacity release permits shippers to release the rights to transportation on the segments of a pipeline they do not need, and to acquire firm rights in segments that connect to other supply areas, on a temporary or permanent basis. Because of this ability to obtain firm transportation access to supply regions throughout the North American continent, shippers have less need to renew contracts for firm capacity over the entire length of the pipelines that have traditionally served them from supply basins in the south and southwestern parts of the United States.[29]

The construction and development of the pipeline grid that continues today will increase this flexibility for shippers. In the Eastern region of the United States, construction has been undertaken to add pipeline capacity to meet peak day demand along traditional pipeline paths,[30] and to add paths to new supply regions.[31] The interstate pipeline grid is undergoing significant expansion in other regions also to access new supply basins, and to create new paths from existing supply basins to additional markets.[32] As new supply basins and paths develop, issues associated with shippers' relinquishment (''turn-back'') of capacity along older pipeline routes from the traditional supply areas have arisen as firm contracts come up for renewal. The Commission has addressed such capacity issues on pipelines serving the Midwest[33] and Southern California,[34] and on other pipelines serving traditional production areas.[35] It is possible that as other pipelines' long-term contracts expire, additional capacity will become unsubscribed because shippers now have more flexibility to choose different suppliers and pipeline routes than they had prior to restructuring. The Commission and the industry have sought creative ways to market excess capacity so that pipelines can recover their costs.[36]

The Commission continues to refine its policies to reflect current circumstances. The Commission is considering possible improvements in the capacity release rules, so that pipeline capacity can be traded more efficiently.[37] The Commission has also adopted uniform national business standards for interstate pipelines,[38] and the process of standardizing practices for interstate transportation is a continuing effort.[39] Because of all these changes in the industry, the Commission's views on the issues remanded by the Court, of necessity, are different from the Commission's views in 1992 when it issued Order No. 636.

In summary, on remand the Commission has decided to modify its no-notice policy, on a prospective basis, to the extent the prior policy restricts entitlement to no-notice service to any particular group of customers. Further, the Commission will reverse its selection of a twenty-year matching term for the right of first refusal and instead adopt a five-year matching term. The Commission will reaffirm its decision to first require customer-by-customer mitigation of the effects of SFV rate design. In addition, the Commission will reaffirm its decision to establish the eligibility of customers of downstream pipelines for the upstream pipeline's one-part small-customer rate on a case-by-case basis. The Commission will reverse the requirement that pipelines allocate ten percent of GSR costs to interruptible customers, and instead will require pipelines to propose the percentage of their GSR costs their interruptible customers must bear in light of the individual circumstances present on each pipeline. Finally, the Commission will reaffirm its decision to exempt pipelines from sharing in GSR costs.

## II. Eligibility Date for No-Notice Transportation

In Order No. 636, in connection with the conclusion that bundled, city-gate, firm sales service was contrary to section 5 of the NGA, the Commission required pipelines to provide a ''no-notice'' transportation service. Under no-notice transportation service, firm shippers could receive delivery of gas on demand up to their firm entitlements on a daily basis, without incurring daily scheduling and balancing penalties. The purpose of no-notice service was to enable firm shippers to meet unexpected requirements such as sudden changes in temperature. The Commission required that pipelines offer no-notice service only to those

[27] Since 1990, futures contracts have provided information about expected prices each month for the next two years, and these prices are reported daily.

[28] This estimate is derived from downloaded data posted on pipelines' electronic bulletin boards as required by 18 CFR § 284.10(b).

[29] For example, in Tennessee Gas Pipeline Co., Opinion No. 406, 76 FERC ¶ 61,022 at 61,127–29 (1996), customers argued they should not be compelled to pay for or hold firm rights to capacity in the production area when they only want capacity in the market area. *See also* Transcontinental Gas Pipe Line Corp., Opinion No. 405, 76 FERC ¶ 61,021 at 61,061 (1996) (discussing the significance of segmenting capacity).

[30] For example, in Docket No. CP96–153–000, Southern Natural Gas Co. has applied for authorization to expand its pipeline facilities by 76,000 Mcf/day of capacity, primarily to serve existing customers wishing to increase their firm contract quantities. *See* Southern Natural Gas Co., 76 FERC ¶ 61,122 (1996). The Commission recently authorized CNG Transmission Corp. to construct a pipeline loop between two points in Schenectady Co., New York, to alleviate potential service interruptions to Niagara Mohawk Power Corp.'s distribution system. CNG Transmission Corp., 74 FERC 61,073 (1996).

[31] In Docket Nos. CP96–248–000 and CP96–249–000, Portland Natural Gas Co. has proposed to construct a new 242-mile pipeline extending from Troy, Vermont, to Haverhill, Massachussets. In Docket Nos. CP96–178–000, CP96–809–000 and CP96–810–000, Maritimes & Northeast Pipeline, LLC also propose to construct new pipeline facilities in Northern New England.

[32] For example, Northern Border Pipeline Company, in Docket No. CP95–194–000 and Natural Gas Pipeline Company of America, in Docket No. CP96–27–000, have proposed to construct new pipeline facilities to bring Canadian gas to the Chicago area.

[33] Natural Gas Pipeline Co. of America, 73 FERC ¶ 61,050 (1995).

[34] El Paso Natural Gas Co., 72 FERC ¶ 61,083 (1995) (rejecting El Paso's proposed ''exit fee'' to reallocate costs associated with turned-back capacity); Transwestern Pipeline Co., 72 FERC ¶ 61,085 (1995) (approving a settlement including a mechanism to share the costs and burdens associated with capacity relinquishment).

[35] Tennessee Gas Pipeline Co., 77 FERC ¶ 61,083 at 61,358 (1996) (permitting rate design changes in a contested settlement based, in part, on Tennessee's concern that 70 percent of its firm contracts would expire by the year 2000); Transcontinental Gas Pipe Line Corp., Opinion No. 405–A, 77 FERC ¶ 61,270 (1996) (deferring potential capacity turn-back issues until closer to the expiration date of the contracts at issue).

[36] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Statement of Policy and Request for Comments, 74 FERC 61,076 (1996); NorAm Gas Transmission Co., 75 FERC ¶ 61,091 at 61,310 (1996).

[37] Secondary Market Transactions on Interstate Natural Gas Pipelines, 61 FR 41046 (1996), IV FERC Stats. & Regs. ¶ 32,520 (to be codified at 18 CFR part 284) (proposed July 31, 1996).

[38] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (1996), III FERC Stats. & Regs. ¶ 31,038 (1996) (to be codified at 18 CFR parts 161, 250, and 284).

[39] Standards for Business Practices of Interstate Natural Gas Pipelines, 61 FR 58790 (1996), IV FERC Stats. & Regs. ¶ 32,521 (to be codified at 18 CFR part 284) (proposed Nov. 13, 1996).

customers eligible for firm sales service at the time of restructuring.

The Court remanded for further explanation of this limitation on the no-notice service requirement.[40] Section 284.8(a)(4) of the regulations, adopted by Order No. 636, requires pipelines ''that provided a firm sales service on May 18, 1992 [the effective date of Order No. 636]'' to offer the no-notice service.[41] The eligibility cut-off for no-notice service was established in Order No. 636-A, in which the Commission held that pipelines were required to offer no-notice transportation service ''only to customers that were entitled to receive a no-notice firm, city gate, sales service on May 18, 1992.'' [42] The Commission also strongly encouraged pipelines to make no-notice service available to their other customers on a non-discriminatory basis.

On appeal, the Court addressed the issue of whether the Commission should have required pipelines to offer no-notice transportation service not only to customers who remained sales customers on May 18, 1992, but also to former bundled firm sales customers who had converted to open access transportation before Order No. 636 (conversion customers). The Court found the Commission had not adequately explained why the conversion customers should not also have a right to receive no-notice service. The Court held that the Commission's desire to begin the experiment with no-notice service on a limited basis does not explain or justify the disadvantaging of former sales customers who converted before Order No. 636.[43] The Court also held that, while conversion customers had no right to expect to receive no-notice service, neither did customers who were still receiving bundled sales service on May 18, 1992.[44] Finally, the Court held that the Commission had not provided substantial evidence to support its assumption that bundled sales customers relied more heavily on reliability of transportation service than did conversion customers.[45] The Court accordingly remanded the issue of no-notice transportation eligibility to the Commission for further explanation.[46]

At the time of Order No. 636, considerable uncertainty existed whether pipelines would be able to perform no-notice service on a widespread basis. Many pipelines had indicated in their comments that they would not be able to provide no-notice transportation service.[47] However, at a technical conference held on January 22, 1992, pipelines made statements to the contrary. In Order No. 636, the Commission relied upon those later assertions. Nevertheless, on rehearing of Order No. 636, rehearing petitions from pipelines such as Carnegie Natural Gas Company (Carnegie) and CNG Transmission Corporation (CNG) indicated there was still some uncertainty among pipelines whether they would be able to provide reliable no-notice service.[48] In addition, pipelines asked the Commission to limit no-notice transportation service to existing sales customers at current delivery points with the option to extend the service on a nondiscriminatory basis where the pipeline had adequate capacity and delivery capacity.[49] The rehearing requests of bundled sales customers also reflected a continuing concern that unbundled services could not replicate the quality of the bundled sales services.[50]

In light of such uncertainty, the Commission decided to limit the requirement for pipelines to offer no-notice service to include only those customers who were then bundled sales customers. It appeared to the Commission that bundled sales customers relied more heavily on the reliability of the transportation service embedded within the sales service they were receiving than the conversion customers relied on the reliability of their transportation service. This is because no-notice service was an implicit part of bundled sales, but was not a part of unbundled transportation. During the period between Order Nos. 436 and 636, sales customers generally converted to transportation only to the extent that they did not need the higher quality of the transportation service embedded within bundled sales service.[51] In many cases, sales customers converted some, but not all, of their sales contract demand. These customers relied on their retained pipeline sales service to obtain gas during peak periods since sales service was equivalent to a no-notice service. Customers used their converted transportation service as a base load service to obtain cheaper gas from non-pipeline suppliers throughout the year.[52] The comments filed in the record of Order No. 636 also indicated that non-converted, or partially-converted customers placed more reliance on the reliability of the transportation service embedded within the bundled sales service.[53]

The post-restructuring experience with no-notice service has been quite varied, but the early concerns about the ability of pipelines to provide reliable no-notice service were not realized. Some pipelines had no bundled sales customers when Order No. 636 took effect, and thus were not required to offer no-notice service as part of their restructuring and did not do so. In the one restructuring proceeding[54] where customers who had converted to transportation before Order No. 636 indicated a desire for no-notice service, the pipeline offered them the service, but they ultimately refused it because they found it too expensive.

Some pipelines have, post-restructuring, expanded their offering of no-notice service. While Williams Natural Gas Company (Williams)

[40] UDC, 88 F.3d at 1137.

[41] 18 CFR 284.8(a)(4).

[42] Order No. 636-A, [Regs. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,573.

[43] UDC, 88 F.3d at 1137.

[44] Id.

[45] Id.

[46] Id.

[47] For example, the Interstate Natural Gas Association of America (INGAA) took the position that the bundled, citygate firm sales service was essential to the providing of no-notice and instantaneous service. See also Initial Comments of Texas Eastern Transmission Corp., Panhandle Eastern Pipe Line Co., Trunkline Gas Co., and Algonquin Gas Transmission Company (PEC Pipeline Group) at 16–17.

[48] For example, Carnegie and CNG asserted that before unbundling, the pipeline's system manager could rely on storage, system supply gas, linepack, and upstream pipeline deliveries. They argued that unbundling would deprive the system manager of the use of some or all of these resources and restrict the manager's ability to operate the system in the most efficient, system-wide manner. CNG Transmission Corp., Request for Rehearing at 32; Carnegie Natural Gas Co., Request for Rehearing at 42–3.

[49] INGAA, United Gas Pipe Line Co., ANR Pipeline Co., and Colorado Interstate Gas Co.

[50] The American Public Gas Association argued that firm sales service could not be replicated without assured access to firm storage service. Request for Rehearing at 12–20, *citing* initial comments of the Distributors Advocating Regulatory Reform at 74. Similarly, Citizens Gas & Coke Utility complained that Order No. 636 did not discuss no-notice gas supplies, storage capacity allocation, or the use of flexible receipt points for meeting the needs of high priority customers. Request for Rehearing at 2–3.

[51] Order No. 636, [Regs. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,402.

[52] For example, Order No. 636 found that in 1991, 60 percent of peak day capacity on the major pipelines that made bundled sales was still reserved for pipeline sales service. Order No. 636 also found: While pipeline sales were less than 20 percent of total throughput on the major pipelines, during the three day period of peak usage, pipeline sales were approximately 50 percent of total deliveries. The seasonal nature of the pipeline sales indicates that customers rely on pipeline sales during periods when capacity is most likely to be constrained. Order No. 636, [Reg. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,400.

[53] Id. at 30,403 n.68 (quoting reply comments of United Distribution Companies at 7: ''The remaining pipeline sales service is largely used to provide swing service during the winter months and therefore cannot be converted absent comparable transportation.'').

[54] Questar Pipeline Co., 64 FERC ¶ 61,157 (1993).

originally refused a group of conversion customers' requests for no-notice service,[55] a number of the conversion customers eventually obtained no-notice service under new contracts with the pipeline.[56] More recently, Mid Louisiana Gas Company (Mid Louisiana) faced the loss of its no-notice customers to a lower-priced competing intrastate bundled service. In an effort to retain the customers, Mid Louisiana proposed to reconfigure its no-notice service to reduce costs and make its no-notice service a more attractive option.[57] Mid Louisiana also expanded its offering of no-notice service to all firm transportation customers, not just those former sales customers previously eligible for no-notice service.

According to data published by the Interstate Natural Gas Association of America, no-notice service represented 17 percent of total pipeline throughput in 1995, an increase from 15 percent the previous year.[58] This increase in the volume of no-notice service provided is consistent with the pattern the Commission has observed in the industry. Some pipelines, such as Mid Louisiana, Questar, and Williams, have been providing no-notice service beyond the minimum requirements directed by the Commission in Order No. 636-A.

The Commission cannot retroactively change Order No. 636's limitation on the pipeline's requirement to offer no-notice service since it is impossible to change past service. However, given the varied experience with no-notice service since restructuring, and in light of the Court's remand, the Commission will no longer continue to limit the pipeline's no-notice service obligation to the pipeline's bundled sales customers at the time of restructuring.

The Commission intends no other changes to the pipeline's obligation to provide no-notice service as provided in section 284.8(4) of the Commission's regulations. If a pipeline offers no-notice service, the Commission will require it to offer that service on a non-discriminatory basis to all customers who request it, under the nondiscriminatory access provision in § 284.8(b)(1).[59] The Commission is aware that since all pipelines were not required during restructuring to offer no-notice service, some pipelines may not have the facilities and the capacity available to do so. The Commission's open-access policy has always been that interstate pipelines must offer open-access transportation to all shippers on a nondiscriminatory basis, to the extent capacity is available.[60] The nondiscriminatory access condition does not obligate pipelines to expand their capacity or acquire additional facilities to provide service. Thus, a pipeline offering no-notice transportation service must do so only to the extent the pipeline has capacity available (including the storage capacity that may be needed to perform no-notice service).

The Commission believes that a prospective change in policy based on current circumstances will satisfy the needs of all shippers who desire no-notice service. This approach is consistent with the fact that some pipelines, such as Mid Louisiana, Williams, and Questar, have already shown a willingness to expand their no-notice service beyond the Commission's basic requirement. However, to the extent there are shippers who desire no-notice service and cannot obtain it for any reason, such cases are appropriately resolved on an individual basis, rather than in a generic rulemaking proceeding.

## III. The Twenty-Year Contract Term

Order No. 636 authorized pregranted abandonment of long-term firm transportation contracts, subject to a right of first refusal for the existing shipper. Under the right of first refusal, the existing shipper can retain service by matching the rate and the term of service in a competing bid. The rate is capped by the pipeline's maximum tariff rate, and the Commission capped the term of service at twenty years. The twenty-year term-matching cap was not set forth in the Order No. 636 regulations themselves, but was explained in the preamble and is part of each pipeline's tariff. In Order No. 636, the Commission indicated that pipelines and customers could agree to a different cap.[61] As part of the restructuring obligations, pipelines were required to include in their tariffs the rules and procedures for exercising the right of first refusal, including the matching term cap to apply on that pipeline.

The Court found that the basic right of first refusal structure protects against pipeline market power,[62] and the Court approved the concept of a contract term-matching limitation ''as a rational means of emulating a competitive market for allocating firm transportation capacity.'' [63] The Court, nevertheless, judged inadequate the Commission's explanations for selecting twenty years as an outer limit for an existing customer to bid before securing the continuation of its rights under an expiring contract.[64] Based upon the arguments of LDCs, the Court found inadequate the Commission's explanation that the twenty-year term balances between preventing market constraint and encouraging market stability. The Court concluded that the Commission failed to explain why the twenty-year cap ''adequately protects against pipelines' preexisting market power, which they enjoy by virtue of natural-monopoly conditions;'' [65] and why the ''twenty-year cap will prevent bidders on capacity-constrained pipelines from using long contract duration as a price surrogate to bid beyond the maximum approved rate, to the detriment of captive customers.'' [66]

Further, the Court found that the Commission's reliance on the fact that twenty-year contracts have been traditional in cases involving new construction did not sufficiently explain the selection of a twenty-year term for renewal contracts on existing facilities.[67] Accordingly, while the Court held that the Commission had justified the right-of-first-refusal mechanism, with its twin matching conditions of rate and contract term, it remanded the twenty-year term cap for further consideration.[68]

The right-of-first-refusal mechanism was, and is, intended to protect existing

[55] Williams Natural Gas Co., 65 FERC ¶ 61,221 (1993), *reh'g denied*, FERC ¶ 61,315 (1994).

[56] Williams Natural Gas Co., 77 FERC ¶ 61,277 (1996).

[57] Mid Louisiana Gas Co., 76 FERC ¶ 61,212 (1996).

[58] Foster Natural Gas Report, No. 2098 (Sept. 9, 1996).

[59] 18 CFR 284.8(b)(1).

[60] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, [Regs. Preambles 1982–1985] FERC Stats. & Regs. ¶ 30,665 at 31,516–17 (1985).

[61] In the restructuring proceedings of Alabama-Tennessee Natural Gas Co., Mississippi River Transmission Corp., Northern Natural Gas Co., and Trunkline Gas Co., as a consequence, the pipeline and its customers agreed to 10-year caps.

[62] *UDC*, 88 F.3d at 1140.

[63] *Id.*

[64] *Id.* at 1140–41.

[65] *Id.* at 1140.

[66] The Court dismissed other arguments against the twenty-year term. In response to the claim that a contract term-matching requirement disadvantaged industrial customers because of the possible short useful life of a particular productive asset, the Court noted the industrial customers' ready access to alternative fuels, and greater access than consumers served by LDCs. *UDC*, 88 F.3d at 1140. The Court also rejected the contention that the twenty-year cap discriminated against industrial customers in light of their shorter-term natural gas needs than other customers. The Court found that although the cap may affect different classes of customers differently, since all parties have an equal opportunity to bid for capacity, the cap did not violate NGA section 5. *Id.* at 1141 and n.47.

[67] *Id.* at 1141.

[68] *Id.*

customers and provide them with the right of continued service, while at the same time recognizing the role of market forces in determining contract price and term. As the Commission held in Order No. 636–A, when a contract has expired, it is most efficient, within regulatory restraints, for the capacity to go to the bidder who values it the most, as evidenced by its willingness to bid the highest price for the longest term.[69] The pipeline's maximum tariff rate is one regulatory restraint, as the bidding for price cannot go above that rate. The Commission set a cap on term-matching in order to avoid shippers on constrained pipelines being forced into contracts with pipelines for longer terms than they desired.

The term-matching cap is relevant mainly on capacity constrained pipelines. However, term-matching also could become necessary in situations where the contract path goes through constrained points. As the Court recognized, where capacity is not constrained, there is no need for an existing customer to match a competing bid, since the pipeline will have sufficient capacity to serve both the existing customer and any new customer that desires service.[70] While the Court approved the concept of a contract term-matching limitation, it found the basis for the particular cap chosen lacking.[71]

In determining the maximum term that an existing customer should be required to match in order to retain its capacity after its current contract expires, the Commission must weigh several factors. On the one hand, the cap should protect captive customers from having to match competing bids that offer longer terms than the competing bidder would have bid ''in a competitive market without pipelines' natural monopoly.'' [72] On the other hand, the Commission does not wish to constrain unnecessarily the ability of shippers who value the capacity the most to obtain it for terms of the desired length. The Court has recognized that the Commission's task in setting the term-matching cap involves the selection of a ''necessarily somewhat arbitrary figure.'' [73]

The Commission has reexamined the record of the Order No. 636 proceedings, as well as data concerning contract terms that have become available since industry restructuring. The Commission can find no additional record evidence, not previously cited to the Court, that would support a cap as long as the twenty-year cap chosen in Order No. 636. Due to changes in the Commission's filing requirements instituted after restructuring,[74] pipelines now must file, in an electronic format, an index of customers, which is updated quarterly and includes the contract term.[75] The data that are now on file have enabled the Commission to determine average contract terms, both before and since the issuance of Order No. 636. For pre-Order No. 636 long-term contracts, the average term was approximately 15 years.[76] The data show that since Order No. 636, pipelines have entered into substantially shorter contracts than before. Post-Order No. 636 long-term contracts had an average term of 9.2 years for transportation, and 9.7 years for storage. For all currently effective contracts (both pre- and post-Order No. 636), the average term is 10.3 years for transportation and 10 years for storage. Moreover, as shown in Appendix A, the trend toward shorter contracts is continuing. About one quarter to one third of contracts with a term of one year or greater, entered into since Order No. 636, have had terms of one to five years.[77] However, nearly one half of such contracts entered into since January 1, 1995, have had terms of one to five years.[78]

This information strongly suggests that since the issuance of Order No. 636, few, if any, pipeline customers have been willing, or required, to commit to twenty-year contracts for existing capacity. In the only case to come before the Commission to resolve a controversy about the pipeline's right-of-first-refusal process, the customers were required to commit to five-year terms in order to retain the capacity.[79] The industry trend thus appears to be contract terms that are much shorter than twenty years.

On remand, the Commission intends to select a cap to be generally applicable to all pipelines. However, the current data lead us to conclude that the term must be significantly shorter than the twenty-year cap approved in Order No. 636. In addition, the Commission recognizes that the selection of a different cap on remand must be supported by the record. In the Order No. 636 rulemaking, as the Court pointed out, ''most of the commentators before the agency had proposed much shorter-term caps, such as five years.'' [80] For example, Associated Gas Distributors (AGD) argued on rehearing of Order No. 636–A that a five-year cap would provide ''the most equitable balance between the LDC's needs to retain some flexibility in its gas supply portfolio and the pipeline's concern for financial stability.'' [81] Public Service Electric & Gas Company and New Jersey Natural Gas Company argued that a five-year cap would avoid unnecessary retention of capacity by LDCs, which, given their general public utility obligation to serve, ''will err on the side of retaining capacity they might not need, rather than risking permanent loss of such capacity.'' [82] A number of other parties also argued in favor of a five-year matching term.[83] In addition, five years is approximately the median length of long term contracts entered into since January 1, 1995.

Based upon the record developed in the Order No. 636 proceeding, and the information available in the Commission's files, the Commission establishes the contract matching term cap at five years. The five-year cap will avoid customers' being locked into long-term arrangements with pipelines that they do not really want, and will therefore be responsive to the Court's concerns. The five-year cap also has the advantage of being consistent with the current industry trend of short-term contracts, as indicated by the Commission's newly-available data.[84]

[69] Order No. 636–A, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. at 30,630.

[70] *UDC*, 88 F.3d at 1140.

[71] *Id*.

[72] *Id*.

[73] *Id*. at 1141 n.44.

[74] Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Cos., Order No. 581, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 31,026 (1995), *reh'g*, Order No. 581–A, [Regs. Preambles Jan. 1, 1991–June 1996] FERC Stats. & Regs. ¶ 31,032 (1996).

[75] 18 CFR 284.106(c).

[76] Using the October 1, 1996 Index of Customers filings, the Commission calculated the average lengths of long-term contracts (contracts with terms of more than one year) entered into before the April 8, 1992 issuance of Order No. 636, versus those entered into after that date. For pre-Order No. 636 contracts, the average contract term for transportation was 14.8 years, and for storage, the average term was 14.6 years.

[77] Appendix A, p. 1.

[78] Appendix A, p. 2.

[79] Williams Natural Gas Co., 69 FERC ¶ 61,166 (1994), *reh'g*, 70 FERC ¶ 61,100 (1995), *reh'g*, 70 FERC ¶ 61,377 (1995), *appeal pending sub nom.* City of Chanute v. FERC, No. 95–1189 (D.C. Cir.).

[80] *UDC*, 88 F.3d at 1141.

[81] Sept. 2, 1992 Request for Rehearing and Clarification at 13.

[82] Sept. 2, 1992 Request for Rehearing at 6.

[83] *E.g.*, Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin), Sept. 1, 1992 Request for Rehearing at 4–6; New Jersey Board of Regulatory Commissioners, Sept. 2, 1992 Request for Rehearing at 2; New Jersey Natural Gas Co., May 8, 1992 Request for Rehearing at 6; UGI Utilities, Inc., Sept. 2, 1992 Request for Rehearing at 27; the Industrial Groups, Sept. 2, 1992 Request for Rehearing at 18.

[84] The American Gas Association (AGA), INGAA, and UDC have filed pleadings proposing different courses of action regarding the contract matching term. AGA urges the Commission either to

Continued

The Commission will require all pipelines whose current tariffs contain term caps longer than five years to revise their tariffs consistent with the new maximum cap, regardless of whether this issue is preserved in the individual restructuring proceedings. The Commission will consider on a case-by-case basis whether any relief is necessary in connection with contracts renewed since Order No. 636. The Commission will entertain on a case-by-case basis requests to shorten a contract term if a customer renewed a contract under the right-of-first-refusal process since Order No. 636 and can show that it agreed to a longer term renewal contract than it otherwise would have because of the twenty-year cap.

IV. Customer-by-Customer v. Customer-Class Mitigation

In order to mitigate the cost-shifting effects of SFV rate design, the Commission required pipelines to phase in SFV rates for some customer classes over a four-year period. However, the Commission required pipelines to first seek to avoid significant cost shifts to individual customers (rather than customer classes) by using alternative ratemaking techniques such as seasonal contract demand.

The Court found that the Commission had not adequately explained its preference for customer-by-customer mitigation over customer-class mitigation.[85] The Court was especially concerned by the argument that the ''establishment of rates on a customer-by-customer basis increases the risks that a pipeline will fail to collect its total costs during the period in which rates are in effect.'' [86] This issue was remanded for the Commission to further examine the question of whether the initial mitigation measures should be implemented on the basis of customer class.[87]

This issue arises because, under MFV, half of the fixed costs in the reservation charge were allocated among customers on the basis of peak demand (the ''D–1'' charge), and the other half were allocated on the basis of annual usage (the ''D–2'' charge). Under the SFV method, however, a pipeline's fixed costs are allocated among customers based on contract entitlement alone. As the Court recognized, the adoption of SFV would shift costs to low load-factor customers, in part by ''measuring usage solely based on peak demand, rather than annual usage.'' [88] The Commission, while finding that the impact of placing all of a pipeline's fixed costs in the reservation charge would facilitate an efficient transportation market and support a competitive gas commodity market, found it appropriate to minimize significant cost-shifting to ''maintain the status quo with respect to the relative distribution of revenue responsibility.'' [89] In explaining how to minimize cost shifts, the Commission held in Order No. 636–B that a ''significant cost shift'' test was to be applied to each customer.[90] The Commission further explained that its goal was to maintain the status quo and not to provide the opportunity for some customers ''to make themselves better off at the expense of other customers.'' [91] Instead, the Commission intended each individual customer's revenue responsibility to stay substantially the same.

The purpose of mitigation was, in a sense, to replicate the role the D–2 component played under MFV rate design. Under MFV rate design, the D–2s operated in essence on a customer-by-customer basis, since each customer got a different D–2 based on its annual usage. The result was a lower allocation to low load factor customers within a class than high load factor customers in the same class. This effect of D–2s was thus customer-specific.

Pipelines tend to have relatively few customer classes, but those classes have many members. As a result, customers within a single class have widely varying load factors and other characteristics. Therefore, the implementation of SFV, together with the elimination of the D–2 component in MFV rate design, caused substantial cost shifts among customers within particular customer classes. Mitigation by class does nothing to minimize those cost shifts. In the proceedings to implement each pipeline's restructuring, it became clear that the customer-by-customer approach was preferable because mitigation could be structured in accordance with the individual circumstances and needs of each customer. Thus, while Order No. 636 provided for mitigation on the basis of customer class as well as on a customer-by-customer basis, in fact, in the individual proceedings, the customer class approach was never used.

Another reason the Commission preferred customer-by-customer mitigation was that the risks to the pipeline, that it would underrecover its cost of service, could be examined and minimized on a case-by-case basis in the individual restructuring proceedings. As a general matter, the customer-by-customer mitigation was carried out by using seasonal contract demands. [92] That method, as implemented by the Commission, did not make it more likely that the pipeline would fail to recover its revenue requirement.[93] It simply uses seasonal measures to reallocate costs in order to avoid significant shifts in revenue responsibility.

Since the Commission directed, in Order No. 636–B, that each customer's revenue responsibility could not change significantly with the use of SFV, the rates would provide for the same revenue stream pre- and post-SFV. In the case of only one pipeline—Williston Basin Pipeline Company—has there been any problem of the pipeline not recovering its costs, and that grew out of the unusual circumstances that developed after restructuring.[94] That matter is now at issue in the pipeline's pending rate case, which is in hearing

eliminate the cap or to select a cap of no more than three years. However, AGA does not provide any basis for its argument that three years, as opposed to any other term shorter than twenty years, is the appropriate cap for the Commission to adopt. UDC supports AGA's proposal and argues that the majority of ''long-term'' contracts now and in the foreseeable future will average four years or less. INGAA argues that the right-of-first refusal requirement should only attach to contracts with terms of at least ten years or longer, and that the Commission should reduce the matching term to ten years. INGAA submits that this would correspond to the length of contract commonly required for new construction, as well as to the needs of the market.

[85] *UDC*, 88 F.3d at 1174.

[86] *Id*. (quoting Pipelines' Brief at 27).

[87] *Id*.

[88] *Id*. at 1170.

[89] Order No. 636–B, 61 FERC at 62,014.

[90] *Id*. at 62,016.

[91] *Id*.

[92] Northwest Pipeline Corp., 63 FERC ¶ 61,130 (1993), *order on reh'g* 65 FERC ¶ 61,055 (1994); Mississippi River Transmission Corp., 64 FERC ¶ 61,299 (1993).

[93] The use of seasonal contract demands enables firm customers to lower their daily reservation quantities for the off peak season and keep the higher quantity needed for the peak season.

[94] In Williston's restructuring proceeding, the Commission accepted Williston's proposal to allow the one customer on its system requiring mitigation (Wyoming Gas) to shift to Williston's one-part rate schedule for small customers. As a consequence, Wyoming Gas pays Williston only when it transports gas, including paying any GSR costs. Williston Basin Interstate Pipeline Co., 63 FERC ¶ 61,184 (1993). In May 1995, Wyoming Gas built a 15-mile extension and connected its facilities with Colorado Interstate Gas System, allowing it to bypass Williston. As a result, Wyoming Gas has reduced its takes from Williston by 35 percent. Williston recently asked the Commission to allow it to convert its existing one-part rate to a two-part rate, with a reservation charge, for Wyoming Gas. Williston has proposed an alternative method of mitigating the cost shift to Wyoming Gas. Williston's proposal, in Docket No. RP95–364, went into effect January 1, 1996, and is in hearing as part of Williston's general rate case. Williston Basin Pipeline Co., 73 FERC ¶ 61,344 (1995), *order on reh'g*, 74 FERC ¶ 61,144 (1996); Order on Motion Rates and Request for Stay, 74 FERC ¶ 61,081 (1996).

before an administrative law judge, and the issue will be addressed in that proceeding. In all other cases, the pipelines' concerns about cost recovery never materialized. Therefore, it appears that this issue has no continuing vitality today. As a result, we see no need to effect changes to the previous ruling. The issues presented in Williston's case can be addressed on a case-specific basis.

V. Small-Customer Rates for Customers of Downstream Pipelines

In Order No. 636, the Commission assured small customers that they could continue to receive firm transportation under a one-part volumetric rate computed at an imputed load factor, similar to the manner in which their previous sales rates were determined. The Commission thus required pipelines to offer a one-part small-customer transportation rate to those customers that were eligible for a small-customer sales rate on the effective date of restructuring.[95] On rehearing of Order No. 636-A, the issue arose whether the Commission should require upstream pipelines to offer their small-customer rate to the small customers of downstream pipelines, who became direct customers of the upstream pipeline as a result of unbundling. The Commission held in Order No. 636-B that this issue should be raised in the upstream pipeline's restructuring proceeding, to ''enable the parties to consider the small customers' need for such a service on the upstream pipeline and the impact of the additional small customers on the rates charged to the upstream pipeline's current customers under the small customer schedule and its customers paying a two-part rate.'' [96]

The Court found that the Commission made an arbitrary distinction between former indirect small customers of an upstream pipeline and small customers who were direct customers of the upstream pipeline.[97] Despite the Commission's indication in Order No. 636–B that the Commission would consider the need for such discounts on a case-by-case basis, the Court agreed with appellants' contention, that it is ''unfair and unreasonable to make them demonstrate * * * a need [for a small customer rate] in restructuring proceedings when that need has already been presumed for other small customers.''[98] Thus, the Court remanded the issue to the Commission for further consideration of ''whether or not the small customer benefits should be made available to the former downstream small customers.'' [99]

The Commission's ruling, that the issue would be considered on a pipeline-by-pipeline basis, rather than in a generic rulemaking, did not represent an unwillingness by the Commission to fully consider the needs of the former downstream small customers. One of the objectives of Order No. 636's requirement that pipelines offer a subsidized, one-part transportation rate to their former small sales customers was to maintain a status quo for that class of customers, subject to a few changes in terms and conditions adopted in the Rule.[100]

Any changes in the size of the subsidized, small customer class on a pipeline necessarily affect the pipeline's other customers. Under traditional cost-based ratemaking, rates are generally designed to recover the pipeline's annual revenue requirement.[101] Costs are allocated to customer classes based on contract capacity entitlements and projected annual or seasonal volumes. Small customer rates, however, involve an adjusted cost allocation to permit them to pay less for their service than they would if their rates were designed based on actual purchase levels. Small customers have historically been charged rates derived from a higher-than-actual, imputed load factor because these customers often ''lack the flexibility to construct storage and lack industrial load to balance their purchases,'' [102] and because they serve the distinct function of delivering gas primarily to residential and light commercial users.[103] During the restructuring process, the Commission intended for pipelines to retain the same imputed load factor for the small customer transportation rate that had previously been used to compute the small customer sales rate.[104]

Since a one-part, small-customer rate is a subsidized rate, eligibility criteria for the small-customer class and the size of that class is always a contentious issue in a pipeline rate case. Before restructuring, pipelines and their customers usually arrived at the small-customer eligibility cutoff through negotiations. The class size and eligibility criteria therefore differ on each pipeline. Changes to the eligibility criteria for the small customer rate, particularly those that enlarge the size of the class, upset the prior cost allocation among the customer classes. Those customers who are not in the small customer class experience a cost shift because they must pick up a greater share of the pipeline's costs. The determination of class size and eligibility requires consideration of the customer profile of each pipeline and the individual circumstances present on each system, and ultimately is the result of pragmatic adjustments.[105]

Before Order No. 636, the pipelines had a relatively stable group of customers. Order No. 636, however, greatly expanded the number of customers a pipeline would serve, and the cost-shifting effects of a significant expansion of the class of customers eligible for the rate were not known. Circumstances vary widely throughout the pipeline industry. For example, the upstream-most pipelines serving production areas, such as Texas and the Gulf of Mexico, may serve ten or more downstream pipelines. Therefore, allowing all the small customers of all those downstream pipelines automatically to qualify for small

[95] Section 284.14(b)(3)(iv) of the regulations adopted by Order No. 636 required pipelines to include in their restructuring compliance filings tariff provisions offering one-part small-customer rates for transportation, to the class of customers eligible for that pipeline's small-customer sales rate on May 18, 1992. Section 284.14 contained provisions governing the implementation of pipeline restructuring and setting forth the contents of pipeline compliance filings. In Order No. 581, the Commission deleted Section 284.14 from the regulations because the regulation was no longer necessary following the completion of restructuring. Revisions to the Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Cos., Order No. 581, 60 FR 53019 (October 11, 1995), II FERC Stats. & Regs. ¶ 20,000 *et seq.* (regulatory text), III FERC Stats. & Regs ¶ 31,026 (1995) (preamble).

[96] Order No. 636–B, 61 FERC at 62,020.

[97] *UDC*, 88 F.3d at 1174–75.

[98] *Id.* at 1174.

[99] *Id.* at 1175.

[100] Order No. 636-B, 61 FERC at 62,019.

[101] The Commission's traditional cost-based ratemaking is a five-step process. The first task is to determine the pipeline's overall cost of service. The second task is to functionalize the pipeline's costs by determining to which of the pipeline's operations or facilities the costs belong. The third task is to categorize the costs assigned to each function as fixed costs (which do not vary with the volume of gas transported) or variable, and to classify those costs to the reservation and usage charges of the pipeline's rates. The fourth step is to allocate the costs classified to the reservation and usage charges among the pipeline's various rate zones and among the pipeline's various classes of jurisdictional services. The fifth step is to design each service's rates for billing purposes by computing unit rates for each service. The fifth step is called rate design. *See* Order No. 636, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. at 30,431.

[102] Texas Eastern Transmission Corp., 30 FERC ¶ 61,144 at 61,288 (1985).

[103] Tennessee Gas Pipeline Co., 27 FERC ¶ 63,090 at 65,375 (1984).

[104] Order No. 636–B, 61 FERC at 62,019.

[105] *See* FPC v. Natural Gas Pipeline Co. of America, 315 U.S. 575, 586 (1941) (holding that rate-making bodies are ''free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.'') *See also* Colorado Interstate Gas Co. v. FPC, 324 U.S. 581, 589 (1945) (''Allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It is not an exact science.'').

customer status on the upstream pipeline could shift substantial costs to the relatively few existing non-pipeline direct customers of the upstream pipeline. The Commission could not, through a generic ruling, be certain this would not happen.

The circumstances of Tennessee Gas Pipeline Company (Tennessee) and its three downstream pipelines illustrate some of the factors to be taken into account with respect to the issues of small customer class size and eligibility.[106] During restructuring, small customers of three pipelines downstream from Tennessee (East Tennessee, Alabama-Tennessee, and Midwestern) became direct customers of Tennessee, as well as the downstream pipelines. Tennessee originally proposed to offer a one-part rate only to its direct small customers and those customers of downstream pipelines that took service directly from Tennessee prior to restructuring. Tennessee proposed to continue using its pre-existing eligibility cutoff of 10,000 Dth/day for the one-part rate. Tennessee added a different, two-part rate schedule for its former small sales customers and to other small customers of downstream pipelines. Tennessee requested an eligibility cutoff of 5,300 Dth/day for the two-part rate schedule because it was the highest criterion used in the tariffs of Tennessee's downstream pipelines.[107]

The Commission found that the lack of a one-part rate for small former sales customers on Tennessee's downstream pipelines would lead to inequitable results. The Commission thus required Tennessee to offer the one-part rate to those downstream customers otherwise eligible for small customer rates on the downstream pipelines, and held that the eligible level would be set at 5,300 Dth/day or less. The Commission analyzed the cost shifting effect of enlarging the small-customer class and found that the particular increase to the eligible class under consideration would affect only a small percentage of Tennessee's daily transportation contract demand.[108] A generic determination concerning the class of eligible customers simply would not have permitted the Commission to fully consider the needs of the small customers and the impact of expanding class size and eligibility on the other customers. Therefore, based on further consideration, the Commission reaffirms its decision to determine, on a case-by-case basis, the eligibility of customers of downstream pipelines for the upstream pipeline's small-customer rate.

## VI. Pipelines' Exemption From GSR Costs

### *A. Summary of Commission Conclusion on Remand*

In UDC, the Court remanded to the Commission the issue of the pipelines' recovery of prudently incurred GSR costs. While the Court did not question the basic principle that recovery of such costs is appropriate, it did take issue with the Commission's decision to provide pipelines the opportunity to recover their prudently incurred costs in a manner that differed from the approach taken by the Commission in the Order Nos. 500/528 series (hereinafter Order Nos. 500/528).

Observing that the petitioners challenging the Order No. 636 recovery mechanism noted ''remarkable similarities'' between Order Nos. 436 and 636, the Court stated that it ''[i]nitially, agreed with petitioners that the Commission's stated rationale for allocating take-or-pay costs to pipelines substantially applied in the context of GSR costs as well.'' [109] The Court found that ''Order No. 636 is based on principles of cost spreading and value of service that are, in turn, premised on the notion that all aspects of the natural gas industry must contribute to the transition to an unbundled marketplace.'' [110] Accordingly, the Court remanded the matter to the Commission for further consideration. In so doing, the Court expressly ''did not conclude that the Commission necessarily was *required* to assign the pipelines responsibility for some portion of their GSR costs,'' [111] but rather that the Commission's stated reasons did not rise to the level of reasoned decisionmaking.

The Commission readily acknowledges that there are noteworthy similarities between the take-or-pay problems underlying Order No. 436 and the Order Nos. 500/528 series and the GSR recovery issues addressed by the Commission in Order No. 636. Those similarities include, as the Court observed, the fact that the GSR costs to be recovered as transition costs in Order No. 636 arise from the same provisions in producer-pipeline contracts that gave rise to the take or pay problem addressed in Order Nos. 500/528. Another equally important similarity is that in both Order Nos. 500/528 and in Order No. 636, the Commission was attempting to fashion a mechanism to provide pipelines a means for recovering prudently incurred gas supply costs.

There are, however, compelling differences as well. In Order Nos. 500/528 the Commission was attempting to deal with the cost consequences of a failure in gas markets, resulting in a major suppression of demand for gas, coupled with mandated monthly increases in the wellhead ceiling prices for gas. This market failure had its origins in events that preceded the Commission's open access initiatives in Order No. 436 and persisted for a number of years thereafter.[112] A number of factors contributed to the extraordinary circumstance in which pipelines were continuing to incur huge contractual liabilities that could not be, and were not being, recovered in rates. As discussed below, Order No. 380 contributed significantly to the problem by prohibiting the pipelines from including commodity costs in their minimum bills. Order No. 436 exacerbated that problem, particularly by giving customers the ability to convert from sales to transportation service without either providing an appropriate transition cost recovery mechanism so that departing parties would bear some responsibility for the cost consequences associated with their departure or relieving the pipelines of their service obligation. They were still obligated to provide service to their customers when called upon but they could not depend upon those customers to purchase gas on an ongoing basis.[113] However, the inability of pipelines to recover their huge take-or-pay liabilities was, at bottom, the direct result of extraordinary market failures overhanging the pipeline-customer sales relationship that had traditionally provided the means by which pipelines recovered their prudently incurred costs.

In the face of these extraordinary market conditions, the Commission adopted extraordinary measures. As

[106] Customers of Tennessee's downstream pipelines include East Tennessee Customer Group and Tennessee Valley, the petitioners on this issue in *UDC*.

[107] East Tennessee used a volumetric maximum of 4,046 Dth/d; Midwestern Gas Co. used 5,233 Dth/d; and Alabama-Tennessee Natural Gas Co. used 2,564 Dth/d. East Tennessee Natural Gas Co., 63 FERC ¶ 61,102 (1993); Midwestern Gas Transmission Co., 63 FERC ¶ 61,099 (1993); and Alabama-Tennessee Natural Gas Co., 63 FERC ¶ 61,054 (1993).

[108] Tennessee Gas Pipeline Co., 65 FERC ¶ 61,224 at 62,064 (1993), *appeal pending sub nom*. East Tennessee Group v. FERC, (D.C. Cir. No. 93–1837 filed Aug. 20, 1993).

[109] 88 F.3d at 1188.

[110] *Id.* at 1190.

[111] *Id.* at 1188 (emphasis in original).

[112] Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 500–H, [Regs. Preambles 1986–1990] FERC Stats. & Regs. ¶ 30,867 at 31,509–14 (1989), *aff'd in relevant part*, American Gas Ass'n v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[113] Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988).

discussed below, in Order Nos. 500/528 the Commission created a mechanism to facilitate settlement of the take-or-pay liabilities, to free gas markets of the burdens of a problem that experience demonstrated would not be resolved through traditional cost recovery mechanisms, *with or without* open access transportation requirements. In that context, (and given the Court's decision in *AGD* requiring the Commission to address the take-or-pay problem as a condition to maintaining open access transportation) the Commission's overriding concern was to restore order to the markets promptly by encouraging settlements that could move the industry past economic stalemate. Of necessity, the Commission's objectives could only be achieved by foregoing efforts to assign costs and ''responsibility'' among the various industry participants through conventional means.

In those circumstances, and to facilitate settlement, the Commission found that because no one segment of the industry could be held accountable for the complex circumstance leading to the take-or pay problem, it required all industry participants, including pipelines, to participate in the solution. In exchange for a pipeline's agreement to absorb some part of its take-or-pay costs, the pipeline was granted a rebuttable presumption that its costs were prudently incurred, significantly reducing its risk that a further portion of its costs would be disallowed as not prudently incurred.

In stark contrast to the circumstances surrounding Order Nos. 500/528, Order No. 636 was not issued in the context of market conditions that precluded pipelines from a meaningful opportunity to seek recovery of prudently incurred costs. While at the time of Order No. 636 there were, of course, individual contracts that were priced higher than the prevailing market prices for gas, this ''market circumstance'' did not render pipeline gas supply costs unrecoverable. To the contrary, pipelines had the ability to seek recovery of costs incurred under those contracts, so long as their sales customers continued to purchase gas from them.

However, Order No. 636 effected significant regulatory changes, largely to the benefit of users of the transportation system and purchasers of gas, that directly resulted in the inability of pipelines to recover their gas supply costs from their sales customers (who were allowed to convert to transportation customers by Order No. 636).

After carefully reviewing the Court's concerns in *UDC* and the circumstances surrounding the cost recovery issues in both Order Nos. 500/528 and Order No. 636, the Commission believes that it must reaffirm its conclusion in Order No. 636 that pipelines should be permitted an opportunity to recover 100 per cent of prudently incurred GSR costs. As described below, the Commission finds that the extraordinary market circumstances that gave rise to the requirement for pipeline absorption of gas supply costs in Order Nos. 500/528 were not present at the time of Order No. 636. In the absence of the special circumstances that gave rise to the justification for pipeline absorption as required in Order Nos. 500/528, and in light of the fact that the regulatory changes in Order No. 636 directly led to the incurrence of GSR costs, the Commission reaffirms its conclusion in Order No. 636 that pipelines should be permitted an opportunity to recover 100 percent of costs that are determined to be eligible gas supply realignment costs and are prudently incurred. [114]

### *B. Scope of Commission's Decision*

The Commission's disposition of this matter on remand does not affect the resolution of GSR costs for most pipelines. Since Order No. 636, the Commission has approved settlements between most pipelines and their customers resolving all issues concerning those pipelines' recovery of their GSR costs. In addition, in two GSR proceedings, no party sought rehearing of the Commission's acceptance of the pipeline's GSR recovery proposal.[115] None of the GSR settlements contains a provision permitting the settlement to be reopened as to the absorption issue.[116] Therefore, the Court's remand of the GSR cost absorption issue does not affect the settled GSR proceedings. Regardless of the Commission's decision on remand concerning absorption of GSR costs, the GSR settlements and the final and non-appealable orders will remain binding on the subject pipelines and their customers.[117] To the extent that pipelines have voluntarily elected to enter into settlements that require absorption of some portion of the GRS costs to avoid protracted litigation of eligibility and prudence challenges, we do not disturb that result.

However, there has as yet been no settlement of the proceedings initiated by Tennessee to recover its GSR costs.[118] There has also been no settlement of a recent filing by NorAm Gas Transmission Company (NorAm) and two recent filings by ANR Pipeline Company (ANR) to recover their GSR costs.[119] Also, while the Commission has approved a settlement concerning Southern Natural Gas Company's (Southern) recovery of GSR costs, several of Southern's customers were severed from that settlement.[120] In addition, the settlement approved by the

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[114] The Court gave several examples of reasons which might justify not requiring pipelines to absorb a share of their GSR costs. These were: (1) a finding that ''unbundling under Order No. 636 benefits consumers so much more than it does the pipelines that the pipelines should bear few or no GSR costs,'' *UDC*, 88 F.3rd at 1189, (2) a finding that ''the pipelines' contribution to the industry's transition has already been so disproportionately large vis-a-vis consumers that they are entitled to be excused from further responsibility, *Id*., and (3) a finding that requiring the pipeline segment of the industry to absorb GSR costs would ''raise substantial concerns about its financial health,'' *Id.* at 1189 n. 99. The pipeline industry is not in such precarious financial condition that absorption would threaten its financial viability. However, the Commission does not believe that the Court precluded the Commission from using the rationale discussed below in this order.

[115] Trunkline Gas Co., 72 FERC ¶ 61,265 (1995); Williston Basin Interstate Pipeline Co., 70 FERC ¶ 61,009 (1995).

[116] On November 25, 1996, the Missouri Public Service Commission (MoPSC) filed, in this rulemaking docket, a motion asserting that Williams' GSR settlement left open the issue whether Williams must absorb its GSR costs in excess of $50 million. On December 10, 1996, Williams filed an answer, arguing that its settlement provides for it to recover 100 percent of those costs, without regard to the outcome of appeals of Order No. 636. In a separate order in the dockets in which Williams is seeking recovery of GSR costs in excess of $50 million, the Commission has upheld Williams' interpretation of its settlement. Williams Natural Gas Co., 78 FERC ¶ 61,068 (1997).

[117] /Similarly, after the court's decision in Associated Gas Distribs. v. FERC, 893 F.2d 348 (D.C. Cir. 1989) (AGD II), that the Order No. 500 method of allocating fixed take-or-pay charges violated the filed rate doctrine, the Commission exempted from the Order No. 528 order on remand all pipelines whose recovery of take-or-pay costs had been resolved either by settlement or by final and non-appealable order. Order No. 528, 53 FERC ¶ 61,163 at 61,594 (1990).

[118] On January 28, 1997, the Administrative Law Judge in Tennessee's GSR proceedings (Docket Nos. RP93–151–000 *et al.*) required the participants to file a joint status report concerning their settlement negotiations by February 7, 1997. The status report indicated that almost all parties have agreed to a settlement in principle. On February 21, Tennessee reported to the ALJ that the parties expect to file a settlement by February 28, or shortly thereafter.

[119] /NorAm made its first filing to recover GSR costs on August 1, 1996, following the *UDC* decision. The Commission accepted and suspended the filing, subject to this order on remand. NorAm Gas Transmission Co., 76 FERC ¶ 61,221 (1996). The Commission has approved settlements of ANR's first three GSR proceedings. ANR Pipeline Co., 72 FERC ¶ 61,130 (1995); 74 FERC ¶ 61,267 (1996). However, those settlements did not address ANR's recovery of any subsequent GSR costs. On October 31, 1996, ANR filed to recover additional GSR costs in Docket No. RP97–47–000. ANR Pipeline Co., 77 FERC ¶ 61,130 (1996). That proceeding has not yet been settled. In addition, on January 31, 1997, ANR made another GSR filing in Docket No. RP97–246–000.

[120] /Southern Natural Gas Co., 72 FERC ¶ 61,322 at 62,329–30, 62,355–6 (1995), *reh'g denied*, 75 FERC ¶ 61,046 (1996).

Commission concerning the recovery of GSR costs by Panhandle Eastern Pipe Line Company (Panhandle) does not resolve how it will recover any GSR costs which it may file in the future.[121] Therefore, since the recovery of GSR costs does remain an issue in some cases, the Commission must address the issue remanded by the Court. The following describes in greater detail the basis for the Commission's decision to reaffirm it's decision in Order No. 636 with respect to recovery of GSR costs.

*C. The Regulatory Framework*

The Commission's task in both Order Nos. 500/528 and Order No. 636 was to determine a method for pipelines to recover their prudently incurred costs arising from the non-market responsive take-or-pay contracts entered into during the late 1970s and early 1980s. Take-or-pay costs are part of a pipeline's expenses. As the Court of Appeals held in *Mississippi Power Fuel Corp.* v. *FPC*,[122] pipelines must be allowed an opportunity to recover their prudently incurred expenses:

> Expenses * * * are facts. They are to be ascertained, not created, by the regulatory authorities. If properly incurred, they must be allowed as part of the composition of rates. Otherwise, the so-called allowance of a return upon investment, being an amount over and above expenses, would be a farce.

The Court of Appeals has recently reiterated that holding, and emphasized the Supreme Court's longstanding admonition that regulatory agencies must recognize prudently incurred expenses in establishing just and reasonable rates:

> More than a half century ago, the Supreme Court admonished regulatory agencies to ''give heed to all legitimate expenses that will be charges upon income during the term of regulation.''

*Mountain States Telephone & Telegraph Co.* v. *FCC*, 939 F.2d 1021, 1029 (D.C. Cir. 1991) (*citing West Ohio Gas Co.* v. *Public Utilities Comm'n of Ohio* 294 U.S. 63, 74 (1935)). Of course, recovery may be denied if particular costs (1) are not used and useful in performing the regulated service [123] or (2) have been imprudently incurred.

Consistent with the Supreme Court's admonishment that regulatory agencies recognize prudently incurred expenses, the Commission has a particular obligation not to ignore or disallow expenses incurred by pipelines as a result of the Commission's own regulatory actions. For that reason, as the Court of Appeals pointed out in *Public Utilities Comm'n of Cal.* v. *FERC*, 988 F.2d 154, 166 (1993), the Commission,

> With the backing of this court, has been at pains to permit pipelines to recover * * * [Order Nos. 500/528 take-or-pay costs] which have accumulated less through mismanagement or miscalculation by the pipelines than through an otherwise beneficial transition to competitive gas markets.

As more fully discussed below, the Order No. 636 GSR costs are the direct result of the transition to unbundled transportation service required by Order No. 636. In Order No. 636, the Commission prohibited pipelines from continuing their practice of bundling sales of natural gas with transportation rights and required pipelines making unbundled sales to do so through a separate arm of the company. Order No. 636 gave pipeline sales customers an immediate right to terminate gas purchases from the pipeline.[124] In light of the substantial improvement in the quality of stand-alone transportation service required by Order No. 636, almost all sales customers immediately terminated their sales service during restructuring, leading to the termination of the pipelines' merchant business. The Commission has developed standards for eligibility for GSR cost recovery designed to limit GSR costs solely to those costs caused by Order No. 636.[125] For that reason, the Commission has given pipelines an opportunity to recover the full amount of their GSR costs.

However, as discussed below, the massive take-or-pay settlement costs addressed by Order Nos. 500/528—unlike GSR costs—were not the direct result of the Commission's regulatory actions. Rather, they arose from market conditions beginning in the early 1980s which would have rendered a portion of the costs unrecoverable, regardless of the Commission's initiation of open access transportation in Order No. 436. In those unique circumstances, while the Commission created a special recovery mechanism to permit the pipelines to recover their take-or-pay settlement costs, the Commission also required pipelines using that mechanism to absorb a share of the costs.

### D. The Treatment of Costs in Order Nos. 500/528

In order to understand the basis for the Commission's different treatment of Order No. 636 GSR costs and Order Nos. 500/528 take-or-pay costs, it is necessary first to review the circumstances which led to the Order Nos. 500/528 absorption requirement and the Commission's reasons for that requirement.

*1. The Factual Context of Order Nos. 500/528*

The industry's take-or-pay crisis developed before the Commission initiated open access transportation in Order No. 436. The Commission made this finding in Order No. 500–H.[126] The severe gas shortages of the 1970's led to enactment of the NGPA, which initiated a phased decontrol of most new gas prices and established ceiling prices for controlled gas, including incentive prices for price-controlled new gas higher than the ceiling prices previously established by the Commission under the NGA.[127] To avoid future shortages, pipelines then entered into long-term take-or-pay contracts at the high prices made possible by the NGPA, and those high prices stimulated producers to greatly increase exploration and drilling.[128] All participants in the natural gas industry expected both demand and prices to continue increasing indefinitely.

However, by 1982 demand was falling, due to a number of factors including unexpectedly strong competition from alternative fuels, the recession of the early 1980s, and warmer than normal weather. By 1983, demand for natural gas was 17 percent below its 1979 level. As a result, the supply of natural gas (*i.e.*, current deliverability from the nation's gas wells) exceeded demand for natural gas by 4 Tcf, or nearly 20 percent of total deliverability.[129] This deliverability

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[121] /Panhandle Eastern Pipe Line Co., 72 FERC ¶ 61,108 (1995).

[122] 163 F.2d 433, 437 (D.C. Cir. 1947).

[123] *Tennessee Gas Pipeline Co.* v. *FERC*, 606 F.2d 1094, 1109 (D.C. Cir. 1979), *cert denied*, 445 U.S. 920, *cert. denied*, 447 U.S. 922 (1980) (''current ratepayers should bear only legitimate costs of providing service to them'').

[124] The Commission's only requirement for pipelines to continue to offer to sell gas at cost-based rates was a requirement that they offer small customers such sales service for a one-year transition period. Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs. at 30,615.

[125] See Texas Eastern Transmission Co., 65 FERC ¶ 61,363 (1993).

[126] Regulation of Natural Gas Pipelines after Partial Wellhead Decontrol, Order No. 500–H, [Regs. Preambles 1986–1990] FERC Stats. & Regs. ¶ 30,867 (1989), aff'd in relevant part, *American Gas Ass'n* v. *FERC*, 912 F.2d 1496 (D.C. Cir. 1990).

[127] *Id.* at 31,509.

[128] *Id.* at 31,509–10.

[129] As the Commission found in Order No. 500–H:

> By 1982, demand for gas was falling. High natural gas prices, combined with decreasing oil prices, led to increased fuel switching, particularly as customers who did not already have the necessary equipment to burn alternative fuels installed it. The recession of the early 1980's and warmer than normal weather further decreased demand. These factors combined to create an excess of the supply

surplus persisted for the remainder of the 1980s.

This unexpected change in market conditions caused pipelines, as early as 1982, to start incurring significant take-or-pay liabilities under the take-or-pay contracts entered into with the expectation of continued high demand. By year-end 1983, nearly two years before Order No. 436 issued, pipeline take-or-pay exposure was $5.15 billion.[130] However, despite the deliverability surplus, both wellhead gas prices and the gas costs reflected in the pipelines' rates continued to increase. Similarly, the average residential cost of gas continued to rise.[131] These price increases at a time of oversupply were primarily the result of the inflexible supply arrangements between producers, pipelines, LDCs, and consumers, under which most gas users could obtain gas only through purchases from the pipeline. The Commission's first major action to address those supply arrangements was the issuance of Order No. 380 [132] on May 25, 1984, requiring pipelines to eliminate commodity costs from their minimum bills.

Take-or-pay exposure increased to $6.04 billion by year-end 1984.[133] By the end of 1985, just two months after Order No. 436 issued and before any pipeline had accepted a blanket certificate under Order No. 436, pipelines had outstanding take-or-pay liabilities of $9.34 billion.[134] In 1986, as pipelines were just beginning to implement open access transportation under Order No. 436, the pipelines' outstanding unresolved take-or-pay liabilities peaked at $10.7 billion.[135]

In short, although Order No. 436 exacerbated pipelines' existing take-or-pay problems by making it easier for the pipelines' traditional sales customers to purchase from alternative suppliers, Order No. 436 did not cause those problems. Rather, the pipelines' take-or-pay problems were caused by an excess of supply over demand in the natural gas market which arose in the early 1980s due to the convergence of a number of factors, many entirely unrelated to the Commission's exercise of its regulatory responsibilities. As a result, even before Order No. 436 issued, the natural gas industry already faced a massive problem in which pipelines were contractually bound to take or pay for high-priced gas which market conditions suppressed demand and prevented them from reselling at prices which would recover their costs. Simply put, at the time of Order No. 436, the market was requiring substantial cost absorption entirely apart from any regulatory action of the Commission.

The Commission and the industry had never previously faced a take-or-pay problem of this nature. In earlier times, pipelines had made take-or-pay payments to particular producers, and the Commission had a policy of permitting such payments to be included in rate base and then recovered as a gas cost when the pipeline later took the gas under make-up provisions in the contract.[136] By 1983, however, with their total take-or-pay exposure over $5 billion, the pipelines could not manage their take-or-pay problems, and stopped honoring the bulk of their take-or-pay liabilities.[137] They then sought settlements with the producers to reform or terminate the uneconomic take-or-pay contracts and to resolve outstanding take-or-pay liabilities.

Because pipelines had never previously incurred significant take-or-pay settlement costs, the Commission had no policy concerning whether and how pipelines were to recover those costs. The Commission commenced establishing such a policy in an April 1985 policy statement,[138] just six months before Order No. 436. When Order No. 500 issued in August 1987, few take-or-pay settlement costs had yet been included in pipelines' rates. However, since the pipelines' outstanding take-or-pay liabilities were in the neighborhood of $10 billion, it was clear that pipelines would incur massive costs in their settlements with producers.

2. The Policies of Order Nos. 500/528

When the Commission first addressed the issue of how pipelines should recover their take-or-pay settlement costs in Order No. 500, it did so under the shadow of the pipelines' vast outstanding take-or-pay exposure. As a result, the fundamental premise of Order No. 500 was, as the Court expressed it in *KN Energy* v. *FERC*, that ''the extraordinary nature of this problem requires the aid of the entire industry to solve it.''[139] In order to accomplish this result, Order No. 500 established an equitable sharing mechanism for pipelines to use in recovering their take-or-pay settlement costs, as an alternative to recovery through their commodity sales rates.[140] Relying on ''cost spreading'' and ''value of service'' principles, the Commission permitted pipelines using the equitable sharing mechanism to allocate their take-or-pay settlement costs among all their customers. The Commission also required the pipelines to absorb a portion of their costs.[141]

The Court was of the view that Order Nos. 500/528 based the absorption requirement on the ''cost spreading'' and ''value of service'' principles.[142] However, Order No. 528–A,[143] where the Commission gave its fullest justification for that absorption requirement, did not rely on either of those principles to support the absorption requirement. [144] Rather,

of natural gas (*i.e.*, current deliverability from the nation's gas wells) over the demand for natural gas. The deliverability surplus persisted for the remainder of the 1980's. In 1982 the deliverability surplus was about 1.5 Tcf, or 8.3 percent of total deliverability. By 1983, with the demand for natural gas 17 percent below its 1979 level, the deliverability surplus was about 4 Tcf, or nearly 20 percent of total deliverability.

[130] *Id.* at 31,510.

[131] *Id.*

[132] The residential cost of gas rose from $5.17 in 1982 to $6.12 in 1984. *Id.*

[133] Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Bill Provisions, Order No. 380, [Regs. Preambles 1982–1985] FERC Stats. Regs. ¶ 30,571 (1984).

[134] *Id.*

[135] *Id.* at 31,513.

[136] Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations, Regulations Preambles 1982–85 ¶ 30,637 at 31,301 (1985).

[137] In Order No. 500–H, the Commission found that, although pipelines incurred total take-or-pay exposure over the period January 1, 1983 through June 30, 1987 of over $24 billion, they only made take-or-pay payments totalling $.7 billion. Order No. 500–H, Regulations Preambles 1986–1990 ¶ 30,867 at 31,514.

[138] Regulatory Treatment of Payments Made in Lieu of Take-or-Pay Obligations, [Regs. Preambles 1982–85] Stats & Regs. ¶ 30,637 (1985).

[139] 968 F.2d 1295, 1301 (D.C. Cir. 1992).

[140] Order No. 500 also increased the pipelines' bargaining power to negotiate settlements with producers through the take-or-pay crediting program.

[141] The Court in *KN Energy* upheld the Commission's use of cost spreading in connection with the allocation of take-or-pay costs among a pipeline's open access customers. However, the Court never reviewed the Order Nos. 500/528 requirement that pipelines absorb a share of the take-or-pay costs. AGA v. FERC, 888 F.2d 136, 152 (D.C. Cir. 1989), holding the absorption requirement not ripe for review. *Accord*: AGA v. FERC, 912 F.2d 1496 (D.C. Cir. 1990).

[142] *UDC*, 88 F.3d at 1188.

[143] Order No. 528–A, 54 FERC ¶ 61,095 (1991).

[144] The Commission's use of cost spreading and value of service principles to allocate take-or-pay costs among all the pipeline's open access customers was, as the Court suggested in *KN Energy*, 968 F.2d at 1302, ''only a minor departure'' from the traditional ratemaking principle that costs should be allocated among customers based on cost causation. Ordinarily, the cost causation principle is used to assign the pipeline's cost-of-service among customers. Its underlying premise is that each customer should be responsible for the costs its service causes the pipeline to incur. A necessary corollary is that the pipeline may, if the market permits, recover 100 percent of the costs it prudently incurs to serve its customers. Otherwise, the customers would not be responsible for all the

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Order Nos. 500/528 consistently recognized the Commission's traditional obligation to ''provide a pipeline a reasonable opportunity to recover its prudently incurred costs.'' [145] However, Order No. 528–A reasoned that, because the take-or-pay problem was caused more by general market conditions than by any regulatory action of the Commission and the underlying take-or-pay contracts were no longer used and useful, it was appropriate to require the pipelines to share in the losses arising from those market conditions.[146]

*E. The Treatment of Costs in Order No. 636*

The nature of the take-or-pay problem had changed dramatically by the time of Order No. 636. That difference in circumstances accounts for the different policies applied by the Commission in Order No. 636.

1. The Factual Context of Order No. 636

By 1992, when Order No. 636 issued, the world had changed, and the unique circumstances out of which the Order Nos. 500/528 absorption requirement arose no longer existed. Pipelines were no longer incurring substantial costs in connection with their take-or-pay contracts which they were unable to recover in sales rates, as they had been when Order No. 436 issued. While some of the uneconomic take-or-pay contracts of the late '70s and early '80s remained in effect and some pipelines were still working to resolve some past take-or-pay liabilities, there was no longer an industry-wide take-or-pay problem.[147]

In contrast to the situation when Order No. 436 issued, at the time of Order No. 636 most pipelines were no longer incurring new take-or-pay liabilities, even under their few remaining old, unresolved contracts.[148] Following Order No. 500, pipelines made a massive effort to reform their supply contracts by negotiating with producers settlements of thousands of take-or-pay contracts which either eliminated the uneconomic take-or-pay provisions or terminated the contracts altogether.[149] By the time Order No. 636 issued, pipelines had succeeded in reforming nearly all their supply contracts at a total cost, in settlement payments to producers, of nearly $10 billion.[150] For example, at the hearing in Docket No. RP92–134–000 concerning Southern's Mississippi Canyon construction costs, Southern provided testimony that by 1987 it had succeeded in renegotiating its supply arrangements such that it was no longer incurring additional take-or-pay liabilities.[151]

Another reason that pipelines were not incurring new take-or-pay liabilities when Order No. 636 issued is that, after Order No. 436, unlike after Order No. 636, pipelines continued to perform a significant sales service. This was at least in part because, as the Commission found in Order No. 636, open access transportation service under Order No. 436 was not comparable to the transportation component of bundled sales service. As a result, through such strategies as purchasing gas in the summer, storing it in their storage fields, and then reselling it during periods of peak demand and prices in the winter, at the time of Order No. 636 the pipelines could meet most of their minimum take requirements even in their remaining high-priced contracts. Many pipelines expected to continue providing such a sales service indefinitely into the future. For example, on the day before the June 30, 1991 issuance of the Notice of Proposed Rulemaking which led to Order No. 636, Southern and some of its sales customers filed a comprehensive settlement that would have assured a continued sales service by Southern.[152] Similarly, on March 10, 1992, less than a month before issuance of Order No. 636, ANR filed a settlement under which it would have continued a bundled sales service.[153]

Order No. 636 upset this relatively stable situation and created a new jeopardy for the recovery of pipeline gas supply costs. Order No. 636 prohibited pipelines from continuing their bundled sales service and resulted in the termination of the pipelines' merchant business. While Order No. 436 had only required pipelines to permit their customers to convert from sales to transportation service over a phased five-year schedule,[154] Order No. 636 gave pipeline sales customers an immediate right to terminate their entire sales service. Order No. 636 also required pipelines to substantially improve the quality of their stand-alone transportation service. As a result, the pipelines' remaining sales customers switched to transportation-only service, with almost all of them immediately terminating their sales service during restructuring.

Order No. 636 also made it more difficult for pipelines to manage their take-or-pay contracts in several other ways. Unlike Order No. 436, Order No. 636 required pipelines to give up most of their storage capacity so that they were less able to pursue such strategies as storing gas purchased in the summer, when sales were too low to meet minimum purchase obligations, for subsequent resale in the winter, when sales levels were higher. In addition, before Order No. 636, many of the pipelines that had the take-or-pay contracts with producers had downstream pipeline customers who were continuing to purchase some gas. However, Order No. 636 required the downstream pipelines also to unbundle, resulting in the loss of the downstream pipelines as sales customers.

The pattern of pipeline filings with the Commission to recover take-or-pay related costs is consistent with the conclusion that Order No. 636 reopened a take-or-pay problem that had been largely resolved. As shown in Table 1 of Appendix B to this order, since Order No. 436, pipelines have filed to recover a total of approximately $12.1 billion in take-or-pay related costs, including about $10.4 billion filed pursuant to Order Nos. 500/528 and $1.7 billion filed as Order No. 636 GSR costs. Fully 81.7 percent of the total $12.1 billion amount was filed, pursuant to Order

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costs their service causes the pipeline to incur. For this reason the cost causation principle is not used to assign costs to the pipeline. Order Nos. 500/528 used cost spreading and value of service principles simply to extend the chain of causation to assign costs to a broader group of customers. KN Energy, 968 F.2d at 1302.

[145] Order No. 500–H, [Regs. Preambles 1986–1990] FERC Stats. & Regs. at 31,575.

[146] Order No. 528A, 54 FERC at 61,303–5 (1991).

[147] In late 1989, the Commission found in Order No. 500–H that pipelines' settlements with producers ''have substantially resolved the existing take-or-pay liabilities of most pipelines, and all the pipelines have made significant progress in resolving their problems.'' Order No. 500–H, [Regs. Preambles 1986–90] FERC Stats. & Regs. at 31,523. The Commission also terminated the take-or-pay crediting program effective December 31, 1990, on the ground that such a program no longer would be necessary. *Id.* at 31,529.

[148] Similarly, when the Commission initiated open access transmission in the electric industry in Order No. 888, most electric utilities were recovering their electric generating costs in the rates charged their customers. Therefore, the Commission concluded that it would not be reasonable to require electric utilities to bear losses that, unlike the Order Nos. 500/528 take-or-pay costs, arise as a direct result of Congress' and the Commission's change in regulatory regime through FPA section 211 and Order No. 888. *See* Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, III FERC Stats. & Regs. ¶ 30,——at 31,——(Order No. 888–A) (1997). The Commission's approach to Order No. 636 GSR costs is similar to its approach in Order No. 888 to stranded electric generation costs.

[149] *See Id.* at 31,522–3 and 31,536.

[150] *See* Appendix B, Table 1.

[151] Southern Natural Gas Co., 72 FERC ¶ 61,322 at 62,358 (1995).

[152] However, during Southern's Order No. 636 restructuring proceeding, all its sales customers decided to take transportation only service and Southern terminated its merchant function. *Id.* at 62,362–3.

[153] ANR Pipeline Co., 59 FERC ¶ 61,347, *reh'g,* 60 FERC ¶ 61,145 (1992).

[154] 18 CFR 284.11(d)(3).

Nos. 500/528, before Order No. 636 issued in April 1992. *See* Table 2.

Since Order No. 636, pipelines have continued to make some filings to recover take-or-pay related costs under Order Nos. 500/528. This is because the only costs eligible for recovery as Order No. 636 GSR costs are costs that are tied to the restructuring required by Order No. 636. However, as shown by Table 2, post-Order No. 636 filings to recover take-or-pay related costs pursuant to Order Nos. 500/528 represent only 4.2 percent of the total take-or-pay related costs filed with the Commission since Order No. 436. Table 3, showing costs filed for recovery under Order Nos. 500/528, by quarter, demonstrates graphically the dramatic decline in such costs before Order No. 636, and the relative insignificance of such costs thereafter.

That take-or-pay was no longer an industry-wide problem at the time of Order No. 636 is also suggested by the fact that just two pipelines—Southern and Tennessee—account for approximately 65 percent of all take-or-pay related costs filed with the Commission as Order No. 636 GSR costs.[155] Moreover, the sudden spike in GSR costs filed with the Commission in late 1993, continuing to an extent in 1994, as pipelines were just implementing their Order No. 636 restructuring is consistent with a conclusion that Order No. 636 reopened a take-or-pay problem that had been largely resolved. *See* Tables 4 and 5.

2. The Policies of Order No. 636

Based on the changing nature of the take-or-pay problem reviewed above, the Commission holds that the rationale supporting the Order Nos. 500/528 absorption requirement is not valid for the GSR costs caused by Order No. 636. The rationale used in Order Nos. 500/528 does not support a requirement that pipelines absorb a share of their Order No. 636 GSR costs. In the factual context faced by the Commission at the time of Order No. 636, the bedrock ratemaking principle, that pipelines must be given an opportunity to recover the full amount of their prudently incurred costs, required the Commission to establish a different mechanism for pipelines to recover their Order No. 636 GSR costs. This is particularly so, because these costs were caused by the Commission's regulatory actions.

When Order No. 636 issued, pipelines were generally taking gas under their remaining take-or-pay contracts and no longer accumulating significant additional take-or-pay obligations. Thus, those contracts could no longer reasonably be analogized to a failed gas supply project, the analogy used to support the Order Nos. 500/528 absorption requirement.[156] As a result, the Commission's section 5 action in Order No. 636 reopened a take-or-pay problem that had been largely resolved. The termination of the pipelines' merchant business as a result of Order No. 636 created a situation in which the pipelines simply lacked an ability to manage and sell the natural gas supply portfolio they had under contract. In these circumstances, where the Commission's own regulatory action in Order No. 636 rendered the pipelines' supply contracts no longer used and useful, the Commission believes that pipelines should be allowed full recovery of transition costs caused by Commission action.

Moreover, the Commission only permits 100 percent recovery of GSR costs arising in connection with supply contracts which were part of an overall gas supply portfolio that was commensurate with the pipeline's merchant obligation—in other words contracts which were used and useful when Order No. 636 issued. *See Texas Eastern Transmission Co.*, 65 FERC ¶ 61,363 (1993). Where the pipeline cannot show that its costs satisfy the eligibility standards developed in *Texas Eastern*, the costs are only eligible for Order Nos. 500/528 recovery and a portion must be absorbed. Indeed, since Order No. 636, pipelines have filed to recover, pursuant to Order Nos. 500/528, over $500 million in costs which they recognized were not caused by Order No. 636. Moreover, when parties have questioned whether claimed GSR costs meet the *Texas Eastern* standards, the Commission has required pipelines to demonstrate their eligibility at a hearing. Thus, through its GSR eligibility standards, the Commission ensures that the costs for which 100 percent recovery is permitted are in fact caused by the Commission's regulatory actions in Order No. 636.

Eligible GSR costs are similar to other stranded pipeline merchant costs which Order No. 636 rendered no longer used and useful and whose recovery the Court approved in *UDC*, 88 F.3d at 1178–80. Order No. 636 permitted pipelines to file under NGA section 4 to recover 100 percent of costs ''incurred by pipelines in connection with their bundled sales services that cannot be directly allocated to customers of the unbundled services.'' [157] Those costs included costs incurred in connection with upstream pipeline capacity and storage capacity that a pipeline no longer needs because its sales service terminated due to restructuring. In the section 4 cases where recovery of these costs has been sought, the Commission has recognized that its action in Order No. 636 rendered the costs no longer used and useful, and the Commission has accordingly permitted the full amount of the eligible and prudently incurred costs to be amortized as part of the pipeline's cost-of-service, although not included in rate base.[158] In *UDC*, the Court approved this approach.[159] The GSR costs have become stranded in an identical manner, and therefore pipelines should be afforded the same opportunity for full recovery of their prudently incurred GSR costs.

Moreover, the fact that Order No. 636 led to the complete termination of most pipelines' merchant function, unlike the situation after Order No. 436, means that the Commission cannot now take the Order Nos. 500/528 approach of offering the pipelines the alternative of seeking 100 percent recovery through their sales commodity rates. Rather, the recovery mechanism provided by Order No. 636 is the only available mechanism for recovering GSR costs. Therefore, if the Commission did not permit pipelines to seek recovery of the full amount of their GSR costs through the mechanism provided by Order No. 636, the Commission would be denying recovery by regulatory decree, not simply allowing market forces to prevent full recovery.

As the Commission has previously found, Order No. 636 substantially benefits all gas consumers. It is for that reason that the Commission required that GSR costs be allocated among all the pipelines' customers. In an October 22, 1996 petition for further proceedings on remand, the Pennsylvania Office of Consumer Advocate (POCA) suggested that Order No. 636 also benefitted pipelines by (1) allowing them to terminate their relatively risky merchant functions, while (2) retaining the relatively stable transportation operations bolstered by the guarantee of substantial fixed cost recovery under SFV rates. POCA asserts that in return for these benefits pipelines should be required to absorb a portion of their transition costs. However, as discussed above, most pipelines were not incurring current financial losses in connection with their merchant functions at the time of Order No. 636.

[155] *See* Table 1.

[156] Order No. 528–A, 54 FERC at 61,304.

[157] Order No. 636, [Regs. Preambles Jan. 1991-June 1996] FERC Stats. & Regs. at 30,662.

[158] *See* Equitrans, Inc. 64 FERC ¶ 61,374 at 63,601 (1993).

[159] *UDC*, 88 F.3d at 1178–80.

Yet the termination of those merchant functions caused a number of pipelines to incur significant expenses, including the costs of shedding the gas supplies they had contracted for to serve their sales customers. Therefore, the Commission does not see the pipelines' termination of their merchant functions as a ''benefit'' justifying the Commission to require the pipelines to absorb a portion of the resulting expenses.[160] This is particularly so, in light of the Supreme Court's admonishment that regulatory agencies must recognize prudently incurred costs.[161] That is an obligation the Commission takes especially seriously when, as here, its own regulatory actions have caused the costs.[162]

The Commission also does not believe that the shift to an SFV rate design, for the recovery of the pipelines' transmission costs, is relevant to the issue of the pipelines' recovery of the costs of realigning their gas supplies which supported their merchant function. To the extent SFV alters the risks a pipeline faces in connection with its performance of transportation service, the appropriate place to make an adjustment is in the allowed return on equity embodied in the pipelines' transportation rates.[163]

In conclusion, the Commission has consistently applied traditional ratemaking principles to the issue of the pipelines' recovery of transition costs. However, the different factual contexts addressed by Order Nos. 500/528 and Order No. 636 led the Commission to approve different recovery mechanisms in those orders. Even before the Commission initiated open access transportation in Order No. 436, the market was preventing pipelines from recovering costs incurred under their take-or-pay contracts. The Order Nos. 500/528 absorption requirement reflected the preexisting effect of the market, which would have required absorption even without open access transportation under Order No. 436.

However, the Commission's regulatory actions in Order No. 636 have caused the pipelines to incur the GSR costs and rendered the underlying gas supply contracts no longer used and useful. In these circumstances, traditional ratemaking principles require the Commission to allow the pipelines an opportunity to recover the full amount of the expenses caused by its actions. And the Commission has been careful, through the eligibility standards developed in *Texas Eastern*, to limit Order No. 636 GSR recovery to the costs actually caused by the Commission's actions in Order No. 636. Accordingly, the Commission reaffirms Order No. 636's holding that pipelines may recover 100 percent of their GSR costs.

## VII. Recovery of GSR Costs From IT Customers

In Order No. 636-A, the Commission required pipelines to allocate 10 percent of GSR costs to interruptible transportation customers. The Industrial End-Users challenged this decision on appeal and contended that unbundling confers no real benefit on that class of customers, who therefore should not be responsible for paying GSR costs. The Small Distributors and Municipalities took the opposite view and asserted that the Commission should have allocated more GSR costs to interruptible transportation customers. The Court agreed with the Commission that interruptible transportation customers benefitted from Order No. 636, through, *inter alia*, access to low cost transportation that is available through the capacity release mechanism.[164]

The Court faulted the Commission, however, for failing to explain why it selected the figure of ''10%''. The Court could not discern how the Commission got from allocating some GSR costs to allocating 10% of those costs to interruptible transportation customers, emphasizing that the law ''requires more than simple guess-work,'' and remanded the issue to the Commission for further consideration.[165]

As discussed above, the Commission has approved settlements between most pipelines and their customers concerning those pipelines' recovery of their GSR costs. Therefore, the Court's remand of the interruptible allocation issue does not affect the settled GSR proceedings. However, the issue of how much GSR costs should be allocated to interruptible service remains open on several pipeline systems. As discussed above, there has been no settlement resolving the recovery of GSR costs by Tennessee and NorAm. Also, the settlements which the Commission has approved in the GSR proceedings of several other pipelines do not resolve the interruptible allocation issue as to all of those pipelines' GSR costs. The Commission has interpreted the settlement of Williams' recovery of GSR costs as leaving open the issue of what portion of Williams' GSR costs in excess of $50 million should be allocated to interruptible service.[166] The interruptible allocation issue is also unresolved to the extent it affects the GSR costs which Southern may recover from the customers which the Commission severed from the settlement of Southern's GSR proceedings. Finally, the issue is unresolved as to any GSR costs which ANR and Panhandle may seek to recover in the future.[167]

The Commission continues to believe that pipelines should allocate some portion of their GSR costs to interruptible service. The Court upheld the Commission's holding that interruptible transportation customers benefit from unbundling under Order No. 636.[168] As the Court stated,

> An active market for firm transportation would seem likely to drive down the cost of less desirable interruptible transportation, and while the additional use of firm transportation under Order No. 636 may crowd out some interruptible transportation, that results at least in part from customers converting from interruptible to firm service * * *. Further still, interruptible transportation customers do clearly benefit from Order No. 636 through access to low cost transportation that is available through the Commission's capacity release mechanism.[169]

These benefits received by interruptible customers clearly justify

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[160] *See UDC*, 88 F.3d at 1189.

[161] West Ohio Gas Co. v. Public Utilities Comm'n of Ohio, 294 U.S. at 74. *Mountain States Telephone & Telegraph Co.* v. *FCC*, 939 F.2d at 1029.

[162] *Public Utilities Comm'n of Cal.* v. *FERC*, 988 F.2d 154, 166 (1993) (The Commission ''with the backing of this court, has been at pains to permit pipelines to recover [take-or-pay costs] . . . which have accumulated . . . through an otherwise beneficial transition to competitive gas markets'').

[163] In determining the returns on equity allowed in individual rate cases after the shift to SFV, the Commission has refused to make any special downward adjustments based on the pipeline's shift to SFV. However, that has been because the Commission has found that the equity markets have already taken the Commission's shift to SFV into account. Therefore, the DCF analysis used by the Commission to establish return on equity reflects the shift to SFV without the need for any special adjustment. See Transcontinental Gas Pipe Line Corp., 71 FERC ¶ 61,305 at 62,196 (1995); 75 FERC ¶ 61,039 at 61,125–6 (1996); 76 FERC ¶ 61,096 at 61,506 (1996).

[164] *UDC*, 88 F.3d at 1187.

[165] *Id*. at 1187–88.

[166] Williams Natural Gas Co., 75 FERC ¶ 61,022 at 61,071, *reh'g denied*, 76 FERC ¶ 61,092 (1996).

[167] The Commission has approved four settlements concerning Natural's recovery of GSR costs from various groups of customers. Natural Gas Pipeline Company of America, 67 FERC ¶ 61,174 (1994), and 68 FERC ¶ 61,388 (1994). Those settlements are generally binding on the parties notwithstanding the outcome of the judicial review of Order No. 636, with certain limited exceptions as to particular settlement provisions. Any party to Natural's GSR proceedings believing that those settlements permit a change in the allocation of costs to interruptible service as a result of the Court's remand of that issue may file in the relevant Natural GSR proceedings a statement explaining why it so interprets the settlements. Otherwise, the Commission will presume that the issue has been settled as to all of Natural's GSR costs.

[168] *UDC*, 88 F.3d at 1187.

[169] *Id*.

the allocation of at least some GSR costs to interruptible service.

However, on remand, the Commission has determined not to require that the percentage of GSR costs so allocated must be 10 percent for all pipelines. As the Court recognized, different pipelines perform different levels of interruptible service. Among the pipelines that potentially could be affected by a departure from the generic 10 percent allocation, interruptible transportation comprises a widely varying percentage of the pipelines' total throughput for the first nine months of 1996—from 2.87 percent (Panhandle) to 21.68 percent (ANR).[170] Given this fact, it is not appropriate to require all pipelines to allocate the same percentage of their GSR costs to interruptible service. If the same percentage of GSR costs were allocated to interruptible service no matter how much interruptible service a pipeline performs, interruptible customers on pipelines performing little interruptible service could bear a disproportionate share of the pipeline's GSR costs (absent discounts).

Therefore, the Commission will, instead, require each individual pipeline, whose GSR proceedings have not been resolved, to propose the percentage of its GSR costs its interruptible customers should bear in light of the circumstances on its system. Pipelines which have filed to recover GSR costs before the date of this order, and whose GSR recovery proceedings have not been resolved by settlement or final and non-appealable Commission order, must file such proposals in their individual GSR proceedings within 180 days of the date of this order. Interested parties will be given an opportunity to comment on each pipeline's proposal. If the pipeline's proposal is protested, the Commission will set the proposal for hearing in the GSR cost recovery proceeding in which the proposal is made. Those hearings will permit the interested parties to develop a record on which the Commission can base its ultimate decision in each case.

This approach will allow the Commission and the parties to develop an allocation of GSR costs to interruptible service that is tailored to the specific circumstances of the few pipelines where the issue is still alive. The Commission also expects that such hearings will provide the parties a forum to discuss settlement of this issue. The Commission encourages the parties to seek to settle this and all other outstanding issues related to GSR recovery.

The Commission Orders

(A) Order No. 636 is reaffirmed, in part, and reversed, in part, as discussed in the body of this order.

(B) Within 180 days of the issuance of this order, any pipeline with a right-of-first-refusal tariff provision containing a contract term cap longer than five years must revise its tariff consistent with the new cap adopted herein.

(C) Within 180 days of the issuance of this order, pipelines which have filed to recover GSR costs before the date of this order, and whose GSR recovery proceedings have not been resolved by settlement or final and non-appealable Commission order, must file, in their individual GSR proceedings, a proposed allocation of GSR costs to its interruptible customers as discussed in the body of this order.

By the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5363 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–P

[170] Interruptible transportation comprises less than ten percent of total throughput on Panhandle, NorAm (5.89 percent), and Tennessee (9.81 percent). Pipelines for which interruptible transportation comprises greater than 10 percent of total throughput are Williams (17.72 percent), Natural (13.11 percent), Southern (11.17 percent), and ANR. The weighted average percentage of interruptible transportation throughput among all pipelines that report such data is approximately 18 percent. The Commission has determined all of the above percentages based on the pipelines' reports, pursuant to FERC Form No. 11, of the total volumes they transported during the first nine months of 1996 and their interruptible volumes during the same period.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 522

## Implantation or Injectable Dosage Form New Animal Drugs; Sarafloxacin Hydrochloride

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Abbott Laboratories. The supplement provides for use of sarafloxacin hydrochloride solution for injection in 18-day embryonated broiler eggs for control of early chick mortality associated with *Escherichia coli* organisms susceptible to sarafloxacin.

**EFFECTIVE DATE:** March 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** George K. Haibel, Center For Veterinary Medicine (HFV–133), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1644.

**SUPPLEMENTARY INFORMATION:** Abbott Laboratories, 1401 Sheridan Rd., North Chicago, IL 60064–4000, filed a supplement to NADA 141–018 that provides for use of sarafloxacin hydrochloride solution for injection (SaraFlox® Injection) in 18-day embryonated broiler eggs in addition to approved use in day-old broiler chickens for control of early chick mortality associated with *E. coli* organisms susceptible to sarafloxacin. The supplement is approved as of January 21, 1997, and the regulations are amended by revising 21 CFR 522.2095(d) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning January 21, 1997, because this supplement contains substantial evidence of the effectiveness of the drug involved, studies of animal safety, or human food safety studies (other than bioequivalence or residue studies), required for approval and conducted or sponsored by the applicant. Marketing exclusivity applies only to use in 18-day embryonated broiler eggs.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.2095 is amended by revising paragraph (d) to read as follows:

### § 522.2095 Sarafloxacin solution for injection.

* * * * *

(d) *Conditions of use.* 18-day embryonated broiler eggs and day-old broiler chickens:

(1) *Amount*—(i) 18-day embryonated broiler eggs: 0.05 milligram sarafloxacin in 0.1 milliliter dose in single in ovo injection.

(ii) Day-old broiler chickens: 0.1 milligrams sarafloxacin per 0.2 milliliter dose in single subcutaneous injection in the neck.

(2) *Indications for use.* For control of early chick mortality associated with *Escherichia coli* organisms susceptible to sarafloxacin.

(3) *Limitations.* Dilute 1 milliliter with 99 milliliters of sterile water or physiologic saline for use. Use entire contents of diluted solution within 24 hours. No preslaughter drug withdrawal period is required when the product is used as directed. Use in a manner other than that indicated or with dosages in excess of that recommended may result in illegal drug residues in edible tissues. Do not use in laying hens producing eggs for human consumption. Do not use in eggs intended for human consumption. The effects of sarafloxacin on the reproductive function of treated fowl have not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: February 7, 1997.

Stephen F. Sundlof,

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–5452 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

## 21 CFR Part 524

## Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Topical Spray

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for use of gentamicin topical spray in dogs for the treatment of infected superficial lesions caused by bacteria susceptible to gentamicin.

**EFFECTIVE DATE:** March 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Reese, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

**SUPPLEMENTARY INFORMATION:** Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–188, which provides for Gentaspray™ Topical Spray (each milliliter contains gentamicin sulfate equivalent to 0.57 milligram (mg) gentamicin, betamethasone valerate equivalent to 0.284 mg betamethasone) to be used topically for the treatment of infected superficial lesions in dogs caused by bacteria susceptible to gentamicin.

Approval of ANADA 200–188 for Med-Pharmex, Inc. 's, Gentaspray™ Topical Spray (gentamicin sulfate with betamethasone valerate) is as a generic copy of Schering Plough's NADA 132–338 Gentocin® Topical Spray (gentamicin sulfate with betamethasone valerate). The ANADA is approved as of January 29, 1997, and the regulations in 21 CFR 524.1044f(b) are amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

## PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 524.1044f is amended by revising paragraph (b) to read as follows:

### § 524.1044f Gentamicin sulfate, betamethasone valerate topical spray.

* * * * *

(b) *Sponsor.* See Nos. 000061 and 051259 in § 510.600(c) of this chapter.

* * * * *

Dated: February 11, 1997.

Stephen F. Sundlof,

*Director, Center for Veterinary Medicine.*

[FR Doc. 97–5453 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 32 and 53

**[CC Docket No. 96–150: FCC 96–490]**

## Accounting Safeguards Under the Telecommunications Act of 1996: Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; Correction.

**SUMMARY:** This document contains a correction to the effective date of the Final Rules, which were published Tuesday, January 21, 1997, (62 FR 2918). The rules related to accounting safeguards that are necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (''1996 Act''). Specifically, this Order prescribed the way incumbent local exchange carriers, including the Bell Operating Companies (''BOCs''), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications, information, manufacturing, electronic publishing, alarm monitoring and payphone services, to ensure compliance with the 1996 Act.

**EFFECTIVE DATE:** The requirements and regulations established in this Order with regard to Part 32 of our Rules 47 CFR Part 32, shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than July 20, 1997 (six months after publication in the Federal Register). We will allow carriers to implement these rules at an earlier date and encourage them to do so. The remaining new and/or modified information collections established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20,1 997. The Commission will publish a document at a later date establishing the effective dates of these rules.

**FOR FURTHER INFORMATION CONTACT:** Mark Ehrlich, Attorney/Advisor, Accounting and Audits Division, Common Carrier Bureau, (202) 418–0385.

**SUPPLEMENTARY INFORMATION:**

Background

The Accounting Safeguards Under the Telecommunications Act of 1996 *Report and Order* established accounting safeguards that are necessary to satisfy the requirements of the 1996 Act, including the way incumbent local exchange carriers, including the Bell Operating Companies (''BOCs''), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, inteLATA telecommunications, information, manufacturing, electronic publishing, alarm monitoring and payphone services.

Need for Correction

Under section 220(g) of the Act, the Commission must allow six months notice before alterations in the required manner or form of keeping accounts are to take effect.

Correction of Publication

Accordingly, the publication on January 21, 1997 is corrected as follows:

1. The effective date paragraph on page 2918, in the third column, should read: The requirements and regulations established in this Order with regard to Part 32 of our Rules, 47 CFR Part 32, shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than July 20, 1997 (six months after publication in the Federal Register). We will allow carriers to implement these rules at an earlier date and encourage them to do so. The remaining new and/or modified information collections established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997.

2. The second indented paragraph 2925, in the second column, should read:

It is further ordered that, pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. § 220(g) and section 1.427(c) of the Commission's Rules, 47 CFR § 1.427(c), the requirements and regulations established in this Order with regard to Part 32 of the Commission's Rules, 47 CFR Part 32, shall be effective six months after publication in the Federal Register. The remaining requirements and regulations established in this Order shall become effective upon approval by OMB of the new information collection requirements adopted herein, but no sooner than February 20, 1997.

Federal Communications Commission

William F. Caton,

*Acting Secretary.*

[FR Doc. 97–5496 Filed 3–5–97; 8:45 am]

**BILLING CODE 6712–01–M**

## 47 CFR Part 53

**[CC Docket No. 96–149; FCC 96–489]**

## Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended; Final rule; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; Correction.

**SUMMARY:** This documents contains corrections to the final regulations which were published Tuesday, January 21, 1997 (62 FR 2927). The regulations related to special provisions relating to Bell Operating Companies.

**EFFECTIVE DATE:** March 6, 1997.

**FOR FURTHER INFORMATION CONTACT:** Joe Di Scipio (202) 418–1580.

**SUPPLEMENTARY INFORMATION:**

Background

The final regulations that are the subject of these corrections affect Bell Operating Companies.

Need for correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. Accordingly, the publication on January 21, 1997 of the final regulations (FCC 97–52) is corrected as follows:

1. On page 2939, in the second column, the first indented paragraph is replaced by the following:

We note that, under *Computer II* and *Computer III*, we have treated three categories of protocol processing services as basic services, rather than enhanced services. These categories include protocol processing: (1) involving communications between an end user and the network itself (*e.g.*, for initiation, routing, and termination of calls) rather than between or among users; (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3) involving internetworking (conversions taking place solely within the carrier's network to facilitate provision of a basic network service, that result in no net conversion to the end user). We agree with PacTel that analogous treatment should be extended to these categories of protocol processing services under the statutory regime. Because the listed protocol processing services are information service capabilities used ''for the management, control, or operation of a telecommunications system or the management of a telecommunications service,'' they are excepted from the statutory definition of information service. These excepted protocol conversion services constitute telecommunications services, rather than information services, under the 1996 Act.

2. On page 2940, column 3, the first indented paragraph is replaced by the following:

*Remote Databases/Network Efficiency.* BOCs may not provide interLATA services in their own regions, either over their own facilities or through resale, before receiving authorization from the Commission under section 271(d). Therefore, we conclude that BOCs may not provide interLATA information services, except for those designated as incidental interLATA services under section 271(g), in any of their in-region states prior to obtaining section 271 authorization. Section 271(g)(4) designates as an incidental interLATA service the interLATA provision by a BOC or its affiliate of ''a service that permits a customer that is located in one

LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA.'' Because BOCs were able to provide incidental interLATA services immediately upon enactment of the 1996 Act, they may provide interLATA information services that fall within the scope of section 271(g)(4) without receiving section 271(d) authorization from the Commission. Since section 271(g)(4) services are not among the incidental interLATA services exempted from section 272 separate affiliate requirements, however, they must be provided in compliance with those requirements. To the extent that parties have argued in the record that centralized data storage and retrieval services that fall within section 271(g)(4) either are not interLATA information services, or are not subject to the section 272 separate affiliate requirements, we specifically reject these arguments.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

[FR Doc. 97–5498 Filed 3–5–97; 8:45 am]

BILLING CODE 6712–01–P

## 47 CFR Part 73

**[MM Docket No. 96–43; RM–8754, RM–8830]**

## Radio Broadcasting Services; Frederiksted and Charlotte Amalie, VI

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Jose J. Arzuaga, allots Channel 269B1 at Frederiksted, Virgin Islands, as the community's third local FM transmission service (RM–8754). *See* 61 FR 10978, March 18, 1996. We also, at the request of Calypso Communications, substitute Channel 297B1 for Channel 246B at Charlotte Amalie, Virgin Islands, and modify Station WVNX(FM)'s construction permit accordingly (RM–8830). Channel 269B1 can be allotted at Frederiksted in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 269B1 at Frederiksted are North Latitude 17–42–48 and West Longitude 64–53–00. Additionally, Channel 297B1 can be allotted at Charlotte Amalie in compliance with the Commission's minimum distance separation requirements with a site restriction of 20.8 kilometers (12.9 miles) east at Station WVNX(FM)'s presently authorized site. The coordinates for Channel 297B1 at Charlotte Amalie are North Latitude 18–20–30 and West Longitude 64–43–59. With this action, this proceeding is terminated.

**DATES:** Effective April 14, 1997. The window period for filing applications for Channel 269B1 at Frederiksted, Virgin Islands, will open on April 14, 1997, and close on May 15, 1997.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96–43, adopted February 21, 1997, and released February 28, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## 47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virgin Islands, is amended by adding Channel 269B1 at Frederiksted; and by removing Channel 246B and adding Channel 297B1 at Charlotte Amalie.

Federal Communications Commission

John A. Karousos,

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 97–5497 Filed 3–5–97; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 961126334–7025–02; I.D. 022897E]**

## Fisheries of the Exclusive Economic Zone Off Alaska, Pacific Cod in the Western Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is closing directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the allocation of Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA.

**EFFECTIVE DATES:** 1200 hrs, Alaska local time (A.l.t.), March 3, 1997, until 2400 hrs, A.l.t., December 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Thomas Pearson, 907–486–6919.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by NMFS according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The final specification of the allocation of Pacific cod for processing by the inshore component in the Western Regulatory Area of the GOA was established by the Final 1997 Harvest Specifications of Groundfish for the GOA (62 FR 8179, February 24, 1997) as 17,442 metric tons (mt), determined in accordance with § 679.20(a)(6)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the ITAC for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 17,142 mt, and is setting aside the remaining 300 mt as

bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Western Regulatory Area.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20 (e) and (f).

## Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 3, 1997.

Bruce Morehead,

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–5541 Filed 3–3–97; 3:10 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 62, No. 44
Thursday, March 6, 1997

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 TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 97–NM–18–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect corrosion in the wing planks under the bottom wing center fairings, and repair, if necessary. This action would require the installation of a protective paint system which, when accomplished, will allow the inspections to be conducted at longer intervals. This action was prompted by the development of a modification that will improve the corrosion resistance of the subject area. The actions specified by the proposed AD are intended to detect and prevent corrosion in the lower skins of the wing center section. If corrosion in this area remains unchecked, it could reduce the integrity of the wing-to-fuselage fitting, and consequently could lead to separation of the wing from the airplane.

**DATES:** Comments must be received by April 14, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–18–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

In 1967, the FAA issued AD 67–04–01, amendment 39–1234 (36 FR 12688, July 3, 1971), applicable to all Gulfstream Model G–159 (G–I) airplanes. That AD requires a visual inspection to detect corrosion of the wing planks under the bottom wing center fairing assemblies (having part numbers 159W10400–121 and 159W10401–121), and repair if necessary. After the initial inspection is accomplished, and after any repair is made, the inspection is required to be repeated at intervals of 26 weeks.

That action was prompted by reports indicating that corrosion was found in the lower skins of the wing center section of several of these airplanes. The requirements of that AD are intended to detect and correct corrosion in this area. If such corrosion remains unchecked, it could reduce the integrity of the wing-to-fuselage fitting, and consequently could lead to separation of the wing from the airplane.

### Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group recently reviewed selected service bulletins, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

### Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971, for mandatory regulatory action. That service change describes procedures for repetitive inspections to detect corrosion of the center section lower wing planks, and repair, if necessary. It also describes the

installation of a protective paint system to the fairing assemblies and bottom wing cover. This protective system is intended to improve the corrosion resistance of this area. Once it is installed, the repetitive inspections may be conducted at longer intervals.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 67–04–01. It would continue to require the repetitive visual inspections, specified in AD 67–04–01, to detect corrosion of the wing planks under the bottom wing center fairing assemblies, and repair, if necessary.

For airplanes on which a protective paint system had not been installed previously, this new action would require that the inspection continue to be repeated at intervals of 6 months (26 weeks), until a protective paint system is installed within 12 months. Once the paint system is installed, the repetitive inspections would be required to continue, but the repetitive interval would be extended to 18 months.

For airplanes on which a protective paint system was installed previously, this new action would extend the currently-required repetitive inspection interval of 12 months to 18 months.

These actions would be required to be accomplished in accordance with the aircraft service change described previously.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 67–04–01, and those that would be required by this proposed action, take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection actions on U.S. operators is estimated to be $172,800, or $2,400 per airplane, per inspection.

The installation of the protective paint system that is proposed in this AD action would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required materials would cost approximately $100 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $136,800, or $1,900 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–1234 (36 FR 12688, July 3, 1971), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation: Docket 97–NM–18–AD. Supersedes AD 67–04–01, Amendment 39–1234.

*Applicability:* All Model G–159 (G–I) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and prevent corrosion in the lower skins of the wing center section, which could reduce the integrity of the wing-to-fuselage fitting and consequently could lead to separation of the wing from the airplane, accomplish the following:

(a) For all airplanes: Within 4 weeks after July 3, 1971 (the effective date of AD 67–04–01, amendment 39–1234), remove the bottom wing center fairings having part numbers (P/N) 159W10400–121 and 159W10401–121, or use an FAA-approved equivalent method, to perform a visual inspection to detect corrosion of the wing planks under these fairings.

Note 2: Paragraph (a) of this AD merely restates the actions previously required by AD 67–04–01, amendment 39–1234. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 67–04–01 have already been accomplished, this AD does not require that those actions be repeated.

Note 3: Care must be exercised when removing the fairings, since the attaching rivets go into the pressure vessel. Use caution not to enlarge rivet holes when removing rivets. When reinstalling the fairings, an adequate type fastener and sealant must be used.

Note 4: Grumman Service Newsletter, Volume 166, dated August–September 1966, pertains to this subject.

(b) For airplanes on which a protective paint system *has not been* installed in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971: Accomplish paragraphs (b)(1) and (b)(2) of this AD. As of the effective date of this AD, the inspections required by this paragraph shall be accomplished in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971.

Note 5: The repeated inspection referred to in this paragraph is the same inspection previously required by AD 67–04–01. Paragraph (b)(1) of this AD merely restates

the requirement of AD 67–04–01 to repeat the inspection at intervals of 6 months. Paragraph (b)(2) permits the reinspection interval to be extended to 18 months once the specified protective paint system is installed.

(1) As a result of the inspection required by paragraph (a) of this AD:

(i) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 6 months (26 weeks) until the actions specified in paragraph (b)(2) of this AD are accomplished.

(ii) If any corrosion is detected, prior to further flight, either repair the corroded part with an FAA-approved repair; or replace the corroded part with a new or serviceable part of the same part number; or replace the corroded part with a part approved by the FAA. Thereafter, continue to perform the inspection at intervals not to exceed 6 months (26 weeks) until paragraph (b)(2) of this AD is accomplished.

(2) Within 12 months after the effective date of this AD, install the protective paint system in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971. After installation, continue to perform the inspection required by this paragraph at intervals not to exceed 18 months.

(c) For airplanes on which a protective paint system *has been* installed previously in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971: Accomplish paragraphs (c)(1) and (c)(2) of this AD. As of the effective date of this AD, the inspections required by this paragraph shall be accomplished in accordance with Grumman Gulfstream I Aircraft Service Change No. 190, dated June 28, 1971.

Note 6: The repeated inspection referred to in this paragraph is the same inspection previously required by AD 67–04–01. Paragraph (c)(1) of this AD merely restates the requirement of AD 67–04–01 to repeat the inspection at intervals of 12 months. Paragraph (c)(2) permits the reinspection interval to be extended to 18 months.

(1) As a result of the inspection required by paragraph (a) of this AD:

(i) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 12 months until paragraph (c)(2) of this AD is accomplished.

(ii) If any corrosion is detected, prior to further flight, either repair the corroded part with an FAA-approved repair; or replace the corroded part with a new or serviceable part of the same part number; or replace the corroded part with a part approved by the FAA. Thereafter, continue to perform the inspection at intervals not to exceed 12 months until paragraph (c)(2) of this AD is accomplished.

(2) Within 18 months since the last inspection accomplished in accordance with paragraph (c)(1) of this AD (i.e., the last inspection accomplished in accordance with AD 67–04–01), repeat the inspection specified in paragraph (c)(1) of this AD.

(i) If no corrosion is detected, repeat the inspection thereafter at intervals not to exceed 18 months.

(ii) If any corrosion is detected, prior to further flight, repair in accordance with the service change. After repair, continue to perform the inspection at intervals not to exceed 18 months.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 67–04–01, amendment 39–1234, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5463 Filed 3–5–97; 8:45 am]

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## 14 CFR Part 39

**[Docket No. 97–NM–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect chafe wear on the upper diagonal engine mount tube, and replacement or repair, if necessary. This action would require the installation of chafe guards at the engine mounts, which would terminate the currently required inspections. It also would require that the chafe guards then be repetitively inspected for chafe wear. This proposal is prompted by the development of a modification that will provide better protection of the subject area against future chafe wear. The actions specified by the proposed AD are intended to prevent excessive chafe wear in the area of the upper diagonal engine mount tubes and trusses; if not detected and corrected, such wear could result in failure of the engine mount assembly and possible separation of the engine from the airplane.

**DATES:** Comments must be received by April 14, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: ''Comments to Docket Number 97–NM–19–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–19–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1967, the FAA issued AD 67–17–05, amendment 39–511 (32 FR 7248, May 16, 1967), applicable to certain Gulfstream Model G–159 airplanes, to require repetitive visual inspections to detect chafe wear on the upper diagonal engine mount tubes, part number (P/N) 159W10172–11 (left engine) and P/N 159W10172–13 (right engine). Depending upon the depth of wear found during any inspection, the AD requires that the tube(s) either be replaced or repaired, and the repetitive visual inspections continued thereafter at intervals of 200 hours time-in-service.

That AD also provides for optional terminating action for these visual inspections, which consists of installing a chafe guard (P/N 159WP10017–11) on each of the upper diagonal trusses. If an operator elects to install these chafe guards, the AD requires that the chafe guards be repetitively inspected to detect wear thereafter at intervals of 2,500 hours time-in-service.

That action was prompted by reports of excessive chafe wear found on the engine mount tubes on some airplanes. The chafe wear was determined to be caused by the tube coming into contact with the engine exhaust tail pipe blanket. The requirements of that AD are intended to detect and correct chafe wear of the engine mount tube; if such wear is left unchecked, it could result in the failure of the engine mount assembly and possible separation of the engine from the airplane.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter class airplanes. This group recently reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream I Aircraft Service Change No. 180, dated October 17, 1966, for mandatory regulatory action. That service change describes procedures for a one-time initial inspection to detect chafe wear of the upper diagonal trusses [P/N 159W10172–5 (left-hand nacelle) and P/N 159W10172–7 (right-hand nacelle), and replacement of worn parts, if necessary.

The service change also describes procedures for installing chafe guards [part number 159WP10017–11] after the inspection of the trusses is accomplished. The chafe guards are intended to provide better protection of the subject area against future chafe wear. Once these chafe guards are installed, the service change recommends that an inspection of the chafe guards be conducted thereafter at intervals of 2,500 hours time-in-service.

(The installation of the chafe guards and continuing inspections, as described in this service change, are the same actions that were provided as optional terminating action for the visual inspections of the engine mount tubes in AD 67–17–05.)

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 67–17–05. It would continue to require the repetitive visual inspections to detect chafe wear of the engine mount tube, and repair or replacement of the tube(s), if necessary. These inspections would be required to continue until (1) a one-time inspection is performed to detect chafe wear of the upper diagonal truss, and (2) chafe guards are installed. (Once the chafe guards are installed, the previously required visual inspections of the engine mount tubes would be terminated.) The proposed AD also would require that, after the chafe guards are installed, an inspection of the chafe guards be conducted at intervals of 2,500 hours time-in-service. These actions would be required to be accomplished in accordance with the aircraft service change described previously.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 67–17–05 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,280, or $240 per airplane, per inspection.

The installation of the chafe guards that is proposed in this AD action would take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $152 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $183,744, or $2,552 per airplane.

The inspections of the chafe guards that are proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $17,280, or $240 per airplane, per inspection.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–511 (32 FR 7248, May 16, 1967), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (formerly Grumman): Docket 97–NM–19–AD. Supersedes AD 67–17–05, Amendment 39–511.

*Applicability:* All Model G–159 (G–I) airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent excessive chafe wear of the engine mount tube and upper diagonal truss, which could lead to failure of the engine mount assembly and possible separation of the engine from the airplane, accomplish the following:

(a) For airplanes on which chafe guards, P/N 159WP10017–11, *have not been* installed on each upper diagonal truss prior to the effective date of this AD: Accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) *Restatement of Requirements of AD 67–17–05:* Within 100 hours time-in-service after May 16, 1967 (the effective date of AD 67–17–05, amendment 39–411), visually inspect to detect chafe wear of the lower half of the upper diagonal engine mount tubes having part number (P/N) 159W10172–11 (left engine) and P/N 159W10172–13 (right engine).

(i) If no chafe wear is detected: Repeat this inspection thereafter at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(ii) If any tube is found to have wear depth greater than 0.030 inch (as measured from the outer edge of the tube): Prior to further flight, replace the tube with a tube of the same part number or with an FAA-approved equivalent part. After replacement, repeat the inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(iii) If any tube is found to have wear depth of 0.030 inch deep or less, as measured from the outer edge of the tube: Prior to further flight, either repair the tube in accordance with an FAA-approved repair, or replace the tube with a part of the same part number or with an FAA-approved equivalent part. After repair or replacement, repeat the inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the requirements of paragraph (a)(2) are accomplished.

(2) *One-Time Inspection of Upper Diagonal Truss and Installation of Chafe Guards.* Within 600 hours time-in-service after the effective date of this AD, perform a one-time visual inspection to detect chafe wear of the left-hand and right-hand upper diagonal truss, P/N's 159W10172–5 (left-hand nacelle) and P/N 159W10172–7 (right-hand nacelle), in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966. Once this inspection is completed, the repetitive inspections required by paragraph (a)(1) of this AD may be terminated.

(i) If there is no evidence of chafe wear on the truss; or if there is evidence of chafe wear and the depth of wear is .030 inch or less (measured from the surface of the tube): Prior to further flight, install a chafe guard, P/N 159WP10017–11, on the truss.

(ii) If there is any evidence of chafe wear and the depth of wear exceeds .030 inch measured (from the surface of the tube): Prior to further flight, install a new upper diagonal truss and install a chafe guard, P/N 159WP10017–11, on the truss.

(3) *Continuing Inspections of Chafe Guards.* Within 2,500 hours time-in-service after installation of the chafe guards required by paragraph (a)(2) of this AD, perform an inspection of the undersurface of each chafe guard for evidence of chafe wear, in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966.

(i) If no chafe wear is detected: Repeat the inspection at intervals not to exceed 2,500 hours time-in-service.

(ii) If any chafe wear is detected: Prior to further flight, replace the chafe guard with a new or serviceable part. After replacement, repeat the inspection for chafe wear of the chafe guard thereafter at intervals not to exceed 2,500 hours time-in-service.

(b) For airplanes on which chafe guards, P/N 159WP10017–11, have been installed on each upper diagonal truss prior to the effective date of this AD: Within 2,500 hours time-in-service after the last inspection of the chafe guard required by paragraph (c) of AD 67–17–05, repeat that inspection to detect chafe wear of the chafe guards in accordance with Grumman Gulfstream Service Change No. 180, dated October 17, 1966.

(1) If no chafe wear is detected: Repeat the inspection thereafter at intervals not to exceed 2,500 hours time-in-service.

(2) If any chafe wear is detected: Prior to further flight, replace the chafe guard with a new or serviceable part. After replacement, repeat the inspection thereafter at intervals not to exceed 2,500 hour time-in-service.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5462 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

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## 14 CFR Part 39

**[Docket No. 97–NM–16–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires modification and repetitive inspections for cracks in the main landing gear (MLG) retract cylinder attachment fittings. This action would require the installation of improved attachment fittings which, when accomplished,

would terminate the requirement for the repetitive inspections. This proposal is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the MLG retract cylinder attachment fitting due to fatigue cracking. That condition, if not corrected, could result in the inability to retract the MLG.

**DATES:** Comments must be received by April 14, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–16–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1967, the FAA issued AD 67–31–08, amendment 39–515 (32 FR 16201, November 28, 1967), applicable to certain Gulfstream Model G–159 airplanes, to require repetitive visual and dye penetrant inspections for cracks in the main landing gear (MLG) retract cylinder attachment fittings, part number (P/N) 159WM10032–1 and –2, located on the lower surface of the left-hand and right-hand wings; and replacement of cracked parts. It also requires that the fittings be modified by rounding off their aft end edges.

AD 67–31–08 also provided for an optional terminating action, which consisted of replacing the MLG retract cylinder attachment fittings with improved fittings, having Grumman P/N 159WM10276–1 and –2, and balls having Grumman P/N 159WM10277–1.

That action was prompted by a report indicating that, during a routine inspection, the MLG retract cylinder attachment fitting on one airplane was found to be cracked through the aft end. Examination of the fitting revealed several notches located along one edge in the area where the failure had occurred. This cracking in the fitting was determined to be due to fatigue that could be directly attributed to these notches.

The requirements of that AD are intended to prevent failure of the MLG retract cylinder attachment fitting due to fatigue cracking. This condition, if not corrected, could result in the inability to retract the MLG.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream Service Change No. 184, dated February 1, 1968, and Amendment 1 to that Service Change, dated June 28, 1968, for mandatory rulemaking action. This service information describes procedures for removing MLG retract cylinder attachment fitting assemblies made of aluminum alloy and having P/N 159WM10032–1 and –2, and replacing them with fitting assemblies made of steel and having P/N 159WM10276–1 and –2 and balls having P/N 159WM10277–1. Installation of steel assemblies will preclude the potential for fatigue cracking to occur in the fittings.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 67–31–08. It would continue to require the repetitive inspections and modification of the MLG retract cylinder attachment fittings, and replacement, if necessary. This new action would require that the attachment fitting assemblies eventually be replaced with assemblies made of steel. Once this replacement is accomplished, the previously required modification and inspections may be terminated. The replacement action would be required to be accomplished in accordance with the service information described previously.

FAA's Determination for the Need to Mandate the Replacement

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led

the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these considerations.

Cost Impact

There are approximately 146 Gulfstream Model G–159 (G–I) airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 67–31–08 take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $12,960, or $180 per airplane, per inspection.

The replacement action that is proposed in this AD action would take approximately 45 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $5,400 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $583,200, or $8,100 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–515 (32 FR 16201, November 28, 1967), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (formerly Grumman): Docket 97-NM–16-AD. Supersedes AD 67–31–08, amendment 39–515.

*Applicability:* Model G–159 (G-I) airplanes; serial numbers (S/N) 1 through 12 inclusive, 14 through 112 inclusive, 114 through 148 inclusive, 322, and 323; on which main landing gear cylinder attach fitting assemblies having part number (P/N) 159WM10276–1 and -2 and balls having P/N 159WM10277–1 are *not* installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) retract cylinder attachment fittings due to fatigue cracking, which could result in the inability to retract the MLG, accomplish the following:

(a) Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, at the times indicated in those paragraphs and in accordance with Grumman Gulfstream Customer Bulletin No. 172, dated September 6, 1963.

(1) Beginning November 7, 1967 (the effective date of AD 67–31–08, amendment 39–515), and prior to each flight, conduct a visual inspection to detect cracks in the MLG retract cylinder attachment fittings on the lower surface of the right-hand and left-hand wings in the vicinity of the aft end of the fitting.

(2) Within 25 hours time-in-service after November 7, 1967, accomplish the actions specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD:

(i) Conduct a dye penetrant inspection, in conjunction with at least a 10X magnifying glass, to detect cracks in the MLG retract cylinder attachment fittings on the lower surface of the right-hand and left-hand wings in the vicinity of the aft end of the fitting. Repeat this inspection thereafter at intervals not to exceed 25 hours time-in-service. And

(ii) Modify the aft end edges of the fitting by rounding them off to approximately 1/32'' radius.

(b) If any crack is found during an inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD:

(1) Replace the cracked part with a part of the same part number that has been modified and inspected in accordance with paragraph (a) of this AD, in accordance with Grumman Gulfstream Customer Bulletin No. 172, dated September 6, 1963. Thereafter, continue the inspections required by paragraph (a) of this AD. Or

(2) Replace the fitting assembly with an assembly having part number (P/N) 159WM10276–1 or -2, and balls having P/N 159WM10277–1. After accomplishing this replacement, the repetitive inspections of that fitting required by paragraph (a) of this AD may be terminated.

(c) Within 400 hours time-in-service after the effective date of this AD, replace the MLG retract cylinder attachment fitting assemblies with assemblies having part numbers (P/N) 159WM10276–1 and -2, and balls having P/N 159WM10277–1. This replacement constitutes terminating action for the inspection requirements of this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 67–31–08, amendment 39–515, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5461 Filed 3–5–97; 8:45 am]

**BILLING CODE 4910–13–U**

## 14 CFR Part 39

**[Docket No. 97–NM–15–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect cracking in the mounting lugs of the elevator trim tab actuators, and replacement, if necessary. This action would require the installation of improved elevator trim tab actuators that are not susceptible to the subject cracking. This proposal is prompted by the development of a modification that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the mounting lugs on the elevator trim tab actuator due to cracking; such failure could result in severe vibration during flight and/or reduction or loss of elevator trim tab capability, which could lead to reduced controllability of the airplane.

**DATES:** Comments must be received by April 14, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–15–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

In 1972, the FAA issued AD 72–24–04, amendment 39–1559 (37 FR 24419, November 17, 1972), applicable to certain Gulfstream Model G–159'' airplanes (formerly designated as ''Grumman Gulfstream G–159'' airplanes), to require:

1. repetitive dye penetrant inspections to detect cracking in the mounting lugs of the elevator trim tab actuator, part number (P/N) 159SCC100–1 and –5; and
2. shimming to correct any out-of-plane mounting.

If cracking is detected during any inspection, the AD requires that the actuator be replaced with an actuator having P/N 159SCC100–1, –5, or –11. (AD 72–24–04 specifies that, if an actuator having P/N 159SCC100–11 is installed, no further action is required.)

That action was prompted by a report indicating that, during an inspection, all four mounting lugs on a Gulfstream G–159 elevator trim tab actuator were found to be cracked. Examination of the actuator unit indicated that two of the lugs had been failed for an undetermined period of time. Additional inspections of other airplanes revealed numerous fittings with one lug failed and some with two lugs failed.

Once one lug fails, the adjacent lug is under twice the normal stress, and will eventually fail. At that point, the remaining two lugs are being worked in bending and their remaining service life, in this condition, is short.

The requirements of that AD are intended to detect cracked lugs as early as possible so as to prevent the concurrent failure of the four lugs. Such failure could cause severe vibration during flight and/or reduction or loss of elevator trim tab capability; this could then result in reduced controllability of the airplane.

### Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

### Explanation of Relevant Service Information

The group reviewed and recommended Grumman Gulfstream I Aircraft Service Change No. 191, dated August 18, 1972, for mandatory rulemaking action. This service change describes procedures for replacing the elevator trim tab actuators having P/N 159SCC100–1 or –5, with actuators having P/N 159SCC100–11. The replacement actuators have new, increased strength housings, and are not susceptible to the type of cracking that

was previously found. Installation of these new actuators eliminates the need for the repetitive inspections for cracking.

The group recognized the fact that cracks in the existing elevator trim tab actuator housings are very difficult to identify, even with the dye penetrant, if they are small or have just started. Therefore, installation of the improved actuators will positively address the identified unsafe condition by eliminating the potential both for the cracking itself, as well as for cracks that are missed during an inspection.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 72–24–04. It would continue to require the repetitive dye penetrant inspections for cracks in the elevator trim tab actuator mounting lugs. However, it would also require the installation of improved actuators, which would constitute terminating action for the repetitive inspections. The installation would be required to be accomplished in accordance with the aircraft service change described previously.

FAA's Determination for the Need to Mandate the Installation

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed installation requirement is in consonance with these considerations.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 72–24–04 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,640, or $120 per airplane, per inspection.

The new installation that is proposed in this AD action would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,900 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $404,640, or $5,620 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–1559 (37 FR 24419, November 17, 1972), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (previously Grumman): Docket 97–NM–15–AD. Supersedes AD 72–24–04, amendment 39–1559.

*Applicability:* Model G–159 (G–I) airplanes, on which elevator trim tab actuators having part number 159SCC100–11 are *not* installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the elevator trim tab mounting lugs due to cracking, which could result in severe vibration during flight and a consequent reduction or loss of elevator trim tab capability, accomplish the following:

(a) Within 10 hours time-in-service after November 24, 1972 (the effective date of AD 72–24–04, amendment 39–1559), perform an inspection to detect cracks in the mounting lugs of the elevator trim tab actuators, having part number (P/N) 159SCC100–1 or –5; and shim to correct any out-of-plane condition, in accordance with Gulfstream Customer Bulletin No. 208A through Amendment 2, dated April 21, 1972, and Operational Summary No. 72–5B, dated August 1972.

(b) If no crack is found in any mounting lug during the inspection required by paragraph (a) of this AD, repeat the inspection at intervals not to exceed 200 hours time-in-service.

(c) If any crack is found in a mounting lug when conducting any inspection required by paragraph (a) or (b) of this AD, prior to further flight, replace the elevator trim tab actuator with a new or serviceable actuator having P/N 159SCC100–1, –5, or –11.

(1) If an actuator having P/N 159SCC100–1 or –5 is used as the replacement unit, repeat the inspection for cracks specified in paragraph (a) of this AD thereafter at intervals not to exceed 200 hours time-in-service.

(2) If an actuator having P/N 159SCC100–11 is used as the replacement unit, no further inspection action is required for that unit in accordance with this AD.

(d) Within 1,000 hours time-in-service after the effective date of this AD, replace the

elevator trim tab actuators with actuators that have P/N 159SCC100–11, in accordance with Gulfstream Aircraft Service Change No.191, dated August 18, 1972. This installation constitutes terminating action for the inspections required by this AD.

(e)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 72–24–02, amendment 39–1559, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5460 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

## 14 CFR Part 39

**[Docket No. 96–CE–25–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Britten-Norman Ltd. (formerly Britten-Norman) BN–2A, BN–2B, and BN–2T Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to adopt a new airworthiness directive that would apply to Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A, BN–2B, and BN–2T series airplanes. The proposed AD would require repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks, and replacing any MLG torque link assembly with a Modification A39 MLG torque link assembly, either immediately when cracks are found or after a certain period of time if cracks are not found. Replacing all MLG torque link assemblies with Modification A39 MLG torque link assemblies would eliminate the need for the repetitive inspections. These proposed repetitive inspections are currently required by AD 86–07–02 for the BN–2A, BN–2B, and BN–2T series airplanes, as well as the BN2A MK. 111 series airplanes. There are no improved design parts for the BN2A MK. 111 series airplanes. The Federal Aviation Administration (FAA) is issuing in a separate action a proposed revision to AD 86–07–02 to retain the repetitive inspection and replacement (if cracked) requirements for the BN2A MK. 111 series airplanes. The actions specified in the proposed AD are intended to prevent failure of the main landing gear caused by cracks in the torque link area, which could lead to loss of control of the airplane during landing operations.

**DATES:** Comments must be received on or before May 12, 1997.

**ADDRESSES:** Submit comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2717; facsimile (32 2) 230.6899; or Mr. S.M. Nagarajan, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, Suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–25–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes. Assisting the FAA in this review were (1) Pilatus Britten-Norman; (2) the Regional Airlines Association (RAA); (3) the Civil Aviation Authority of the

United Kingdom; and (4) several operators of the affected airplanes.

From this review, the FAA has identified AD 86–07–02, Amendment 39–5382, as one which falls under the FAA's aging aircraft policy. AD 86–07–02 currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any cracked part.

Pilatus Britten-Norman has developed a modification that, when incorporated, would eliminate the need for the repetitive inspection requirement of AD 86–07–02 for the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes. The requirements of AD 86–07–02 should still apply for the Pilatus Britten-Norman BN2A MK. 111 series airplanes.

Applicable Service Information

Fairey Hydraulics Limited has issued Service Bulletin (SB) 32–4, Issue 4, dated January 30, 1990, which applies to the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes. This SB includes procedures for inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies, and installing new Modification A39 MLG torque link assemblies. Pilatus Britten-Norman SB BN–2/SB.170, Issue 4, dated November 16, 1990, references Fairey Hydraulic Limited SB32–4, Issue 4, dated January 30, 1990.

The FAA's Determination

The FAA has examined all available information related to this subject matter and has determined that:

- AD action should be taken for the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes to require the installation of Modification A39 MLG torque link assemblies. The repetitive inspections of the junction of the torque link lug and upper case of the MLG torque link assemblies would still be required until the improved parts are installed; and
- AD 86–07–02 should be revised to remove the BN–2A BN–2B, and BN–2T series airplanes from the applicability of that AD, but retain the actions for the BN2A MK. 111 series airplanes (this is being proposed in a separate action).

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes of the same type design, the proposed AD would require repetitively inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies for cracks, and replacing any MLG torque link assembly with a Modification A39 MLG torque link assembly, either immediately when cracks are found or at a certain period of time if cracks are not found. Installation of the improved part would eliminate the need for the repetitive inspections. Accomplishment of the proposed inspections and installation would be in accordance with Fairey Hydraulics Limited SB 32–4, Issue 4, dated January 30, 1990.

Cost Impact

The FAA estimates that 112 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 13 workhours per airplane to accomplish the proposed action (1 workhour per inspection and 12 workhours for the installation), and that the average labor rate is approximately $60 an hour. Parts cost approximately $6,200 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $781,760 or $6,980 per airplane.

The proposed inspections are currently required on the 112 affected airplanes by AD 86–07–02. The proposed AD would not require any additional inspection requirements over that already required by AD 86–07–02. In addition, the cost figures referenced above are based on the presumption that no affected airplane operator has incorporated the proposed inspection-terminating installation. Pilatus Britten-Norman does not know the number of parts distributed to the affected airplane owners/operators. Numerous sets of parts were sent out to the owners/operators of the affected airplanes, but over the years Pilatus Britten-Norman has not retained these records.

The FAA's Aging Commuter Aircraft Policy

The intent of the FAA's aging commuter airplane program is to ensure safe operation of commuter-class airplanes that are in commercial service without adversely impacting private operators. Of the approximately 112 airplanes in the U.S. registry that would be affected by the proposed AD, the FAA has determined that approximately 25 percent are operated in scheduled passenger service by 11 different operators. A significant number of the remaining 75 percent are operated in other forms of air transportation such as air cargo and air taxi.

The proposed action would allow at least 1,000 hours TIS after the effective date of the AD before mandatory accomplishment of the design modification (upon the accumulation of 5,000 hours TIS or within the next 1,000 hours TIS after the effective date of the AD, whichever is later). The average utilization of the fleet for those airplanes in commercial commuter service is approximately 25 to 50 hours TIS per week. Based on these figures, operators of commuter airplanes involved in commercial operation would have to accomplish the proposed modification within 5 to 10 calendar months (at the least) after the proposed AD would become effective. For private owners, who typically operate between 100 to 200 hours TIS per year, this would allow 5 to 10 years (at the least) before the proposed modification would be mandatory. The time it would take those in air cargo/air taxi operations before the proposed action would be mandatory is unknown because of the wide variation between each airplane used in this service. The exact numbers would fall somewhere between the average for commuter operators and private operators.

Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionally burdened by government regulations. The RFA requires government agencies to determine whether rules would have a ''significant economic impact on a substantial number of small entities,'' and, in cases where they would, conduct a Regulatory Flexibility Analysis in which alternatives to the rule are considered. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, outlines FAA procedures and criteria for complying with the RFA. Small entities are defined as small businesses and small not-for-profit organizations that are independently owned and operated or airports operated by small governmental jurisdictions. A ''substantial number'' is defined as a number that is not less than 11 and that is more than one-third of the small entities subject to a proposed rule, or any number of small entities judged to be substantial by the rulemaking official. A ''significant economic impact'' is defined by an annualized net compliance cost, adjusted for inflation, which is greater than a threshold cost level for defined entity types.

The entities that would be affected by this AD are mostly in the portion of Standard Industrial Classification (SIC)

4512, Operators of Aircraft for Hire, classified as ''unscheduled.'' FAA Order 2100.14A sets the size threshold for small entities operating aircraft in this category at nine or fewer aircraft owned and the annualized cost thresholds of at least $4,975 (1996 dollars) for unscheduled operators. A four-year life for the torque link assembly and capital cost of 15-percent would establish an annualized cost of $2,445 (1996 dollars). This is less than 50-percent of the threshold cost of $4,975 per year. In order to incur costs of at least $4,975, an entity would have to operate three or more of the airplanes referenced in the proposed AD. FAA data shows that only five small entities operate three or more of these airplanes. In addition, this data shows that approximately 60 entities operate the airplanes referenced in the proposed AD, but that only 15 of these entities (one-fourth) operate two or more of these airplanes.

Based on this information, less than one-third of the entities would incur significant operating costs under FAA Order 2100.14A. Therefore, the proposed AD would not significantly affect a number of small entities.

A copy of the full Cost Analysis and Regulatory Flexibility Determination for the proposed action may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–25–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

Pilatus Britten-Norman: Docket No. 96–CE–25–AD.

*Applicability:* Models BN–2, BN–2A, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–2, BN–2A–9, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, and BN–2T airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failure of the main landing gear caused by cracks in the torque link assembly area, which could lead to loss of control of the airplane during landing operations, accomplish the following:

(a) Prior to further flight after the effective date of this AD or within the next 100 hours time-in-service (TIS) after the last inspection required by AD 86–07–02, whichever occurs later, and thereafter at intervals not to exceed 100 hours TIS until the installations required by paragraph (c) of this AD are accomplished, inspect the junction of the torque link lug and upper case of all main landing gear (MLG) torque link assemblies for cracks (using a 10-power magnifying glass or by dye penetrant methods). Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited Service Bulletin (SB) 32–4, Issue 4, dated January 30, 1990. Pilatus Britten-Norman SB BN–2/SB.170, Issue 4, November 16, 1990, references this service bulletin.

Note 2: These inspections were initially a part of AD 86–07–02, which applied to the BN2A MK. 111 series airplanes as well as the airplanes affected by this AD. The ''prior to further flight after the effective date of this AD'' compliance time was the original initial compliance time of AD 86–07–02, and is being retained to provide credit and continuity for already-accomplished and future inspections.

(b) If any cracks are found during any of the inspections required by this AD, prior to further flight, replace the MLG torque link assembly with a Modification A39 MLG torque link assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited SB No. 32–4, Issue 4, dated January 30, 1990.

(1) Repetitive inspections are no longer required when all MLG torque assemblies are replaced with Modification A39 MLG torque link assemblies.

(2) Repetitive inspections may no longer be required on one MLG torque assembly, but still be required on another if all haven't been replaced with a Modification A39 MLG torque link assembly.

(c) Upon the accumulation of 5,000 hours TIS or within the next 1,000 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished as specified in paragraph (b) of this AD, replace each MLG torque link assembly with a Modification A39 MLG torque link assembly in accordance with of the ACCOMPLISHMENT INSTRUCTIONS section of Fairey Hydraulics Limited SB No. 32–4, Issue 4, dated January 30, 1990.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these actions along with other scheduled maintenance on the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairey Hydraulics

Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR, as applicable; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 24, 1997.

Michael Gallagher,

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5471 Filed 3–5–97; 8:45 am]

**BILLING CODE 4910–13–U**

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**14 CFR Part 39**

**[Docket No. 96–CE–23–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Aviat Aircraft, Inc. Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes (formerly known as Pitts Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B Airplanes)

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise AD 96–12–03, which applies to Aviat Aircraft, Inc. (Aviat) Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes that are equipped with aft lower fuselage wing attach fittings incorporating either part number (P/N) 76090, 2–2107–1, or 1–210–102. That AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting. Modifying both aft lower fuselage wing attach fittings eliminates the repetitive inspection requirement of AD 96–12–03. Aviat recently started incorporating modified aft lower fuselage wing attach fittings on newly manufactured airplanes. The proposed AD would retain the requirements of AD 96–12–03, but would exempt airplanes that had the modified aft lower fuselage wing attach fittings incorporated at manufacture. The actions specified by the proposed AD are intended to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing attach fitting.

**DATES:** Comments must be received on or before June 4, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger Caldwell, Aerospace Engineer, FAA, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249; telephone (303) 342–1086; facsimile (303) 342–1088.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 96–CE–23–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Events Leading to the Proposed AD

AD 96–12–03, Amendment 39–9645 (61 FR 28730, June 6, 1996), applies to Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes that are equipped with aft lower fuselage wing attach fittings incorporating either part number (P/N) 76090, 2–2107–1, or 1–210–102. The AD currently requires repetitively inspecting the aft lower fuselage wing attach fitting on both wings for cracks, and modifying any cracked aft lower fuselage wing attach fitting. Modifying both aft lower fuselage wing attach fittings eliminates the repetitive inspection requirement of AD 96–12–03. Accomplishment of the actions required by AD 96–12–03 is in accordance with Aviat Service Bulletin (SB) No. 25, dated April 3, 1996.

Aviat recently started incorporating modified aft lower fuselage wing attach fittings on newly manufactured Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes. In addition, Aviat revised SB No. 25 (Revised November 12, 1996) to include this airplane serial number effectivity change.

### The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) those airplanes with modified aft lower fuselage wing attach fittings incorporated at manufacture should be exempt from AD 96–12–03; and (2) AD action should be taken to prevent possible in-flight separation of the wing from the airplane caused by a cracked fuselage wing attach fitting.

### Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Aviat Models S–1S, S–1T, S–2, S–2A, S–2S, and S–2B airplanes of the same type design that are equipped with aft lower fuselage wing attach fittings incorporating either P/N 76090, 2–2107–1, or 1–210–102, the FAA is proposing to revise AD 96–12–03. The proposed AD would retain the requirements of AD 96–12–03, but would exempt airplanes that had the modified aft lower fuselage wing attach fittings incorporated at manufacture. Accomplishment of the proposed AD would be in accordance with Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996.

### Cost Impact

The FAA estimates that 500 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 2 workhours per airplane

to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Parts to accomplish the repetitive inspections cost approximately $100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $110,000. These figures do not take into account the cost of repetitive inspections. The FAA has no way of determining how many repetitive inspections each owner/operator may incur over the life of the airplane.

In addition, AD 96–12–03 currently requires the same inspections as the proposed AD for all 500 of the affected airplanes. The only difference is that newly manufactured airplanes would be exempt from the actions because they have modified aft lower fuselage wing attach fittings incorporated at manufacture. Therefore, the cost impact of the proposed AD for operators of all affected airplanes is the same as AD 96–12–03.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 USC 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13, is amended by removing Airworthiness Directive (AD) 96–12–03, Amendment 39-9645, and by adding a new AD to read as follows:

Aviat Aircraft, Inc.: Docket No. 96–CE–23–AD. Revises AD 96–12–03, Amendment 39–9645.

*Applicability*: The following airplane models and serial numbers, certificated in any category, that are equipped with aft lower fuselage wing attach fittings incorporating part number (P/N) 76090, 2–2107–1, or 1-210–102, and where these aft lower fuselage wing attach fittings on both wings have not been modified in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat Service Bulletin (SB) No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996:

—Models S–1S, S–1T, S–2, S–2A, and S–2S airplanes, all serial numbers.

—Model S–2B airplanes, serial numbers 5000 through 5348.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required initially within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished (compliance with AD 96–12–03), and thereafter at intervals not to exceed 50 hours TIS.

To prevent possible in-flight separation of the wing from the airplane caused by a cracked aft lower fuselage wing attach fitting, accomplish the following:

(a) Inspect the aft lower fuselage wing attach fitting on both wings for cracks in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996.

(b) If any cracked aft lower fuselage wing attach fitting is found during any inspection required by this AD, prior to further flight, modify the cracked aft lower fuselage wing attach fitting in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996. Repetitive inspections are no longer necessary on an aft lower fuselage wing attachment fitting that was found cracked and has the referenced modification incorporated.

(c) Modifying the aft lower fuselage wing attach fitting on both wings in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Aviat SB No. 25, dated April 3, 1996, Revised November 12, 1996; or Aviat SB No. 25, dated April 3, 1996, is considered terminating action for the repetitive inspection requirement of this AD.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Denver Aircraft Certification Office, 26805 E. 68th Avenue, Room 214, Denver, Colorado 80249. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Denver ACO. Alternative methods of compliance approved in accordance with AD 96–12–03 are considered approved for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Denver ACO.

(f) All persons affected by this directive may obtain copies of the service bulletin referred to herein upon request to Aviat Aircraft, Inc., P.O. Box 1240 (postal service delivery), 672 South Washington Street (express mail), Afton, Wyoming 83110; or may examine this service bulletin at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(g) This amendment revises AD 96–12–03, Amendment 39–9645. Issued in Kansas City, Missouri, on February 24, 1997.

Michael Gallagher,

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5470 Filed 3–5–97; 8:45 am]

**BILLING CODE 4910–13–U**

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**14 CFR Part 39**

**[Docket No. 97–NM–17–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace Corporation Model G–159 (G–I) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Gulfstream Model G–159 (G–I) airplanes, that currently requires repetitive inspections to detect cracks and loose rivets in the forward brackets for the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary. This action would require the installation of redesigned brackets that preclude the potential for cracking and loose rivets; when accomplished, this installation would constitute terminating action for the currently required inspections. This proposal is prompted by the development of an installation that will positively address the identified unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the bracket for the MLG uplock beam assembly due to cracking and loose rivets; such failure could result in the inability to retract the MLG.

**DATES:** Comments must be received by April 14, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Gulfstream Aerospace Corporation, Technical Operations Department, P.O. Box 2206, M/S D–10, Savannah, Georgia 31402–2206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Christina Marsh, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Campus Building, 1701 Columbia Avenue, Suite 2–160, College Park, Georgia 30337–2748; telephone (404) 305–7362; fax (404) 305–7348.

**SUPPLEMENTARY INFORMATION:**

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 97–NM–17–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 97–NM–17–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

In 1966, the FAA issued AD 66–10–03, amendment 39–222 (31 FR 5660, April 12, 1966), applicable to certain Gulfstream Model G–159 airplanes, to require repetitive dye penetrant and visual inspections to detect cracks and loose rivets in the forward brackets of the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary.

That action was prompted by reports of cracks and loose rivets found in brackets having part number (P/N) 159W10150–51/52. These conditions were attributed to elongated rivet holes.

The requirements of that AD are intended to prevent such cracking and loose rivets, which could lead to the failure of the bracket. Failure of the bracket of the MLG uplock beam assembly could result in the inability to retract the MLG.

Actions Since Issuance of Previous Rule

As part of its on-going program to address issues relevant to the continued operational safety of the aging transport fleet, the FAA, along with Gulfstream Aerospace Corporation and several U.S. and non-U.S. operators of the affected airplanes, agreed to undertake the task of identifying and implementing procedures to ensure the continuing structural airworthiness of aging commuter-class airplanes. This group reviewed selected customer bulletins and aircraft service changes, applicable to Gulfstream Model G–159 (G–I) airplanes, to be recommended for mandatory rulemaking action to ensure the continued operational safety of these airplanes.

Explanation of Relevant Service Information

The group reviewed and recommended Part II of Grumman Gulfstream Service Change No. 179, dated March 15, 1966, for mandatory regulatory action. (Part I of that service change describes procedures for repetitive inspections to detect cracks and loose rivets in the forward brackets of the MLG uplock beam assembly. Those procedures were mandated by AD 66–10–03.) Part II of the service change describes procedures for replacing the uplock beam support brackets (angles) with brackets of an improved design and having P/N 159W10150–71 and –72. Installation of these improved brackets eliminates the need for the repetitive inspections.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 66–10–03. It would continue to require repetitive dye penetrant and visual inspections to detect cracks and loose rivets in the forward brackets of the main landing gear (MLG) uplock beam assembly, and replacement of the brackets, if necessary. This new action also would require that the currently-installed brackets be replaced with the improved brackets. Once this replacement is accomplished, the previously required inspections may be terminated. The actions would be required to be accomplished in accordance with the service change described previously.

FAA's Determination for the Need to Mandate the Replacement

The FAA has determined that long term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more

emphasis on design improvements. The proposed replacement requirement is in consonance with these considerations.

Cost Impact

There are approximately 146 Gulfstream Model G–159 airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 66–10–03 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $8,640, or $120 per airplane, per inspection.

The terminating replacement that is proposed in this AD action would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $425 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $82,440, or $1,145 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–222 (31 FR 5660, April 12, 1966), and by adding a new airworthiness directive (AD), to read as follows:

Gulfstream Aerospace Corporation (formerly Grumman): Docket 97–NM–17–AD. Supersedes AD 66–10–03, Amendment 39–222.

*Applicability:* Model G–159 (G–I) airplanes; serial numbers (S/N) 1 through 12 inclusive, 14 through 83 inclusive, and 114; on which main landing gear uplock beam support brackets (angles) having part numbers (P/N) 159W10150–71 and –72 are not installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the brackets for the main landing gear (MLG) uplock beam assembly due to cracking and loose rivets, which could result in the inability to retract the MLG, accomplish the following:

(a) Within 50 hours time-in-service after April 12, 1966 (the effective date of AD 66–10–03, amendment 39–222), and thereafter at intervals not to exceed 100 hours time-in-service, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966:

(1) Conduct a dye penetrant inspection, in conjunction with at least a 10X magnifying glass, to detect cracks in the MLG uplock beam forward brackets, P/N's 159W10150–51 and –52; and

(2) Conduct a visual inspection of the attachments of each bracket to the firewall bulkhead and to the main gear uplock beam for loose rivets caused by elongated rivet holes.

(b) If any crack or loose rivet is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD, in accordance with Grumman Gulfstream Service Change No. 179, dated March 15, 1966:

Note 2: Grumman Gulfstream Service Change No. 179A, dated March 20, 1966, contains additional procedural information relevant to the inspection and replacement requirements of this AD.

(1) Replace the bracket with a new or serviceable bracket having P/N 159W10150–51 or –52, as applicable. After this replacement, continue to inspect in accordance with paragraph (a) of this AD. Or

(2) Replace the bracket with a bracket having P/N 159W10150–71 or –72, as applicable. This replacement constitutes terminating action for the inspection required by paragraph (a) of this AD for the replaced bracket.

(c) Within 1,000 hours time-in-service after the effective date of this AD, replace the brackets for the main landing gear (MLG) uplock beam assembly with brackets having P/N 159W10150–71 and –72, in accordance with Part II of Grumman Gulfstream Service Change No. 179, dated March 15, 1966. Such replacement constitutes terminating action for the inspections required by this AD.

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 66–10–03, amendment 39–222, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on February 27, 1997.

Darrell M. Pederson,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5467 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–U

**14 CFR Part 39**

**[Docket No. 86–CE–23–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pilatus Britten-Norman Ltd. (formerly Britten-Norman) BN2A MK. 111 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise AD 86–07–02, which currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman Ltd. (Pilatus Britten-Norman) BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any part found cracked with a like part. The proposed AD would remove from the applicability the BN–2A, BN–2B, and BN–2T series airplanes, and would retain the repetitive inspection and replacement (if necessary) requirements of AD 86–07–02 for the BN2A MK. 111 series airplanes. The proposed AD results from the Federal Aviation Administration's determination that additional AD action needs to be taken on the BN–2A, BN–2B, and BN–2T series airplanes. This additional action will be addressed in a separate AD. The actions specified by the proposed AD are intended to prevent failure of the main landing gear caused by cracks in the torque link area, which could lead to loss of control of the airplane during landing operations.

**DATES:** Comments must be received on or before May 12, 1997.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 86–CE–23–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR; telephone 44–1983 872511; facsimile 44–1983 873246. This information also may be examined at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom Rodriguez, Program Officer, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; telephone (32 2) 508.2717; facsimile (32 2) 230.6899; or Mr. S.M. Nagarajan, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 86-CE–23-AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 86-CE–23-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

### Discussion

The FAA has determined that reliance on critical repetitive inspections on aging commuter-class airplanes carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences if the known problem is not detected during the inspection; (2) the probability of the problem not being detected during the inspection; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

These factors have led the FAA to establish an aging commuter-class aircraft policy that requires incorporating a known design change when it could replace a critical repetitive inspection. With this policy in mind, the FAA conducted a review of existing AD's that apply to Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes. Assisting the FAA in this review were (1) Pilatus Britten-Norman; (2) the Regional Airlines Association (RAA); (3) the Civil Aviation Authority of the United Kingdom; and (4) several operators of the affected airplanes.

From this review, the FAA has identified AD 86–07–02, Amendment39–5382, as one which falls under the FAA's aging aircraft policy. AD 86–07–02 currently requires repetitively inspecting the junction of the torque link lug and upper case of the main landing gear (MLG) torque link assemblies for cracks on Pilatus Britten-Norman BN–2A, BN–2B, BN–2T, and BN2A MK. 111 series airplanes, and replacing any cracked part.

Pilatus Britten-Norman has developed a modification that, when incorporated, would eliminate the need for the repetitive inspection requirement of AD 86–07–02 for the Pilatus Britten-Norman BN–2A, BN–2B, and BN–2T series airplanes. The requirements of AD 86–07–02 should still apply for the Pilatus Britten-Norman BN2A MK. 111 series airplanes.

### Applicable Service Information

Fairey Hydraulics Limited has issued Service Bulletin (SB) 32–7, Issue 3, dated January 30, 1990, and Fairey Hydraulics Limited SB 32–10, Issue 2, dated November 10, 1992. These SB's include procedures for inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies on Pilatus Britten-Norman BN2A MK. 111 series airplanes. Pilatus Britten-Norman SB BN–2/SB. 173, Issue 3, dated November 16, 1990, references Fairey Hydraulic Limited SB 32–7; and Pilatus Britten-Norman SB BN–2/SB.209, Issue 1, datedNovember 30, 1992, references Fairey Hydraulic Limited SB 32–10.

The FAA's Determination

The FAA has examined all available information related to this subject matter and has determined that:

- AD 86–07–02 should be revised to remove the BN–2A, BN–2B, and BN–2T series airplanes from the applicability of the AD (the BN2A MK. 111 series airplanes should still apply); and
- separate AD action should be taken for the Pilatus Britten-NormanBN–2A, BN–2B, and BN–2T series airplanes to require a modification to the main landing gear torque link assembly.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Pilatus Britten-Norman BN2A MK. 111 series airplanes of the same type design, the proposed AD would revise AD 86–07–02 by removing the BN–2A, BN–2B, and BN–2T series airplanes from the applicability of that AD. The requirement of repetitively inspecting the junction of the torque link lug and upper case of the MLG torque link assemblies would be retained for the BN2A MK. 111 series airplanes. The FAA will propose separate AD action for the BN–2A and BN–2T series airplanes to require a modification that, when incorporated, would eliminate the repetitive inspection requirement currently required by AD 86–07–02. Accomplishment of the proposed inspections and would be accomplished in accordance with the previously referenced service bulletins.

Cost Impact

The FAA estimates that nine airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately one workhour per airplane to accomplish the proposed initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $540 or $60 per airplane. This figure only takes into account the cost of the proposed initial inspection and does not take into account the cost of the proposed repetitive inspections. The FAA has no way of determining the number of repetitive inspections each of the owners/operators would incur over the life of the affected airplanes.

In addition, the proposed inspections are currently required on the nine affected airplanes. The proposed AD would not require any additional actions over that already required by AD 86–07–02.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 86–07–02, Amendment 39–5382, and by adding a new AD to read as follows:

Pilatus Britten-Norman LTD.: Docket No. 86–CE–23–AD. Revises AD 86–07–02, Amendment 39–5382.

*Applicability:* Models MK. 111, BN2A MK. 111–2, and BN2A MK. 111–3 airplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required prior to further flight after the effective date of this AD (see Note 2) or within 100 hours time-in-service (TIS) after the last inspection accomplished in accordance with AD 86–07–02, whichever occurs later, and thereafter at intervals not to exceed100 hours TIS.

Note 2: The ''prior to further flight after the effective date of this AD'' compliance time was the original initial compliance time of AD 86–07–02, and is being retained to provide credit and continuity for already-accomplished and future inspections.

To prevent failure of the main landing gear caused by cracks in the torque link assembly area, which could lead to loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect the junction of the torque link lug and upper case for cracks (using a 10-power magnifying glass or by dye penetrant methods) in accordance with Fairey Hydraulics Limited Service Bulletin (SB) 32–7, Issue 3, dated January 30, 1990, or Fairey Hydraulics SB 32–10, Issue 2, dated November 10, 1992, as applicable. Pilatus Britten-Norman SB BN–2/SB. 173, Issue 3, dated November 16, 1990, references Fairey Hydraulic Limited SB 32–7; and Pilatus Britten-Norman SB BN–2/SB.209, Issue 1, dated November 30, 1992, references Fairey Hydraulic Limited SB 32–10.

(b) If cracked parts are found during any of the inspections required by this AD, prior to further flight, replace the cracked parts with airworthy parts in accordance with the applicable maintenance manual.

(c) If the landing gear is replaced, only equal pairs of the same manufacturer are approved as replacement parts. Mixing of different manufacturer landing gears is not authorized.

(d) The intervals between the repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these actions along with other scheduled maintenance on the airplane.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division. Alternative methods of

compliance approved for AD 86–07–02 are considered approved as alternative methods of compliance for this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division.

(g) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairey Hydraulics Limited, Claverham, Bristol, England; or Pilatus Britten-Norman Limited, Bembridge, Isle of Wight, United Kingdom PO35 5PR, as applicable; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) This amendment revises AD 86–07–02, Amendment 39–5382.

Issued in Kansas City, Missouri, on February 25, 1997.

Michael Gallagher,

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 97–5491 Filed 3–5–97; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 2

**[Docket No. 97N–0023]**

**RIN 0910–AA99**

## Chlorofluorocarbon Propellants in Self-Pressurized Containers; Determinations That Uses Are No Longer Essential; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is seeking public comment on the policy it is considering for adoption on making and implementing determinations that uses of chlorofluorocarbons (CFC's) currently designated essential will no longer be deemed essential under the Clean Air Act due to the availability of safe and effective medical product technology that does not use CFC's. Essential-use products are exempt from FDA's ban on the use of CFC propellants in FDA-regulated products and the Environmental Protection Agency's (EPA's) ban on the use of CFC's in pressurized dispensers. The agency is taking this action because it is responsible for determining which products containing CFC's or other ozone-depleting substances are an essential use under the Clean Air Act. FDA is soliciting comments on this policy to assist the agency in striking an appropriate balance that will best protect the public health, both by ensuring the availability of an adequate number of treatment alternatives and by curtailing the release of ozone-depleting substances.

**DATES:** Written comments by May 5, 1997.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Wayne H. Mitchell, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

**SUPPLEMENTARY INFORMATION:**

I. Background

Under § 2.125 (21 CFR 2.125), any food, drug, device, or cosmetic in a self-pressurized container that contains a CFC propellant for a nonessential use is adulterated, or misbranded, or both, under the Federal Food, Drug, and Cosmetic Act. This prohibition is based on scientific research indicating that CFC's reduce the amount of ozone in the stratosphere and thereby increase the amount of ultraviolet radiation reaching the earth. An increase in ultraviolet radiation will increase the incidence of skin cancer, and produce other adverse effects of unknown magnitude on humans, animals, and plants. Section 2.125(d) exempts from the adulteration and misbranding provisions of § 2.125(c) certain products containing CFC propellants that FDA determines provide unique health benefits that would not be available without the use of a CFC.

These products are referred to in the regulation as essential uses of CFC's and are listed in § 2.125(e). Under § 2.125(f), any person may petition FDA to request additions to the list of uses considered essential. To demonstrate that the use of a CFC is essential, the petition must be supported by an adequate showing that: (1) There are no technically feasible alternatives to the use of a CFC in the product; (2) the product provides a substantial health, environmental, or other public benefit that would not be obtainable without the use of the CFC; and (3) the use does not involve a significant release of CFC's into the atmosphere or, if it does, the release is warranted by the consequence if the use were not permitted.

EPA regulations implementing the provisions of section 610 of the Clean Air Act (42 U.S.C. 7671i) contain a general ban on the use of CFC's in pressurized dispensers, such as metered-dose inhalers (MDI's) (40 CFR 82.64(c) and 82.66(d)). These EPA regulations exempt from the general ban ''medical devices'' that FDA considers essential and that are listed in § 2.125(e). Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines ''medical device'' as any device (as defined in the Federal Food, Drug, and Cosmetic Act), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and, where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A).

Production of ozone-depleting substances is being phased out worldwide under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), Sept. 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I.L.M. 1541 (1987). In accordance with the provisions of the Montreal Protocol, under authority of Title VI of the Clean Air Act (section 601 *et seq.*), manufacture of CFC's in the United States was generally banned as of January 1, 1996. To receive permission to manufacture CFC's in the United States after the phaseout date, manufacturers must obtain an exemption from the phaseout requirements from the Parties to the Montreal Protocol. Procedures for securing an essential-use exemption under the Montreal Protocol are described in the most recent request by EPA for applications for exemptions (60 FR 54349, October 23, 1995). Firms that wish to use CFC's manufactured after the phaseout date in medical devices (as

defined in section 601(8) of the Clean Air Act) covered under section 610 of the Clean Air Act must receive exemptions for essential uses under the Montreal Protocol.

Faced with the statutorily mandated phaseout of the production of CFC's, drug manufacturers are developing or have developed alternatives to MDI's and other self-pressurized drug dosage forms that do not contain ozone-depleting substances. Examples of these alternative dosage forms are MDI's that use such non-ozone-depleting substances as propellants and dry-powder inhalers (DPI's). FDA has recently approved the first CFC-free MDI, 3M Pharmaceuticals Inc.'s albuterol sulfate product, Proventil® HFA; although a determination has not yet been made on whether this product is a technically feasible alternative to the use of CFC's, this approval gives the subject matter of this advance notice of proposed rulemaking (ANPRM) a particular timeliness. The current or future availability of ''technically feasible alternatives to the use of a [CFC]'' may mean that the existing listing of a use in § 2.125(e) would no longer reflect current conditions. It is with this situation in mind that FDA is publishing this ANPRM regarding agency determinations that certain uses of ozone-depleting substances are no longer essential.

FDA has determined that it would be most productive to set out the following tentative policy on the elimination of essential uses in an ANPRM. The agency believes that providing an opportunity for the fullest public participation at the earliest possible stage in the agency decisionmaking process in this matter is appropriate to assist FDA in striking an appropriate balance that will best protect the public health, both by ensuring the availability of an adequate number of treatment alternatives and by curtailing the release of ozone-depleting substances. In striking this balance, FDA intends to assess a number of factors and is interested in public comment on them. In establishing its policy on the elimination of essential uses, FDA will assess the potential beneficial effects of reducing CFC emissions from drug products broadly, based on the amount of CFC emissions that would be avoided, the stratospheric ozone depletion that would be averted, and the resulting decline in incidence of UV-B-related adverse human health effects, including human cancers and cataracts. FDA will also assess the beneficial public health effects of continued availability of CFC-containing drug products broadly, based on the availability, safety, and efficacy of alternatives, in full consideration of differences in patients' medical circumstances, physiological sensitivity, and acceptability of use, among others. FDA is specifically soliciting comments on how it should develop information to assist in striking this balance and how it should further balance the need for timely action. FDA also believes that there is adequate time to publish an ANPRM and respond to comments but will endeavor to complete this rulemaking process in a timely fashion. Because the first potential technically feasible alternatives are just now coming on the market, it will take a significant amount of time for manufacturers to collect and present the postmarketing safety and patient acceptance data that the agency will need to determine if the products are, in fact, technically feasible alternatives (see section II.B. of this document).

## II. Proposed Policy

FDA has tentatively determined that certain uses of CFC's, listed in § 2.125(e) as essential, can no longer be considered to be essential. FDA is considering proposing to remove these uses from the list of essential uses in a rulemaking to be initiated soon. Uses no longer considered essential are discussed in section II.A. of this document. FDA also expects that certain uses still considered to be essential will cease to be considered essential as new technology develops. Section II.B. of this document describes the policy that FDA has tentatively determined will be used in making determinations that these uses of CFC's are no longer essential. FDA has worked closely with EPA in developing the following policy and this ANPRM reflects those discussions. This policy will also be the subject of a notice of proposed rulemaking to incorporate the policy into FDA regulations.

### *A. Listed Uses That Are No Longer Considered Essential*

#### 1. Metered-Dose Steroid Human Drugs for Nasal Inhalation

Steroid human drugs for nasal inhalation are currently available using metering atomizing pumps rather than nasal MDI's. The availability of such products as Beconase® AQ and Vancenase® AQ (beclomethasone dipropionate monohydrate), Nasarel® and Nasalide® (flunisolide), Flonase® (fluticasone propionate), and Nasacort® AQ (triamcinolone acetonide), and the widespread patient acceptance of these products, indicate to FDA that using CFC's in metered-dose steroid human drugs for nasal inhalation can no longer be considered to be essential and FDA has tentatively determined to remove the use from § 2.125(e).

#### 2. Drug Products That Are No Longer Being Marketed

Several of the essential uses listed in § 2.125(e) exempt only a single approved drug product and, in a few cases, that drug product is no longer being marketed (or is no longer being marketed in a formulation containing CFC's). FDA has tentatively determined that an essential use for which no drug product is currently being marketed should no longer be considered to be essential. The absence of a demand for the product sufficient for even one company to market it is highly indicative that the use is not essential. Therefore, FDA has tentatively determined to remove the following uses from § 2.125(e): Polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for topical use on humans; and contraceptive vaginal foams for human use.

### *B. Criteria for Determination That a Use Is No Longer Essential*

#### 1. Therapeutic Classes

In evaluating petitions submitted under § 2.125(f) requesting that a new use be listed as essential, FDA has not required a showing that technically feasible non-CFC alternatives to a product contain the same active ingredient or active moiety[1] as the drug product that would be the subject of the proposed essential use. Thus, if other drug products, containing other active moieties, are available for treatment of the same condition, they may be considered technically feasible alternatives to the proposed essential-use product. Many of the drug products marketed under § 2.125 are pharmacologically closely related, are indicated for the treatment of the same conditions, and may be considered to be treatment alternatives. In evaluating whether a use remains essential, FDA believes that it is appropriate to evaluate these treatment alternatives together as a therapeutic class. In this regard, FDA has tentatively determined that metered-dose corticosteroid human drugs for oral inhalation and metered-dose short-

[1] 21 CFR 314.108(a) defines active moiety as meaning ''the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance.''

acting adrenergic bronchodilator human drugs for oral inhalation are appropriate therapeutic classes for essential-use determinations. The determination of whether drug products that are not members of either therapeutic class represent essential uses of CFC's will be made under the criteria set out in section II.B.2. of this document.

FDA has tentatively determined that all drugs currently marketed under § 2.125(e)(2) should be considered to be members of the therapeutic class ''metered-dose corticosteroid[2] human drugs for oral inhalation.'' These drugs contain the following active moieties:

- beclomethasone
- dexamethasone
- flunisolide
- fluticasone
- triamcinolone

FDA has tentatively determined that drugs containing the following active moieties currently marketed under § 2.125(e)(3) should be considered to be members of the therapeutic class ''metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation'':

- albuterol
- bitolterol
- isoetharine
- isoproterenol
- metaproterenol
- pirbuterol
- terbutaline

Adrenergic bronchodilator drug products containing the active moiety salmeterol are not included in the therapeutic class because of the longer duration of action and different indication of usage of salmeterol as compared to metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation. Adrenergic bronchodilator drug products containing the active moiety epinephrine are also not included in the class because epinephrine is the only active moiety used in drug products sold over-the-counter (OTC). These OTC drug products are available to patients who may not have access to prescription drugs. Therefore, FDA has tentatively determined that prescription drug products should not be considered as alternatives to drug products containing epinephrine. The determination of whether a drug product containing salmeterol or epinephrine constitutes an essential use would be considered under the criteria for an individual active moiety discussed in section II.B.2. of this document.

The use of CFC's in any drug product that is a member of a therapeutic class described above would no longer be considered essential if, for each therapeutic class:

1. Three distinct alternative products, representing at least two different active moieties, are being marketed, with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the products containing CFC's. At least two of the three alternative products must be MDI's.

2. Adequate supplies and production capacity exist for the alternative products to meet the needs of the population indicated for the therapeutic class.

3. At least 1 year of postmarketing use data for each product are available. There should be persuasive evidence of patient acceptance in the United States of each of the alternative products.

4. There is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative products.

FDA believes that making essential-use determinations for an entire class of closely related drug products will expedite the elimination of drug products that release ozone-depleting substances. FDA recognizes that there may be limited incentives to develop alternative products containing every active moiety currently marketed under essential-use exemptions. By eliminating the essential use by therapeutic class, FDA will ensure that these drugs do not remain on the market longer than necessary.

FDA also hopes that the knowledge that the essential use covering a given product may be eliminated, even though no alternative product exists containing the same active moiety as that product, may provide added incentive for the manufacturer of that product to develop an alternative product containing the same active moiety. In addition, the agency believes that requiring multiple alternative drug products containing multiple active moieties should ensure that all significant patient populations have safe and effective alternatives to CFC-containing drug products.

A discussion of the application of these criteria can be found in section II.B.3 of this document.

Under the proposed policy being considered for elimination of the essential-use status of the therapeutic classes, the essential-use status for individual members of a therapeutic class would only be eliminated when the essential-use status for the therapeutic class as a whole is eliminated. FDA recognizes that this approach may allow the essential-use status of an individual member of a therapeutic class to be retained despite the marketing of one or more technically feasible alternatives containing the same active moiety, pending elimination of the essential-use status for the therapeutic class as a whole. In addition to the policy FDA is considering for elimination of the essential-use status of the therapeutic classes described above, FDA is considering a policy for elimination of the essential-use status of individual members of a therapeutic class in advance of elimination of the essential-use status for the therapeutic class as a whole. Under this proposed policy, the essential-use status of an active moiety within a therapeutic class would be eliminated when one alternative product that contains the same active moiety is being marketed. All other elements of the policy regarding therapeutic classes would apply, including: The alternative product is delivered by the same route of administration, for the same indication, and with approximately the same level of convenience of use; there are adequate supplies and production capacity; at least 1 year of postmarketing use data are available; and there is no persuasive evidence to rebut a presumption that all significant patient subpopulations using that active moiety are served by the alternative product. Therapeutic classes would still be evaluated under the proposed therapeutic class policy, and alternative products used in the evaluation of the essential-use status of a member of the therapeutic class under the proposed additional policy would also be used in the evaluation of the class as a whole. FDA requests public comment on these approaches, and other possible approaches, for the elimination of the essential-use status of individual members of the therapeutic classes and the therapeutic classes as a whole.

2. Individual Active Moieties

In examining the essential-use status of drug products when FDA has not already made a tentative determination that a currently listed essential use can no longer be considered to be essential, or when the drug is not a member of one of the therapeutic classes described in section II.B.1. of this document, FDA will look at other drug products containing the same active moiety as possible technically feasible alternatives. The use of CFC's in any drug product that is not a member of a

[2] The active ingredients in all drug products currently marketed under the essential use for metered-dose steroid human drugs for oral inhalation are members of the subclass of substances known as corticosteroids. FDA has tentatively determined that it would be more accurate to use the more specific term corticosteroids rather than the more general term steroids to describe the therapeutic class.

therapeutic class described in section II.B.1. of this document would no longer be considered essential if:

1. One alternative product containing the same active moiety is being marketed, delivered by the same route of administration, for the same indication, and with approximately the same level of convenience of use compared to the product containing CFC's.

2. Adequate supplies and production capacity exist to meet the needs of the population indicated for the alternative drug product containing the active moiety.

3. At least 1 year of postmarketing use data for the product are available. There should be persuasive evidence of patient acceptance in the United States of the alternative product.

4. There is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative product.

A discussion of the application of these criteria can be found in section II.B.3. of this document.

Drug products marketed under the following current essential uses would generally be evaluated under the above ''individual active moieties'' criteria:

- Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.
- Intrarectal hydrocortisone acetate for human use.
- Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.
- Metered-dose nitroglycerin human drugs administered to the oral cavity.
- Metered-dose cromolyn sodium human drugs administered by oral inhalation.
- Metered-dose ipratropium bromide for oral inhalation.
- Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.[3]
- Metered-dose nedocromil sodium human drugs administered by oral inhalation.
- Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.
- Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

[3] The evaluation of the essential use status of drug products containing atropine sulfate may be an exception to the application of the criteria set out in section II.B. of this document. Drug products containing atropine sulfate were never commercially marketed under § 2.125, but were manufactured for the U.S. Army for use by armed services personnel. The unique status of this use may require that other criteria be applied to it.

As discussed in section II.B.1. of this document, the essential-use status of drugs containing the active moieties epinephrine and salmeterol will also be evaluated under the ''individual active moieties'' criteria.

FDA requests public comment on the appropriateness of potentially eliminating such essential uses and criteria outlined here.

3. Discussion of Criteria

In arriving at the tentative criteria for evaluating the essential-use status of the two therapeutic classes, FDA has kept in mind that the MDI is the most widely accepted delivery system for administering drugs by oral inhalation for the treatment of asthma and chronic obstructive pulmonary disease. Physicians and patients value an MDI's compact size and ease of use. Because these factors are important and help ensure that patients receive appropriate medical treatment, FDA would require that at least two of the alternative products be available as an MDI. FDA is also aware that not all patients may tolerate a given drug product. Accordingly, FDA has reached the tentative conclusion that there must be products representing at least two different active moieties before FDA will consider that there are technically feasible alternatives to the therapeutic class. FDA is proposing that there be three distinct drug products. FDA wishes to ensure that there are substantial differences among the alternative products in order to give patients a wide variety of therapeutic options. Therefore, a drug product and a second generic drug product that refers to the first drug product to gain approval, under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)), would not generally be considered to be two distinct drug products for purposes of evaluating the essential-use status of the drug.

For most of the essential uses that would be evaluated under the ''individual active moieties'' criteria, there is only one product being marketed under each essential use. Therefore, requiring the availability of more than one alternative would appear to be inadvisable.

Because of their larger size and relative lack of convenience of use, FDA does not consider currently available nebulizers to be technically feasible alternatives to MDI's. Currently available delivery systems that FDA considers to be technically feasible alternatives to MDI's using CFC's are multiple-dose DPI's[4] and MDI's that do not contain CFC's. Continuing changes in technology may give FDA reason to revisit this tentative determination.

In evaluating whether adequate supplies and production capacity exist for the alternative product or products to meet the needs of the patient population indicated for drug products covered by an essential use, FDA's analyses will be flexible, but with one overarching principle: To ensure that there are no significant shortages of drug product that could harm the public health of the United States. Factors such as multiple production sites, to secure a steady supply if there is an interruption at one site, would be considered favorably in this regard.

In evaluating postmarketing use data and evidence of patient acceptance under the third criterion, FDA anticipates that it may be useful for sponsors of alternative products to conduct large postmarketing studies, preferably in the U.S. clinical practice setting, directly comparing their product which does not contain CFC's to the CFC-containing product for which it would be considered an alternative. It may also be possible for several sponsors to jointly commission a large postmarketing clinical study of their common products. In addition to the formal studies described above, manufacturers of alternative products, or other persons requesting the elimination of an essential use, may wish to submit to FDA a review of postmarketing surveillance data from FDA's MEDWATCH program, the spontaneous reporting systems of other countries, and all other available postmarketing data after a potential alternative product has been marketed in the United States for a period of 1 year. FDA has tentatively concluded that foreign data would not be considered acceptable as the sole evidence of patient acceptance, but these data will be considered in addition to U.S. postmarketing use data in cases where U.S. formulations and foreign formulations have been shown to be the same or substantially similar. The term ''patient acceptance'' here

[4] Single-dose DPI's that are currently marketed in the United States would not be considered technically feasible alternatives to MDI's using CFC's. The agency has tentatively determined that these single-dose DPI's do not approximate the convenience of MDI's because patients must carry both the single-dose DPI device and a supply of the drug. The patient must also load the device prior to each use. The comparative inconvenience of single-dose DPI's does not warrant their being considered technically feasible alternatives. The agency also believes that these single-dose DPI's have not shown adequate levels of patient acceptance.

assumes that the alternative products have adequate safety, tolerability, effectiveness, and compliance. Because information regarding patient acceptance is not routinely captured by postmarketing surveillance, such assessments should be incorporated into the proposed formal clinical studies.

In evaluating the last criterion, that there is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative product, FDA believes that there should be a strong presumption that, if the first three criteria are met, then all relevant subpopulations will be adequately served by alternative products. If FDA is not already in possession of evidence indicating the presence of a subpopulation served only by a product containing CFC's, then the burden of producing compelling scientific evidence that there is a subpopulation served only by a product containing CFC's would be placed on anyone opposing the determination that a use is no longer essential.

*C. Implementation*

FDA currently intends to publish a notice of proposed rulemaking after the comment period for this ANPRM closes. That proposed rule would eliminate essential uses for steroid human drugs for nasal inhalation and for drugs that are no longer marketed. The proposed rule would also codify the criteria for elimination of essential uses discussed in section II.B. of this document. FDA intends to use the preamble of the proposed rule to respond to comments on this ANPRM.

As the criteria for eliminating essential uses are met, FDA will propose elimination of essential uses for the appropriate therapeutic classes or individual active moieties. FDA intends that such proposals will be published and finalized in an expeditious manner.

FDA is aware that the proposed policy contained in this ANPRM is, to a certain degree, predicated on the assumption that drug manufacturers are aggressively developing alternatives to products containing CFC's. If this assumption is less than fully met, FDA recognizes that it may have to take an even more active role in encouraging the development of technically feasible alternatives. Furthermore, FDA contemplates reexamining the effectiveness of the policy set out in this ANPRM 1 to 3 years after the publication of the first final rule implementing the policy set out in this ANPRM. If this reexamination reveals that alternatives to CFC's are not being aggressively developed, FDA will consider eliminating essential uses where manufacturers of drug products covered by those uses have not demonstrated due diligence in developing alternative products.

*D. Analysis of Impacts*

FDA is required to examine the impacts of its proposed rules under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options if the proposed rule is expected to have a significant impact on a substantial number of small entities. FDA is soliciting information and data to help it examine the impacts that a proposed rule based on this advance notice would have. In order to help the agency prepare these analysis, FDA requests comments on the following impact questions:

1. Are the incentives discussed in the ANPRM adequate to spur the needed market innovation? Are there alternative means of introducing appropriate market incentives?

2. Assuming that an alternative product is approved for marketing, what is the estimated cost of obtaining postmarketing data supporting the new product as a technologically feasible alternative? How much time would be necessary? What other costs should the agency consider?

3. How much would it cost to obtain the data including the postmarketing study discussed in the ANPRM? How much would it cost to obtain the data excluding such a postmarketing study? What are the components of this estimate (e.g., person-hours, contract dollars, etc.)?

4. How much time should be allowed for phasing out a CFC-containing product no longer considered essential?

5. Are there other alternative policies that the agency should consider that would achieve the stated goals and be less burdensome to patients that use these products and/or to the industry that provides the products?

## III. Other Rulemaking Proceedings Regarding CFC's

In the very near future, FDA intends to propose a rule regarding criteria to be applied in agency determinations to add new essential uses to § 2.125(e). The agency is not soliciting comments on this separate rulemaking proceeding, and is only mentioning the matter here to provide a more complete picture of FDA's current plans regarding the regulation of CFC-containing drug products. FDA does not intend to respond to any comments regarding this issue at this time; those persons wishing to comment on this issue should wait until the proposed rule is published.

Consistent with the phaseout provisions of the Clean Air Act, the proposed rule regarding the addition of new essential uses will provide new and substantially more stringent criteria for determining that a use is essential. Specific criteria will be proposed for both investigational drugs and commercially marketed drugs.

FDA currently intends that this proposed rule will provide a restructuring of § 2.125(e) to eliminate essential uses that cover an entire class of drugs, such as current § 2.125(e)(3) ''metered-dose adrenergic bronchodilator human drugs for oral inhalation.'' In their place, FDA will propose to list the use of every active moiety currently marketed under the current class essential use. This will mean that an individual wishing to market, for example, an adrenergic bronchodilator where the active moiety is not listed will need to petition FDA to amend § 2.125(e) to add the use of the active moiety.

The proposed rule would also eliminate out-of-date transitional provisions, and make other similar nonsubstantive housekeeping changes.

The agency has determined to go directly to a proposed rule on these provisions of the agency's policy, rather than requesting comment on them in this or another ANPRM, in order to accelerate consideration of the new more stringent criteria for determining when new uses are essential. FDA believes that as the agency will soon be eliminating essential uses, it would be a waste of scarce agency resources, as well as inconsistent with the general policy favoring the phase out of ozone-depleting substances, to create new essential uses unless an extraordinary showing of public benefit can be made.

Interested persons may, on or before May 5, 1997, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 28, 1997.
William B. Schultz,
*Deputy Commissioner for Policy*
[FR Doc. 97–5495 Filed 3–5–97; 8:45 am]
**BILLING CODE 4160–01–F**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Chapter I

**[Docket No. FR–4170–N–07]**

### Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meetings

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Negotiated Rulemaking Committee Meetings.

**SUMMARY:** This notice announces three series of negotiated rulemaking meetings sponsored by HUD to develop the regulations necessary to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996).

**DATES:** The meetings will be held on:

1. March 20, 21, 22, 24, 25, 26, and 27, 1997.
2. April 8, 9, 10, and 11, 1997.
3. April 24, 25, 26, 28, 29, 30, and May 1, 1997.

The meetings will begin at approximately 9:00 am and end at approximately 5:00 pm on each day, local time.

**ADDRESS:** The meetings will be held at the Cheyenne Mountain Conference Resort, 325 Broadmoor Valley Road, Colorado Springs, CO 8096; telephone (719) 576–4600 or 1–800–588–6532; fax (719) 576–4711 (With the exception of the ''800'' telephone number, these are not toll-free numbers).

**FOR FURTHER INFORMATION CONTACT:** Dominic Nessi, Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO; telephone (303) 675–1600 (voice) or 1–800–877–8339 (TTY for speech or hearing impaired individuals) (With the exception of the ''800'' number, these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Secretary of HUD has established the Native American Housing Assistance & Self-Determination Negotiated Rulemaking Committee (Committee) to negotiate and develop a proposed rule implementing NAHASDA. HUD will hold three series of meetings during March and April 1997 in Colorado Springs, Colorado to discuss the regulatory implementation of NAHASDA. The meetings will be held on the following dates:

1. March 20, 21, 22, 24, 25, 26, and 27, 1997.
2. April 8, 9, 10, and 11, 1997.
3. April 24, 25, 26, 28, 29, 30, and May 1, 1997.

The agenda planned for the meetings includes: (1) the development of regulatory language by workgroups; (2) discussion and approval of the draft regulatory language by the full Committee; and (3) other agenda items which may be agreed upon by the Committee.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of Committee meetings will be available for public inspection and copying at the same address.

The location and dates of any future meetings will be published in the Federal Register. HUD will make every effort to publish such notice at least 15 calendar days prior to each meeting.

Dated: March 3, 1997.
Kevin Emanuel Marchman,
*Acting Assistant Secretary for Public and Indian Housing.*
[FR Doc. 97–5564 Filed 3–5–97; 8:45 am]
**BILLING CODE 4210–33–P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 30 CFR Parts 202 and 206

**RIN 1010–AB57**

### Amendments to Gas Valuation Regulations for Indian Leases

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of meeting and reopening of public comment period.

**SUMMARY:** The Minerals Management Service (MMS) is reopening the public comment period for a proposed rule published in the Federal Register on September 23, 1996, 61 FR 49894, amending its regulations governing the valuation for royalty purposes of natural gas produced from Indian leases.

**DATES:** Comments must be submitted on or before April 4, 1997. The committee meeting will be on March 26, 1997.

**ADDRESSES:** MMS will hold a meeting of the Indian Gas Valuation Negotiated rulemaking committee on March 26, 1997, in the conference room at: Golden Hill Office Complex, 12600 West Colfax Avenue, Suite B200, Golden, Colorado.

Written comments, suggestions, or objections regarding this proposed amendment should be sent to the following addresses. For comments sent via the U.S. Postal Service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3101, Denver, Colorado 80225–0165.

For comments via courier or overnight delivery service use: Minerals Management Service, Royalty Management Program, Rules and Publications Staff, MS 3101, Building 85, Denver Federal Center, Room A–212, Denver, Colorado 80225–0165.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Publications Staff, phone (303) 231–3432, FAX (303) 231–3194, e-Mail David__Guzy@smtp.mms.gov.

**FOR FURTHER INFORMATION CONTACT:** David S. Guzy, Chief, Rules and Procedures Staff, at (303) 231–3432.

**I. SUPPLEMENTARY INFORMATION:**

Background

On September 23, 1996, MMS published a notice of proposed rulemaking in the Federal Register (61 FR 49894) to amend the valuation regulations for gas production from Indian leases. The framework for the proposed rule was the product of an Indian Gas Valuation Negotiated Rulemaking Committee. The proposed rulemaking provided for a 60-day comment period, which ended November 22, 1996, and was extended to December 3, 1996, by a Federal Register Notice (61 FR 59849, November 25, 1996). during the public comment period MMS received 13 written comments: 7 responses from industry, 4 from industry trade groups or associations, 1 from an Indian tribe, and 1 from an Indian agency. A public hearing was held in Oklahoma City, Oklahoma, on October 23, 1996.

II. Comments on Proposed Rule

MMS proposed to revise the current regulations regarding the valuation of gas production from Indian leases to accomplish the following:

- To ensure that Indian mineral lessors receive the maximum revenues from mineral resources on their land consistent with the Secretary of the

Interior's (Secretary) trust responsibility and lease terms; and,

- To improve the regulatory framework so that information is available which would permit lessees to comply with the regulatory requirements at the time that royalties were due.

All commenters endorsed the concept of revising the existing regulations to provide simplicity and certainty, decrease administrative costs, and decrease litigation. Industry generally supports the use of independent published index prices for valuing gas produced from Indian leases. Industry also supports the concept of an alternative ''percentage increase'' to satisfy the dual accounting requirement contained in most Indian leases to the extent the use of this alternative methodology is voluntarily chosen by the lessee. Industry does not support the language in the proposed rule and objects to:

- the safety net concept for nondedicated sales,
- the separate dual accounting requirement on natural gas liquids, and
- the gross proceeds requirement if gas production was subject to a previous contract which was the subject of a gas contract settlement. The Council of Petroleum Accountants Societies (COPAS) states ''The COPAS representative on the Committee voted in favor of the original index-based formula at the Committee's May, 1995 meeting based on the belief that the use of that formula would satisfy both the gross proceeds and major portion clauses contained in most Indian leases, with the exception of gas sold under certain high-priced contracts.''

MMS agrees the gross proceeds requirement in the proposed rule dealing with the issue of gas contract settlements changed the Committee's agreement that the index formula was to replace both the gross proceeds requirement and the major portion requirement. The MMS would like to receive comments on a concept where contract settlement proceeds would be royalty bearing, but would not require a monthly gross proceeds comparison to the index formula. MMS will view contract settlement proceeds to be part of gross proceeds when value is determined by gross proceeds such as for production from a dedicated contract, or in nonindex areas where the initial value is determined under the gross proceeds context. For index areas, MMS will require the gross proceeds of gas sold under nondedicated contracts to be calculated only if the contract settlement proceeds per MMBTU when added to the 80 percent of the safety net price exceeds the formula value for the month including any increase for dual accounting. This computation would be made after the safety net prices were reported to the MMS by the lessee. Specifically, under this concept, MMS would revise § 206.172(b)(2)(ii) to read as follows:

This paragraph applies to gas not sold under a dedicated contract and that was subject to a previous contract which was part of a gas contract settlement. If the contract settlement proceeds per MMBTU added to the 80 percent of the safety net prices calculated at § 206.172(e)(4)(i) exceeds the index-based value that applies to the gas under this section (including any adjustments required under § 206.176), then the value of the gas is the higher of the value determined under this section (including any adjustments required under § 206.176) or § 206.174.

MMS specifically requests comments on these revised paragraphs. You do not need to comment on the rest of the rule. MMS will respond to all comments in a final rule.

February 28, 1997.

Lucy R. Querques,

*Associate Director for Royalty Management.*

[FR Doc. 97–5493 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–MR–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Parts 223 and 239

**[FRA Docket No. PTEP–1, Notice No. 2]**

**RIN 2130–AA96**

## Passenger Train Emergency Preparedness

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking; dates and locations of public hearings.

**SUMMARY:** By notice of proposed rulemaking (NPRM) published on February 24, 1997 (62 FR 8330), FRA proposed a rule to require minimum Federal safety standards for the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, including freight railroads hosting the operations of rail passenger service. In that notice, FRA announced that it would soon schedule two public hearings to allow interested parties the opportunity to comment on issues addressed in the NPRM.

**DATES:** Public Hearings: The date of the first public hearing is Friday, April 4 at 8:30 a.m. in Chicago, Illinois, and the date of the second public hearing is Monday, April 7 at 8:30 a.m. in New York City, New York. Any person wishing to participate in a public hearing should notify the Docket Clerk by telephone (202–632–3198) or by mail at the address provided below at least five working days prior to the date of the hearing and submit three copies of the oral statement that he or she intends to make at the hearing. The notification should identify the hearing in which the person wishes to participate, the party the person represents, and the particular subject(s) the person plans to address. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the hearings of persons who fail to provide such notification.

**ADDRESSES:** (1) *Docket Clerk:* Written notification should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 400 Seventh Street, S.W., Washington, D.C. 20590. (2) *Public Hearings:* The hearing scheduled for April 4 in Chicago will be held in the Special Events Room, Suite 200 on the Second Floor, Corporate Conference Center, 200 W. Adams Street, Chicago, Illinois 60606. The hearing scheduled for April 7 in New York City will be held in Room 305C of the Federal Building at 26 Federal Plaza, New York, N.Y. 10278.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone number: 202–632–3349), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone: 202–632–3191).

Issued in Washington, D.C., on March 3, 1997.

Donald M. Itzkoff,

*Deputy Federal Railroad Administrator.*

[FR Doc. 97–5545 Filed 3–3–97; 3:39 pm]

BILLING CODE 4910–06–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 600**

**[Docket No. 970213030–7030–01; I.D. 020597B]**

**RIN: 0648–AJ77**

## Central Title and Lien Registry for Limited Access Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking; request for comments.

**SUMMARY:** NMFS requests comments about a central registry (Registry) for limited access permits (LAPs). The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires us to establish the Registry. The Registry will be the exclusive means of perfecting title to LAPs. It will also be the exclusive means of perfecting security interests in, assignments of, and liens and other encumbrances (collectively Liens) against LAPs.

We want the public's guidance before proposing regulations.

**DATES:** Comments must be submitted by April 7, 1997.

**ADDRESSES:** Send comments to: Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable at (301) 713–2390.

**SUPPLEMENTARY INFORMATION:** Conservation and management sometimes requires limiting access to Federally-managed fisheries. Only parties with LAPs can fish in these fisheries. Some LAPs are transferable independently of fishing vessels (Transferable). Others are not.

The Sustainable Fisheries Act of 1996 (SFA) is Public Law 104–297. The SFA amended the Magnuson-Stevens Act. One SFA provision requires NMFS to establish the Registry:

> * * * the Secretary [of Commerce] shall establish an exclusive central registry system (which may be administered on a regional basis) for limited access system permits established under section 303(b)(6) or other Federal law, including individual fishing quotas, which shall provide for the registration of title to, and interests in, such permits * * *.

Section 110(d) of the SFA makes the Registry the legally exclusive means of perfecting LAP titles and Liens (except Federal tax Liens).

Before establishing the Registry, NMFS wants the public's guidance. We welcome comments from anyone, but particularly want guidance from:

1. Fisheries parties who will buy and sell LAPs,

2. Creditors and other parties who will file Liens for registration against LAPs, and

3. The Regional Fishery Management Councils.

We welcome comments about any Registry aspect, but particularly want guidance about the following:

1. Who should administer the Registry?

The SFA allows us either to administer the Registry or contract for its administration. We are considering the former alternative because:

a. The Registry's perpetual nature requires continuity,

b. Similar functions often appear to be governmentally administered, and

c. Many Registry title aspects involve LAP administration functions we already perform.

Should we administer the Registry, or should we contract for its administration? Which is the better alternative, and why?

2. Where should we locate the Registry?

Almost 90 per cent of all Transferable LAPs involve Alaska's fisheries. NMFS' Regional Office in Juneau, AK, administers these through its Restricted Access Management (RAM) Division.

If we administer the Registry, Juneau, AK, could be the most efficient and effective Registry location and the RAM Division the Registry's most suitable manager. A comparable example of a centralized national registry is the U.S. Coast Guard's National Vessel Documentation Center (NVDC) in Falling Waters, WV.

A centralized Registry could consider ways to facilitate filings from all parts of the country. One alternative could be similar to a NVDC approach that allows facsimile filings contingent upon receiving original documentation within 10 calendar days. If we adopted this approach, a facsimile's date and time could be the date and time of perfection if the original documentation were timely received. Otherwise, the date and time the Registry received the original documentation would be the date and time of perfection.

The centralization alternative includes only the Registry portion of LAP functions. Regular LAP administrative functions (issuance, renewal, transfer approval, etc.) would remain in their present regional locations.

3. Should the Registry register LAPs that are not Transferable?

About 60 per cent of all LAPs are Transferable. They can be bought and sold. They have market value. They can be pledged as collateral.

The other 40 per cent are not Transferable. They cannot be independently bought and sold. They have no independent market value. They are not useful as collateral. Most of them generally follow the titles of the fishing vessels to which they relate. They have no commercial significance apart from those vessels.

Although the SFA does not limit registration to Transferable LAPs, we question whether there is a practical reason to register LAPs that are not Transferable. The Registry's purpose is perfecting title to, and Liens against, LAPs. This benefits LAP buyers, sellers, lenders, and other lienholders. LAPs that are not Transferable do not separately involve any of these parties.

4. Should initial title registration be voluntary or mandatory for all Transferable LAPs?

In the first alternative, registration would be voluntary for all Transferable LAPs, except those to which title transfers, or against which Liens, were filed for registration. Registration would be mandatory for the excepted LAPs. The Registry would, without LAP holder requests, register these LAPs and bill LAP holders for the registration fees.

In the second alternative, registration of all Transferable LAPS would be mandatory. This might produce a more stable and dependable Registry that affords all LAP holders, buyers, lenders, and other lienholders greater security and assurance. Potential objections to mandatory registration, however, include:

a. Those planning neither to sell nor pledge their LAPs might object to mandatory registration's time and cost,

b. Mandatory registration could be burdensome for seasonal LAPs, and

c. Registering all LAPs might cause unnecessary Government work.

Regular LAP administration records disclose the authorized holders of all LAPs. We could automatically register title in the names of the authorized holders and charge a moderate fee for it (the SFA requires a fee). This would minimize the time and cost of mandatory registration. The alternative in question No. 5 might minimize the seasonal LAP problem.

5. How should the Registry treat seasonal LAPs that merely allocate periodic catch quantities for continuous LAPs?

The Pacific halibut and sablefish fishery, for example, has two types of LAPs. The first type is Quota Share (Access) permits. These are continuous

LAPs allowing access to the fishery. The second type is Individual Fishing Quota (Allocation) permits. These are seasonal LAPs that annually allocate the amount of fish each Access permit holder may catch that season. Allocation permit holders may transfer only 10 per cent of allocated catch quantity.

Separately including this fishery's Allocation permits in the Registry would be burdensome and complicated for everyone. Excluding Allocation permits could compromise minor commercial interests in the Allocation permit's limited transferability, but the time and expense of doing otherwise might not be worth the limited benefit.

One alternative we are considering would be for initial title registration of this fishery's Access permits (and payment of the registration fee) to include automatic registration of all subsequent Allocation permits (in the name of the LAP title holders of record and without payment of additional registration fees). This would prevent Access permit holders from having each year to register their seasonal Allocation permits and pay annual registration fees. Under this alternative, Liens against the Access permits would also encumber the corresponding Allocation permits.

6. How should we determine LAP ''value''?

The SFA limits Registry fees to amounts not exceeding 0.5 per cent of LAP ''value.'' Fees may be less, but not more, than this. We must determine the ''value'' of all LAPs included in the Registry.

Some LAPs have commonly known market values. We have market-value ranges for other LAPs because buyers and sellers have disclosed purchase prices to us. There may, however, be little or no market-value data for some LAPs.

Valuation problems should mostly be limited to initial title registration. The registration of subsequent title transfers should involve purchase prices or other consideration that we can objectively value. Where known, we could apply market values to LAPs transferred by gift, trade, or inheritance.

If initial registration fees are a modest flat fee for all, the valuation problem might be mostly limited to determining that the fee does not exceed 0.5 per cent of the ''value'' of LAPs for which little or no market data exists. We are unsure how to establish the ''value'' of these LAPs.

7. What fees should the Registry charge?

The SFA requires fees for initial title registration (Initial Fee) and subsequent title-transfer registration (Transfer Fee). It does not authorize fees for registering Liens (or their renewal, release, assumption, assignment, etc.) or for any other Registry service.

Presumably, Registry fees should offset Registry expenses.

Unless fees other than the specifically authorized ones are possible, title and title-transfer registrants will have to bear the cost of all Registry services. Although it might be more equitable if the Registry could also charge the cost of Lien or other services to those seeking them, the SFA does not authorize this.

How should we determine the Initial Fee? Should it be a modest flat fee or 0.5 per cent of market value, whichever is less? If so, what should control the flat fee's amount? Should it, instead, be a specified percentage (not exceeding 0.5%) of market value? If so, what should control the percentage's amount? Should we publish a schedule of average market values representative of various LAPs and base the percentage on those values?

Under the mandatory title-registration alternative, the Initial Fee could be moderate. There are about 23,000 Transferable LAPs, if Pacific halibut and sablefish Allocation permits are included. If not, there are about 14,500. Under the voluntary title-registration alternative, however, the Initial Fee may have to be substantially higher.

How should we determine the Transfer fee, and what should control its amount? Should it be a specified percentage (within the statutory maximum) of LAP purchase price? If so, what should control the percentage's amount? This alternative could include provisions to determine market value for LAP gifts, inheritances, trades, and other title transfers involving considerations other than market value.

Recent title-transfer activity for Transferable LAPs indicates about 2,300 title transfers annually.

8. How should we respond when LAP holders required to register LAP titles and pay registration fees do not do so?

This would apply to all LAP holders included in a mandatory Registry. In a voluntary Registry, it would apply only to those who sell or pledge their LAPs or whose LAPs are otherwise subjected to Liens. The Registry must be able to compel appropriate performance. How should it do this? What should the penalties be?

9. What Lien registrations should the Registry allow?

One alternative we are considering would limit registerable Liens to:

a. Secured interests in LAPs to which the LAPs' holders have, by their signatures, consented,

b. Liens authorized or constituted by the judgments or orders of duly constituted courts of competent jurisdiction, and

c. Other Liens authorized by State or Federal statute.

Should the Registry allow other types of Liens to be registered? Why? Could this create problems or be burdensome?

10. Should the Registry attempt to validate any title or Lien?

One alternative we are considering is to accept the validity of title or Lien filings that meet the Registry's minimal filing requirements. Under this alternative, the Registry would not attempt to determine the completeness, accuracy, or validity of any documents filed.

11. Should the Registry do anything to help prevent unauthorized signatures?

One alternative might be requiring signatures to be notarized. Would this be useful? Is there a better approach?

12. Should the Registry require using a standard form for filing Liens for registration?

One alternative we are considering is to require using a form fulfilling the Registry's minimum filing requirements. This seems to be the practice under the Uniform Commercial Code (UCC). For consensual Liens, the Registry could require both the lienholder and the LAP holder to sign this form. Nonconsensual Liens would not require the LAP holder's signature, but could require specifying the nature of, and authority for, the nonconsensual Liens. All forms could identify: the name and address of the LAP holder, the name and address of the lienholder, the LAP against which the Lien is to be registered, and the effective date of the Lien.

Would the use of a standard form expedite registration or make it more reliable? If so, what should the form require?

13. Should Lien filing forms be accompanied by the Lien documentation upon which the filings are based?

If the Registry were to register all Liens that met its minimal filing requirements, should Lien documentation accompany Lien filing forms? If so, why, and what should the Registry do with this documentation?

14. Should Lien registrations require periodic renewal?

One alternative we are considering is for Lien registrations to expire if lienholders do not renew them within a certain time. This seems to be the UCC practice. If we should adopt this alternative, what should the periodic renewal period be?

15. How should the Registry handle registering Lien releases?

The UCC practice seems to involve release forms signed by lienholders.

16. What Lien data should the Registry register, and how long should the Registry maintain them?

Should the Registry register only lienholders' names and addresses? Would registering other Lien characteristics (e.g., nature, amount, and maturity) be useful? Should the Registry perpetually maintain all Lien data or periodically purge all data about terminated Liens?

17. Should the Registry require using a specific form for filing LAP title transfers for registration and, if so, what should it include?

We are considering this alternative, because it might expedite title-transfer registration or make it more reliable.

For voluntary transfers, the form could be signed by the LAP seller and purchaser and could include: the identity of the LAP whose title seller transfers to purchaser, the date seller transfers title to purchaser, and the accompanying instrument evidencing seller's transfer of title to purchaser.

For involuntary transfers, the form could be signed by the party to whom title involuntarily transfers and include: the identity of the LAP interest whose title involuntarily transfers, the date title involuntarily transfers, and the nature of the accompanying instrument evidencing involuntary title transfer.

18. Should any evidence of title transfer the Registry might require contain original signatures or would a copy of the original evidence be sufficient?

19. Should the Registry perpetually maintain any evidence of title transfer it might require?

20. Should the Registry make available for public inspection any evidence of title transfer it might maintain and, if so, how and under what circumstances?

21. Should the Registry provide title abstracts (or any other written record of LAP title and lien registration)?

The statute does not authorize the Registry to charge fees for this purpose. If the Registry provided this, its cost might have to be recovered primarily from fees that the statute authorizes the Registry to collect for title transfers. What would the effect be if the Registry did not provide this? If it did, should it limit provision to certain users for certain purposes? What data should this include?

22. How should the Registry best provide for nonjudicial foreclosure (NJF)?

The SFA requires the Registry to provide:

> * * * a mechanism for filing notice of a nonjudicial foreclosure * * * by which the holder of a senior security interest acquires or conveys ownership of a permit * * * [and] the interests of the holders of junior security interests are released when the permit is transferred * * *.

How should the Registry best comply? One alternative we are considering is adapting the UCC's NJF procedure. Under this alternative, we would register an NJF title transfer only if one of the following two conditions apply:

a. The LAP holder and all registered lienholders junior (Junior Lienholders) to the senior security interest being foreclosed nonjudicially (NJF Security) first notify the Registry in writing that they consent to the recordation of the NJF title transfer; or

b. Absent such consent:

i. The holder of the NJF Security (NJF Lienholder) certifies to the Registry that the NJF Lienholder:

A. Is contractually entitled to NJF,

B. Has, at least 21 calendar days before such certification, notified the LAP Holder and all Junior Lienholders and given the LAP Holder and all Junior Lienholders the opportunity to object in writing to the Registry about the NJF title transfer; and

ii. The Registry has received no such objection.

If either of these two conditions apply, the Registry would register NJF title transfer to the NJF Lienholder.

If neither of these two conditions applied, the Registry would not register NJF title transfer.

All NJF title transfers would release only such registered Liens as are junior to the NJF Security. The Registry would not release any registered Liens senior to the NJF security, and the title transferred by NJF would continue subject to the unreleased Liens.

We would not adjudicate conflicting interests. Conflicting interests would have either to be settled by the consent of all relevant parties or by adjudication in a duly constituted court of competent jurisdiction.

Are there better ways to implement the NJF provisions? What are they and why are they better than the alternative suggested here?

23. If we adopt the alternative suggested in question No. 22, what certification requirements should the Registry impose?

One alternative we are considering is a certification, pursuant to 28 U.S.C. 1746, that:

a. The NJF Lienholder gave NJF title transfer notice, at least 21 calendar days before such certification, to the LAP holder and all Junior Lienholders,

b. Such notice was in writing and delivered to the LAP holder and each Junior Lienholder both at the address of record maintained at the Registry for the LAP Holder and each Junior Lienholder and at such other address as the NJF Lienholder may have had cause to have known was a better address,

c. Such notice contained the notice language required by the Registry's regulations,

d. The NJF Lienholder is contractually entitled to NJF, and

e. Such certification is made in good faith and without any design to hinder, delay, or defraud the LAP holder or any present or future lienholder or creditor of the LAP holder.

24. When NJF title transfer is based on consent, should the Registry require using a standard filing form?

25. When NJF title transfer is based on certification, should the Registry require using a standard form of certification?

26. Under what circumstances should the Registry register title transfer by judicial foreclosure, as a result of judgment enforcement, or otherwise by involuntary transfer?

The SFA provides that the Registry shall provide:

> * * *procedures for changes in the registration of title to such permits upon the occurrence of involuntary transfers, judicial* * * foreclosure of interests, enforcement of judgments thereon, and related matters deemed appropriate* * *.

The Registry would register judgments as Liens against LAP title. One alternative we are considering, however, is that the Registry would not register LAP title transfer by judicial foreclosure (or as a result of judgment enforcement or other involuntary transfer) unless the party judicially foreclosing (or enforcing a judgment or causing an involuntary transfer) presented to the Registry a bill of sale (or other instrument causing title transfer) issued pursuant to, or confirmed by, the order of a duly constituted court of competent jurisdiction.

27. How best should the Registry provide public access to Registry data, and what Registry data should be public?

We are considering putting Registry data on the Internet. Are there additional or better ways of providing public access to Registry data?

We are considering making the following data publicly available

a. LAP fishery;

b. LAP nature;

c. LAP holder's name and address (tax identification number and other protected or confidential data would be excluded);

d. Chronological listing of all LAP Lien data (including names and

addresses of all lienholders and recordation dates for: initial recordation, renewal, expiration, release, assumptions, assignments, etc.); and

e. Complete chain of post-Registry LAP title, including the name and address of each party to whom LAP title has been registered and the date of each such title registration.

28. How should the Registry best provide for the perfection of pre-Registry Liens?

The SFA provides that:

> Security interests on * * * [LAPs] that are effective and perfected by otherwise applicable law on the date of the final regulations implementing * * * [the Registry] shall remain effective and perfected if, within 120 days after such date, the secured party submits evidence satisfactory to * * * [the Registry] and in compliance with such regulations of the perfection of the security.

The UCC is (in UCC States) the only ''otherwise applicable law'' known to us under which pre-Registry Liens against LAPs could have been ''perfected.'' Should we give priority to Liens perfected under the UCC in strict chronological precedence regardless of the UCC jurisdiction involved? If so, what evidence of UCC perfection and its chronological precedence should we require?

Are there any other ''otherwise applicable laws'' that we should consider? If so, how would they relate to perfection under the UCC?

What should the regulations require?

Before the SFA, we had informally allowed lienholders to register with the RAM Division their Liens against Alaska LAPs. These informal filings are not ''perfected by otherwise applicable law'' and we cannot consider them in determining pre-Registry Lien priorities.

We welcome all comments on any other Registry aspects.

This advance notice of proposed rulemaking has been determined to be not significant for purposes of E.O. 12866.

Dated: February 28, 1997.

Nancy Foster,

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 97–5540 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 62, No. 44
Thursday, March 6, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Procurement and Property Management; Notice of Intent To Extend a Currently Approved Information Collection

**AGENCY:** Procurement and Property Management, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Agriculture, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Comment should be received on or before April 15, 1997.

**ADDRESS:** Direct all written comments to Denise Patterson, USDA, Room 1520–S, 1400 Independence Avenue, SW, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Linda W. Oliphant, (202) 720–3141, USDA, Room 1522–S, 1400 Independence Avenue, SW, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:**

*Title:* Department of Agriculture Guidelines for the Donation of Excess Research Equipment under 15 U.S.C. 3710(i).

*OMB Number:* 0505–0019.

*Expiration Date of Approval:* April 30, 1997.

*Type of Request:* Intent to extend currently approved information collection.

*Abstract:* This action is necessary to obtain approval for use of the forms beyond the current expiration date. The collection of this information will substantiate that property donations are based on need, usability and related to agricultural sponsored education and research activities. In addition, the information enables the Department of Agriculture to comply with the requirement to report all donations of excess research equipment under the Stevenson-Wydler Innovation Technology Act (Public Law 102–245), U.S.C. 3710(i).

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2 hours per response.

*Respondents:* Not-for-profit Institutions and State, local or Tribal Organizations.

*Estimated number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimate, Total Annual Burden on Respondents:* 100 hours.

Copies of this information collection can be obtained from Linda W. Oliphant, (202) 720–3141.

*Comments:* Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

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

W.R. Ashoworth,

*Director, Procurement and Property Management.*

[FR Doc. 97–5475 Filed 3–5–97; 8:45 am]

**BILLING CODE 3410–PA–M**

## Forest Service

### Clean Slate Ecosystem Management Project; Nez Perce National Forest, Idaho County, ID

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of applying ecosystem management techniques across the landscape in Main Slate and North Fork Slate Creek drainages. The area is located approximately 19 air miles south of Grangeville, Idaho. Some activities are planned within the North Fork Slate Creek (#1850) Roadless Area. This EIS will tier to the Nez Perce National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to improve overall vegetative conditions and diversity, restore impacted aquatic resources, and provide goods and services to the public.

**DATES:** Written comments and suggestions should be received by April 7, 1997 to receive timely consideration in the preparation of the Draft EIS.

**ADDRESSES:** Send written comments and suggestions on the proposed action, requests for a map of the proposed action, or requests to be placed on the project mailing list to Jack Carlson, District Ranger, Salmon River Ranger District, HC 01, Box 70, White Bird, Idaho 83554.

**FOR FURTHER INFORMATION CONTACT:** Mike McGee, Planner, Salmon River Ranger District, Nez Perce National Forest, HC 01, Box 70, White Bird, Idaho 83554, Phone (208) 839–2211.

**SUPPLEMENTARY INFORMATION:** The following activities are proposed in the Main Slate and North Fork Slate Creek drainages to: Treat approximately 1,100 acres through the use of helicopter, tractor, and cable logging systems, which will produce approximately 8 million board feet (MMBF) of timber; introduce fire for the treatment of both activity generated and natural fuels; use precommercial thinning of saplings and small poles; provide commercial post and pole material; improve watershed conditions by implementing actions such as cutslope revegetation, ditch rocking, culvert replacement, improvement of road drainage and surfacing, partial or complete obliteration on many sections of road, and improvement of the trail system; implement wildlife habitat improvements; implement practices to manage undesirable exotic vegetation; modify existing fish habitat structures in

Slate Creek; analyze and implement access management prescriptions for the existing road and trail system; develop and enhance dispersed recreation sites; and provide interpretive sites for the public.

No new permanent roads would be constructed. Some new construction of temporary roads and helicopter log landings would occur and some re-construction of existing roads would occur. Temporary roads that are constructed or re-constructed will be recontoured after use.

A watershed analysis, called the Slate Creek Implementation Area Assessment, was recently undertaken for the entire Slate Creek watershed. The Clean Slate project is located within the Slate Creek watershed. One of the primary purposes of this watershed analysis was to collect and display historic conditions and processes and document how management activities have influenced the current conditions of the watershed. From this, management opportunities were identified that would best fit with the natural character and processes of the watershed. This proposal is moving forward with some of the recommendations made in the Slate Creek Watershed Assessment.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the ''no action'' alternative, in which none of the proposed action will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities, including entry into the Roadless Area, to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations who may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in May, 1997. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the Federal Register. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in [July,] 1997. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the Federal Register.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir, 1986) and Wisconsin Heritages Inc. v. Harris, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: January 31, 1997.

Coy G. Jemmett,

*Forest Supervisor, Nez Perce National Forest, Route 2, Box 475, Grangeville, ID 83530.*

[FR Doc. 97–5543 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–11–M

## Yakima Province Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Yakima Province Advisory Committee will meet on March 12, 1997, in the Cle Elum Ranger District office warehouse conference room, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and continue until 3:00 p.m. Agenda items to be covered will include agency updates and information relative to the development and role of an advisory subcommittee in providing advice on the Snoqualmie Pass Adaptive Management Area. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: February 25, 1997.

Glenn Hoffman,

*Acting Forest Supervisor, Wenatchee National Forest.*

[FR Doc. 97–5458 Filed 3–5–97; 8:45 am]

BILLING CODE 3410–11–M

## ARCTIC RESEARCH COMMISSION

### Notice of Meeting

Notice is hereby given that the U.S. Research Commission will hold its 46th Meeting at 9:00 a.m. on Monday, March 24, 1997, at the National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Agenda items include:

(1) Call to order and approval of the Agenda
(2) Approval of the minutes of the 45nd Meeting
(3) Reports of Congressional Liaisons
(4) Agency Reports
(5) Research News

The focus of the meeting will be on Arctic Ocean Research.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703/306–0090.

Garrett W. Brass,

*Executive Director.*

[FR Doc. 97–5520 Filed 3–5–97; 8:45 am]

BILLING CODE 7555–01–M

## ASSASSINATION RECORDS REVIEW BOARD

### Sunshine Act Meeting

**DATE:** March 13–14, 1997.

**PLACE:** ARRB, 600 E Street, NW, Washington, DC.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

**CONTACT PERSON FOR MORE INFORMATION:** Eileen Sullivan, Assistant Press and Public Affairs Officer, 600 E Street, NW, Second Floor, Washington, DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

David G. Marwell,

*Executive Director.*

[FR Doc. 97–5619 Filed 3–3–97; 5:12 pm]

BILLING CODE 6118–01–P

## BROADCASTING BOARD OF GOVERNORS

### Sunshine Act Meeting

**DATE AND TIME:** March 11, 1997; 9:30 a.m.

**PLACE:** Cohen Building, Visitor's Center, First Floor, 330 Independence Ave., S.W., Washington, D.C. 20547.

**OPEN MEETING:** The members of the Broadcasting Board of Governors (BBG) will meet in open session to address a variety of issues relating to U.S. Government-funded non-military international broadcasting. Among the subjects on the agenda are the following: opening remarks by the BBG Chairman; approval of minutes of a previous meeting; remarks by Kevin Klose, Director-designate of the International Broadcasting Bureau; remarks by Evelyn Lieberman, new Director of the Voice of America; and miscellaneous subjects relating to the Board's responsibilities such as the annual report to the President and the Congress.

**CONTACT PERSON FOR MORE INFORMATION:** Persons interested in obtaining more information about the meeting should contact Brenda Thomas at (202) 401–3736.

Dated: March 4, 1997.

David W. Burke,

*Chairman.*

[FR Doc. 97–5725 Filed 3–4–97; 2:37 pm]

BILLING CODE 8230–01–M

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* 1997 Economic Censuses General Classification Schedule.

*Form Number(s):* NC–9923.

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 50,000 hours in FY98.

*Number of Respondents:* 300,000.

*Avg. Hours Per Response:* 10 minutes.

*Needs and Uses:* The 1997 Economic Census will cover virtually every sector of the U.S. economy. The Census Bureau will implement the new North American Industry Classification System (NAICS) in the 1997 Economic Census. The implementation of the NAICS as a replacement for the 1987 Standard Industrial Classification (SIC) system will require contacting businesses to collect classification information to update the 1997 Economic Census mailing lists. Accurate and reliable industry and geographic codes are critical to the Bureau of Census statistical programs. New businesses are assigned industry classification by the Social Security Administration (SSA). However, approximately 22 percent of these businesses cannot be assigned industry codes because insufficient information is provided on Internal Revenue Service (IRS) Form SS–4. Since the 1992 Economic Censuses, the number of unclassified businesses has grown to almost 500,000.

In order to provide detailed industry data reflecting NAICS for the 1997 Economic Censuses and the Standard Statistical Establishment List (SSEL), these unclassified businesses must be assigned industry codes. The Census Bureau has contracted with the Bureau of Labor Statistics (BLS) to receive classification information for unclassified businesses. However, differences in NAICS implementation schedules, coverage, and updating procedures between the two agencies and our further attempts to assign industry codes to these businesses based on their name will still leave some 300,000 unclassified businesses on the 1997 Economic Censuses mail list. This data collection, Form NC–9923, is designed to obtain classification information for different types of industries including reflecting changes from the SIC to NAICS and provide current information on physical locations.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Frequency:* Every five years.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 USC, Sections 131 and 224.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 27, 1997.

Linda Engelmeier,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–5490 Filed 3–5–97; 8:45 am]

BILLING CODE 3510–07–P

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Annual Capital Expenditures Survey.

*Form Number(s):* ACE–1, ACE–1(l), ACE–2, ACE–2(l).

*Agency Approval Number:* 0607–0782.

*Type of Request:* Revision of a currently approved collection.

*Burden:* 114,000 hours.

*Number of Respondents:* 46,000.

*Avg. Hours Per Response:* 2.5 hours.

*Needs and Uses:* The Census Bureau plans the continuing information collection for the 1996 and 1997 Annual Capital Expenditures Survey (ACES) measuring capital investment in new

and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending by domestic, private, nonfarm businesses operating in the United States. Major changes from the 1995 collection of ACES data are the annual collection of data form businesses with one to four employees and nonemployers, and a request from employer businesses for data on total company sales and receipts, and sales and receipts for the three ACES industries with the largest sales and receipts.

Business spending data are used to evaluate the quality of estimates of gross domestic product, develop monetary policy, analyze business asset depreciation, and improve estimates of capital stock for productivity analysis. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

*Affected Public:* Business or other for-profit, Not-for-profit institutions.

*Frequency:* Annually.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* (Title 13 USC, Sections 182, 224, and 225.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1997.

Linda Engelmeier,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–5542 Filed 3–5–97; 8:45 am]

**BILLING CODE 3510–07–M**

## Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* Bureau of the Census.

*Title:* Study of Privacy Attitudes.

*Form Number(s):* None (automated instrument).

*Agency Approval Number:* 0607–0822.

*Type of Request:* Revision of a currently approved collection.

*Burden: 396 hours.*

*Number of Respondents:* 1,200.

*Avg. Hours Per Response:* 20 minutes.

*Needs and Uses:* The Census Bureau is interested in privacy issues—such as, the public's attitude toward individual privacy, the Census Bureau's privacy practices, and the potential use of administrative records and collecting Social Security numbers (SSNs—for several reasons. Most notable is the steady decline in response rates to the Census Bureau's mailed questionnaire in the last five decennial censuses, which may reflect the growing apathy toward and mistrust of the Federal government. A clear understanding of the public's beliefs regarding the Census Bureau and its practices may help decennial census planners offset the trend in declining responses rates and address new methods to acquire data. The purpose of this survey, along with former collections, is to:

Determine and clarify the public's opinion of: (1) The Federal government and Census Bureau in general; (2) the Census Bureau's privacy and confidentiality policies; (3) the extent to which the Census Bureau adheres to its own privacy guidelines; (4) the Census Bureau's expanded use of administrative records and possible interest in collecting SSNs in the future; (5) the notion of an ''administrative records—only census'' in 2010; and (6) the utility of adopting and communicating fair information use principles.

Assess change in the public's attitudes on privacy-related issues on a yearly basis. The 1996, 1997, and 1998 privacy studies, along with the inaugural survey—the 1995 Joint Program in Statistical Methods (JPSM) study, will help inform decisions on Census 2000. Beginning in 1999, privacy studies will be part of the research and experimentation program for the 2010 census.

The Study of Privacy Attitudes was formerly known as the ''Study of Public Attitudes Towards Administrative Records Use (SPARU).'' To maintain continuity, the content of the 1997 SPA questionnaire will be mostly the same as the 1996 SPARU. However, questions originally included in the 1995 JPSM survey that were left off the 1996 SPARU because of budgetary reasons will be reinstated for the 1997 SPA.

*Affected Public:* Individuals or households.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, Sections 141 and 193.

*OMB Desk Officer:* Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 28, 1997.

Linda Engelmeier,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–5544 Filed 3–5–97; 8:45 am]

**BILLING CODE 3510–07–M**

## Bureau of the Census

## Survey of Local Government Finances (School Systems), Forms F–33, F–33–1, and F33–L1

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before May 5, 1997.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sharon Meade, Bureau of the Census, Governments Division, Washington, DC 20233–0001. Her telephone number is (301) 457–1563.

**SUPPLEMENTARY INFORMATION:**

I. Abstract

The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments.

This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system level finance data.

Information on the finances of our public schools is vital to assessing their effectiveness. This data collection makes it possible to access a single data base to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Recently, as exemplified by the establishment of the America 2000 education goals, there has been increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data.

The three forms used in the school finance portion of the survey are:

*Form F–33.* This form contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and NCES. It is used primarily as a worksheet by the state education agencies that provide school finance data centrally for all of the school systems in their respective states. Most states supply their data by electronic means.

*Form F–33–1.* This form is used at the beginning of each survey period to solicit the assistance of the state education agencies. It establishes the conditions by which the state education agencies provide their school finance data to the Census Bureau.

*Form F–33–L1.* This is a supplemental letter sent to the school systems in nine states. In these states, the state education agencies collect adequate detail in all aspects of school finance except for assets. Respondents provide the assets data on this letter and it is merged with the other data collected from the state education agencies.

This request is to reinstate the previous collection for which approval expires July 31, 1997. The data to be collected is identical to the previous collection except as follows:

1—In order to differentiate between payments made to public school systems and those made to private school systems, we are adding an item that identifies payments to private schools.

2—In order to differentiate between payments made to public schools, those made to private schools, and those made to quasi-public charter schools, we are adding an item that identifies payments to charter schools.

II. Method of Collection

Through central collection arrangements with the state education agencies, the Census Bureau collects almost all of the finance data for local school systems from state education agency data bases. The states transfer most of this information in electronic format on microcomputer disks and over the Internet. The Census Bureau has facilitated central collection of school finance data by accepting data in whatever formats the states elect to transmit.

III. Data

*OMB Number:* 0607–0700.

*Form Number:* F–33, F–33–1, F–33–L1.

*Type of Review:* Regular.

*Affected Public:* State and local governments.

*Estimated Number of Respondents:* 894.

*Estimated Time Per Response:* 3.2 hours.

*Estimated Total Annual Burden Hours:* 2,871 hours.

*Estimated Total Annual Cost:* $51,678.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C., sections 161 and 181.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 27, 1997.

Linda Engelmeier,

*Departmental Forms Clearance Officer, Office of Management and Organization.*

[FR Doc. 97–05459 Filed 3–5–97; 8:45 am]

**BILLING CODE 3510–07–P**

## Economic Development Administration

## Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration (EDA), Commerce.

**ACTION:** To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/11/97–02/21/97

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Centurion International, Inc | 3425 North 44th St., Lincoln, NE 68501 | 01/17/97 | Batteries and antennas. |
| Heinke Technology, Inc | 5120 Northwest 38th St., Lincoln, NE 68524. | 02/03/97 | Pharmaceutical applicators. |
| Penn & Fletcher, Inc | 242 West 30th St., suite 200, New York, NY 10001. | 02/04/97 | Embroidered lace and trimming. |
| Brodnax Mills, Inc | P.O. Box A, Brodnax, VA 23920 | 02/04/97 | Synthetic and blended yarns. |
| Precision Sintered Parts, L.L.C | 9902 East 46th Place, Tulsa, OK 74146 | 02/06/97 | Iron or steel, forged or stamped gears. |
| Styletek, Inc | 1857 Middlesex St., Lowell, MA 01851 .. | 02/07/97 | Plastic parts for footwear, luggage, tool, and sporting goods industries and plastic injection molds. |
| Lamarr Jamerson | 929 North Sherman, Springfield, MO 65802. | 02/07/97 | Wooden doors and door frames. |

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 01/11/97–02/21/97—Continued

| Firm name | Address | Date petition accepted | Product |
|---|---|---|---|
| Ideal Forging Corp | 167 Center St., Southington, CT 06489 | 02/07/97 | Parts for compressors, pumps, and machinery. |
| Modu Form, Inc | 172 Industrial Rd., Fitchburg, MA 01420 | 02/07/97 | Stackable arm chairs, tables, casegoods, couches, and library shelving. |
| B&L Industries, Inc | 4570 West 77th St., suite 238, Minneapolis, MN 55435. | 02/10/97 | Toroid radio frequency filters. |
| White Stokes Co., Inc | 3615 South Jasper Place, Chicago, IL 60609. | 02/10/97 | Fondant as a reprocessed sugar-based paste used as a base ingredient in icing, fillings and candy, etc. |
| Cassemco, Inc | P.O. Box 1495, Cookeville, TN 38503 | 02/11/97 | Seat parts for motor vehicles, chin straps for football helmets, ammunition packs and medical products. |
| Ever Corp | Highway 67 North, Newport, AR 72112 | 02/13/97 | Collapsible aluminum tubes. |
| Acme Roll Forming Co | P.O. Box 706, Sebewaing, MI 48759 | 02/12/97 | Steel tubes for material handling racks. |
| Posey Manufacturing Co., Inc | P.O. Box 418, 810 Ontario St., Hoquiam, WA 98550. | 02/13/97 | Piano parts. |
| Coates ASI | 4607 South 35th St., Phoenix, AZ 85040 | 02/14/97 | Wet processing equipment used to manufacture printed circuit boards. |
| Advance Energy Technologies, Inc | P.O. Box 387, Clifton Park, NY 12065 | 02/14/97 | Insulated refrigeration walls for walk-in freezers and coolers. |
| Firerobin Puppets, Inc | Bridge St., Richmond, VT 05477 | 02/21/97 | Puppets. |

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: February 27, 1997.

Anthony J. Meyer,

*Coordinator, Trade Adjustment and Technical Assistance.*

[FR Doc. 97–5450 Filed 3–5–97; 8:45 am]

**BILLING CODE 3510–24–M**

## National Oceanic and Atmospheric Administration

**[I.D. 022497D]**

## Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of scientific research permit no. 1029 (815–1312)

**SUMMARY:** Notice is hereby given that Mr. William G. Gilmartin, Hawaii Wildlife Fund, 55–472A Palekana Street, Laie, Hawaii 96762, has been issued a permit to ''take'' by Level A and Level B harassment, Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Protected Species Program Coordinator, Pacific Area Office, Southwest Region, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

**SUPPLEMENTARY INFORMATION:** On November 18, 1996, notice was published in the Federal Register (61 FR 58676) that the above-named applicant had submitted a request for a scientific research permit to ''take'' by Level A and Level B harassment Hawaiian monk seals (*Monachus schauinslandi*) from the population at Midway Atoll. The research will be conducted over an 5-year period and will involve census observations, bleach marking, pup tagging/ measuring, disentanglement, necropsies, and scat collections. The objective of the research is to study the natural history and behavior of monk seals at Midway Atoll. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Regulations Governing the Taking, Importing, and Exporting of Endangered Fish and Wildlife (50 CFR part 222). Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: February 24, 1997.

Ann D. Terbush,

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–5479 Filed 3–5–97; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 022897C]**

## Marine Mammals; Scientific Research Permit (PHF# 848–1335)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application.

**SUMMARY:** Notice is hereby given that Southwest Fisheries Science Center, Honolulu Laboratory, NMFS, 2570 Dole Street, Honolulu, Hawaii 96822–2396, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research.

**DATES:** Written comments must be received on or before April 5, 1997.

**ADDRESSES:** The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Protected Species Coordinator, Pacific Area Office, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Concurrent with the publication of this notice in the Federal Register, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The application encompasses all research and enhancement activities to be conducted on Hawaiian monk seals by the NMFS Honolulu Laboratory for the next 5 years. The proposed activities will also include all takes currently authorized under the Center's Permit No. 898, thereby making that permit null and void. Research activities will involve population assessment, disease assessment, recovery action, and pelagic ecology studies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: February 28, 1997.

Ann D. Terbush,

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 97–5539 Filed 3–5–97; 8:45 am]

**BILLING CODE 3510–22–W**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Sunshine Act Meeting

Pursuant to the provisions of the Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given of the following meeting of the Board of Directors of the Corporation for National and Community Service (Corporation).

*Date and Time:* Thursday, March 13, 1997, from 9:30 a.m. to 1:00 p.m.

*Place:* The Ritz Carlton Hotel, 401 Ward Parkway, Kansas City, MO 64112.

*Status:* The meeting will be open to the public up to the seating capacity of the room, except that Board deliberations addressing personnel matters will be closed, pursuant to exemptions (c)(2) and (4) of the Government in the Sunshine Act. The basis for this partial closing has been certified by the Corporation's Deputy General Counsel. A copy of the certification will be posted for public inspection at the Corporation's headquarters at 1201 New York Avenue NW, Suite 8200, Washington, DC 20525, and will otherwise be available upon request.

*Matters To Be Considered:* The Board of Directors of the Corporation will meet to review (1) reports from committees of the Board of Directors on Corporation activities, (2) a report from the Chief Executive Officer, and (3) the status of Corporation initiatives.

*Accommodations:* Those needing interpreters or other accommodations should notify the Corporation by March 10, 1997. This notice may be requested in an alternative format for the visually impaired.

*For Further Information:* Contact Rhonda Taylor, Associate Director of Special Projects and Initiatives, the Corporation for National and Community Service, 1201 New York Avenue NW, 8th Floor, Washington, DC 20525. Telephone (202) 606–5000 ext. 282.

Dated: March 4, 1997.

Stewart Davis,

*Deputy General Counsel, Corporation for National and Community Service.*

[FR Doc. 97–5722 Filed 3–4–97; 2:36 pm]

**BILLING CODE 6050–28–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the Military Health Care Advisory Committee

**AGENCY:** Department of Defense, Military Health Care Advisory Committee.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the forthcoming meeting of the Military Health Care Advisory Committee. This is the sixth meeting of the Committee. The purpose of the meeting is to have discussions centering around medical personnel for the Military Health Service System which will include recruitment, retention, and support for readiness; and the healthcare benefit; and approaches to meeting medical personnel requirements. A meeting session will be held and will be open to the public.

**DATES:** March 25, 1997.

**ADDRESSES:** Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA, unless otherwise published.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gary A. Christopherson, Senior Advisor or Commander Sid Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

**SUPPLEMENTARY INFORMATION:** Business sessions are scheduled between 9:30 am and 5:00 pm, on Tuesday, March 25, 1997. Contact Elaine L. Powell, CMP, in the MHCAC Conference Support Office at (703) 575–5024, if you are interested in attending or need additional information concerning the agenda, directions, and maps to the meeting location.

Dated: February 28, 1997.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 97–5455 Filed 3–5–97; 8:45 am]

**BILLING CODE 5000–04–M**

## Department of the Army

## Patent Applications Available for Licensing

**AGENCY:** Office of the Judge Advocate General.

**ACTION:** Notice.

**SUMMARY:** In compliance with 37 CFR 404 *et seq.*, announcement is made of the availability of the U.S. Patent applications available for licensing.

| Patent No. | Title | Filing date |
|---|---|---|
| 08/446,148 ..... | Chemotherapeutic Treatment of Bacterial Infections. | 05/22/95 |
| 08/446,149 ..... | Chemotherapeutic Treatment of Bacterial Infections With An Antibiotic Encapsulated Within A Biodegradable Polymeric Matrix. | 05/22/95 |
| 08/590,973 ..... | Novel Burst-Free Sustained Release Poly (Lactide/Glycolide) Microspheres. | 01/24/96 |

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Mele, ORTA, Walter Reed Army Institute of Research, Washington, DC 20307–5100.

**SUPPLEMENTARY INFORMATION:** None.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 97–5503 Filed 3–5–97; 8:45 am]

**BILLING CODE 3710–08–M**

## Patent Applications Available for Licensing

**AGENCY:** Office of the Judge Advocate General.

**ACTION:** Notice.

**SUMMARY:** In compliance with 37 CFR 404 *et seq.*, announcement is made of the availability of the U.S. Patent applications available for licensing.

| Patent No. | Title | Filing date |
|---|---|---|
| 08/352,944 ..... | Vaccines Against Diseases Caused by Enteropathogenic Organisms Using Antigens Encapsulated Within Biodegradable-Biocompatible Microspheres. | 12/09/94 |
| 08/396,986 ..... | Oral-Intestinal Vaccines Against Diseases caused by Enteropathogenic Organisms Using Antigens Encapsulated Within Biodegradable-Biocompatible Microspheres. | 03/01/95 |
| 08/242,960 ..... | Microparticle Carriers of Maximal Uptake Capacity By Both M Cells and Non-M Cells | 05/16/94 |
| 08/247,884 ..... | Model For Testing Immunogenicity of Peptides | 05/23/94 |
| 08/598,874 ..... | Vaccines Against Intracellular Pathogens Using Antigens Encapsulated Within Biodegradable-Microspheres | 02/09/96 |
| 08/698,896 ..... | Hybrid Solvent Evaporation-Extraction Process For Producing PLGA Microspheres | 08/16/96 |
| 08/788,002 ..... | Therapeutic Treatment And Prevention of Infections With A Bioactive Material(s) Encapsulated Within A Biodegradable-Biocompatible Polymeric Matrix. | 01/24/97 |
| 08/789,734 ..... | Therapeutic Treatment And Prevention Of Infections With A Bioactive Material(s) Encapsulated Within A Biodegradable-Biocompatible Polymeric Matrix. | 01/27/97 |

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Mele, ORTA, Walter Reed Army Institute of Research, Washington DC 20307–5100.

**SUPPLEMENTARY INFORMATION:** None.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 97–5504 Filed 3–5–97; 8:45 am]

**BILLING CODE 3710–08–M**

## Patents Available for Licensing

**AGENCY:** Office of the Judge Advocate General, Army.

**ACTION:** Notice.

**SUMMARY:** In compliance with 37 CFR 404 *et seq.*, announcement is made of the availability of U.S. Patent No. 5,417,986, entitled ''Vaccines Against Diseases Caused by Enteropathogenic Organisms using Antigens Encapsulated Within Biodegradable-Biocompatible Microspheres'' issued May 28, 1995 and U.S. Patent No. 5,470,311 entitled ''Microsphere Drug Application Device'' issued November 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul Mele, ORTA, Walter Reed Army Institute of Research, Washington DC 20307–5100.

**SUPPLEMENTARY INFORMATION:** None.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 97–5505 Filed 3–5–97; 8:45 am]

**BILLING CODE 3710–08–M**

## Department of the Army

## Corps of Engineers

## Surplus Real Property—Fayetteville, NC

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice.

**SUMMARY:** This notice identifies the surplus real property designated as Recreation Center No. 2 and located at 333 Ray Avenue, Fayetteville, NC. The center is located on the corner of Rowan Street and Ray Avenue. Properties in the vicinity are generally commercial/business.

**FOR FURTHER INFORMATION CONTACT:**

For more information regarding the property identified in this Notice, contact Mr. Clyde Martin, U.S. Army Corps of Engineers, P.O. Box 889, Savannah, GA 31402–0889 (telephone 912–652–5014, fax 912–652–5335) or Mrs. Dewana Kennedy, Fort Bragg, NC 2830–5000 (telephone 910–396–4139, fax 910–396–3069).

**SUPPLEMENTARY INFORMATION:**

1. This surplus property is available under the provisions of the Federal Property and Administrative Services Act of 1949 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994. Notices of interest should be forwarded to Fayetteville City Council, ATTN: Mr. Roger L. Stancil, 433 Hay Street, Fayetteville, NC 28301–5537.

2. The surplus real property totals 4.35 acres and includes a two-story building containing 17,035 square feet. The facility is currently under lease to the City of Fayetteville and is being

used for educational and recreational purposes.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 97–5502 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–HP–M

## Corps of Engineers

### Grant of Exclusive License

**AGENCY:** U.S. Army Corps of Engineers.

**ACTION:** Notice.

**SUMMARY:** In accordance with 37 CFR 404.7(b)(1)(i), announcement is made of a prospective exclusive license of Japanese Patent Application No. 7–510293, entitled ''Concrete Armor Unit to Protect Coastal and Hydraulic Structures and Shorelines'' filed August 17, 1994.

**DATES:** Written objections must be filed not later than May 5, 1997.

**ADDRESSES:** .U.S. Army Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199, ATTN: CEWES–OC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Phil Stewart (601) 634–4113, e-mail stewarp@ex1.wes.army.mil.

**SUPPLEMENTARY INFORMATION:** The Concrete Armor Unit was invented by Jeffrey A. Melby and George F. Turk (Japanese Patent Application No. 7–510293, Filed August 17, 1994. Rights to the Japanese patent application have been assigned to the United States of America as represented by the Secretary of the Army. The United States of America as represented by the Secretary of the Army intends to grant an exclusive license for all fields of use, in the manufacture, use, and sale in the territories and possessions, including territorial waters of Japan to TETRA Co., LTD, Shinjuku I-Land Wing, 6–3–1, Nishishinjuku, Shinjuku-ku, Tokyo 160, Japan.

Pursuant to 37 CFR 404.7(b)(1)(i), any interested party may file a written objection to this prospective exclusive license agreement.

Gregory D. Showalter,

*Army Federal Register Liaison Officer.*

[FR Doc. 97–5501 Filed 3–5–97; 8:45 am]

BILLING CODE 3710–92–M

## Department of the Navy

### Notice of Availability of Invention for Licensing; Government Owned Invention

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Copies of the patent cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of the patent should include the patent number.

**FOR FURTHER INFORMATION CONTACT:** Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

U.S. Patent No. 5,552,993: AUDIO INFORMATION APPARATUS FOR PROVIDING POSITION INFORMATION, patented September 3, 1996.

Dated: February 20, 1997.

D.E. Koenig, Jr.

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–5521 Filed 3–5–97; 8:45 am]

BILLING CODE 3810–FF–P

### Notice of Closed Meeting of the Chief of Naval Operations (CNO) Executive Panel

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel will meet 1 April 1997 from 10:00 to 11:00 at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. This session will be closed to the public.

The purpose of this meeting is to conduct the mid-term briefing of the Naval Warfare Innovations Task Force to the Chief of Naval Operations. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

**FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT:** Janice Graham, Assistant for CNO Executive Panel Management, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, telephone number (703) 681–6205.

Dated: February 20, 1997.

D.E. Koenig, Jr.

*LCDR, JAGC, USN, Federal Register Liaison Officer.*

[FR Doc. 97–5522 Filed 3–5–97; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. RP95–196–000, et al. and RP95–392–000 (Consolidated)]**

### Columbia Gas Transmission Corporation, UGI Utilities v. Columbia Gulf Transmission Company, et al.; Notice of Informal Settlement Conference

February 28, 1997.

Take notice that an informal settlement conference in this proceeding will be convened on Thursday, March 6, 1997, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Thomas J. Burgess at 208–2058 or David R. Cain at 208–0917.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5485 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP97–178–001]**

### Kern River Gas Transmission Co.; Notice of Compliance Filing

February 28, 1997.

Take notice that on February 25, 1997, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective April 6, 1997:

First Revised Sheet Nos. 71–2
Original Sheet No. 72–A
First Revised Sheet No. 502
First Revised Sheet No. 602
First Revised Sheet No. 703
First Revised Sheet Nos. 804–805

Kern River states that the purpose of this filing is to propose an early

implementation date for standard 1.3.1 of the standards that were promoted by the Gas Industry Standard Board (GISB) and adopted by the Commission in Order No. 587 on July 17, 1996 in Docket No. RM96–1–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5486 Filed 3–5–97; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. CP97–269–000]**

## Midwestern Gas Transmission Company; Notice of Request Under Blanket Authorization

February 28, 1997.

Take notice that on February 26, 1997, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–269–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct a new delivery point for Natural Gas of Kentucky (NGK), a local distribution company, under Midwestern's blanket certificate issued in Docket No. CP82–414–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Midwestern proposes to establish a new delivery point on its system at approximate Mile Post 2105–1+.5 in Ohio County, Kentucky, for the delivery of up to 1,500 Dekatherms of natural gas per day to NGK for the ultimate distribution to a commercial entity not currently served by any other provider. Midwestern states that in order to accommodate the deliveries to NGK, Midwestern proposes to install, own, operate and maintain a two-inch hot tap, a tie-in assembly and electronic gas measurement equipment. Midwestern also states that NGK will install, own, and maintain approximately 40 feet of two-inch interconnecting pipe and measurement facilities. Midwestern states that NGK will reimburse Midwestern for the cost of this project which is approximately $22,400.

Midwestern states that service at the proposed delivery point will be on an interruptible basis and that (i) volumes delivered to NGK after the construction of this delivery point will not exceed the total volumes authorized prior to this request, (ii) that the construction of the proposed delivery point is not prohibited by Midwestern's existing tariff, and, (iii) that Midwestern has sufficient capacity to accomplish deliveries at the proposed delivery point without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5487 Filed 3–5–97; 8:45 am]

**BILLING CODE 6717–01–M**

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**[Docket No. CP97–225–000]**

## Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

February 28, 1997.

Take notice that on February 3, 1997, and as supplemented February 27, 1997, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP97–225–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) and blanket certificate authority granted September 1, 1982, in Docket No. CP82–413–000, a request for authorization to install a new delivery point to provide interruptible natural gas transportation service to El Paso Energy Marketing Company on behalf of Pearson Technologies (El Paso/Pearson), an end-user, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee proposes to establish a new delivery point on its system at approximately Mile Post 547J–102+7.0 in Monroe County, Mississippi. Tennessee states that it would install, own, operate and maintain a two-inch hot tap and electronic gas measurement interconnecting pipe on Tennessee's right-of-way, and will inspect and operate the meter facility to be installed by El Paso/Pearson. It is further stated that El Paso/Pearson would install the remaining interconnecting pipe—approximately 50 feet, and would provide the site for, and install, own, operate and maintain, the meter facility. Tennessee states that the cost of the proposed facility is approximately $37,900, and that El Paso/Pearson would reimburse Tennessee.

Tennessee further states that it proposes to deliver approximately 1,500 dekatherms per day to the proposed new delivery point. It is further stated that the total quantities to be delivered to El Paso/Pearson after the delivery point is installed would not exceed previously authorized total quantities. Tennessee further asserts that the installation of the proposed delivery point is not prohibited by Tennessee's tariff, and that it has sufficient capacity to accomplish deliveries at the proposed new point without detriment or disadvantages to Tennessee's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5534 Filed 3–5–97; 8:45 am]

**BILLING CODE 6717–01–M**

**[Docket No. RP97–195–001]**

## Viking Gas Transmission Company; Notice of Compliance Filing

February 28, 1997.

Take notice that on February 25, 1997, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to be effective January 15, 1997:

Second Substitute Fourth Revised Sheet No. 1
Second Substitute Second Revised Sheet No. 117
Second Substitute Second Revised Sheet No. 118
Second Substitute Fourth Revised Sheet No. 141
Second Substitute Original Sheet No. 142
Second Substitute Original Sheet No. 143
Second Substitute Original Sheet No. 144
Second Substitute Original Sheet No. 145
Second Substitute Original Sheet No. 146

Viking states that purpose of this filing is to comply with the Office of Pipeline Regulation's January 15, 1997, Letter in Docket No. RP97–195–000 requesting that Viking correct the pagination on these sheets consistent with the tariff sheet pagination guidelines set forth by the Commission.

Viking states that the copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5489 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP97–249–000]**

## William Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

February 28, 1997.

Take notice that on February 14, 1997, Williston basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP97–249–000 a request pursuant to §§ 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, 157.216) for authorization to modify an existing tap and to abandon the operation of the existing tap at Station 68+97, located in Ramsey County, North Dakota, under Williston Basin's blanket certificate issued in Docket No. CP82–487–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to modify an existing tap at Station 68+97 located in Ramsey County, North Dakota, on its line from Cleveland to Grafton, North Dakota, to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Company (Montana-Dakota), a local distribution company, under currently effective transportation service agreements. Williston Basin states the existing tap is owned and was installed by Montana-Dakota to serve industrial, commercial and/or residential customers. Williston Basin also proposes to abandon the operation of the existing tap at Station 68+97, located in Ramsey County, North Dakota.

Williston Basin declares the authorization requested herein includes installation of a two-inch tap and riser connected by approximately twelve feet of two-inch pipe. Williston Basin asserts they will retain ownership of the two-inch tap, riser, and piping through the first high-pressure valve.

Williston Basin states the estimated total cost of this project to be $3,700, 100% reimbursable by Montana-Dakota.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. if no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest if filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5488 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ER97–783–000, et al.]**

## Illinois Power Company, et al.; Electric Rate and Corporate Regulation Filings

February 27, 1997.

Take notice that the following filings have been made with the Commission:

1. Illinois Power Company

[Docket No. ER97–783–000]

Take notice that on February 10, 1997, Illinois Power Company tendered for filing its amended summary of activity report for the second and third quarters of 1996.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. PECO Energy Company

[Docket No. ER97–1501–000]

Take notice that on January 31, 1997, PECO Energy Company (PECO) tendered for filing a Service Agreement dated January 8, 1997 with Green Mountain Power Corporation (Green Mountain) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Green Mountain as a customer under the Tariff.

PECO requests an effective date of January 8, 1997, for the Service Agreement.

PECO states that copies of the filing have been supplied to Green Mountain and to the Pennsylvania Public Utility Commission.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. Dayton Power & Light Company

[Docket No. ER97–1529–000]

Take notice that on January 30, 1997, Dayton Power & Light Company (DP&L) tendered for filing a summary of transactions made by DP&L for the 4th quarter of 1996.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER97–1531–000]

Take notice that on January 30, 1997, Cinergy Services, Inc. (Cinergy) tendered for a quarterly transaction report for the quarter ending December 31, 1996.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Cleveland Electric Illuminating Company

[Docket No. ER97–1532–000]

Take notice that on January 31, 1997, Cleveland Electric Illuminating Company (CEI) tendered for a quarterly transaction report for the quarter ending December 31, 1996.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER97–1589–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and Ohio Edison Company.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Duquesne Light Company

[Docket No. ER97–1590–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and The Dayton Power & Light Company.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER97–1591–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing an Agreement between Duquesne and The Cleveland Electric Illuminating Company.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER97–1592–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing an Agreement between Duquesne and The Toledo Edison Company.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER97–1593–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing an Agreement between Duquesne and Allegheny Power.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Duquesne Light Company

[Docket No. ER97–1594–000]

Take notice that on February 10, 1997, Duquesne Light Company (Duquesne) tendered for filing a Service Agreement between Duquesne and WPS Energy Services, Inc.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER97–1654–000]

Take notice that on February 11, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and Southern Energy Trading and Marketing, Inc. Duke states that the TSA sets out the transmission arrangements under which Duke will provide Southern Energy Trading and Marketing, Inc., non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of January 18, 1997.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

13. Nevada Power Company

[Docket No. ER97–1655–000]

Take notice that on February 11, 1997, Nevada Power Company (Nevada Power), tendered for filing an Electric Service coordination Tariff (Coordination Tariff) having a proposed effective date of March 1, 1997. The Coordination Tariff provides for the sale of capacity and energy by Nevada Power to all eligible parties under the Coordination Tariff. Customers who take service under the Coordination Tariff can purchase any of the following services: 1) short term energy and capacity, 2) limited term energy and capacity, 3) economy energy, or 4) emergency energy.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

14. Florida Power Corporation

[Docket No. ER97–1656–000]

Take notice that on February 11, 1997, Florida Power Corporation (''FPC'') tendered for filing a contract for the provision of interchange service between itself and PanEnergy Trading and Market Services, Inc. (''PanEnergy''). The contract provides for service under Schedule J, Negotiated Interchange Service, Schedule S, FERC Electric Rate Schedule No. 1 and OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the contract to become effective as a rate schedule on February 12, 1997. Waiver is consistent with Commission policies because it will allow voluntary economic transactions to go forward.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

15. New York State Electric & Gas Corporation

[Docket No. ER97–1657–000]

Take notice that on February 11, 1997, New York State Electric & Gas Corporation (NYSEG), filed three Firm and one Non-Firm Service Agreements between NYSEG and New York State Electric & Gas Corporation, (Customer). The Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed on July 9, 1996 in Docket No. OA96–195–000.

NYSEG requests waiver of the Commission's sixty-day notice requirements and an effective date: January 12, 1997 Firm Point-to-Point Transmission Service Agreement, January 19, 1997 Firm Point-to-Point Transmission Service Agreement, January 26, 1997 Firm Point-to-Point Transmission Service Agreement, and January 12, 1997 Non-Firm Point-to-Point Transmission Service Agreement. NYSEG also requests that the Commission approve the termination of the above-referenced Firm Service Agreements as of the termination date set forth in each such agreement without the need for filing a separate notice of termination pursuant to the Commission's Rules. NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER97–1658–000]

Take notice that on February 11, 1997, Duke Power Company (Duke), tendered for filing a Transmission Service Agreement between Duke, on its own behalf and acting as agent for its wholly-owned subsidiary, Nantahala Power and Light Company, and The Power Company of America, L.P. Duke states that the TSA sets out the transmission arrangements under which Duke will provide The Power Company of

America, L.P., non-firm point-to-point transmission service under Duke's Pro Forma Open Access Transmission Tariff. Duke requests that the Agreement be made effective as of January 23, 1997.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER97–1659–000]

Take notice that on February 11, 1997, Illinois Power Company (''Illinois Power''), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which NIPSCO Energy Services will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of February 1, 1997.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

18. Western Resources, Inc.

[Docket No. ER97–1660–000]

Take notice that on February 11, 1997, Western Resources, Inc., tendered for filing non-firm transmission agreements between Western Resources and Illinois Power Company, St. Joseph Light & Power Company, Wisconsin Electric Power Company, Western Power Services, Inc., Heartland Energy Services, and Sonat Power Marketing L.P. Western Resources states that the purpose of the agreements is to permit non-discriminatory access to the transmission facilities owned or controlled by Western Resources in accordance with Western Resources' open access transmission tariff on file with the Commission. The agreements are proposed to become effective as follows: Illinois Power Company, January 24, 1997, St. Joseph Light & Power Company, January 30, 1997; Wisconsin Electric Power Company, January 30, 1997; Western Power Services, Inc., January 31, 1997; Heartland Energy Services, February 1, 1997; and Sonat Power Marketing L.P., February 5, 1997.

Copies of the filing were served upon Illinois Power Company, St. Joseph Light & Power Company, Wisconsin Electric Power Company, Western Power Services, Inc., Heartland Energy Services, and Sonat Power Marketing L.P., and the Kansas Corporation Commission.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Company

[Docket No. ER97–1661–000]

Take notice that on February 11, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a transmission service agreement between itself and Northern Indiana Public Service Company (Northern). The agreement establishes Northern as a customer under Wisconsin Electric's transmission service tariff (FERC Electric Tariff, Original Volume No. 7).

Wisconsin Electric respectfully requests an effective date sixty days after filing. Wisconsin Electric is authorized to state that Northern joins in the requested effective date.

Copies of the filing have been served on Northern and the Public Service Commission of Wisconsin.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Public Service Corporation

[Docket No. ER97–1662–000]

Take notice that on February 11, 1997, Wisconsin Public Service Corporation (''WPSC''), tendered for filing an executed Transmission Service Agreement between WPSC and American Electric Power Service Corp. The Agreement provides for transmission service under the Open Access Transmission Service Tariff, FERC Original Volume No. 11.

*Comment date*: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

21. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation

[Docket No. ER97–1664–000]

Take notice that on February 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated January 31, 1997 (the Service Agreement) between Federal Energy Sales, Inc. (Federal Energy Sales) and OVEC. OVEC proposes an effective date of January 31, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Federal Energy Sales.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Federal Energy Sales.

*Comment date*: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

22. Ohio Valley Electric Corporation Indian-Kentucky Electric Corporation

[Docket No. ER97–1665–000]

Take notice that on February 12, 1997, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service, dated February 5, 1997 (the Service Agreement) between Duke/Louis Dreyfus L.L.C. (Duke/Louis Dreyfus) and OVEC. OVEC proposes an effective date of February 5, 1997 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Duke/Louis Dreyfus.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Order No. 888 compliance filing (Docket No. OA96–190–000).

A copy of this filing was served upon Duke/Louis Dreyfus.

*Comment date*: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

23. New England Power Company

[Docket No. ER97–1666–000]

Take notice that on February 12, 1997, New England Power Company (NEP) filed Service Agreements with U.S. Generating Co. and Wisconsin Electric Power Co. for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

24. Portland General Electric Company

[Docket No. ER97–1667–000]

Take notice that on February 12, 1997, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Second Revised Volume No. 2, an executed Service Agreement with the Okanogan Public Utility District.

Pursuant to 18 CFR 35.11 and the Commission's order issued July 30, 1993 (Docket No. PL93–2–002), PGE respectfully requests the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed Service Agreement to become effective February 1, 1997.

A copy of this filing was caused to be served upon the Okanogan Public Utility District as noted in the filing letter.

*Comment date*: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Company

[Docket No. ER97–1668–000]

Take notice that on February 12, 1997, New England Power Company (NEP) filed a Service Agreement with Fitchburg Gas & Electric Co. (FG&E) for non-firm, point-to-point transmission service under NEP's open access transmission tariff, FERC Electric Tariff, Original Volume No. 9.

*Comment date*: March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

26. Public Service Company of New Mexico

[Docket No. ER97–1669–000]

Take notice that on February 12, 1997, Public Service Company of New Mexico (PNM), submitted for filing an executed service agreement under the terms of PNM's Open Access Transmission Tariff with Southwestern Public Service Company. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

27. Southern Company Services, Inc.

[Docket No. ER97–1670–000]

Take notice that on February 12, 1997, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies) filed two (2) service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) with the following entities: (i) Illinois Power Company; and (ii) Morgan Stanley Capital Group, Inc. SCSI states that the service agreements will enable Southern Companies to engage in short-term market-based rate transactions with this entity.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

28. Black Brook Energy Company

[Docket No. ER97–1676–000]

Take notice that on February 12, 1997, Black Brook Energy Company tendered for filing a Petition for Initial Rate Schedule, Waivers and Blanket Authority.

*Comment date:* March 13, 1997, in accordance with Standard Paragraph E at the end of this notice.

29. City of Vernon, California

[Docket No. OA97–524–000]

Take notice that on February 7, 1997, City of Vernon, California (Vernon) filed an application for waiver of the requirements of Order No. 889. Vernon states that it meets the standards enunciated by the Commission for eligibility for such a waiver.

*Comment date:* March 20, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5481 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–P

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**[Project Nos. 11285–003]**

## Casitas Municipal Water District; Notice of Extension of Comment Date

February 28, 1997.

Because of delayed newspaper publication of the notice issued February 5, 1997 (62 FR 8235, February 24, 1997), for the Lake Casitas Power Project, the comment date in item j. is being extended from March 25, 1997 to April 1, 1997.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5480 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. PL97–1–000]**

## Issues and Priorities for the Natural Gas Industry; Notice of Public Conference and Opportunity To Comment

February 28, 1997.

Take notice that the Federal Energy Regulatory Commission is convening a public conference on May 29 and 30, 1997, to conduct a broad inquiry into the important issues facing the natural gas industry today, and the Commission's regulation of the industry for the future. The Commission expects a broad ranging discussion that will allow the members of the Commission to discuss these issues with the industry, and the public generally, in order for the Commission to establish its regulatory goals and priorities in the post-Order No. 636 [1] environment. We anticipate engaging all industry segments in a dialogue about how the industry currently works, how the industry is changing, and how the Commission's regulatory policies should respond to such changes in the marketplace.

I. Background

Since the issuance and implementation of Order No. 636, natural gas markets have developed rapidly and the industry has gained experience functioning under different conditions.[2] Also, significant changes in the structure of the natural gas industry have occurred since Order No. 636 issued. These include consolidation in the ownership of interstate pipelines, the spin-off and spin-down of gathering with the potential for state regulation, the emergence of mega marketers, and the emerging electric and gas convergence. In addition, many more market centers exist today, offering a wide array of services that increase the flexibility of the system and facilitate connections between gas sellers and buyers. These services commonly include wheeling, parking, loaning, and storage.

The interstate pipeline transportation grid has expanded significantly, offering

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Regs. Preambles Jan. 1991–June 1996] FERC Stats. & Regs. ¶ 30,939 (1992), *order on reh'g*, Order No. 636–A, [Regs. Preambles Jan. 1991–June 1992] FERC Stats. & Regs. ¶ 30,950 (1992), *order on reh'g*, Order No. 636–B, 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (1993).

[2] For example, the winters of 1993–94 and 1995–96 were relatively cold and capacity in some regions was tight, and the winter of 1994–95 relatively warm and capacity was unusually slack in some regions.

shippers more flexibility in their choice of supply areas, and creating new paths from existing supply areas to additional markets. Today, the natural gas contract is among the most heavily traded of all commodity futures. Also, pipeline capacity rights can now be traded, and electronic communication and trading is increasingly more common. Electronic trading systems enable buyers to discover the price and availability of gas at transaction points, submit bids, complete legally binding transactions, and prearrange capacity release transactions. Further, capacity release is also playing an increasingly significant role in permitting the reallocation of firm pipeline capacity to customers most desiring it. Capacity release permits shippers to release the rights to transportation on the segments of a pipeline they do not need, and to acquire firm rights in segments that connect to other supply areas, on a temporary or permanent basis. In sum, all of the changes that have occurred since Order No. 636 have given shippers better alternatives at less cost and greater reliability than ever before.

With all these advances, the industry now faces new issues. A few states have implemented unbundled retail access for all customer classes. Unbundled retail access is progressing in some states faster than others, and unbundled retail access generally is not available to all customer classes equally. Further, the exercise of market power behind the city gate may translate into the exercise of market power in the interstate transportation market. These developments may create new issues for the Commission in its regulation of interstate pipelines.

In addition, the ability of customers to buy and sell gas and transportation capacity, especially in the intraday market, is not yet a reality. Electric generators, for example, sell into increasingly competitive hourly electric markets. The natural gas market has not yet developed the ability to engage in transactions on an hourly basis. The Commission would like input on whether trading gas and transportation capacity on an hourly basis is desirable to meet the needs of customers. It may be that regulatory impediments exist that prevent the natural gas industry from offering such flexibility.

Under Order No. 636 the natural gas markets have improved industry reliability; however, there may be further improvements that could be made, and at a lower cost. From a competitive perspective, gas transportation and commodity markets are interconnected. Many commodity trades cannot occur without the appropriate transportation. Therefore, the Commission needs to continually assess the operation of the transportation system to ensure that unnecessary restrictions, particularly regulatory restrictions, do not impair the functioning of the commodity market. Are there aspects of interstate pipeline regulation that could facilitate the emergence of even more efficient natural gas commodity and transportation markets?

In the aftermath of Order No. 636, the Commission also sees more competition among interstate pipelines. Nontraditional interstate service providers, such as intrastate pipelines, Hinshaw pipelines and local distribution companies, are also competing with interstate pipelines to provide interstate service. This raises questions concerning the relative roles of NGPA Section 311[3] and NGA Section 7[4] in meeting the demand for new interstate services. Increased use of NGPA Section 311 to provide a wide variety of interstate transportation services creates questions about applying two different regulatory regimes.

In addition, there are longstanding issues respecting pricing and environmental review for new facilities. Furthermore, given the post-Order No. 636 evolution of the natural gas industry, there are questions concerning the Commission's criteria for the certification and siting of new interstate pipeline facilities.

At the same time, market power issues also remain a concern. Discrimination, affiliate abuse, and other exercises of market power by transporters and holders of interstate pipeline capacity (*i.e.*, LDC's, marketers, producers and endusers) can undermine the goals of open access and can pose impediments to greater regulatory flexibility.

The Commission remains committed to the fundamental goal of Order No. 636: ''improving the competitive structure of the natural gas industry in order to maximize the benefits of wellhead decontrol.'' [5] To that end, the Commission has already initiated certain regulatory changes to improve the functioning of the transportation grid. Among these are the standardization of interstate pipeline business practices,[6] which the Commission intends to be a continuing effort. The Commission also has adopted an alternative ratemaking policy, including market-based, negotiated, and incentive rates. Further, the Commission has obtained comments on the appropriateness of also permitting the negotiation of the terms and conditions of service.[7] The Commission has also considered capacity turnback issues in specific cases. The Commission has proposed improvements to the capacity release rules so that pipeline capacity can be traded more efficiently.[8] In addition to these initiatives, the Commission has also been urged to develop procedures to clarify and expedite the processing of complaints.

## II. Scope of Inquiry

As noted, the Commission is interested in obtaining public comment as to what should be the Commission's near-term and longer term regulatory priorities. We request a broad analysis of industry issues now and in the future, including those deemed the highest priority for Commission action. Specifically, the Commission would like input on issues of competition and market power, the general financial outlook for the industry, and the present and future development of industry segments (*e.e.*, pipelines, local distribution companies, producers, marketers, and consumers). We would also like an analysis of whether, and to what extent, the Commission's current approach to regulation should be altered. For example, in light of the issues identified, what procedural innovations should the Commission explore? How can the Commission more effectively address the issues inherent in a competitive environment? How should the Commission continue to fulfill its NGA mandate in an increasingly competitive market? It is the answers to these kinds of questions that the Commission seeks in this proceeding.

## III. Request for Comments

In order to focus and facilitate the organization of the discussion at the conference, the Commission requests written comments from interested participants to be filed with the Commission by April 29, 1997. The Commission requests that the

[3] 15 U.S.C. § 3371.

[4] 15 U.S.C. § 717f.

[5] Order No. 636 at 30,392 (citation omitted).

[6] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (July 26, 1996), III FERC Stats. & Regs. ¶ 31,038 (1996) (to be codified at 18 CFR Parts 161, 250 and 284).

[7] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 74 FERC ¶ 61,076 (1996).

[8] Secondary Market Transactions on Interstate Natural Gas Pipelines, 61 FR 41046 (August 7, 1996), IV FERC Stats. & Regs. ¶ 32,520 (proposed July 31, 1996).

participants include executive summaries in their comments, and file joint comments, wherever possible. Any person who wishes to make a formal presentation to the Commission should submit a request to the Secretary of the Commission along with the written comments. The Commission will issue a separate notice at a later date organizing the public conference.

An original and 14 copies of comments on these issues should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, and should refer to Docket No. PL97–1–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room during regular business hours.

Commenters are requested to submit a diskette containing the written comments. If the Commission receives diskettes with the comments submitted in hard copy, then the Commission will make the written comments also available on the Commission Issuance Posting System (CIPS). CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397 if dialing locally or 1–800–856–3920 if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. The full text of this order will be available on CIPS in ASCII and WordPerfect 5.1 format. CIPS user assistance is available at 202–208–2474. CIPS is also available on the Internet through the Fed World system. Telnet software is required. To access CIPS via the Internet, point your browser to the URL address: http://www.fedworld.gov and select the ''Go to the FedWorld Telnet Site'' button. When your Telnet software connects you, log on to the FedWorld system, scroll down and select FedWorld by typing: 1 and at the command line and type: /go FERC. FedWorld may also be accessed by Telnet at the address fedworld.gov.

All questions concerning the format of the conference should be directed to: Erica J. Yanoff, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–208–0708.

By direction of the Commission.

Lois D. Cashell,

*Secretary.*

[FR Doc. 97–5535 Filed 3–5–97; 8:45 am]

BILLING CODE 6717–01–M

## Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of February 3 Through February 7, 1997

During the week of February 3 through February 7, 1997, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: February 25, 1997.

George B. Breznay,

*Director, Office of Hearings and Appeals.*

Decision List No. 19

*Week of February 3 Through February 7, 1997*

Personnel Security Hearings

*Personnel Security Hearing, 2/3/97 VSO–0106,*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual habitually used alcohol to excess and had mental conditions (alcohol abuse and alcohol dependency) that cause or may cause a significant defect in judgment or reliability. These findings were based on the individual's two charges of Driving Under the Influence (DUI), his pattern of alcohol consumption despite the negative impact it had on his life and the fact that such consumption violated the terms of his probation, and the diagnoses of two mental health professionals, including one selected by the individual himself. The Hearing Officer found the Individual was not rehabilitated or reformed from his habitually excessive use of alcohol. The Hearing Officer also found that there was a security concern resulting from other alcohol consumption-related behavior that tended to show that the individual was not honest, reliable or trustworthy. However, the Hearing Officer found that the security concerns raised by other mental conditions diagnosed by the DOE psychiatrist were mitigated by the passage of time and a more current diagnosis in which another mental health professional expressed his opinion that such mental conditions were not present. Therefore, the Hearing Officer found that those concerns had been mitigated. Nevertheless, because of the security concerns based on his alcohol-related charges, the Hearing Officer recommended that the individual's access authorization not be restored.

*Personnel Security Hearing, 2/3/97, VSO–0113*

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. After considering the testimony presented at the hearing and the record, the Hearing Officer found that the individual habitually used alcohol to excess. This finding was based on the individual's two charges of Driving Under the Influence (DUI), the high amount of alcohol that the individual consumed and his belief that he had a drinking problem. Although the individual had attended a three month counseling program, he continued to drink. The Hearing Officer found the Individual was not rehabilitated or reformed from his habitually excessive use of alcohol. The Hearing Officer also found the Individual, due to his two DUI arrests, two assault charges, two domestic violence charges, two telephone harassment charges, and his unreformed drinking habitually to excess to have engaged in unusual conduct or to have been subject to circumstances which tend to show that he was not honest, reliable, or trustworthy; or which furnished reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of the national security. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

*Personnel Security Hearing, 2/7/97, VSO–0118*

A Hearing Officer found that an individual had not successfully mitigated security concerns arising from his provision of false information to the DOE and a pattern of criminal and other conduct that tended to show that the

individual was not honest, reliable, and trustworthy. Accordingly, the Hearing Officer recommended in the Opinion that the individual's access authorization not be restored.

Whistleblower Proceeding

*Charles Barry DeLoach, 2/5/97, VWA–0014*

Charles Barry DeLoach (DeLoach), a former employee of a Department of Energy (DOE) contractor, Westinghouse Savannah River Company (WSRC), filed a request for a hearing under the DOE's Contractor Employee Protection Program, 10 C.F.R., Part 708. DeLoach claimed that he was terminated from his job as a result of his raising issues with his superiors regarding various health and safety issues. WSRC claimed DeLoach was fired for stealing approximately $50,000 of DOE equipment. A hearing was held in which DeLoach and witnesses for WSRC testified before an Office of Hearings and Appeals Hearing Officer. On the basis of the testimony and other evidence in the record, the Hearing Officer concluded that DeLoach proved by a preponderance of the evidence that he had made disclosures protected by Part 708. However, the Hearing Officer further concluded that WSRC had proved by clear and convincing evidence that it would have taken this action even in the absence of DeLoach's disclosures. The Hearing Officer therefore determined that DeLoach was not entitled to any relief under 10 C.F.R. Part 708.

Implementation of Special Refund Procedures

*Houma Oil Co., Jedco, Inc., 2/7/97, VEF–0023, VEF–0024*

The DOE issued a Decision and Order establishing procedures for the distribution of funds obtained from Houma Oil Company and Jedco, Inc. These funds were remitted by each firm to the DOE to settle pricing violations with respect to sales of motor gasoline. The Decision sets forth procedures for customers who claim they were injured by motor gasoline purchases from Houma Oil during the period May 1, 1979 through April 30, 1980 or from Jedco, Inc. between November 1, 1973 and March 31, 1974. Any funds remaining after meritorious claims are paid will be used for indirect restitution through the states in accordance with the Petroleum Overcharge Distribution and Restitution Act of 1986.

Refund Applications

*Anchor Gasoline Corporation/Mid Continent Systems, Inc., Seago Enterprises, Inc., Atlantic Richfield Company/Seago Enterprises, Inc., 2/4/97, RF346–18, RF346–48, RF304–15507*

Both Seago Enterprises, Inc., and Mid Continent Systems, Inc., filed competing Applications for Refund in the Anchor special refund proceeding for the same purchases. The Anchor purchases had been made by Seago. However, the DOE found that Seago had merged into Mid Continent, and consequently, the right to the Anchor refund belonged to Mid Continent, not to the former owner of Seago. Accordingly, the application filed by Mid Continent was granted and that filed by Seago was denied. For these same reasons, the DOE rescinded a refund previously granted to Seago in the ARCO special refund proceeding.

*Pan Ocean Shipping Co., Ltd., 2/4/97, RG272–381*

The Department of Energy (DOE) issued a Decision and Order (D&O) granting an Application for Refund that was filed by Pan Ocean Shipping Co., Ltd. (Pan Ocean) in the crude oil refund proceeding. In the Decision, the OHA approved Pan Ocean's estimation methodology, which was based on their ships'' average daily fuel consumption, the number of days that their voyages lasted, and the petroleum product purchasing patterns of their vessels. Pan Ocean was granted a refund of $184,469.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

| | | |
|---|---|---|
| AJO TRADING CORPORATION | RJ272–35 | 2/4/97 |
| BLUFF CREST, INC | RJ272–36 | ..... |
| ALTAIR AIRLINES, INC | RG272–620 | 2/7/97 |
| NORTHERN COOPERATIVE, INC. ET AL | RG272–640 | 2/7/97 |
| RUDYARD COOPERATIVE COMPANY | RG272–658 | 2/4/97 |

Dismissals

The following submissions were dismissed.

| Name | Case No. |
|---|---|
| ENERGY MARKET & POLICY ANALYSIS, INC | VFA–0259 |
| ENSERCH CORPORATION | RG272–00495 |
| FARMERS UNION COOPERATIVE CO | RG272–00584 |
| KUMM FARM INC | RF272–89420 |
| L. KRUPP CONSTRUCTION CO., INC | RG272–00855 |
| LANKIN FARMERS GRAIN CO | RG272–00770 |
| LYNNEDALE PLANTING CO., INC | RF272–89268 |
| MIK COOP TRUCKING ASSN | RG272–00896 |
| NERSTRAND FARMERS MERC. & ELEV. CO | RG272–00664 |
| NEW YORK TELEPHONE COMPANY | RF272–89009 |
| THE CALIFORNIA STATE UNIVERSITY | RF272–87979 |
| WEST SHORE CONSTRUCTION | RG272–00789 |
| XEROX CORPORATION | RF272–93346 |

[FR Doc. 97–5516 Filed 3–5–97; 8:45 am]
BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPT–00210; FRL–5592–9]**

### National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL); Open Meeting

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

**ACTION:** Notice of open meeting and chemicals to be addressed.

**SUMMARY:** A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL) will be held on March 17–19, 1997, in Washington, D.C. At this meeting, the committee will continue deliberations as time permits on various aspects of the acute toxicology and development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: ethylene oxide; phosgene; aniline; toluene 2,6-diisocyanate and 2,4-isomer; isopropyl chloroformate; and hydrogen chloride.

**DATES**: A meeting of the NAC/AEGL will be held from 10 a.m. to 5 p.m. on Monday, March 17; from 8:30 a.m. to 5:00 p.m. on March 18; and from 8:30 a.m. to 11:15 a.m. on March 19, 1997.

**ADDRESSES:** The meeting will be held in Hearing Room C on the first floor of the Interstate Commerce Commission Building, 1201 Constitution Avenue NW, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Dr. Paul S. Tobin, Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St. SW., Washington, D.C. 20460, (202) 260–1736, e-mail: tobin.paul@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** For further information on the scheduled meeting, the activities of the committee or the submission of information on chemicals to be discussed at the meeting, contact Dr. Paul S. Tobin, the Designated Federal Officer (DFO) (see FOR FURTHER INFORMATION CONTACT).

The meeting of the NAC/AEGL will be open to the public. Oral presentations or statements by interested parties will be limited to ten minutes. Since seating for outside observers may be limited, those wishing to attend the meeting as observers should contact the NAC/AEGL DFO at the earliest possible date to insure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should also be directed to the DFO.

Another meeting of the NAC/AEGL is expected to be held in Washington, D.C. in June, 1997. It is anticipated that chemicals to be addressed at this meeting will include, but not necessarily be limited to the following: ammonia, carbon tetrachloride, allyl amine, ethylene imine, methyl isocyanate, chlorine trifluoride, diborane, methyl chloroformate, and propyl chloroformate. Inquiries regarding the submission of data, written statements or chemical-specific information on these chemicals should be directed to the DFO at the earliest date possible to allow for consideration of this information in the preparation of committee materials.

List of Subjects

Environmental protection.

Dated: February 27, 1997.

Joseph A. Carra,

*Acting Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 97–5684 Filed 3–5–97; 8:45 am]
BILLING CODE 6560–50–F

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Equal Employment Opportunity Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 62 FR 9430, Monday, March 3, 1997.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 2:00 p.m. (Eastern Time) Tuesday, March 11, 1997.

**CHANGE IN THE MEETING:**

Open Session

Item No. 2.B. Task Force presentation on Litigation Strategy has been removed from the agenda.

**CONTACT PERSON FOR MORE INFORMATION:** Frances M. Hart, Executive Officer, on (202) 663–4070.

Dated: March 3, 1997.

Frances M. Hart,

*Executive Officer, Executive Secretariat.*

[FR Doc. 97–5602 Filed 3–3–97; 4:28 pm]
BILLING CODE 6750–06–M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting

*Tuesday, March 11, 1997 at 10:00 a.m.*

**PLACE:** 999 E Street, N.W., Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

*Thursday, March 13, 1997 at 10:00 a.m.*

**PLACE:** 999 E Street, N.W., Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.
Advisory Opinion 1997–01: Susan Bevill Livingston on behalf of Tom Bevill and the Bevill Foundation.
Petition for Rulemaking Filed by James Bopp, Jr., on Behalf of the National Right to Life Committee, Inc.; Notice of Availability.
Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

*Secretary of the Commission.*

[FR Doc. 97–5729 Filed 3–4–97; 2:37 pm]
BILLING CODE 6715–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board

of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 20, 1997.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

*1. Randolph S. Miles*, Antioch, Illinois; to retain a total of 55.73 percent of the voting shares of Antioch Holding Company, Antioch, Illinois, and thereby indirectly retain State Bank of The Lakes, Antioch, Illinois.

*2. Cynthia M. Stout*, Antioch, Illinois; to retain a total of 25.44 percent of the voting shares of Antioch Holding Company, Antioch, Illinois, and thereby indirectly retain State Bank of The Lakes, Antioch, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

*1. Deborah Yowell Farley*, Killeen, Texas, and Sheryl Yowell Anderson, Austin, Texas; to each acquire an additional 10.00 percent, for a total of 29.99 percent, of the voting shares of Texas State Bancshares, Harker Heights, Texas, and thereby indirectly acquire Heights State Bank, Harker Heights, Texas.

Board of Governors of the Federal Reserve System, February 28, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 97–5448 Filed 3–5–97; 8:45 am]

**BILLING CODE 6210–01–F**

## Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq*.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 31, 1997.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

*1. Southern National Corporation*, Winstom-Salem, North Carolina; to merge with United Carolina Bancshares Corporation, Whiteville, North Carolina, and thereby indirectly acquire United Carolina Bank, Whiteville, North Carolina, and United Carolina Bank of South Carolina, Greer, South Carolina.

Board of Governors of the Federal Reserve System, February 28, 1997.

Jennifer J. Johnson,

*Deputy Secretary of the Board*.

[FR Doc. 97–5449 Filed 3–5–97; 8:45 am]

**BILLING CODE 6210–01–F**

## FEDERAL TRADE COMMISSION

## Public Workshop on Consumer Information Privacy

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice Requesting Public Comment and Announcing Public Workshop.

**SUMMARY:** The Federal Trade Commission has determined to hold a public workshop devoted to consumer information privacy. The workshop will be divided into three sessions.

*Session One* is intended to gather information as part of a Commission study of the collection, compilation, sale, and use of computerized data bases that contain what consumers may perceive to be sensitive identifying information, often referred to as ''look-up services.'' These data bases typically are used to locate individuals or develop individual background information. Interested parties are encouraged to submit written comments concerning the subject of this study, which is described more fully in the Supplementary Information section of this Notice. Any person who wishes to apply for participation in Session One must file a written comment addressing one or more of the questions set forth below under the heading: ''Session One: Computerized Data Bases Containing Sensitive Consumer Identifying Information.'' However, the Commission will consider comments of all persons, including non-participants in Session One.

*Sessions Two and Three* follow upon the Bureau of Consumer Protection's June 1996 public workshop on Consumer Privacy on the Global Information Infrastructure (''June 1996 Workshop''), which was held to provide an opportunity for public dialogue on the complex privacy issues posed by the emerging online marketplace. Sessions Two and Three are intended to update the Commission on the current status of the collection, compilation, sale, and use of personal information online, and on self-regulatory efforts and technological developments since June 1996. *Session Two* will address recent developments in the collection, compilation, sale, and use of personal information online generally, including self-regulatory efforts, technological innovations, and unsolicited commercial e-mail. *Session Three* will address the same developments as they pertain to children's personal information.

Interested parties who wish to apply for participation in Session Two must file a written comment addressing one or more of the questions listed below under the heading ''Session Two: Consumer Online Privacy.'' Interested parties who wish to apply for participation in Session Three must file a written comment addressing one or more of the questions listed below under the heading ''Session Three: Children's Online Privacy.'' However, Commission staff will consider comments of all persons, including non-participants in Session Two or Session Three, in determining what further Commission action, if any, it will recommend in the area of online privacy protections.

**DATES:** Written comments and notifications of interest in participating in the workshop must be submitted on or before April 15, 1997. Parties may apply to participate in more than one workshop session. Notifications of interest must specify the session(s) in which participation is sought. Requesters will be notified as soon as possible after May 15, 1997, if they have been selected to participate. The workshop will be held on June 10–13, 1997 in Room 432 of the Commission's headquarters building, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. The tentative

schedule for workshop sessions is as follows: Session One—June 10, 1997 (9:00 am—5:00 pm); Session Two—June 11, 1997 (9:00 am—5:00 pm) and June 12, 1997 (9:00 am—noon); Session Three—June 12, 1997 (1:30—5:00 pm) and June 13, 1997 (9:00 am—5:00 pm).

**ADDRESSES:** Six paper copies of each written comment and each request to participate in the workshop should be submitted to: Secretary, Federal Trade Commission, Room H–159, Sixth Street & Pennsylvania Ave., N.W., Washington, D.C., 20580. Comments for Session One should be captioned ''Data Base Study—Comment, P974806.'' Requests to participate in Session One should be identified as ''Data Base Workshop—Request to Participate, P974806.'' Comments for Sessions Two and Three should be captioned as ''Consumer Privacy 1997—Comment, P954807.'' Requests to participate in Sessions Two and Three should be identified as ''Consumer Privacy 1997—Request to Participate, P954807.''

To enable prompt and efficient review and dissemination of the comments to the public, comments also should be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a disk label stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individuals filing comments in electronic form need submit only one computer disk.

**FOR FURTHER INFORMATION CONTACT:** For questions concerning Session One: Steven Silverman, Attorney, Division of Credit Practices, Bureau of Consumer Protection, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2460. For questions concerning Session Two: Martha Landesberg, Attorney, Division of Credit Practices, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2825. For questions concerning Session Three: Toby Milgrom Levin, Attorney, Division of Advertising Practices, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–3156.

To obtain a copy of the Commission Staff Report *Consumer Privacy on the Global Information Infrastructure* (1996), contact the Commission's Public Reference Section, Room H-130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2222, or visit the Commission's home page at http://www.ftc.gov for instructions on obtaining an electronic copy.

**SUPPLEMENTARY INFORMATION:**

Session One: Computerized Data Bases Containing Sensitive Consumer Identifying Information

*Background*

In light of widespread concern and Congressional interest, the Commission has determined to conduct a study of the collection, compilation, sale, and use of computerized data bases that contain what consumers may perceive to be sensitive identifying information, often referred to as ''look-up services.'' Examples of such sensitive identifying information may include some or all of the following: social security numbers, mothers' maiden names, prior addresses, and dates of birth. Some data bases provide significantly more information, such as information about physical characteristics, property holdings, and the subject individual's family members and neighbors. Session One is intended to gather information as part of this study.

The study will assess the types of information that consumers perceive to be sensitive, as well as their level of concern regarding the maintenance of and access to such information. In addition, the study will evaluate the risks associated with the lawful and unlawful use of data bases containing sensitive identifying information, and the benefits offered by such data bases. Finally, the data base study will explore consumers' privacy concerns regarding the collection, sale and use of their identifying information. The study will not address data bases used primarily for direct marketing purposes; medical and student records; or the use of consumer credit reports for employment purposes. The study will culminate in a report to Congress.

*Invitation To Comment*

Interested parties are requested to submit written comments on any issue of fact, law or policy that may inform the Commission's study of the collection, compilation, sale, and use of computerized data bases that provide sensitive consumer identifying information, often referred to as ''look-up services.'' Please provide copies of any studies, surveys, research, or other empirical data referenced in responses. The Commission seeks comment on the following questions:

*Information Collection and Use*

1.1 What is the number and the identity of such data bases?

1.2 What information is contained in the data bases? Please provide specific examples.

1.3 What is the source of the information in the data bases?

1.4 What information is currently used to identify individuals? What types of information might be used to identify individuals in the future?

1.5 Do the data bases contain identifying information that consumers regard as sensitive? What identifying information is considered to be sensitive? Why is such information regarded as sensitive? Please provide specific examples.

1.6 Do the data bases contain identifying information that consumers regard as non-sensitive? What identifying information is considered to be non-sensitive? Why is such information regarded as non-sensitive? Please provide specific examples.

1.7 Who has access to the information in the data bases?

1.8 How is the information in the data bases accessed? What are the charges for accessing the information?

1.9 What are the uses of the information in the data bases? Are there beneficial uses of the information in these data bases? If so, please describe. Are there risks associated with the compilation, sale, and use of this information? If so, please describe.

1.10 Do these data bases create an undue potential for theft of consumers' credit identities? How is such potential for theft created? Please provide specific examples. What is the extent to which these data bases (as opposed to other means) contribute to consumer identity theft? Is this likely to change in the future? If so, please describe.

1.11 How do the risks of the collection, compilation, sale, and use of this information compare with the benefits?

1.12 Are there means that are currently available to address the risks, if any, posed by these data bases? If so, please describe.

1.13 What means might be considered in the future to address any risks posed by these data bases? What impact will potential solutions have on the beneficial uses of these data bases?

1.14 What are consumers' perceptions of (1) the benefits and risks associated with the collection, compilation, sale, and use of this information and (2) appropriate uses of such information?

1.15 Are consumers' privacy interests implicated by the collection,

compilation, sale, and use of information from these data bases? If so, please describe. Are other legal interests implicated? If so, please describe.

1.16 Are there means to address any privacy or other legal interests implicated by the collection, compilation, sale, and use of information from these data bases? If so, please describe.

1.17 How should the benefits of the collection, compilation, sale, and use of information from these data bases be balanced against privacy or other legal interests implicated by such practices? Are there other ways to obtain these benefits without implicating privacy or other legal interests? If so, please describe.

1.18 Is the ultimate use of the information disclosed to the subject individuals? At what point in time is the use of the information disclosed? What is the content of such disclosures? Is there any information that should be added to these disclosures? If so, please describe.

1.19 Do data base operators permit consumers to choose whether and how their personal identifying information will be collected and used? If so, please describe the choices provided to consumers.

1.20 Is there an effective mechanism for an individual to remove his or her name from a data base or otherwise control the use of their personal identifying information? If so, please describe.

1.21 Do subject individuals have access to their data and the ability to correct errors? If so, please describe.

1.22 Have data base operators instituted procedures to maintain the security of identifying information that they collect? What is the nature of such procedures? Are the procedures adequate? Please provide specific examples.

1.23 Are there additional procedures that are used or available to assure the accuracy of the data and to limit use of the data to its intended purpose? What is the nature of such procedures? Are the procedures adequate? Please provide specific examples.

1.24 Is the collection, compilation, sale, and use of this information subject to any federal laws or regulations? If so, please describe.

1.25 Is the collection, compilation, sale, and use of this information subject to any state laws or regulations? If so, please describe.

1.26 Should the collection, compilation, sale, and use of information from these data bases be subject to additional regulations or laws? If so, what regulatory or legal requirements are appropriate?

*Self-Regulation*

1.27 Have data base operators undertaken self-regulatory efforts to address concerns raised by the collection, compilation, sale, and use of sensitive consumer identifying information?

1.28 What is the content of principles, recommendations, or guidelines that have emerged? To the extent that industry associations have developed principles, recommendations, or guidelines, are they permissive or mandatory for association members? What sanctions are imposed for non-compliance? How many association members have implemented them? Please provide case studies, member surveys, or other quantitative data wherever possible.

1.29 Have such principles, recommendations or guidelines been effective in addressing concerns associated with the collection, compilation, sale, and use of sensitive consumer identifying information? How can the effectiveness of self-regulation in this area best be measured?

*Technological Developments*

1.30 Has technology evolved that could address concerns raised by the collection, compilation, sale, and use of sensitive consumer identifying information? Please describe any such developments.

1.31 What are the costs and benefits of employing such technology?

1.32 What are consumers' perceptions, knowledge and expectations regarding the risks and benefits of using such technology?

*Consumer and Business Education*

1.33 What efforts are underway to educate consumers about data bases containing sensitive consumer identifying information?

1.34 What are or should be the principle messages of such efforts?

1.35 How can education efforts best be implemented?

Workshop Sessions Two and Three

*Background*

The June 1996 Workshop identified key issues raised by information practices of commercial sites on the World Wide Web (the ''Web''), privacy concerns raised by those practices, and interactive technology's potential for addressing information privacy online. Participants in the June 1996 Workshop discussed a wide array of subjects, including the collection and use of personal information online; the necessary elements of self-regulatory efforts to enhance consumer privacy online; developments in interactive technology that could enhance online information privacy; consumer and business education efforts; the role of government in protecting online information privacy; and the special issues raised by the online collection and use of information from and about children. On January 6, 1997, the Commission published the staff report *Consumer Privacy on the Global Information Infrastructure* (1996), which summarized the workshop testimony. The report recommended that the Commission hold a follow-up workshop.

Unlike the June 1996 Workshop, which was convened primarily to provide a forum for the expression of views on online privacy issues, Workshop Sessions Two and Three are designed to collect empirical data relevant to those issues. Specifically, staff now seeks written commentary to document developments in four areas: (1) Web sites' current actual practices in the collection, compilation, sale, and use of consumers' personal information; (2) current implementation of self-regulatory efforts to address online privacy, including industry proposals presented at the June 1996 Workshop; (3) current design and implementation of technologies intended to enhance online information privacy; and (4) unsolicited commercial e-mail. Interested parties are requested to submit written comments on any issue of fact, law or policy that may inform the Commission on these subjects.

Session Two: Consumer Online Privacy

*Invitation To Comment*

To supplement and update the record developed at the June 1996 Workshop, the Commission seeks new evidence and additional comment on the following questions, a number of which were discussed generally at that Workshop. *Responses should provide specific examples, models, case studies, surveys or other research, and quantitative and empirical data wherever possible.* Please provide copies of any studies, surveys, research, or other empirical data referenced in responses.

*Information Collection and Use*

2.1 What kinds of personal information are collected by commercial Web sites from users who visit those sites and how is such information subsequently used? Among other things, is clickstream data being collected and

tied to personally identifying information?

2.2 To what extent is the collection, compilation, sale or use of personally identifying, as opposed to aggregate, personal information important for marketing online and for market research? What privacy concerns, if any, are raised by the collection or use of aggregate personal information in this context?

2.3 What are the risks, costs, and benefits of collection, compilation, sale, and use of personal consumer information in this context?

2.4 What surveys, other research, or quantitative or empirical data exist about consumers perceptions, knowledge and expectations regarding (1) whether their personal information is being or should be collected by Web site operators and the extent of such collection; (2) the benefits and risks associated with the collection and subsequent use of this information; (3) appropriate uses of such information; and (4) whether certain categories of information should never be collected or disclosed to others?

2.5 How many commercial Web sites collect, compile, sell or use personal information? Of these, how many give consumers notice of their practices regarding the collection and subsequent use of personal information? With respect to these Web sites, describe (1) how and when such notice is given, (2) the content of such notice, and (3) the costs and benefits, for both consumers and commercial Web sites, of providing such notice.

2.6 Of the commercial Web sites that collect, compile, sell or use personal information, how many provide consumers choice with respect to whether and how their personal information is to be collected and subsequently used by those sites? With respect to such Web sites, describe (1) what choices are provided to consumers and how such choices are exercised; and (2) the costs and benefits, for both consumers and commercial Web sites, of providing such choices.

2.7 Of the commercial Web sites that collect, compile, sell or use personal information, how many provide consumers access to, and an opportunity to review and correct, personal information about them that is collected and retained by those sites?

2.8 Of the commercial Web sites that collect, compile, sell or use personal information, how many have procedures to maintain the security of personal information collected from consumers online, and what are those procedures?

*Self-Regulation*

2.9 What industry principles, recommendations or guidelines have emerged since the June 1996 Workshop? Please discuss whether they are permissive or mandatory, whether they include sanctions for non-compliance, and the extent to which they have been implemented within the industry.

2.10 What steps have individual commercial Web sites taken since June 1996 to address online privacy issues? How many have employed the procedures for notice and choice set forth in the *Joint Statement on Online Notice and Opt-Out* presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

2.11 How many online services have implemented the procedures set forth in the Interactive Services Association's *Guidelines for Online Services: The Renting of Subscriber Mailing Lists* submitted for inclusion in the June 1996 Workshop record?

2.12 How many marketers have implemented the provisions of the Coalition for Advertising Supported Information and Entertainment's (CASIE) *Goals for Privacy in Marketing on Interactive Media* presented at the June 1996 Workshop?

2.13 What privacy concerns, if any, are not adequately addressed by existing guidelines?

*Technological Developments*

2.14 Has interactive technology evolved since June 1996 in ways that could address online privacy issues? To what extent is it currently available and being used by consumers and commercial Web sites?

2.15 What are the risks and benefits, to both consumers and commercial Web sites, of employing such technology? What are consumers' perceptions about the risks and benefits of using such technology to address online privacy issues?

*Unsolicited Commercial E-mail*

2.16 How widespread is the practice of sending unsolicited commercial e-mail? Are privacy or other consumer interests implicated by this practice? What are the sources of e-mail addresses used for this purpose?

2.17 What are the risks and benefits, to both consumers and commercial entities, of unsolicited commercial e-mail? What are consumers' perceptions, knowledge, and expectations regarding the risks and benefits of unsolicited commercial e-mail?

2.18 What costs does unsolicited commercial e-mail impose on consumers or others? Are there available means of avoiding or limiting such costs? If so, what are they?

2.19 Are there technological developments that might serve the interests of consumers who prefer not to receive unsolicited commercial e-mail? If so, please describe.

2.20 How many commercial entities have implemented the *Principles for Unsolicited Marketing E-mail* presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

Documents referenced in the above questions may be found in Appendix C to the Commission staff report *Consumer Privacy on the Global Information Infrastructure (1996).*

Session Three: Children's Online Privacy

*Invitation To Comment*

The June 1996 Workshop identified key issues raised by information practices of commercial Web sites that are directed to children (''children's commercial Web sites''), privacy concerns raised by those practices, and interactive technology's potential for addressing children's information privacy online. To supplement and update the record developed at the June 1996 Workshop, the Commission seeks new evidence and additional comment on the following questions, a number of which were discussed generally at that Workshop. *Responses should provide specific examples, models, case studies, surveys or other research, and quantitative and empirical data wherever possible.* Please provide copies of any studies, surveys, research, or other empirical data referenced in responses.

*Information Collection and Use*

3.1 What kinds of personal information are collected by children's commercial Web sites from children who visit those sites and how is such information subsequently used? Among other things, is clickstream data being collected and tied to personally identifying information about children; is information being collected from children to create lists for sending unsolicited e-mail?

3.2 To what extent is the collection, compilation, sale or use of personally identifying, as opposed to aggregate, children's personal information important for marketing online or for marketing research? What privacy concerns, if any, are raised by the collection or use of aggregate children's personal information in this context?

3.3 What are the risks, costs and benefits of the collection, compilation,

sale, and use of children's information in this context?

3.4 What surveys, other research, or quantitative or empirical data exist about parents' perceptions, knowledge and expectations regarding (1) whether their children's personal information is being or should be collected by Web site operators and the extent of such collection; (2) the benefits and risks associated with the collection and subsequent use of such information; (3) appropriate uses of such information; and (4) whether certain categories of children's information should never be collected or disclosed to others?

3.5 How many children's commercial Web sites collect, compile, sell or use children's personal information? Of these, how many give parents notice of their practices regarding the collection and subsequent use of personal information? With respect to these Web sites, describe (1) how and when such notice is given; (2) the content of such notice; and (3) the costs and benefits, for both parents and children's commercial Web sites, of providing such notice.

3.6 Of the children's commercial Web sites that collect, compile, sell or use children's personal information, how many provide parents choice with respect to whether and how their children's personal information is collected and subsequently used by those sites? With respect to such Web sites, describe: (1) what choices are provided to parents and how such choices are exercised; and (2) the costs and benefits, for both parents and children's commercial Web sites, of providing such choices.

3.7 Of the children's commercial Web sites that collect, compile, sell or use children's personal information, how many provide parents access to, and an opportunity to review and correct, personal information about their children that is collected and retained by those sites?

3.8 Of the children's commercial Web sites that collect, compile, sell or use children's personal information, how many have procedures to maintain the security of personal information collected from children online, and what are those procedures?

3.9 Do children's information practices in the online context differ from those implemented in other contexts? If so, describe the differences. Do the risks, costs, and benefits of these practices differ depending on the context? If so, describe the differences.

3.10 Do schools, libraries, and other settings in which children may have access to the Web, have a role to play in protecting children's privacy? What role do they currently play, and what role could they play in the future?

*Self-Regulation*

3.11 What industry principles, recommendations or guidelines have emerged since the June 1996 Workshop? Please discuss whether they are permissive or mandatory, whether they include sanctions for non-compliance, and the extent to which they have been implemented within the industry.

3.12 What steps have children's commercial Web site operators taken since June 1996 to address children's online privacy issues? To what extent have they adopted the principles outlined in the following documents submitted at the June 1996 Workshop: (1) the *Joint Statement on Children's Marketing Issues* presented by the Direct Marketing Association and Interactive Services Association; (2) *Self-Regulation Proposal for the Children's Internet Industry* presented by Ingenius, Yahoo and Internet Profiles Corporation; and (3) *Proposed Guidelines* presented by the Center for Media Education and Consumer Federation of America?

3.13 What privacy concerns, if any, are not adequately addressed by existing guidelines?

*Technological Developments*

3.14 Has interactive technology evolved since June 1996 in ways that could address children's online privacy issues? To what extent is it (a) readily available; (b) currently in use; (c) easy to use; and (d) effective in preventing children from disclosing personally identifiable information?

3.15 What are the costs and benefits, to both parents and children's commercial Web sites, of employing such technology? What are parents'' perceptions, knowledge and expectations of the risks and benefits of using such technology?

*Unsolicited Commercial E-mail*

3.16 How widespread is the practice of sending children unsolicited commercial e-mail? Are privacy or other consumer interests implicated by this practice? What are the sources of e-mail addresses used for this purpose?

3.17 What are the risks and benefits, to children, parents and commercial entities, of unsolicited e-mail directed to children? What are parents' perceptions, knowledge and expectations of the risks and benefits?

3.18 What costs does unsolicited commercial e-mail directed to children impose on children, parents, or others? Are there available means of avoiding or limiting such costs? If so, what are they?

3.19 Are there technological developments that might serve the interests of parents who prefer that their children not receive unsolicited commercial e-mail?

3.20 How many children's commercial Web sites have implemented the *Principles for Unsolicited Marketing E-mail* presented at the June 1996 Workshop by the Direct Marketing Association and the Interactive Services Association?

Documents referenced in the above questions may be found in Appendix C to the Commission staff report *Consumer Privacy on the Global Information Infrastructure* (1996).

Form and Availability of Comments

Comments should indicate the number(s) of the specific question(s) being answered, provide responses to questions in numerical order, and use a new page for each question answered.

Written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 C.F.R. Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at the Public Reference Room 130, Federal Trade Commission, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission will make this notice and, to the extent technically possible, all comments received in response to this notice available to the public through the Internet at the following address: http://www.ftc.gov. The Commission cannot currently receive comments responding to this notice over the Internet.

Workshop Sessions

The workshop will be held on June 10–13, 1997 in Room 432 of the Commission's headquarters building, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580. The tentative schedule for workshop sessions is as follows: Session One—June 10, 1997 (9:00 am–5:00 pm); Session Two—June 11, 1997 (9:00 am–5:00 pm) and June 12, 1997 (9:00 am–noon); Session Three—June 12, 1997 (1:30–5:00 pm) and June 13, 1997 (9:00 am–5:00 pm). Those parties who wish to participate in the workshop must file written comments and notify the Commission's Secretary, in writing, of their interest in participating in Sessions One, Two, and/or Three on or before April 15, 1997. Parties may participate in more than one workshop session; notifications of interest must specify the session(s) in which

participation is sought. All workshop sessions are open to the public.

The purpose of the workshop will not be to achieve a consensus of opinion among participants, or between participants and Commission staff, with respect to any issue raised in Sessions One, Two, or Three. The purpose of Session One will be to explore the issues raised by the Commission's study and discussed in the comments responding to this notice. The Commission will consider the views and suggestions made during Session One, as well as any written comments, as part of its study.

The purpose of Sessions Two and Three will be to update the Commission on the current collection and use of personal information online, and on self-regulatory efforts and technological developments since June 1996. Commission staff will consider the views and suggestions made during these sessions, as well as any written comments, in determining what further Commission action, if any, it will recommend in the area of online privacy protections.

If the number of parties who request to participate in Session One, Two, or Three is so large that including all requesters would inhibit effective discussion among the participants, then Commission staff will select a limited number of parties, from among those who submit written comments, to represent the significant interests affected by the study. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties will ask and answer questions based on their respective comments, including questions posed by Commission staff. The discussion will be transcribed and the transcription placed on the public record.

To the extent possible, Commission staff will select parties to represent the following affected interests. For Session One: data base operators and their customers; suppliers of data to data bases; federal, state and local law enforcement and regulatory authorities; consumer and privacy advocacy groups; and any other interests that Commission staff may identify and deem appropriate for representation. For Sessions Two and Three: consumer and privacy advocacy groups; industry groups, online service providers, Web site owners; online marketers; consumers who are active on the World Wide Web; interactive technology developers; and any other interests that Commission staff may identify and deem appropriate for representation.

Parties to represent the above-referenced interests will be selected on the basis of the following criteria:

1. The party submits a written comment (in the prescribed form) for one or more sessions and notifies Commission staff of its interest in participating in those sessions on or before April 15, 1997.

2. The party's participation would promote a balance of interests being represented at the conference.

3. The party's participation would promote the consideration and discussion of a variety of issues raised by the study.

4. The party has expertise in or knowledge of the issues that are the focus of the study.

5. The party adequately reflects the views of the affected interest(s) which it purports to represent, not simply a single entity or firm within that interest.

6. The party has been designated by one or more interested parties (who timely file written comments and requests to participate) as a party who shares group interests with the designator(s).

7. The number of parties selected will not be so large as to inhibit effective discussion among them.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both written comments and requests to participate, may be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Requesters will be notified as soon as possible after May 15, 1997, if they have been selected to participate in workshop sessions. To assist Commission staff in making this notification, parties are asked to include in their request to participate a telephone number and facsimile number if available.

Authority: 15 U.S.C. 41 et seq.

By direction of the Commission.

Donald S. Clark,

*Secretary.*

[FR Doc. 97–5562 Filed 3–5–97; 8:45 am]

BILLING CODE 6750–01–P

## GENERAL SERVICES ADMINISTRATION

### Notice of Intent to Prepare an Environmental Impact Statement for the Exterior Security of Federally Occupied Buildings in the District of Columbia

Pursuant to Section 102(2)(C) the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the General Services Administration (GSA) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental impacts of vehicle restrictions near selected federally-occupied buildings in the District of Columbia.

The GSA is investigating measures to improve security at buildings in the District of Columbia occupied by federal employees. In cooperation with the GSA, tenants of federally occupied buildings formed Building Security Committees (BSC) to decide the type and amount of security appropriate for their needs. The BSC recommended vehicle restrictions in the proximity of federal buildings. GSA will prepare an EIS to assess the potential effect of this type of recommendation and determine whether the impact of the recommended alternative is significant.

The GSA has identified 80 federally occupied buildings within the downtown of the District of Columbia that are currently at a security risk. A series of alternatives will be analyzed to determine the effectiveness at improving building security and determine the environmental impacts:

- No Action—This alternative presents no change in the existing vehicle restrictions.
- Partial Vehicular Restriction—Vehicle restrictions in proximity to federal buildings would only allow for authorized vehicles with a secure windshield sticker, placard, or other identifying marker.
- Total Vehicular Restriction—All vehicles in proximity to any at-risk federally occupied buildings would be prohibited.

The EIS to be prepared by the GSA will address the following potential areas of concern: economic impacts to the District of Columbia; traffic flow and mass transit; air quality; and public safety.

GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this proposed action.

Public scoping meetings are scheduled for:

*April 9, 1997 beginning at 7:30 p.m. at the General Services Administration Auditorium located at 18th and F Streets, NW., Washington, DC 20405 (enter on the F Street Entrance) and April 10, 1997 beginning at 1:30 p.m. at the General Services Administration Regional Auditorium located at 7th & D Streets, SW., Washington, DC 20407 (enter on the D Street Entrance)* These meetings will be announced in local newspapers.

A brief presentation will precede the request for public comment. GSA representative will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested groups and individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. All interested parties are invited to attend this meeting or submit comments in writing as described below. When registering, each attendee will be requested to indicate whether oral comments will be delivered at the meeting. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. Longer comments should be summarized at the public meeting or mailed to the address listed at the end of this announcement. To be most helpful, scoping comments should clearly describe specific issues or topics that the commenter believes the EIS should address. All written statements and/or questions regarding the scoping process should be mailed no later than April 24, 1997 to: Ms. Christine Kelly, General Services Administration, (WPCAA), Property Development Division, Room 2634, 7th & D Streets SW., Washington, DC 20407, telephone (202) 708–4900, ext. 256, E-mail *christine.kelly@gsa.gov*.

Dated: February 21, 1997.

William R. Lawson,

*Assistant Regional Administrator, Public Buildings Service.*

[FR Doc. 97–5477 Filed 3–5–97; 8:45 am]

**BILLING CODE 6820–23–M**

## GOVERNMENT PRINTING OFFICE

### Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will hold its Spring 1997 meeting on Monday, April 14, 1997, through Thursday, April 17, 1997, in Arlington, Virginia. The meeting sessions will take place from 8:30 a.m. until 5 p.m. on Monday, Tuesday, Wednesday and from 8:30 a.m. until 12 noon on Thursday. The sessions will be held at the Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, Virginia 22202. The purpose of this meeting is to discuss the Federal Depository Library Program. The meeting is open to the public.

A limited number of hotel rooms have been reserved at the Washington National Airport Hilton for anyone needing hotel accommodations. Telephone: 703–418–6800; FAX: 703–418–3762.

Please specify the Depository Library Council when you contact the hotel. Room cost per night is $124.

Michael F. DiMario,

*Public Printer.*

[FR Doc. 97–5557 Filed 3–5–97; 8:45 am]

**BILLING CODE 1520–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS).

*Times and Dates:* 9 a.m.–5:30 p.m., March 13, 1997; 9 a.m.–5:30 p.m., March 14, 1997.

*Place:* Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

*Status:* Open.

*Purpose:* The meeting will focus on the Committee's progress in addressing new responsibilities in health data standards and health information privacy as outlined in the administrative simplification provisions of P.L. 104–191, as well as on related matters. Departmental officials will brief the Committee on recent activities of the HHS Data Council, the status of HHS activities in implementing the administrative simplification provisions of P.L. 104–191, and related data policy activities. The Committee is scheduled to hear reports from its subcommittees and work groups dealing with privacy and confidentiality, data standards and populations at risk.

Information presentations are scheduled on conceptual frameworks for coding and classification, as well as on unique patient identifiers. The Committee also will discuss its priorities and work plans.

*Contact Person for More Information:* Substantive program information as well as summaries of the meeting and a roster of committee members may be obtained from James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie Greenberg, Acting Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: February 28, 1997.

James Scanlon,

*Director, Division of Data Policy.*

[FR Doc. 97–5517 Filed 3–5–97; 8:45 am]

**BILLING CODE 4151–04–M**

## Agency for Health Care Policy and Research

### Notice of Health Care Policy and Research; Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of March 1997:

Name: Health Care Policy and Research Special Emphasis Panel.

*Date and Time:* March 28, 1997, 1:00 p.m.

*Place:* Agency for Health Care Policy and Research, 2101 E. Jefferson Street, Suite 400, Rockville, MD 20852.

Open Mach 28, 1:00 p.m. to 1:15 p.m.

Closed for remainder of meeting.

*Purpose:* This Panel is charged with conducting the initial review of grant applications submitted in response to the National Research Service Award Individual Postdoctoral Fellowships Program. The postdoctoral research fellowships provide opportunities for 1 or more years of academic training and supervised experience in applying quantitative research methods to the systematic analysis and evaluation of health services.

*Agenda:* The open session of the meeting on March 28, from 1:00 p.m. to 1:15 p.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Acting Administrator, AHCPR, has made a formal determination that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Carmen M. Johnson, Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449 x1613.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: February 26, 1997.
Lisa Simpson,
*Acting Administrator.*
[FR Doc. 97–5494 Filed 3–5–97; 8:45 am]
**BILLING CODE 4160–90–M**

## Centers for Disease Control and Prevention

**[Announcement Number 730]**

## State Capacity Projects for Assessing and Preventing Secondary Conditions Associated With Disability and Promoting the Health of Persons With Disabilities; Notice of Availability of Funds for Fiscal Year 1997

### Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1997 cooperative agreements to establish and/or sustain capacity to assess the magnitude of disability in States, prevent secondary conditions associated with disability, and promote the health and wellness of persons with disabilities.

CDC is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a national activity to reduce morbidity and mortality and improve the quality of life. This Announcement is related to the Healthy People 2000 category, Preventive Services. (For ordering a copy of ''Healthy People 2000,'' see the section ''WHERE TO OBTAIN ADDITIONAL INFORMATION.'')

### Authority

This program is authorized by Section 301(a) (42 U.S.C. 241(a)) and Section 317 (42 U.S.C. 247b) of the Public Health Service Act, as amended.

### Smoke-free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. Public Law 103–227, the Pro Children Act of 1994 prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

### Eligible Applicants

Eligible applicants are the official public health departments of States or other State agencies or departments. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

State agencies applying under this announcement other than the official State health department must provide written concurrence from that agency and describe the proposed working relationship. Only one application from each State may enter the review process and be considered for an award under this program.

### Availability of Funds

A total of $5,300,000 is estimated to be available in FY 1997 to fund State capacity projects. CDC anticipates making 15–16 awards which will not exceed $350,000 each. Awards are expected to be made in June 1997, for a 12-month budget period beginning on July 1, 1997, within a project period of up to four years.

Funding estimates are subject to change, including funds to be awarded in continuation budget years. The funding levels for each continuation year of the project period are expected to remain constant at $350,000. However, the actual amount of future year funding levels will take into account documented progress toward objectives, the quality of subsequent project work plans, evidence of cost sharing, previous year expenditures, and the availability of funds.

### Use of Funds and Project Costs

These awards may be used for personnel services, supplies, equipment, travel, subcontracts, consultants, and services directly related to project activities. Funds may not be used to supplant State or local funds for the purpose of this cooperative agreement, for construction costs, to lease or purchase space or facilities, or for patient care. Awards made under this Announcement should also be used to enhance/increase expenditures from State, local, and other funding sources to augment program operations.

This program has no statutory matching requirement; however applicants should demonstrate and document their capacity to support a portion of project costs, increase cost-sharing over time, and identify other funding sources for expanding the project.

Financial assistance should be utilized for the following State capacity activities (refer to the attachment providing DEFINITIONS included in the application kit and also appended to this Announcement available through the CDC Home Page on the Internet <http://www.cdc.gov>):

1. The human resources needed to direct the statewide project, including facilitating leadership, visibility, coordination, and inclusion of the prevention of secondary conditions as a public health priority, both within the applicant agency and in cross-agency collaborations;
2. Support of an advisory function to assist in project guidance and oversight;
3. Developing and implementing a State plan and/or policy document for the prevention of secondary conditions that includes coordination with other related planning functions;
4. Gathering and analyzing disability information from targeted populations in the State and promoting the use of this data in developing and implementing disability policy and the resulting program direction;
5. Support of data collection using questions taken from BRFSS-related modules and other instruments;
6. Sustaining collaborations and partnerships with constituency organizations and individuals, and ensuring that access for persons with disabilities to project activities and facilities will be achieved;
7. Collecting and disseminating disability and health promotion information;
8. Designing, promoting, and measuring the impact of efforts toward informing the public, professionals, and persons with disabilities and their family members regarding the disabling process and the opportunities for intervention;
9. Providing technical assistance to disability service organizations and community groups.

States may budget funds within their maximum request of $350,000 to develop a university partnership which can expand the scope of the State in defining and assessing the magnitude and impact of disabilities at the State and community level. This partnership may also include establishing and sustaining a resource and research capacity to serve the State in identifying gaps and addressing unmet disability data/information and service needs, and in assisting in program evaluation.

Within their application, States should outline the rationale for selecting and contracting with the proposed university (denoting specific departments or programs), and describe the competencies and relationships in place at the university that will blend with State capacity to address and fulfill the proposed epidemiologic and program evaluation agenda.

Such a partnership is not a requirement of this Announcement. However, if State applicants elect not to

pursue the university affiliation; they must indicate how and by whom these enumerated tasks will be conducted (such as within the resources of the applicant agency).

Given the limits on funding for State capacity activities, it is important that applicants demonstrate their shared support in making a resource commitment for the project. States should identify those staff positions and other components of cost-sharing that will be supported by the applicant agency or other organizations in helping to achieve the objectives of the project. The sources and amounts of such contributions should be specified in the budget narrative and those amounts represented on the budget information sheet (Form 424A) under non-Federal budget categories. States receiving awards are expected to sustain (and make efforts to increase) that level of support throughout the project period. Meeting those commitments will be taken into account by CDC in funding level determinations for subsequent budget years.

Background

The CDC Office on Disability and Health (proposed), current name-Disabilities Prevention Program has provided financial assistance to States since 1988. These awards have permitted State health departments and other State agencies to build capacity in program identity, planning, surveillance of targeted disabilities, conduct of community-based interventions, training of providers, and providing health education/promotion curricula and conferences. Awards resulting from this Announcement are designed to assist States in shifting from assessing and preventing condition-specific etiologies (e.g., spinal cord injury, traumatic brain injury, fetal alcohol syndrome, mild mental retardation, spina bifida, cerebral palsy, osteoporosis, etc); toward building epidemiologic capacity to assess the magnitude of disability in States, developing data systems that contribute to the understanding of secondary conditions, and conducting other activities noted in the PROGRAM REQUIREMENTS section.

This change in approach acknowledges that over 49 million Americans have a disability and the national cost of disabilities is in excess of $170 billion each year, of which an estimated $85 billion is spent in federally-supported programs and services.

CDC has been assigned a Federal leadership role in assessing the magnitude of disability and the prevention of secondary conditions. Therefore, it is incumbent that this Announcement recognize that even though specific conditions or etiologies are important, each individually represents only a small portion of the total measure of disability in America. Broader disability domains and associated secondary conditions represent the major impact and effects of disability in terms of human and economic cost. CDC wishes to give priority to these broader effects of disability on Americans and address the importance of health promotion among persons with disabilities, preventing the loss of their independence and participation, and reducing the economic and human costs of secondary conditions. These are health and social concerns of great magnitude and national significance.

This Announcement emphasizes expanding the capacity of States to determine the magnitude of disability in their respective jurisdictions. States should also conduct and measure the effectiveness of programs to reduce or prevent secondary conditions, and assess the risk and protective factors related to their selected disability domain.

Disability domains are categories of activities that individuals perform in everyday life. States should propose activities in at least one of the following disability domains: (1) mobility (locomotion); (2) personal care/home management; (3) communication; and (4) learning. Descriptions and *examples* within these disability domains are as follow:

1. *Mobility* (locomotion) refers to an individual's ability to perform distinctive activities associated with moving; both himself and objects, from place to place. Examples of underlying conditions or diagnoses include persons with spinal cord injury, cerebral palsy, lower limb loss, blindness, arthritis, or stroke. Secondary conditions may include urinary tract infections, cardiovascular deficit due to sedentary lifestyle, pressure sores, results from falls, bowel obstruction, dependence on assistive devices and its economic impact, lack of access to medical care, and social isolation.

2. *Personal Care/Home Management* refers to an individual's ability to perform basic self-care activities such as feeding, bladder and bowel care, personal hygiene, dressing, financial management, and homemaking. Examples of underlying conditions or diagnoses include persons with arthritis, asthma, stroke, osteoporosis, paraplegia, or multiple sclerosis. Secondary conditions may include lack of physical fitness, weight gain, incontinence, poor nutrition, and emotional dependence.

3. *Communication* refers to an individual's ability to generate and express messages, and to receive and understand messages. Examples of underlying conditions or diagnoses include persons with cerebral palsy, deafness, aphasia from varied pathology, or congenital speech impediments. Secondary conditions may include family dysfunction, isolation, and constraints and barriers in employment opportunity.

4. *Learning* refers to an individual's ability to profit from daily experiences, and includes aspects of receiving, processing, remembering, and using information. Examples of underlying conditions or diagnoses include persons with mental retardation, spina bifida, fetal alcohol syndrome, or traumatic brain injury. Secondary conditions may include depression, behavioral problems, increased family stress, and poor academic and vocational performance.

Note that the examples listed above are illustrative, and not intended to be exhaustive. Several secondary conditions may apply to more than one disability domain. Because of limited funds and other resources available, this Announcement does not include disabilities created by psychiatric diagnoses, although mental health issues may be appropriately included as secondary conditions.

CDC will develop a set of questions taken from existing Behavioral Risk Factor Surveillance System (BRFSS) modules and add additional questions that must be asked by States funded under this Announcement. This would include asking an expected range of 20 to 25 questions that would take approximately 15–20 minutes to administer per interview. This process would employ BRFSS-like survey methods, designed to benefit the State in determining the magnitude of disability and selected secondary conditions. CDC will identify and finalize the survey questions by the time of issuance of awards in June 1997. The survey questions will be discussed with the successful State applicants in a start-up technical assistance conference to be held in Atlanta within 60 days of award. States will be required to implement (at a minimum) a point-in-time survey in the first year. The conduct of the BRFSS-like survey is expected to begin in early 1998 and would be repeated in the second and subsequent years of the project period, whether as a point-in-time survey or as a continuous

surveillance system at approximately the same range of annual expenditure.

For purposes of budgeting, applicants should set aside $50,000 of their financial assistance request to conduct the survey each year and describe the process, methods, and organizational structure within the State for its implementation. Since the States to be funded are not yet known, sample sizes for the survey based on population differences among States cannot yet be determined. Thus, with each State proposing $50,000 for this survey, adjustments to the awards will be made on an individual State basis once the sample sizes and resulting costs are determined. This will occur subsequent to the selection of States to be funded and during award negotiations.

Purpose

The purpose of these cooperative agreements is to assist States to develop highly visible programs for assessing the magnitude of disability in the State, preventing secondary conditions, and fostering health promotion among persons with disabilities within their own agency and through statewide collaborations. Financial assistance is being provided to allow States to work toward that goal by promoting public health leadership; building program visibility statewide; coordinating prevention services; using existing and emerging disability data; establishing an external or internal mechanism to enhance epidemiologic and program evaluation capabilities; providing technical assistance; and facilitating training, education, and health promotion programs directed to meet the needs of persons with disabilities. State capacity awards are also designed to support functions that promote and influence the activities of other organizations regarding these goals.

Program Requirements

Under this Program Announcement, States should develop strategies to identify the magnitude of a selected disability domain within the State in addition to the BRFSS-like survey. States should also be able to measure and characterize the incidence and prevalence of State-selected secondary conditions related to that domain, implement preventive interventions, and assess how participation is affected by secondary conditions.

State projects must include an organizationally-defined prevention office, an advisory function that includes broad representation with an emphasis on persons with disabilities, a strategic planning and/or policy development process, access to sound epidemiologic information on the magnitude of disabilities in the State, competence in guiding and overseeing education/health promotion activities for persons with disabilities, and the ability to establish and sustain communications/information dissemination systems.

To that end, applicants must propose a disability program office that includes a full-time manager/coordinator position with the authority to carry out all project requirements. *Applicants who do not include (and maintain) a full-time manager/coordinator position will not be eligible for award or continuation funding.* Applicants should present their plan and time line for staffing the disability program office and indicate how the proposed staff will function in facilitating and promoting the activities required under this Announcement. Applicants should describe the proposed staff disciplines and professional competencies needed to meet these requirements, while also coordinating and influencing those activities that reside outside of this office.

Applicants should describe the organizational structure and placement of the project and how this placement/location can maximize the applicant's capacity to promote State level policy and priority setting for the prevention of secondary conditions. CDC prefers that State disability program offices have a program title and organizational location that adequately conveys their State-level coordination functions and responsibilities.

Applicants must cite the present and/or proposed composition and structure of its advisory function, and indicate how maximum input by persons with a disability, and their family members, and minority populations will be achieved. CDC recommends as high ratios as practical, but requires that applicants provide a specific plan to maximize representation of persons with a disability, women, and minorities. *CDC requires that such a plan assures that the State advisory function includes a minimum representation of 25 percent of persons with a disability.*

States must note the disability domain selected and the basis for that determination. Within that domain, States should conduct surveillance assessing the prevalence of the selected domain in addition to the BRFSS-like survey. A variety of underlying conditions may contribute to the selected disability domain. To work toward that assessment, States should identify specific data sets which are available, and could be accessed to help ascertain the magnitude of disability within the selected domain.

Although separate State and other resources should be utilized for condition-specific surveillance, applicants may request a portion of cooperative agreement funds (up to a maximum of 15 percent of the total budget) to sustain surveillance for conditions or surveillance systems of importance (e.g., selected traumatic injuries, developmental disabilities, chronic diseases) that will contribute to the requirements of this Announcement.

Direct financing of interventions for primary prevention activities at the State or community level should be supported from resources apart from these awards; although the State disability program office may appropriately be used to provide technical assistance for planning, monitoring, and evaluation of these activities.

Cooperative Activities

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for activities under A. (Recipient Activities) and CDC shall be responsible for activities listed under B. (CDC Activities).

*A. Recipient Activities*

1. Develop a highly visible State-based program for the prevention of secondary conditions (see attachment providing DEFINITIONS for the list of State capacity activities included in the application kit and also appended to this Announcement available through the CDC Home Page on the Internet <http://www.cdc.gov>);

2. Establish coordination with other disabilities-related agencies, develop project objectives and time frames, provide technical assistance, and establish a mechanism for computerized communications/information systems;

3. Implement data collection using survey questions provided by CDC from existing BRFSS-related modules and other instruments;

4. Use existing disability data and access other State information in developing and implementing disability policy, including working with populations within a disability domain; and

5. Promote prevention planning in communities, conduct or guide education and health promotion activities (primarily for persons with disabilities), and evaluate their effectiveness.

*B. CDC Activities*

1. Provide scientific and programmatic technical assistance in

the planning, operation, and evaluation of disability data and health promotion activities;

2. Provide programmatic assistance in administrative and organizational aspects of project operations and provide information on project activities in other States and national initiatives;

3. Support project staff by conducting training programs, conferences, and workshops to enhance skills and knowledge;

4. Provide a point of referral for coordinating State, regional and/or national data pertinent to the disabling process; and

5. Provide survey questions to States from BRFSS-related modules and assist in the analysis of the resulting data.

Application Contents for State Capacity Projects

1. Document the background and need for support, including an overview (with evidence) of the disability problem in the State.

2. Describe the gaps in information and program services, and how this award will help close those gaps.

3. Provide a synopsis of prevention services now in place including those related to secondary conditions, denote other organizations with similar interests, discuss efforts to identify populations at risk, and provide an inventory of unmet needs that this award can help address.

4. Describe the plans to identify, designate, and utilize partner organizations and other collaborators in the conduct of the project and discuss their prospective roles in meeting agreed-upon objectives.

5. Describe the proposed structure of the advisory function and how it will function as a viable component for program guidance and oversight.

6. Present how the project will develop, disseminate, and implement a strategic plan and/or policy directive for the prevention of secondary conditions, and use it to advance this agenda within the State.

7. Provide letters of endorsement and support confirming proposed collaborations. These must represent specific, tangible commitments, not merely convey general interest and imprecise future relationships. Discuss how collaborations will function individually, and collectively contribute to the overall success of the project.

8. Provide a detailed work plan for all State capacity activities. The work plan should outline long-range goals for the four year project period, but also include detailed specific, measurable, and time-phased objectives by quarter the first two budget years of the project period.

9. Describe how the organizational linkages in place or to be negotiated will be utilized for data access, analysis, data sharing, and dissemination. Denote the internal State structure and the proposed university partnership (if selected) to enhance epidemiologic capability. Indicate the experience and competencies in place to assure that these epidemiologic activities can be performed successfully and within defined time frames.

10. Present the methods and organizational entities to be used for developing and conducting surveys using CDC-supplied BRFSS-related questions.

11. Describe and identify the information/data systems (including their title, ownership, linkage opportunities, and potential benefit) to be accessed for the selected disability domain. Outline how that data will be utilized in the design of health promotion programs or other interventions to prevent secondary conditions.

12. Indicate how the project will address the reliability and validity of epidemiologic data collected, and how it will be used for policy development and prevention practice.

13. Describe the plan, methods and structure (such as a university partnership) to be enlisted for ongoing program evaluation, noting the experience and competencies available, and how the evaluation component will be integrated into project operations.

14. Present how, and by whom the advisory function and strategic planning and policy activities of the project will be evaluated as to process and results.

15. Discuss how the delivery of health promotion and technical assistance activities will be measured and modified for greater quality, acceptance, and improved outcomes.

16. Present the plan to establish the State disability program office, clearly indicate the time frames for staff recruitment, and provide curriculum vitae for the proposed Principal Investigator and key project personnel.

17. Provide an organization chart of the proposed project delineating its placement, and discuss how this location and resultant linkages will serve to ensure the prominence of the program and its influence within the applicant agency.

18. Discuss how and by whom the project will be directed. Designate the responsibilities of all staff members in the State disability program office. Present the rationale for outlined tasks, and identify personnel (by positions) to be responsible for each identified objective.

19. Describe the plan for assuring that persons with disabilities as well as all racial, ethnic, gender, and cultural groups will have access to all project services, facilities, and opportunities for representation in the project.

20. Present the approach to design, influence, and/or provide leadership in training and education programs for health professionals and for the public, with an emphasis on groups at special risk. Indicate the subject areas and target audiences to be included in such programs. Describe the process for developing a system for disabilities-related information sharing and communications.

21. Prepare a budget and narrative that clearly and *fully justifies* all requested items, denoting the specific line categories for Federal financial assistance. The budget form should also list categories of non-CDC Federal funds and non-Federal funds that contribute to and comprise the total budget for the project.

22. In addition to the budget justification, applicants should denote the extent of State financial support of the project as documented by budget and narrative information. Indicate the level of full-time and majority-time staff and resources dedicated to this project and the level of other tangible costs to be borne by the applicant.

23. *Human Subjects (if applicable):* This section must describe the degree to which human subjects may be at risk and the assurance that the project will be subject to initial and continuing review by the appropriate institutional review committees.

Evaluation Criteria for State Capacity (Total 100 Points)

*1. Evidence of Need and Understanding of the Problem:* (10 Points)

Evaluation will be based on:

a. The applicant's description and understanding of the magnitude of disabilities showing evidence (as available) of estimates of incidence and/or prevalence, demographic indicators, scope of disabilities and their severity, and their associated costs.

b. The applicant's description of, and the extent of current prevention activities related to disability, including those related to the prevention of secondary conditions within the State. This description should describe need, available resources, populations-at-risk, knowledge gaps, and the use of this award in addressing those needs.

*2. Evidence of Collaboration:* (15 Points)

Evaluation will be based on:

a. Evidence of collaboration with other principal partners in the conduct of the project, including (if selected) the formal university partnership.

b. The description of the proposed advisory function including evidence of representation of persons with disabilities and its role and capacity to influence State-level policy.

c. The approach to develop and implement a State strategic plan and/or policy directive for the prevention of secondary conditions.

d. The description of the specific roles and responsibilities of these working partners including the products and services to be provided.

e. The presentation of evidence as to how these collaborations will result in successful implementation of the project.

*3. Goals and objectives:* (15 Points)

Evaluation will be based on the quality of the proposed project goals and objectives related to the conduct of the project. Objectives must be specific, measurable, achievable, and time-phased; and based on a formal work plan with descriptive methods and a timetable for accomplishment.

*4. Epidemiological Capacity:* (25 Points)

Evaluation will be based on:

a. The epidemiologic capacity and structure in place to coordinate and facilitate data collection, analysis, and dissemination.

b. The description of the approach and activities necessary to conduct the survey taken from CDC-provided BRFSS-related questionnaires.

c. The description of the approach to access other identified applicable State disability information sources, and how such data will be used.

d. The plan for how the university partnership (if selected) or other agency will be employed to facilitate epidemiologic excellence toward assessing the magnitude of disability and set intervention and health promotion priorities.

e. The accounts of how the project will assess the reliability and validity of epidemiological data collected and used for policy development.

*5. Program Evaluation:* (15 Points)

Evaluation will be based on:

a. The overall plan for evaluation of the project, including design, methods, partners, and process to be followed for implementation.

b. The description of how the advisory committee functions and planning activities of the project will be evaluated, and by whom.

c. The description of how the project will measure increases in public awareness, knowledge, behavior, and the overall benefits of health promotion delivery.

d. The description of how the project will assess changes in public policy, and measure the effects of its technical assistance and communications directed toward communities and special populations.

*6. Project Management and Staffing:* (20 Points)

Evaluation will be based on:

a. The description of the proposed staffing for the project, including the plan to expedite filling of all positions.

b. The description of the responsibilities of individual staff members including the level of effort and time allocation for each project activity by staff position.

c. The extent to which the placement of the project within the applicant organization assures maximum operational visibility and influence.

d. The strength of the presentation citing that all project facilities and services provided will be fully accessible to persons with disabilities.

e. The extent to which the application demonstrates direct involvement of personnel who reflect the racial, ethnic, gender, and cultural composition of the population to be served.

f. The plan to provide technical assistance, education and training, and health promotion programs; and the proposed design of a shared information and communications dissemination system.

*7. Budget Justification*: (Not Scored)

The budget section must demonstrate reasonableness, a concise and clear justification, accuracy, and full itemization of line categories for Federal and non-Federal funds comprising the total budget. It also must show consistency with the intended use of cooperative agreement funds.

*8. Human Subjects (if Applicable)*: (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

Funding Priorities

CDC intends that there be representation of all four listed disability domains among its State capacity recipients nationally. Therefore, to the extent that high quality and high ranking applications are reviewed, CDC plans to have no fewer than two States conducting prevention programs in each of the four disability domains.

As part of the funding decision process, CDC desires to achieve a balance of States that are geographically and demographically representative of the United States; and, to the extent practical, fund States in most or all of the ten Department of Health and Human Services Regions.

Priority for funding will be given to those States that both score high in the review and can also provide substantial commitment and *evidence* of tangible cost-sharing for financial and human resource contributions to this cooperative agreement. This includes commitments for both immediate and long-term support as the applicant's participation in project costs.

Priority for funding will also be given to those States that score high in the review and also demonstrate an organizational commitment to meet the requirements of this Announcement by integrating key project personnel within their agency personnelmerit system structure. In lieu of that capability, applicants should provide evidence that key personnel will be able to function effectively under an alternate staffing plan, such as through a contract/consultant personnel agreement, and present the basis and rationale for such action.

CDC considers it important that States expedite meeting the requirements of this Announcement. Hence, special consideration will be given to those applicants that demonstrate evidence of an immediate or short term capability to address these requirements, as opposed to a longer term approach for development of these components of the project. While extra points are not set aside for that capability, the objective review committee will view the tasks explicit in this Announcement in light of the applicant's facility for implementation and attainment over the short term, as opposed to not being in place until late or at the conclusion of the four year project period.

Reporting Requirements

Project narrative reports will be required twice annually; and due 31 days after the close of each six month calendar period. An original and two copies of the narrative progress report should be submitted to the CDC Grants Management Branch by January 31 and July 31 of each year. The January report should cover the period from July 1 to December 31. The July report should cover the period from January 1 to June 30. An original and two copies of the Financial Status Report is required to be submitted to the CDC Grants Management Branch no later than 90

days after the end of each budget period, or by September 30 of each year.

Special Instructions

Applicants must submit a separate typed abstract or summary of their proposal as a cover to their applications, consisting of no more than two double-spaced pages. Applicants should also include a table of contents for both the project narrative and attachments. The budget narrative and full budget justification must be placed immediately after the table of contents and abstract in the front of the application. Applications must be developed in accordance with PHS Form 5161–1. Applicants should organize their proposals along the lines of the application contents section for state capacity functions under this Announcement, as those elements are arranged to be compatible with the respective application review evaluation criteria.

The main body of the application narrative should not exceed 50 double-spaced pages. Pages must be numbered and printed on only one side of the page. All material must be typewritten; with 10 characters per inch type (12 point) on 8–½″ by 11″ white paper with at least 1'' margins, headers and footers (except for applicant-produced forms such as organizational charts, photos, graphs and tables, etc.). Applications must be held together only by rubber bands or metal clips. Applications must not be bound together in any other way. Attachments to the application should be held to a minimum in keeping to those items required by this Announcement.

Applicants may contract with other entities for the conduct of the project. These can include activities such as formal instruments with universities and faculty members as part of State capacity, facilitators for project meetings, training leaders/specialists, consultants for strategic planning, data collection contracts, intra-agency agreements in states for conducting surveys such as BRFSS-like questions provided by CDC, health promotion curriculum and communications/information systems development, questionnaire and survey design, and workshops and conferences.

Applicants are invited by CDC to attend a one day technical assistance meeting in Atlanta on Wednesday, March 26, 1997, to discuss the requirements of this Announcement, and to ask questions regarding its content. Interested State applicants should contact the official listed for obtaining programmatic information in the ''WHERE TO OBTAIN ADDITIONAL INFORMATION'' Section for the time and location.

CDC plans to hold a start-up conference for successful applicants early in the project cycle. That meeting will be held in Atlanta within 60 days of award. Details regarding that conference will be provided at the time of the issuance of grant awards. Applicants should include travel funds in their budgets to participate in this start-up conference, and for one additional workshop for key project staff late in the first budget year.

CDC considers it critical that States participate in these and future project meetings. *By virtue of accepting an award, States are understood to have agreed to use cooperative agreement funds for travel by project staff selected by CDC to participate in CDC-sponsored workshops and other called meetings.*

Executive Order 12372

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOCs of each affected State. A current list is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, no later than 60 days after the deadline date for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance (CFDA)

The Catalog of Federal Domestic Assistance number is 93.184.

Other Requirements

*Paperwork Reduction Act*

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

*Human Subjects*

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and forms provided in the application kit.

*Animal Subjects*

If the proposed project involves research on animal subjects, the applicant must comply with the ''PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions.'' An applicant organization proposing to use vertebrate animals in PHS-supported activities must file an Animal Welfare Assurance with the Office of Protection from Research Risks at the National Institutes of Health.

*Women and Minority Inclusion Policy*

It is the policy of CDC to ensure that women and racial and ethnic groups will be included in CDC-supported research projects involving human subjects, whenever feasible and appropriate. Racial and ethnic groups are those defined in OMB Directive Number 15 and include American Indian, Alaska Native, Asian, Pacific Islander, Black, and Hispanic. Applicants shall ensure that women, racial, and ethnic minority populations are appropriately represented in applications for research involving human subjects. Where clear and compelling rationale exist that inclusion is inappropriate or not feasible, this situation must be explained as part of the application. In conducting the review of applications for scientific merit, review groups will evaluate proposed plans for inclusion of minorities and both sexes as part of the scientific assessment and assigned score. This policy does not apply to research studies when the investigator cannot control the race, ethnicity, and/or sex of subjects. Further guidance to

this policy is contained in the Federal Register, Vol. 60, No. 179, Friday, September 15, 1995, pages 47947–47951.

Application Submission and Deadline

*A. Pre-Application Letter of Intent*

Although not a prerequisite of application, a non-binding letter of intent to apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer whose name is noted in section B. below. The letter should be postmarked no later than 30 days prior to the submission deadline. The letter of intent should identify the Announcement Number; name the proposed project director; and in a paragraph, describe the scope of the proposed project. The letter will not influence review or funding decisions, but it will enable CDC to plan the review more efficiently and ensure that applicants receive timely and relevant information prior to application submission.

*B. Application Submission*

The original and two copies of the application PHS Form 5161–1 (OMB Number 0937–0189) should be submitted to Mr. Ron Van Duyne, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, on or before Thursday, May 1, 1997.

1. *Deadline:* Applications will be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U. S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications that do not meet the criteria in 1.(a) or 1.(b). above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked your name, address, and telephone number and will need to refer to Announcement Number 730. You will receive a complete program description, information on application procedures, and application forms. In addition, this announcement is also available through the CDC Home Page on the Internet. The CDC Home Page address is http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 255 East Paces Ferry Road, NE., Room 321, Mailstop E–13, Atlanta, Georgia 30305, telephone (404) 842–6814. (Internet address: glj2@cdc.gov).

Programmatic and operational information may be obtained from Joseph B. Smith, Office on Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, Building 101, Mailstop F–29, Atlanta, Georgia 30341, telephone (770) 488–7082. (Internet address: jos4@cdc.gov). Epidemiologic and surveillance-related technical assistance is available from Donald J. Lollar, Ed.D. at the same address, telephone (770) 488–7094. (Internet address: dcl5@.cdc.gov).

An attachment to this Announcement provides definitions concerning the conceptional model of disability, secondary conditions; and includes a list and description of major State capacity activities (included in the application kit and also appended to this Announcement available through the CDC Home Page on the Internet <http://www.cdc.gov>).

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report; Stock number 017–001–00474–0) or ''Healthy People 2000'' (Summary Report; Stock number 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: February 28, 1997.

Joseph R. Carter,

*Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 97–5515 Filed 3–5–97; 8:45 am]

BILLING CODE 4163–18–P

## Administration for Children and Families

### Agency Record/keeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

*Title:* Community-Based Family Resource and Support Grants.

*OMB No.:* New Collection.

*Description:* The Program Instruction, prepared in response to the enactment of the Community-Based Family Resource and Support Grants (CBFRS), as set forth in Title II of Pub. L. 104–235, Child Abuse Prevention and Treatment Act Amendments of 1996, provides direction to the States and Territories to accomplish the purposes of (1) supporting State efforts to develop, operate, expand and enhance a network of community-based, prevention-focused, family resource and support programs that coordinate resources among existing human service organizations within the State; and (2) fostering an understanding, appreciation, and knowledge of diverse populations in order to be effective in preventing and treating child abuse and neglect. This Program Instruction contains information collection requirements that are found in Pub. L. 104–235 at Sections 202(1)(A); 202(b); 203(b)(1)(B); 205; and pursuant to receiving a grant award. The information submitted will be used by the agency to ensure compliance with the statute, complete the calculation of the grant award entitlement, and provide training and technical assistance to the grantee.

*Respondents:* State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Application | 57 | 1 | 40 | 2,280 |
| Annual report | 57 | 1 | 40 | 1,368 |

ANNUAL BURDEN ESTIMATES—Continued

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Estimated total annual burden hours: | | | | 3,648 |

*Additional Information:* ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by March 21, 1997. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Larry Guerrero at (202) 401–6465.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, *ATTN:* OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street N.W., Washington, D.C. 20503, (202) 395–7316.

Dated: February 28, 1997.

Bob Sargis,

*Acting Reports Clearance Officer.*

[FR Doc. 97–5451 Filed 3–5–97; 8:45 am]

BILLING CODE 4184–01–M

## Food and Drug Administration

**[Docket No. 97G–0063]**

## Cerestar Holding Co. B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., Ltd.; Filing of Petition for Affirmation of GRAS Status

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Cerestar Holding Co. B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., Ltd., have filed a petition (GRASP 7G0422) proposing to affirm that the use of erythritol is generally recognized as safe (GRAS) as an ingredient in human food.

**DATES:** Written comments by May 20, 1997.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Rosalie M. Angeles, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3107.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Cerestar Holding Co. B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., Ltd., c/o Hyman, Phelps & McNamara, 700 13th St. NW., suite 1200, Washington, DC 20005, have filed a petition (GRASP 7G0422) proposing that erythritol be affirmed as GRAS for use as an ingredient in human food.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Interested persons may, on or before May 20, 1997, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 12, 1997.

George H. Pauli,

*Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.*

[FR Doc. 97–5454 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–01–F

## Health Care Financing Administration

**[Document Identifier: HCFA–3427]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposals for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Reinstatement, with change, of previously approved collection for which approval has expired; *Title of Information Collection:* End Stage Renal Disease (ESRD) Application and Survey and Certification Report Form; *Form No.:* HCFA–3427; *Use:* This form is a facility identification and screening measurement tool used to initiate the certification and recertification of ESRD

facilities. The form is also completed by the Medicare/Medicaid State survey agency to determine facility compliance with ESRD conditions for coverage; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Governments; *Number of Respondents:* 2,640; *Total Annual Responses:* 1,056; *Total Annual Hours:* 2,376.

To obtain copies of the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, *Atten:* Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 27, 1997.

Edwin J. Glatzel,

*Director, Management Analysis and Planning Staff, Office of Financial and Human Resources, Health Care Financing Administration.*

[FR Doc. 97–5532 Filed 3–5–97; 8:45 am]

**BILLING CODE 4120–03–M**

**[OPL–014–N]**

## Medicare Program; March 24, 1997 Meeting of the Practicing Physicians Advisory Council

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

**DATES:** The meeting is scheduled for March 24, 1997, from 9 a.m. until 5 p.m. e.s.t.

**ADDRESSES:** The meeting will be held in the Stonehenge Room, 615F, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Pamela J. Gentry, Associate Administrator for External Affairs, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, (202) 690–7418.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Catalina E. Garcia, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C. (renominated—pending selection); Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Katherine L. Markette, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D. (renominated—pending selection); and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D.

The Council agenda will provide for discussion and comment on the following three items:

- Practice expense project.
- Administrative simplifications under the Health Insurance Portability and Accountability Act of 1966 (Public Law 104–191), enacted on August 21, 1996.
- Fraud and abuse provisions under the Health Insurance Portability and Accountability Act.

Council members will also receive an update on legislation, managed care, and Medicaid. In addition, new members will be sworn in to serve on the Council. Individuals or organizations who wish to make 5-minute oral presentations on the above issues should contact the Executive Director by 12:00 noon, March 13, 1997, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12:00 noon, March 19, 1997.

Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12:00 noon, March 19, 1997. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 27, 1997.

Bruce C. Vladeck,

*Administrator, Health Care Financing Administration.*

[FR Doc. 97–5511 Filed 3–5–97; 8:45 am]

**BILLING CODE 4120–01–P**

## Health Resources and Services Administration

## Notice Regarding Healthy Start Initiative Cooperative Agreements

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Correction of eligibility criteria for healthy start initiative cooperative agreements.

**SUMMARY:** In Notice document 97–1928 in the issue of Monday January 27, 1997 (62 FR 3903), make the following correction: The eligibility criteria on page 3904 in the second column, the paragraph preceding ''Funding Category; which states: ''A percentage of children under 18 with family incomes below the Federal Poverty Level which exceeded the national average of 22 percent for 1993 only'' has been changed to: ''A percentage of children under 18 years of age with family incomes below the Federal Poverty Level which exceeded the national average of 19.9% for 1990.''

This correction has been made to allow the use of 1990 Census data which is available and accessible to most communities. Applicants who have access to and wish to use more recent verifiable poverty data may do so.

Dated: March 3, 1997.
Ciro V. Sumaya,
*Administrator.*
[FR Doc. 97–5549 Filed 3–5–97; 8:45 am]
**BILLING CODE 4160–15–P**

## Substance Abuse and Mental Health Services Administration

## Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, Room 13A–54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443–6014.

**SUPPLEMENTARY INFORMATION:**

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Rd., Suite 21, Nashville, TN 37211, 615–331–5300

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931 / 334–263–5745

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 22021, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866 / 800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787 / 800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Dr., Brown Deer, WI 53223, 414–355–4444 / 800–877–7016

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310–215–6020

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

CompuChem Laboratories, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–549–8263/800–833–3984 (Formerly: CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P. O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 4048 Evans Ave., Suite 301, Fort Myers, FL 33901, 941–418–1700/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 800–898–0180/206–386–2672 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Harrison Laboratories, Inc., 9930 W. Highway 80, Midland, TX 79706, 800–725–3784/915–563–3300 (formerly: Harrison & Associates Forensic Laboratories)

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Ave., Cincinnati, OH 45229, 513–569–2051

LabOne, Inc., 8915 Lenexa Dr., Overland Park, Kansas 66214, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America, 888 Willow St., Reno, NV 89502, 702–334–3400 (formerly: Sierra Nevada Laboratories, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 113 Jarrell Dr., Belle Chasse, LA 70037, 504–392–7961

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MedExpress/National Laboratory Center, 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–526–6339

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–381–5213

Medlab Clinical Testing, Inc., 212 Cherry Lane, New Castle, DE 19720, 302–655–5227

MedTox Laboratories, Inc., 402 W. County Rd, D, St. Paul, MN 55112, 800–832–3244/612–636–7466

Methodist Hospital of Indiana, Inc., Department of Pathology and

Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Ave., Peoria, IL 61636, 800–752–1835/309–671–5199
MetroLab-Legacy Laboratory Services, 235 N. Graham St., Portland, OR 97227, 503–413–4512, 800–237–7808 (x4512)
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–338–4070/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Premier Analytical Laboratories, 15201 I–10 East, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas)
Presbyterian Laboratory Services, 1851 East Third Street, Charlotte, NC 28204, 800–473–6640
Puckett Laboratory, 4200 Mamie St., Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–526–0947/972–916–3376 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 800–574–2474/412–920–7733 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories, Inc.)
Quest Diagnostics Incorporated, 2320 Schuetz Rd., St. Louis, MO 63146, 800–288–7293/314–991–1311 (formerly: Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 800–446–4728/619–686–3200 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 25th St., Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–727–8800/800–999–LABS
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520
SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)
SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 800–523–0289/610–631–4600 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee St., Oklahoma City, OK 73102, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Ave., Woodland Hills, CA 91367, 818–226–4373/800–966–2211 (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.)
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 800–492–0800/818–996–7300 (formerly: MetWest-BPL Toxicology Laboratory)
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197.

Richard Kopanda,

*Executive Officer, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 97–5563 Filed 3–5–97; 8:45 am]

BILLING CODE 4160–20–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WO 310 1310 03–2410]**

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act; OMB Approval Number 1004–0074

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). On September 3, 1996, the Bureau of Land Management (BLM) published a notice in the Federal Register (61 FR 46480)

requesting comments on the collection. The comment period ended November 4, 1996. No comments were received. Copies of the proposed collection of information may be obtained by contacting the Bureau's Clearance Office at the phone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments:

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*Title:* Oil and Gas and Geothermal Resources Leasing (43 CFR 3120, 3209 and 3220).

*OMB Approval Number:* 1004–0074.

*Abstract:* Respondents supply information that will be used to determine the highest qualified bonus bid submitted for a competitive oil and gas or geothermal resources parcel on Federal land and to enable the BLM to complete reviews in compliance with the National Environmental Policy Act. The BLM needs the information to determine the eligibility of an applicant to hold, explore for, develop, and produce oil and gas and geothermal resources on Federal lands.

*Form Numbers:* 3000–2 and 3200–9.

*Frequency:* On occasion.

*Description of Respondents:* Individuals, small businesses, large corporations.

*Estimated Completion Time:* 2 hours each form.

*Annual Responses:* 443.

*Annual Burden Hours:* 886.

*Bureau Clearance Officer:* Carole Smith (202) 452–0367.

Dated: February 27, 1997.

Frank P. Bruno,

*Acting Manager, Regulatory Affairs Group.*

[FR Doc. 97–5556 Filed 3–5–97; 8:45 am]

BILLING CODE 4310–84–P

**[MT–921–07–1320–01; NDM 85515]**

## Coal Lease Offering

**AGENCY:** Bureau of Land Management, Montana State Office, Interior.

**ACTION:** Notice of coal lease offering by sealed bid NDM 85515, NDM 85517, NDM 85537 (Acq.)—The Coteau Properties Company, and NDM 85516—The Falkirk Mining Company.

**SUMMARY:** Notice is hereby given that the coal resources in the tracts described below in Mercer and McLean Counties, North Dakota, will be offered for competitive lease by sealed bid, in accordance with the provisions of the Mineral Leasing Act of February 25, 1920, as amended (41 Stat. 437; 30 U.S.C. 181 et seq.), and The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351–359 et seq.). This offering is being made as a result of applications filed by The Coteau Properties Company and The Falkirk Mining Company.

**SUPPLEMENTARY INFORMATION:** Environmental Assessments of the proposed coal developments and related requirements for consultation, public involvement and hearings have been completed in accordance with 43 CFR 3425. The results of these activities were a finding of no significant environmental impact.

Each tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for each tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

All tracts in this lease offering contain split estate lands. Regulations at 43 CFR 3427 set out the protection that shall be afforded qualified surface owners of split estate lands (as defined at 43 CFR 3400.0–5).

Coal Tracts Offered

The recoverable coal reserves of the tracts NDM 85515, NDM 85517, and NDM 85537 (Acquired) are contained in the Beulah-Zap lignite seam of the Sentinel Butte Formation of the Fort Union Group. The recoverable coal reserve of NDM 85516 is contained in the Hagel lignite seam of the Sentinel Butte Formation of the Fort Union Group.

*NDM 85515*

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in Mercer County, North Dakota:

*T. 145 N., R. 87 W., 5th P.M.*
Sec. 2: Lot 3, SE¼NW¼

The 79.470-acre tract contains an estimated 2.00 million tons of recoverable coal reserves. For NDM 85515, the Beulah-Zap seam averages 15.5 feet in thickness with an average overburden depth of 125 feet, 6,690 BTU/lb. in heating value, and 1.43% sulphur content.

*NDM 85516*

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in McLean County, North Dakota:

*T. 146 N., R. 81 W., 5th P.M.*
Sec. 30: Lot 4, SE¼SW¼, S½SE¼

The recoverable coal reserve in this 158.75-acre tract is contained in the Hagel lignite seam. The Hagel seam of the Sentinel Butte Formation of the Fort Union Group is split into two benches throughout the area. The upper bench, the Hagel A, ranges from 0 to 10.6 feet over the Falkirk Mine area and averages 8.6 feet in thickness, 6,082 BTU/lb. in heating value, and 0.55% sulphur content. Separating the upper and lower benches of the Hagel seam is an interburden layer ranging from 8 to 32 feet in thickness and consisting of clays, silts, and carbonaceous matter. The lower bench, the Hagel B, ranges from 0 to 4.4 feet over the mine area and averages 3.5 feet in thickness, 6,012 BTU/lb. in heating value, and 0.62% sulphur content. An estimated 1.75 million tons of recoverable lignite are present in the Hagel A and Hagel B coal seams.

*NDM 85517*

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in Mercer County, North Dakota:

*T. 146 N., R. 87 W., 5th P.M.*
Sec. 30: Lot 2
*T. 146 N., R. 88 W., 5th P.M.*
Sec. 26: SE¼SE¼
Sec. 34: E½

The 398.790-acre tract contains an estimated 5.61 million tons of recoverable coal reserves. For NDM

85517, the Beulah-Zap averages 17.0 feet in thickness with an average overburden depth of 57 feet, 6,766 BTU/lb. in heating value, and 0.46% sulphur content.

*NDM 85537 (Acquired)*

The coal resource to be offered consists of all recoverable reserves in the following-described lands located in Mercer County, North Dakota. The United States owns 50 percent mineral interest in these lands.

*T. 146 N., R. 87 W., 5th P.M.*
Sec. 31: NE¼

The Federal interest in the 160.00-acre tract contains an estimated 0.51 million tons of recoverable coal reserves. For NDM 85537 (Acquired), the Beulah-Zap seam averages 16.0 feet in thickness with an average overburden depth of 70 feet, 6,766 BTU/lb. in heating value, and 0.46% sulphur content.

Rental and Royalty

Leases issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 30 CFR 206.

Date

The lease sale will be held at 11:00 a.m., Wednesday, March 26, 1997, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59101.

Bids

Sealed bids must be submitted on or before 10:00 a.m., Wednesday, March 26, 1997, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107–6800. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

If identical high sealed bids are received, the tying high bidders will be requested to submit follow-up sealed bids until a high bid is received. All tie-breaking sealed bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

Notice of Availability

Bidding instructions for the offered tracts are included in the detailed statement of Lease Sale. Copies of the detailed statement and the proposed coal leases are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: February 26, 1997.

Thomas P. Lonnie,

*Deputy State Director, Division of Resources.*

[FR Doc. 97–5528 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–DN–P**

**[NV–030–1992–02]**

## Notice of Availability for the Denton-Rawhide Mine Expansion Project Final Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of availability for the Denton-Rawhide Mine Expansion Final Environmental Impact Statement (FEIS), Mineral County, Nevada.

**SUMMARY:** Pursuant to section 102 (2) (C) of the National Environmental Policy Act, 40 CFR 1500–1508 and 43 CFR 3809, notice is given that the Bureau of Land Management (BLM) has prepared, with the assistance of a third-party consultant, a FEIS for Kennecott Rawhide Mining Company's proposed Denton-Rawhide Mine Expansion, located approximately 55 miles southeast of Fallon, Nevada. Copies of the document are available for public review.

**DATES:** Written comments on the FEIS will be accepted until close of business on April 7, 1997. No public meetings are scheduled. Following the 30-day availability period of this FEIS, a Record of Decision (ROD) will be issued.

**ADDRESSES:** A copy of the FEIS can be obtained from: Bureau of Land Management, Carson City District Office, Attn: Terri Knutson, Rawhide Project Manager, 1535 Hot Springs Road 89706.

The FEIS is available for inspection at the following locations: BLM State Office (Reno) and BLM Carson City District Office.

**FOR FURTHER INFORMATION CONTACT:** For additional information, write to the above address or call Terri Knutson at (702) 885–6156.

Dated: February 24, 1997.

John O. Singlaub,

*District Manager.*

[FR Doc. 97–5476 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–HC–P**

**[(NM–930–1310–01); (NMNM 92169)]**

## New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease NMNM 92169 for lands in Chaves County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1996, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms of rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this Federal Register notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1930 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1996, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

For further information contact: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

Dated: February 26, 1997.

Lourdes B. Ortiz,

*Land Law Examiner*

[FR Doc. 97–5473 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–FB–M**

**[NM–070–1430–01; NMNM039649/NMNM96454, NMNM22493/NMNM97415]**

## Notice of Realty Action; Recreation and Public Purpose (R&PP) Act

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** R&PP transfer of title and change of use located in San Juan County, New Mexico.

**SUMMARY:** The following described public land are classified (previously) as being suitable for lease/conveyance under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et seq.). An assignment from the City of Farmington to the Farmington Municipal School District #5, with a change of use taking place for the following lands.

New Mexico Principal Meridian

T. 30 N., R. 13 W.,
Sec 25, S½SW¼NE¼SW¼,
SW¼SE¼NE¼SW¼,

S½SE¼SE¼NE¼SW¼,
S½NE¼SW¼NE¼SW¼,
S½NW¼SE¼NE¼SW¼,
NE¼SW¼SE¼, W½NE¼SW¼SE¼,
NW¼SE¼SW¼SE¼,
N½SW¼SE¼SW¼SE¼,
N½S½SW¼SW¼SE¼,
N½SW¼SW¼SE¼.

Containing 37.50 acres, more or less.

A transfer of title from the Farmington Municipal School District #5 to the City of Farmington, with a change of use taking place for the following lands.

New Mexico Principal Meridian

T. 30 N., R. 13 W.,
Sec. 25, SW¼.

Containing 40 acres, more or less.

**FOR FURTHER INFORMATION CONTACT:** Information related to this action, including the environmental assessment, is available for review at the Bureau of Land Management, Farmington District Office, 1235 La Plata Highway, Farmington, NM 87401.

**SUPPLEMENTARY INFORMATION:** Publication of this notice is to provide public notification that this transfer of title and change of use is being considered. The original land classifications remain the same.

Dated: February 28, 1997.

Joel E. Farrell,

*Assistant District Manager for Lands and Renewable Resources.*

[FR Doc. 97–5514 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–FB–M**

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**[CA–067–1230–00]**

## Establishment of Supplementary Rule for Use Management of Imperial Sand Dunes Recreation Area, California Desert District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Establishment of supplementary rule.

**SUMMARY:** The primary purpose of this supplementary rule is enhancement of public safety in the Imperial Sand Dunes Recreation Area. This rule will provide a safety zone between the heavy traffic on Gecko Road and those camping off the road.

The following rule is therefore recommended:

1. No person shall camp or park on the shoulder of Gecko Road in the Imperial Sand Dunes Recreation Area except where permitted by posted signs. In areas where there is no obvious shoulder, no one shall park or camp within 10 feet of the pavement of Gecko Rd. This includes all portions of Gecko Road. For purposes of this rule, the shoulder of the road is the compacted road base that extends from the edge of the pavement to where it drops off and resumes the natural contour of the surrounding terrain.

Background

The need for safety rules was identified during a series of public meetings held during preparation of the Imperial Sand Dunes Recreation Area Management Plan, completed in 1987. Safety hazards and methods of reducing them were high priority planning issues identified by participants at the planning meetings.

Additional safety precautions are needed to prevent accident or injury along Gecko Road. Visitors are parking and camping immediately adjacent to the road, and there is a high likelihood of accidents or injuries involving visitors parked or camped on the shoulder of the road.

**EFFECTIVE DATE:** Effective upon date of publication and will remain in effect until rescinded or modified by the authorized officer.

**FOR FURTHER INFORMATION CONTACT:** Chief Area Ranger Robert Zimmer, Bureau of Land Management, El Centro Resource Area, 1661 S. 4th St., El Centro, CA 92243 (619) 337–4407.

**SUPPLEMENTARY INFORMATION:** The authority for this restriction is provided in 43 CFR 8365.1–6. Violation of this restriction is punishable by a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months.

Dated: February 26, 1997.

Terry Reed,

*Area Manager.*

[FR Doc. 97–5529 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–40–M**

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**[CO–956–96–1420–00]**

## Colorado; Filing of Plats of Survey

February 25, 1997.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., February 25, 1997. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

The plat (in six sheets) representing the dependent resurvey of portions of the subdivisional lines, and certain mineral claims and portions thereof and the subdivision of section 29, T. 1 N., R. 71 W., Sixth Principal Meridian, Group 1008, Colorado, was accepted February 3, 1997.

This survey requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of portions of the south boundary, subdivisional lines, and the section subdivision lines of section 35, T. 1 S., R. 1 W., Ute Principal Meridian, Group 1144, Colorado, and the completion survey of section 35, the subdivision, the metes-and-bounds survey of lots and private land parcels A & B, the original meander of the left bank, and the informative traverse of the meanders of the actual right bank of the Gunnison River, all in section 35, was accepted February 10, 1997.

This survey was requested by BLM for administrative purposes.

The amended plat correcting the bearings and distances on the west boundary T. 33 N., R. 6 W., New Mexico Principal Meridian, Colorado, was accepted January 7, 1997.

The supplemental plat showing the correct position of corner no. 7 and line 7–1 of the Maysville Townsite and creating new lot 20 in section 3, T. 49 N., R. 7 E., New Mexico Principal Meridian, Colorado, was accepted January 9, 1997.

These plats were requested by BLM for administrative purposes.

Colin R. Kelley,

*Acting Chief Cadastral Surveyor for Colorado.*

[FR Doc. 97–5536 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–JB–P**

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**[ID–957–1420–00]**

## Idaho; Filing of Plats of Survey; Idaho

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. February 24, 1997.

The plat representing the dependent resurvey of portions of the subdivisional lines and the subdivision of section 15, T. 36 N., R. 2 E., Boise Meridian, Idaho, Group No. 903, was accepted February 24, 1997. This plat was prepared to meet certain administrative needs of the Nez Perce Tribe and the Bureau of Indian Affairs.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

February 24, 1997.

Duane E. Olsen,

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 97–5527 Filed 3–5–97; 8:45 am]

**BILLING CODE 4310–GG–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 701–TA–368–371 and 731–TA–763–766 (Preliminary)]**

### Certain Steelwire Rod From Canada, Germany, Trinidad & Tobago, and Venezuela

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

**SUMMARY:** The Commission hereby gives notice of the institution of the investigations and commencement of preliminary phase countervailing duty investigations 701–TA–368–371 (Preliminary) under section 703(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a)) (the Act) and antidumping investigations No. 731–TA–763–766 (Preliminary) under section 733(a) of the Act (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Germany, Trinidad & Tobago, and Venezuela of certain steel wire rod, provided for in subheadings 7213.91.30, 7213.91.45, 7213.91.60, 7213.99.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized and/or sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach preliminary determinations in countervailing duty and antidumping investigations in 45 days, or in this case by April 14, 1997. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 21, 1997.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207), as amended in 61 FR 37818 (July 22, 1996).

**EFFECTIVE DATE:** February 26, 1997.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

**SUPPLEMENTARY INFORMATION**

*Background.*—These investigations are being instituted in response to a petition filed on February 26, 1997, by counsel for Connecticut Steel Corp., Wallingford, CT; Co-Steel Raritan, Perth Amboy, NJ; GS Industries, Inc., Georgetown, SC; Keystone Steel & Wire Co., Peoria, IL; and North Star Steel Texas, Inc., Beaumont, TX.

*Participation in the investigations and public service list.*—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the Federal Register. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission countervailing duty and antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the Federal Register. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on March 19, 1997, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than March 13, 1997, to arrange for their appearance. Parties in support of the imposition of countervailing duty and/or antidumping duties in the investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 24, 1997, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 28, 1997.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 97–5466 Filed 3–5–97; 8:45 am]

**BILLING CODE 7020–02–P**

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**[Investigation No. 337–TA–390]**

### In the Matter of Certain Transport Vehicle Tires; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law

judge's (ALJ's) initial determination (ID) (Order No. 17) in the above-captioned investigation terminating the investigation based on withdrawal of the complaint.

**FOR FURTHER INFORMATION CONTACT:** Neal J. Reynolds, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3093.

**SUPPLEMENTARY INFORMATION:** On July 31, 1996, the Commission instituted this investigation based on a complaint filed by Michelin North America, Inc. (''MNA'). The complaint alleged that the importation and sale of certain transport vehicle tires violated section 337 of the Tariff Act of 1930 by infringing claims of U.S. Letters Patent 4,480,671 (''the '671 patent'') covering tread on a heavy duty tire. The companies named as respondents are Kumho Tire Co., Ltd. and Kumho Tire U.S.A., Inc. (''Kumho').

On November 27, 1996, Kumho filed a motion for summary determination of non-infringement. MNA opposed the motion. On December 12, 1996, Kumho also filed two motions requesting the ALJ to compel MNA to discover certain information relating to MNA's tire compounding and manufacturing processes. MNA opposed the discovery motions, arguing that the information requested by Kumho was extremely sensitive and highly sought-after proprietary information of MNA and that it was not relevant to the subject matter of the investigation. On December 24, 1996, the ALJ ordered MNA to produce the information (Order No. 12).

On January 7, 1997, pursuant to Commission rule 210.21(a), MNA moved for an order terminating the investigation based on withdrawal of the complaint. MNA stated that it was withdrawing the complaint and requesting termination of the investigation in order to protect its highly proprietary tire compounding information from discovery. Kumho opposed the motion, arguing that the ALJ should rule on the pending motion for summary determination before addressing the motion to terminate. On January 30, 1997, the ALJ granted MNA's motion to terminate and issued an ID terminating the investigation ''with prejudice'' (Order No. 17). The ALJ declined to issue a decision on Kumho's motion for summary determination.

On February 6, 1997, Kumho filed a petition for review of the ID terminating the investigation. In its petition, Kumho requested that the Commission vacate the ID and remand the investigation to the ALJ with instructions to rule on Kumho's pending motion for summary determination and its motion for discovery sanctions before ruling on MNA's motion to terminate. MNA and the IA have opposed the petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission rule 210.42, 19 C.F.R. §§ 210.42. Copies of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: February 28, 1997.

By order of the Commission.

Donna R. Koehnke,

*Secretary.*

[FR Doc. 97–5465 Filed 3–5–97; 8:45 am]

**BILLING CODE 7020–02–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Information Security Oversight Office; National Industrial Security Program Policy Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.2) and implementing regulation 41 CFR 101–6, announcement is made of the following committee meeting:

*Name of Committee:* National Industrial Security Program Policy Advisory Committee (NISPPAC).

*Date of Meeting:* March 25, 1997.

*Time of Meeting:* 10:00 a.m. to 12:00 noon.

*Place of Meeting:* National Archives and Records Administration, 700 Pennsylvania Avenue, NW, Washington, DC.

*Purpose:* To discuss National Industrial Security Program policy matters.

This meeting will be open to the public. However, due to space limitations and access procedures, the names and telephone numbers of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than March 20, 1997.

For Further Information Contact: Steven Garfinkel, Director, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW, Room 100, Washington, DC 20408, telephone (202) 219–5250.

Dated: February 28, 1997.

Mary Ann Hadyka,

*Policy and Communications Staff.*

[FR Doc. 97–5509 Filed 3–5–97; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL COMMUNICATIONS SYSTEM

### National Security Telecommunications Advisory Committee

**AGENCY:** National Communications System (NCS).

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the President's National Security Telecommunications Advisory Committee will be held on Tuesday, March 18, 1997, from 8:30 a.m. to 3:15 p.m. The Business Session will be held at the Department of State, 2101 C Street NW, Washington, DC. The Executive Session will be held at the Department of Treasury, 15th and Pennsylvania Avenue NW, Washington, DC. The agenda is as follows:

—Call to Order/Welcoming Remarks
—Manager's Report
—IES Report of Activities
—Information Assurance Task Force Report
—National Information Infrastructure Task Force Report
—Network Security Group Report
—Global Information Infrastructure and Information Assurance Topics
—Adjournment

Due to the potential requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense.

**FOR FURTHER INFORMATION:** Telephone (703) 607–6221 or write the Manager, National Communications System, 701 S. Court House Rd., Arlington, VA 22204–2198.

Dennis Bodson,

*Chief, Technology and Standards.*

[FR Doc. 97–5474 Filed 3–5–97; 8:45 am]

**BILLING CODE 5000–03–M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Submission for OMB Review; Comment Request

March 3, 1997.

The National Endowment for the Arts (NEA) has submitted the following public information collection request (ICR) to the Office of Management and

Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 [P.L. 104–13, 44 U.S.C. Chapter 35]. Copies of this ICR, with applicable supporting documentation, may be obtained by calling the National Endowment for the Arts' Director of Guidelines & Panel Operations, A.B. Spellman [(202) 682–5421]. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 682–5496 between 10:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the National Endowment for the Arts, Office of Management and Budget, Room 10235, Washington, DC 20503 [(202) 395–7316], within 30 days from the date of this publication in the Federal Register.

The Office of Management and Budget (OMB) is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate 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;
- Enhance the quality, utility and clarity of the information to be collected; and
- 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, e.g., permitting electronic submissions of responses.

**SUPPLEMENTARY INFORMATION:** The Endowment request the review of all of its funding application guidelines. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. § 3504(h).

*Agency:* National Endowment for the Arts.

*Title:* Blanket Justification for NEA Funding Application Guidelines FY 1998–FY 2001.

*OMB Number:* 3135–0112.

*Frequency:* Annually.

*Affected Public:* Nonprofit organizations, state and local arts agencies, and individuals.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 19.29 hours.

*Total Burden Hours:* 96,450.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* 0.

*Description:* Guideline instructions and applications elicit relevant information from individuals, nonprofit organizations, and state and local arts agencies that apply for funding from the NEA. Current Endowment categories include, but are not limited to: Grants to Organizations, Partnership Agreements, Literature Fellowships, American Jazz Masters, National Heritage Fellowships in the Folk & Traditional Arts, and Leadership Initiatives (including Millennium). This information is necessary for the accurate, fair and thorough consideration of competing proposals in the review process.

**ADDRESSES:** A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 516, Washington, DC 20506–0001, telephone (202) 682–5421 (this is not a toll-free number), fax (202) 682–5049.

Murray Welsh,

*Director, Administrative Services, National Endowment for the Arts.*

[FR Doc. 97–5538 Filed 3–5–97; 8:45 am]

BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–348 and 50–364]**

### Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company, Inc. (the licensee), for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would revise and clarify surveillance requirements for the Control Room Emergency Filtration System, the Penetration Room Filtration System, and the Containment Purge Exhaust Filter System.

This requested Technical Specification (TS) change is a followup to a Notice of Enforcement Discretion (NOED) granted to the licensee that is in effect for the period from 1:27 p.m. Eastern Standard Time on February 26, 1997, until approval of this exigent TS request and full implementation of the amendments within 30 days of its issuance. NRC Inspection Manual, Part 9900, ''Operations—Notices of Enforcement Discretion,'' requires that a followup TS amendment be issued within 4 weeks from the issuance of the NOED.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the requested amendments involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to convert from ANSI N510–1980 to ASME N510–1989 for specific FNP [Farley Nuclear Plant] filtration surveillance testing requirements do not affect the probability of any accident occurring. The consequences of any accident will not be affected since the proposed change will continue to ensure that appropriate and required surveillance testing for FNP filtration systems will be performed. Relocating specific testing requirements to the FNP FSAR [Final Safety Analysis Report] has no effect on the probability or consequences of any accident previously evaluated since required testing will continue to be performed.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Testing differences between ANSI N510–1980 and ASME N510–1989 have been evaluated by SNC [Southern Nuclear Operating Company, Inc.] and none of the proposed changes have the potential to create an accident at FNP. ANSI N510–1989 has been endorsed and approved by the NRC for licensee use in NUREG 1431. No new system design or testing configuration is being proposed that could create the possibility of any new or different kind of accident from any accident previously evaluated. Relocating specific testing requirements to the FSAR has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated since it is an administrative change in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Conversion from the testing requirements of ANSI N510–1980 sections 5, 8, and 14 to ASME N510–1989 sections 5, 8, and 14 has been previously approved by the NRC at other nuclear facilities. ASME N510–1989 has been approved and endorsed by the NRC in NUREG 1431. Relocating specific testing requirements to the FSAR has no effect on the margin of plant safety since required testing will continue to be performed. Therefore, SNC concludes based on the above, that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP technical specifications.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 7, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing.

The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Herbert N. Berkow: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated February 24, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room, located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 28th day of February 1997.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

*Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 97–5507 Filed 2–5–97; 8:45 am]

BILLING CODE 7590–01–P

## Industry Presentation on the Fabrication of Mixed Oxide Fuel

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Meeting notice.

**SUMMARY:** Representatives from the nuclear industry will be making presentations relating to the fabrication of mixed oxide (MOX) fuel for use in commercial light nuclear reactors. This meeting is a follow-up to the February 21, 1997, meeting where NEI presented material concerning the use of MOX fuel in nuclear reactors. The meeting is open to the public, and all interested parties may attend.

**DATES:** Wednesday, March 26, 1997, from 8:30 a.m. to 1:00 p.m.

**ADDRESSES:** U.S. Nuclear Regulatory Commission, Two White Flint North, Auditorium, 11545 Rockville Pike, Rockville, Maryland. (Note: The NRC is accessible to the White Flint Metro Station; visitor parking around the NRC building is limited.)

**FOR FURTHER INFORMATION CONTACT:** Ms. Vanice A. Perin, Mail Stop T–8–A–33, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. *Phone:* 301–415–8143; FAX: 301–415–5390; INTERNET: VAP@NRC.GOV. For material related to the meeting please contact U.S. NRC Public Affairs Office at (301) 415–8200 after March 26, 1997.

**SUPPLEMENTARY INFORMATION:** On January 14, 1997, the Department of Energy issued the Record of Decision (ROD) on the Storage and Disposition of Weapons-Usable Fissile Materials. One of DOE's approaches to dispose of the surplus plutonium is to burn it as MOX fuel in existing domestic commercial reactors.

The Nuclear Energy Institute (NEI) has requested the opportunity to present information on the use and fabrication of MOX fuel for nuclear reactors to NRC staff. This meeting is a follow-up to the February 21, 1997, meeting where NEI presented material concerning the use of MOX fuel in nuclear reactors. A preliminary agenda for the meeting is as follows: (1) Technology Confirmation Around the World, presented by the National Laboratories; (2) MOX Fabrication and Licensing Experience, presented by British Nuclear Fuels, Inc.; (3) MOX Fabrication and Licensing Experience, presented by Belgonucleaire; (4) MOX Fabrication and Licensing Experience, presented by Cogema; and (5) MOX Fabrication and Licensing Experience, presented by Siemens.

Attendees are requested to notify Ms. Vanice A. Perin at 301–415–8143 of their planned attendance if special requirements (e.g., for the hearing-impaired) are necessary.

Dated at Rockville, Maryland, this 28th day of February, 1997.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

*Division Director, Division of Fuel Cycle Safety and Safeguards.*

[FR Doc. 97–5508 Filed 3–5–97; 8:45 am]

BILLING CODE 7590–01–P

# RAILROAD RETIREMENT BOARD

## Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**SUMMARY OF PROPOSAL(S):**

(1) *Collection title:* Voluntary Customer Surveys in Accordance with E.O. 12862.

(2) *Form(s) submitted:* G–201, Web-Site Survey.

(3) *OMB Number:* N/A.

(4) *Expiration date of current OMB clearance:* N/A.

(5) *Type of request:* New collection.

(6) *Respondents:* Individuals or households, business or other for profit.

(7) *Estimated annual number of respondents:* 11,550.

(8) *Total annual responses:* 11,550.

(9) *Total annual reporting hours:* 1,043.

(10) *Collection description:* The Railroad Retirement Board (RRB) will utilize voluntary customer surveys to ascertain customer satisfaction with the RRB in terms of timeliness, appropriateness, access, and other

measures of quality service. Surveys will involve individuals that are direct or indirect beneficiaries of RRB services as well as railroad employers who must report earnings.

**ADDITIONAL INFORMATION OR COMMENTS:** Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

*Clearance Officer.*

[FR Doc. 97–5533 Filed 3–5–97; 8:45 am]

**BILLING CODE 7905–01–M**

## Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (16 U.S.C., Section 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 1997, shall be at the rate of 35 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 1997, 31.5 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.5 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: February 25, 1997.

By Authority of the Board.

Beatrice Ezerski,

*Secretary to the Board.*

[FR Doc. 97–5484 Filed 3–5–97; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–22534; 812–9450]**

## Capital Southwest Corporation, et al.; Notice of Application

February 28, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the ''Act'').

**APPLICANTS:** Capital Southwest Corporation (''CSC'') and Capital Southwest Venture Corporation (''CSVC'')

**RELEVANT ACT AND EXCHANGE ACT SECTIONS:** Order requested under section 6(c) of the Act for an exemption from sections 18(a), 18(c), 30, and 61(a) of the Act, under sections 17(d) and 57(a)(4) of the Act and rule 17d–1 thereunder to permit certain joint transactions, under section 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 57(c) of the Act for an exemption from section 57(a) of the Act.

**SUMMARY OF APPLICATION:** The order would permit CSC and CSVC to engage in certain transactions that would otherwise be permitted if CSC and CSVC were one company. The order also would permit modified asset coverage requirements for CSC and CSVC on a consolidated basis. In addition, the order would permit CSC and CSVC to file reports on a consolidated basis. The requested order would supersede a prior order.

**FILING DATES:** The application was filed on January 23, 1995, and amended on October 25, 1995, August 22, 1996, and February 27, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 25, 1997, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street N.W., Washington, D.C. 20549. Applicants, 12900 Preston Road, Suite 700, Dallas, Texas 75230.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Mercer E. Bullard, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. CSC is a business development company (''BDC''), as defined under section 2(a)(48) of the Act,[1] organized under the laws of Texas. CSVC, a wholly-owned subsidiary of CSC, is a Nevada corporation and is registered under the Act as a closed-end management investment company. CSVC is also licensed by the Small Business Administration (''SBA'') as a small business investment company (''SBIC'') under the Small Business Investment Act of 1958. CSC's principal business is to make, directly and through CSVC, loans and equity-type investments in small businesses.

2. Applicants request an order to permit CSC and CSVC to engage in certain transactions that would otherwise be permitted if CSC and CSVC were one company. The order also would permit modified asset coverage requirements for CSC and CSVC on a consolidated basis. In addition, the order would permit CSC and CSVC to file reports on a consolidated basis. The requested order would supersede a prior order obtained by CSC, which, among other things, permits CSC and CSVC to engage in certain joint transactions.[2]

Applicants' Legal Analysis

*A. Section 18*

1. Section 18(a) of the Act prohibits a registered closed-end investment company from issuing any class or senior security unless the company complies with the asset coverage requirements set forth in section 18. ''Asset coverage'' is defined in section 19(h) to mean the ratio which the value of the total assets of an issuer, less all

[1] Section 2(a)(48) generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Investment Company Act and makes available significant managerial assistance with respect of the issuers of such securities. Such issuers are small, nascent companies whose securities typically are illiquid.

[2] Investment Company Act Release Nos. 5640 (Mar. 25, 1969) (notice) and 5827 (Sept. 30, 1969) (order).

liabilities not represented by senior securities, bears to the aggregate amount of senior securities of such issuer. Under section 18(a), senior securities of closed-end investment companies representing indebtedness must have an asset coverage of 300% immediately after their issuance and senior securities of such companies representing stock must have an asset coverage of 200%. Section 18(k) provides for modified asset coverage requirements for SBICs. Section 61 makes section 18, with certain modifications, applicable to a BDC.

2. CSC and CSVC are subject to the requirements of section 18(a) (as modified by section 61 with respect to CSC). Applicants request relief from section 18(a) to the extent necessary to provide that senior securities issued by CSVC that are excluded from CSVC's individual asset coverage ratio by section 18(k) will be excluded from CSC's consolidated asset coverage ratio.

3. Applicants believe that CSC may be required to comply with applicable as set coverage requirements on a consolidated basis with CSVC. Applicants state that this would mean that CSC would treat as its own any liabilities of CSVC (with intercompany receivables and liabilities eliminated), including liabilities of CSVC with respect to senior securities as to which CSVC is exempt from the provisions of section 18(a) by virtue of section 18(k). Applicants state that section 18(k) is intended to benefit SBICs by permitting them to issue a greater amount of senior securities representing indebtedness than is otherwise permitted under section 18(a). Applicants further state that if senior securities representing indebtedness issued and sold by CSVC are treated as CSC's for purposes of section 18(a), then the consolidated entity (CSC and CSVC) would lose the benefits of section 18(k) to which CSVC is entitled as a SBIC.

*B. Sections 17(a) and 57(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between registered investment companies and certain affiliated persons of that company. Paragraphs (1), (2), and (3) of section 57(a) impose substantially the same prohibitions between BDCs and certain of their affiliates as described in sections 57(b) of the Act.

2. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, or under common control with, such investment company. Applicants state that CSC is an affiliated person of CSVC, and therefore subject to section 17(a) with respect to transactions between it and CSVC, because CSC owns one hundred percent of CSVC's voting stock. Section 57(b)(2) of the Act describes certain persons to which section 57(a) applies. Such persons includes a person directly or indirectly controlling, controlled by, or under common control with a BDC. Applicants state that they share a common board of directors and are under common control of persons serving as officers and directors of both CSC and CSVC. Accordingly, applicants state that CSVC is ''controlled by'' CSC for purposes of section 57(b)(2).

3. Applicants believe that, under sections 17(a) and 57(a), the acquisition by CSC of the capital stock of CSVC in exchange for part of CSC's investment portfolio may be considered as (a) a sale of a security of an investment company (CSVC's capital stock) to a BDC (CSC); (b) a sale of a security (part of CSC's investment portfolio) to an investment company; (c) a purchase from an investment company of a security by an affiliate; and (d) a purchase from a BDC of a security by an affiliate. Likewise, loan transactions between CSC and CSVC may be deemed to be purchases and sales of securities representing indebtedness by an affiliate of a BDC or an affiliate of an investment company, as applicable. In addition, applicants contend that there may be circumstances when it is in the interest of CSC and its shareholders that CSVC invest in securities of an issuer that may be deemed to be an affiliate of CSC or that CSC invest in securities of an issuer that may be deemed to be an affiliate of CSVC, as in the case of a portfolio company deemed to be affiliated with either CSC or CSVC as a result of its ownership of five percent or more of the portfolio company's outstanding voting securities.

4. Applicants request an order from the provisions of sections 17(a) and 57(a) (1), (2), and (3) to exempt (a) any transaction solely between CSC and CSVC with respect to the purchase or sale of securities or other property or the borrowing of any money or other property including the guarantee by CSC of CSVC's debts and (b) any transaction involving CSC and/or CSVC and portfolio affiliates of either or both of CSC and/or CSVC, but only to the extent that any such transaction would not be prohibited if CSVC (and all of its asset and liabilities) were deemed to be part of CSC, and not a separate company.

*C. Sections 17(d) and 57(a)(4) and Rule 17d–1*

1. Section 17(d) and rule 17d–1 make it unlawful for an affiliated person of a registered investment company or any affiliated person of such person, acting as principal, to participate in or effect any transaction in connection with any joint enterprise or arrangement in which any such registered company or a company controlled by it is participant, unless an order permitting such transaction has been granted by the SEC. Section 57(a)(4) imposes substantially the same prohibitions on joint transactions involving BDCs and certain of their affiliates as described in section 57(b). Section 57(i) provides that the rules and transactions subject to section 57(a)(4) in the absence of rules under that section. No rules with respect to joint transactions have been adopted under section 57(a)(4) and, therefore, the standards set forth under rule 17d–1 govern the requested order.

2. As noted above, CSC and CSVC are affiliated persons of each other. Applicants state that there may be circumstances when it is in the interest of CSC and its shareholders that CSC and CSVC invest in securities of the same issuer, either simultaneously or sequentially, in the same or different securities of such issue, and to deal with their investments separately or jointly. Accordingly, applicants request an order under sections 57(a)(4) rule 17d–1 to permit CSC or CSVC to invest in any portfolio company in which the other is or proposes to be an investor, but only to the extent that such transaction would not be prohibited if CSVC were deemed to be part of CSC and not a separate company.

*D. Reporting Requirements*

1. Sections 30 (a) and (d) of the Act and rules 30a–1, 30b–1, and 30d–1 thereunder require that certain information be filed with the SEC and be transmitted to shareholders on an annual or semi-annual basis. As a registered investment company, CSVC must file the reports required by the SEC under section 30. Section 13(a) of the Securities Exchange Act of 1934 requires any issuer of a security subject to section 12 thereof, such as CSC, to file such documents and information as the SEC may require to keep such issuer's registration current and such annual or other periodic reports as the SEC may prescribe.

2. Applicants state that the filing of separate reports and financial statements of CSVC with respect to its individual operations, in addition to such filings by CSC with respect to the consolidated operations of CSC and CSVC, is unduly burdensome and is not necessary to protect the investing public. Accordingly, applicants request an order granting relief to CSVC from

section 30 and rules 30a–1, 30b1–1, and 30–d to the extent necessary to permit CSC to file consolidated reports to the SEC and CSC's shareholders as provided in condition number four below.

*E. Standards for Relief*

1. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy of the Act. Applicants state that the operation of CSC as a BDC with a wholly-owned SBIC subsidiary is intended to permit CSC to expand the scope of its operations beyond that which would be permitted to it as an SBIC. Applicants further state that the requested exemptions would permit CSC and CSVC to operate effectively as one company even though they will be divided into two legal entities. Accordingly, applicants believe that the requested relief meets the section 6(c) standards.

2. Section 17(b) of the Act permits the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 57(c) permits the SEC to exempt a proposed transaction from sections 57(a)(1), (2), and (3) using substantially the same standard imposed by section 17(b). Applicants believe that the requested relief from sections 17(a) and 57(a) meets these standards.

3. In passing upon applications filed pursuant to rule 17d–1, the SEC considers whether the participation of the registered investment company in a joint enterprise or arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants believe that the requested authorization under sections 57(a)(4) and rule 17d–1 is appropriate.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be conditioned upon the following:

1. CSC will at all times own and hold, beneficially and of record, all of the outstanding capital stock of CSVC.

2. CSVC will have fundamental investment policies not inconsistent with those of CSC as set forth in CSC's registration statement; CSVC will not engage in any action described in section 13(a) of the Act, unless such action shall have been authorized by CSC after approval of such action by a vote of a majority (as defined in the Act) of the outstanding voting securities of CSC.

3. No person shall serve or act as investment adviser to CSVC unless the directors and shareholders of CSC shall have taken the action with respect thereto also required to be taken by the directors and sole shareholder of CSVC.

4. CSC shall (a) file with the SEC, on behalf of itself and CSVC, all information and reports required to be filed with the SEC under the Securities Exchange Act of 1934 and other applicable federal securities laws, including information and financial statements prepared solely on a consolidated basis as to CSC and CSVC, such reports to be in satisfaction of any separate reporting obligations of CSVC, and (b) provide to its shareholders such information and reports required to be disseminated to CSC's shareholders, including information and financial statements prepared solely on a consolidated basis as to CSC and CSVC, such reports to be in satisfaction of any separate reporting obligations of CSVC. Notwithstanding anything in this condition, CSC will not be relieved of any of its reporting obligations, including, but not limited to, any consolidating statement setting forth the individual statements of CSVC required by rule 6–03(c) of Regulation S–X.

5. CSC and CSVC may file on a consolidated basis pursuant to condition (4) above only so long as the amount of CSC's total consolidated assets invested in assets other than (a) securities issued by CSVC or (b) securities similar to those in which CSVC invests, does not exceed 10%.

6. No person shall serve as a director of CSVC unless elected as a director of CSC at its most recent annual meeting, as contemplated by section 16(a) of the Act. Vacancies on CSC's board of directors will be filled in the manner provided for in section 16(a). Notwithstanding the foregoing, the board of directors of CSVC will be elected by CSC as the sole shareholder of CSVC, and such board will be composed of the same persons that serve as directors of CSC.

7. CSC will not itself issue, and CSC will not cause or permit CSVC to issue, any senior security or sell any senior security of which CSC or CSVC is the issuer, unless immediately after the issuance or sale of any such senior securities, CSC and CSVC on a consolidated basis, and CSC individually, shall have the asset coverage that would be required by section 18(a) if CSC and CSVC had each elected to become a BDC pursuant to section 54 of the Act (except that, in determining whether CSC and CSVC, on a consolidated basis, have the asset coverage required by section 18(a), any borrowings by CSVC pursuant to section 18(k) of the Act shall not be considered senior securities and, for purposes of the definition of asset coverage in section 18(h), shall not be treated as indebtedness not represented by senior securities).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–5524 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

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**[Investment Company Act Release No. 22532; 811–5855]**

## Conestoga Family of Funds; Notice of Application

February 27, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** Conestoga Family of Funds.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Application requests an order declaring that it has ceased to be an investment company.

**FILING DATE:** The application was filed on November 12, 1996.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSESS:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 680 East Swedesford Road, Wayne, Pennsylvania 19087–1658.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. Applicant's Pennsylvania Tax-Free Bond Fund is a non-diversified investment company, and all other funds of applicant are diversified investment companies. On August 9, 1989, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–1A pursuant to section 8(b) of the Act and the Securities Act of 1933, covering an indefinite number of shares of common stock. The registration statement was declared effective on November 20, 1989, and the initial public offering of applicant's funds commenced thereafter.

2. On December 21, 1995, applicant's board of trustees considered and approved an Agreement and Plan of Reorganization (the ''Reorganization Agreement'') between applicant and CoreFunds, Inc. (''CoreFunds''). Pursuant to the Reorganization Agreement, the holders of each class of shares of applicant's Cash Management Fund, Tax-Free Fund, U.S. Treasury Securities Funds, Equity Fund, Intermediate Income Fund, Pennsylvania Tax-Free Bond Fund, Balanced Fund, and International Equity Fund (collectively, the ''Reorganizing Portfolios'') would receive the class of shares of the corresponding existing portfolios of CoreFunds (the ''CoreFunds Portfolios''). Also pursuant to the Reorganization Agreement, the holders of each class of shares of applicant's Special Equity Fund, Bond Fund, and Short-Term Income Fund (collectively, the ''Continuing Portfolios'') would receive the class of shares of the corresponding new portfolios of CoreFunds (the ''New CoreFunds Portfolios'').

3. In approving the Reorganization Agreement, the trustees identified certain potential benefits likely to result from the reorganization, including, (a) a broader array of investment opportunities available to shareholders, (b) existing purchase and redemption features will remain in place, and (c) the potential for economies of scale in portfolio management resulting from the larger asset size.

4. On February 15, 1996, proxy materials soliciting shareholder approval of the reorganization were sent to applicant's shareholders. The Reorganization Agreement was approved by applicant's shareholders at a special meeting held on March 22, 1996.

5. On April 15, 1996: (1) all of the assets of Conestoga Cash Management Fund were transferred to CoreFunds Cash Reserve in exchange for shares of CoreFunds Cash Reserve based on net asset value; (2) all of the assets of Conestoga Tax-Free Fund were transferred to CoreFunds Tax-Free Reserve in exchange for shares of CoreFunds Tax-Free Reserve based on net asset value; (3) all of the assets of Conestoga U.S. Treasury Securities Fund were transferred to CoreFunds Treasury Reserve in exchange for shares of CoreFunds Treasury Reserve based on net asset value; (4) all of the assets of Conestoga Equity Fund were transferred to CoreFunds Value Equity Fund based on net asset value; (5) all of the assets of Conestoga Intermediate Income Fund were transferred to CoreFunds Intermediate Bond Fund in exchange for shares of CoreFunds Intermediate Bond Fund based on net asset value; (6) all of the assets of Conestoga Pennsylvania Tax-Free Bond Fund were transferred to CoreFunds Pennsylvania Municipal Bond Fund in exchange for shares of CoreFunds Pennsylvania Municipal Bond Fund based on net asset value; (7) all of the assets of Conestoga Balanced Fund were transferred to CoreFunds Balanced Fund in exchange for shares of CoreFunds Balanced Fund based on net asset value; and (8) all of the assets of Conestoga International Equity Fund were transferred to CoreFunds International Growth Fund in exchange for shares of CoreFunds International Growth Fund based on net asset value. The aggregate net asset value of the shares of the corresponding existing CoreFunds Portfolios received by each Reorganizing Portfolio was equal to the aggregate net asset value of each such Reorganizing Portfolio. Thereafter, applicant's Reorganizing Portfolios made liquidating distributions to their shareholders so that a holder of a class of shares in a Reorganizing Portfolio received a class of shares of the corresponding existing CoreFunds Portfolio with the same aggregate net asset value as the shareholder had in the Reorganizing Portfolio immediately before the transaction.

6. On April 22, 1996, all of the assets of the Continuing Portfolios were transferred to corresponding New CoreFunds Portfolios in exchange for shares of the New CoreFunds Portfolios. The New CoreFunds Portfolios had only nominal assets and liabilities immediately prior to the transaction, and the number of shares of each class of shares of the New CoreFunds Portfolios issued in the transaction equalled the number of shares of each corresponding class of shares of the Continuing Portfolios that were issued and outstanding immediately prior to the transaction. Applicant thereafter made a liquidating distribution to shareholders of the Continuing Portfolios of a like number of full and fractional shares of the New CoreFunds Portfolios.

7. In connection with the reorganization, certain expenses were incurred and consisted primarily of professional fees, printing expenses, expenses associated with the special meeting of shareholders, and expenses associated with the winding up of applicant's affairs. The Reorganization Agreement provides that these expenses will be borne by Meridian Bancorp, Inc. and/or CoreStates Financial Corp., the bank holding companies that control the investment advisers.

8. Applicant has retained no assets. Applicant has no outstanding debts or liabilities. As of the date of the application, applicant has no security holders.

9. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

10. Applicant intends to file the necessary documentation with the Commonwealth of Massachusetts to effect its dissolution as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–5469 Filed 3–5–97; 8:45 am]

**BILLING CODE 8010–01–M**

**[Investment Company Act Release No. 22533; 811–5331]**

## Hampton Utilities Trust; Notice of Application

February 27, 1997.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

**APPLICANT:** Hampton Utilities Trust.

**RELEVANT ACT SECTION:** Section 8(f).

**SUMMARY OF APPLICATION:** Applicant requests an order declaring that it has ceased to be an investment company.

**FILING DATES:** The application was filed on December 3, 1996 and amended on February 21, 1997.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1997, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 777 Mariners Island Blvd., San Mateo, California 94404.

**FOR FURTHER INFORMATION CONTACT:** Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application.The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a closed-end, diversified management investment company organized as a business trust under the laws of the Commonwealth of Massachusetts. On September 15, 1987, applicant registered under section 8(a) of the Act and filed a registration statement on Form N–2 pursuant to section 8(b) of the Act and the Securities Act of 1933 to register its shares of beneficial interest. On March 7, 1988, applicant's registration statement was declared effective, and the initial public offering of applicant's shares commenced on the same date.

2. On December 16, 1993, applicant's board of trustees approved an Agreement and Plan of Reorganization (the ''Agreement'') between applicant and Franklin Custodian Funds, Inc. on behalf of its Utilities Series, pursuant to which applicant would transfer substantially all of its assets to the Utilities Series in exchange for shares of common stock of Utilities Series. In accordance with rule 17a–8 of the Act, applicant's board determined that the sale of applicant's assets to Utilities Series was in the best interests of applicant and that the interests of the existing shareholders would not be diluted as a result of the sale.[1]

3. The board's conclusion was based on a number of factors, including that the sale of applicant's assets to the Utilities Series in exchange for shares of Utilities Series would permit shareholders to pursue their investment goals in a larger fund with enhanced ability to effect portfolio transactions on more favorable terms and with greater investment flexibility. The board also considered that as shareholders of an open-end fund, the holders of applicant's Capital Shares would have redemption rights and exchange privileges that were not previously available.

4. As of March 7, 1994, applicant was a closed-end investment company with two classes of shares outstanding: The Cumulative Preferred Shares and the Capital Shares. On that date, in accordance with applicant's Restated Declaration of Trust, dated December 16, 1993, all of the Cumulative Preferred Shares were redeemed by applicant in cash at $50.00 per share.

5. On or about May 30, 1994, proxy materials soliciting shareholder approval of the Agreement were furnished to holders of applicant's Capital Shares and filed with the SEC. Applicant's shareholders approved the Agreement at an annual meeting held on July 14, 1994.

6. On August 4, 1994, there were 1,032,684 Capital Shares of applicant outstanding at a net asset value of $12.54 per share. At such date, aggregate net assets amounted to $12,950,208.48.

7. On August 5, 994 (the ''Closing Date''), applicant transferred substantially all of its net assets to the Utilities Series in exchange solely for shares of common stock of Utilities Series having an aggregate net asset value equal to the aggregate value of net assets transferred. The number of shares was determined by dividing the aggregate value of applicant's assets to be transferred on the Closing Date by the net asset value per share of common stock of Utilities Series as of 1:00 p.m. Pacific time on Closing Date. Shares of Utilities Series were distributed to the holders of applicant's Capital Shares pro rata in accordance with their respective interest in applicant.

8. The expenses incurred in connection with the reorganization were approximately $90,370. These expenses included printing and mailing costs for proxy materials and related documents. One half of these costs were borne by Franklin Advisers, Inc. through a reimbursement of the amounts advanced by applicant and Utilities Series, and the remainder of the costs were borne by applicant.

9. Applicant has no securityholders, assets, or liabilities. Applicant is not a party to any litigation or administration proceeding. Applicant is not now engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

10. A Notice of Termination of Trust was filed with the Massachusetts Secretary of State on October 4, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–5468 Filed 3–5–97; 8:45 am]

**BILLING CODE 8010–01–M**

[1] Applicant and Franklin Custodian Funds, Inc., may be deemed to be affiliated persons of each other solely by reason of having a common investment adviser, common director, and/or common officers. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption from certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

**[Release No. 35–26679]**

## Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

February 28, 1997.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available

for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 24, 1997, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Western Massachusetts Electric Company (70–8959)

Western Massachusetts Electric Company (''WMECO'' or the ''Applicant''), a wholly owned electric utility subsidiary of Northeast Utilities, a registered holding company, located at 174 Brush Hill Avenue, West Springfield, Massachusetts 01089, has filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 thereunder.

WMECO requests that: (i) WMECO be allowed to organize a wholly-owned special purpose corporation to be called WMECO Receivables Corporation (''WRC'') for the sole purpose of acquiring certain of WMECO's eligible accounts receivable; (ii) WRC be allowed to issue shares of Common Stock; (iii) WMECO be allowed to acquire shares of capital stock of WRC; and (iv) WMECO be allowed to make, directly and indirectly, general and initial equity contributions to WRC.

WMECO has entered into a Receivables Purchase and Sale Agreement dated as of September 11, 1996, as amended (''Existing Agreement'') under which WMECO may sell (from time to time in its discretion and subject to the satisfaction of certain conditions precedent) fractional, undivided ownership interests expressed as a percentage (''Undivided Interests'') in: (i) Billed and unbilled indebtedness of customers, as booked to Accounts 142.01 and 173 under the Federal Energy Regulatory Commission Chart of Accounts (''Receivables''); and (ii) certain related assets, including any security or guaranty for any Receivables, and collections thereon, and related records and software (''Related Assets''). The purchaser (''Purchaser'') is a special purpose Delaware corporation which acquires receivables and other assets and issues commercial paper to finance these acquisitions. A Swiss bank will act as agent (''Agent'') for the Purchaser for transactions under the Existing Agreement.

The Existing Agreement is structured so that any sales made thereunder would be accounted for as sales under generally accepted accounting principles. In order for such sales made on or after January 1, 1997 to be so treated, they must comply with the requirements of the Statement of Financial Accounting Standards No. 125 (''FAS 125'') issued in June 1996. The formation of WRC is intended to satisfy certain of the requirements of FAS 125: (i) WRC, as purchaser and transferee, will be a ''qualifying special purpose entity'' within the meaning of FAS 125, and (ii) once transferred, WMECO will no longer have effective control over the assets, so that such transfers should be labeled ''true sales'' in the event of WMECO's bankruptcy or receivership. The Existing Agreement contemplates that a restructured purchase and sales program involving WRC will be in place by March 31, 1997, at which date the Existing Agreement will terminate.

The restructured accounts receivable purchase and sales program will consist of two agreements which will replace the Existing Agreement, and is intended to accomplish sales to the Purchaser in a manner substantially similar to that under the Existing Agreement. Applicant states that the addition or WRC serves merely as a vehicle to isolate the Receivables as required by FAS 125, and that restructured purchase and sales arrangements are on essentially the same terms to WMECO as the Existing Agreement. Under the first agreement (''Company Agreement''), WMECO will sell or transfer as equity contributions from time to time all of its receivables and related assets to WRC. The purchase price will take into account historical loss statistics in WMECO's receivables pool. Under the second agreement (''WRC Agreement''), WRC will sell Undivided Interests to the Purchaser from time to time. Such Undivided Interests may be funded and repaid on a revolving basis. The purchase price for an Undivided Interest will be calculated according to a formula. Such formula will include reserves based on, among other things, a multiple of historical losses, a multiple of historical dilution (such as, e.g., adjustments due to billing errors), customer concentrations that exceed specified levels and carrying costs and other costs associated with the agreements. The formula will also take into account the cost of servicing, which will be returned to WMECO in the form of a servicing fee.

Primarily because of the reserves, the purchase price paid by the Purchaser for Undivided Interests will be lower than the purchase price paid by WRC to WMECO for Receivables and Related Assets. WMECO states that it expects WRC to have sufficient assets to pay WMECO the full purchase price for Receivables purchased from WMECO.

WMECO anticipates that the availability of Receivables and Related Assets will vary from time to time in accordance with the Energy use of its customers. Therefore, since WRC's only source of funds are its participation in the program and WMECO's capital contributions, it may not have funds available at a particular time to purchase the Receivables and Related Assets available to it. WMECO proposes to accommodate this situation by (i) allowing WRC to make the purchase and owe the balance to WMECO on a deferred basis, or (ii) by making a capital contribution to WRC in the form of the Receivables and Related Assets for which WRC lacks the purchase price funds at the time.[1]

Under the WRC Agreement, purchases may be funded by the Purchaser's issuance of commercial paper or drawing under its bank facilities. Initially, the aggregate purchase price paid by the Purchaser for Undivided Interests is not intended to exceed $50,000,000.

The Agent will have the right to appoint a servicer on behalf of it and WRC, to administer and collect receivables and to notify the obligors of the sale of their receivables, at the Agent's option. WMECO will be appointed as the initial servicer.

Certain obligations under the Company Agreement create limited recourse against WMECO. In order to secure these obligations, WMECO will grant to WRC a lien on, and security interest in, any rights which WMECO may have in respect of Receivables and Related Assets. The WRC Agreement creates comparable recourse obligations against WRC, and WMECO states that WRC will grant a security interest to the Purchaser in all rights in the Receivables retained by WRC, the Related Assets and certain other rights

[1] WMECO also states that if WRC develops a substantial cash balance, it will likely dividend the excess cash to WMECO, so that WRC will not itself retain substantial cash balances at any one time, and substantially all of the net cash realized from the collection of Receivables will be made available to WMECO.

and remedies (including its rights and remedies under the Company Agreement) to secure such recourse obligations.[2]

WMECO and WRC will be obligated to reimburse the Purchaser and the Agent for various costs and expenses associated with the Company Agreement and the WRC Agreement. WRC will also be required to pay to the Agent certain fees for services in connection with such agreements.

The arrangements under the Company Agreement and the WRC Agreement are scheduled to terminate on September 4, 2001. WRC may, upon at least five business days' notice to the Agent, terminate in whole or reduce in part the unused portion of its purchase limit in accordance with the terms and conditions of the WRC Agreement. The WRC Agreement allows the Purchaser to assign all of its rights and obligations under the WRC Agreement (including its Undivided Interests and the obligation to fund Undivided Interests) to other persons, including the providers of its bank facilities.

WMECO intends that the above-described transactions will permit it, in effect, through this intermediary device, to accelerate its receipt of cash collections from accounts receivable and thereby meet its short-term cash needs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–5525 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

## Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following closed meeting during the week of March 10, 1997.

A closed meeting will be held on Tuesday, March 11, 1997, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Wallman, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, March 11, 1997, at 10:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 4, 1997.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 97–5669 Filed 3–4–97; 12:08 pm]

BILLING CODE 8010–01–M

**[Release No. 34–38351; File No. SR–Amex–97–06]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Audit Trail Identifiers

February 27, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 1997, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement audit trail identifiers relating to competing market-maker and ''short exempt'' transactions, substantially identical to those previously approved for use at the New York Stock Exchange. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Amex member firm procedures currently require that Amex clearing members provide comparison and clearing reports with the following trade details with respect to each transaction processed by them: security, volume, price, trade date, clearing member number and contra clearing member number. In addition, for each trade processed by them, clearing members are responsible for providing the Exchange with additional audit trail information, including the following account types: agency (market with identifier ''A''), principal (''P''), specialist principal (''S''), registered trader (''G'') and Amex options specialist or market-maker trading an Amex Paired Security (''V'').

The Exchange proposes to require that the audit trail information provided by clearing members include the following additional account types:

Oproprietary transactions for a competing market-maker that is affiliated with the clearing member.

T—transactions for the account of an unaffiliated member's competing market-maker (that is, transactions were an Amex member is acting as agent for another member's competing market-maker account).

[2] WMECO states that neither WRC's nor the Purchaser's recourse to WMECO will include any rights against WMECO should customer defaults on the Receivables result in collections attributable to the Undivided Interests sold to the Purchaser being insufficient to reimburse the Purchaser for the purchase price paid by it for the Undivided Interests and its anticipated yield. The Purchaser will bear the risk for any credit losses on the Receivables which exceed the reserves for such losses included in the Undivided Interests.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

R—transactions for the account of a non-member competing market-maker.

''Competing market-maker'' is defined as any person acting as a market-maker, as defined in section 3(a)(38)[3] of the Act, in an Amex-traded security. A person acting solely in the capacity of block positioner would not be considered to be a competing market maker. The Exchange believes that implementation of O, T and R identifiers will permit the Exchange to better assess the level of member and non-member competing market-maker activity on the Amex and to formulate appropriate rules and procedures relating to such activity in view of the needs of public investors and other market participants.

The Exchange proposes further to implement account identifiers for individual investor orders (''I'') and orders submitted by an Amex clearing member for the account of an unaffiliated Amex member or member organization (''W'').

The Exchange is also proposing to expand use of the audit trail account type field to require designation of ''short exempt'' trades Four identifiers would be added to the audit trail account type field to identify ''short exempt'' trades for:

The proprietary account of a clearing member organization or an affiliated member/member organization—to be designated E

The proprietary account of an unaffiliated member/member organization—to be designated F

An individual customer account—to be designated H

Other agency customer account—to be designated B.

In addition, member firms would be required to identify ''short exempt'' trades of competing market-makers utilizing the following identifiers:

L—to designate a ''short exempt'' transaction for the account of a competing market-maker that is a member or member organization trading for its own account.

X—to designate a ''short exempt'' transaction where one member is acting as agent for another member's competing market-maker account.

Z—to designate a ''short exempt'' transaction for the account of a non-member competing market-maker.

''Short exempt'' transactions are those that are exempt from the ''tick-test'' provisions of SEC Rule 10a–1[4] or Amex Rule 7. The Exchange notes that it understands that members should mark as ''short exempt'' any short selling order that is exempt from the ''tick-test'' provisions of Rule 10a–1. Use of identifiers for ''short exempt'' transactions will enhance the Exchange's ability to identify violations of Rule 10a–1 and Amex Rule 7.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public.[6]

The Commission also believes that the adopted ''short exempt'' account identifiers are consistent with SEC Rule 10a–1, which requires that orders be marked ''long'' or ''short.'' In this regard, the new, more precise identifier codes should facilitate surveillance investigations and will allow the Exchange to ensure compliance with the exemptive provisions of Rule 10a–1(e) of the Act.

Finally, the Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information used for surveillance purposes. In particular, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity. In summary, the Commission believes that the proposed identifier codes should permit the Amex to perform its surveillance responsibilities under the Act more thoroughly and for this reason, finds the proposal consistent with Section 6(b)(5) of the Act.

The Commission notes that the approval of this proposal is limited solely to establishing competing dealer identifier codes for audit trail and surveillance purposes.[7] The proposal does not limit or restrict the activity of competing dealers or their access to the Amex. Thus, any competitive burden on competing dealers would be minimal and outweighed by the surveillance benefits to be obtained by the Amex.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. This rule change will permit the Amex to implement the new audit trail identifiers on the same day that their use will be made mandatory on the New York Stock Exchange.[8] Substantially similar audit trail identifiers were approved for use on the New York Stock Exchange in 1994 following a full notice period during which no comments were received.[9] Since that time, the Commission has not been made aware of any concerns regarding the use of the audit trail identifiers and therefore believes that it is appropriate to approve the use of the audit trail identifiers on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[3] Section 3(a)(38) of the Act defines market maker as any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

[4] 17 CFR 240.10a–1(e).

[5] 15 U.S.C. § 78f(b).

[6] In approving these rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

[7] This information is not available to specialists or traders on the floor.

[8] The use of the new audit trail identifiers will be made mandatory on the NYSE on March 3, 1997. See NYSE Information Memo No. 96–36 (Dec. 5, 1996).

[9] See Securities Exchange Act Release Nos. 33662 (Feb. 23, 1994), 59 FR 10027 (Mar. 2, 1994) (order approving File No. SR–NYSE–91–46) and 34539 (Aug. 17, 1994), 59 FR 43605 (Aug. 24, 1994) (order approving File No. SR–NYSE–94–16).

arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–97–06 and should be submitted by March 27, 1997.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Amex–97–06) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 97–5526 Filed 3–5–97; 8:45 am]

BILLING CODE 8010–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Meeting of the Industry Functional Advisory Committee on Customs Matters (IFAC 1)

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of meeting.

**SUMMARY:** The Industry Functional Advisory Committee on Customs Matters (IFAC 1) will hold a meeting on March 24, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public.

**DATES:** The meeting is scheduled for March 24, 1997, unless otherwise notified.

**ADDRESSES:** The meeting will be held at the Department of Commerce in Room 1859, located at 14th Street and Constitution Avenue, N.W., Washington, D.C., unless otherwise notified.

**FOR FURTHER INFORMATION CONTACT:** Dan Gardner, Department of Commerce, 14th St. and Constitution Ave., N.W. Washington, D.C. 20230, (202) 482–3681 or Suzanna Kang, Office of the United States Trade Representative, 600 17th St. N.W., Washington, D.C. 20508, (202) 395–6120.

**SUPPLEMENTARY INFORMATION:** The IFAC 1 will hold a meeting on March 24, 1997 from 9:30 a.m. to 12:30 p.m. The meeting will be open to the public and press during this time. Agenda topics to be addressed will be:

1.Strategies and Priorities of U.S. Trade Promotion Efforts
2. Rules of Origin Work Program
3. Regional Customs Activities
4. Customs Valuation
5. Other Business

Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Phyllis Shearer Jones,

*Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.*

[FR Doc. 97–5492 Filed 3–5–97; 8:45 am]

BILLING CODE 3190–01–M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss emergency evacuation issues.

**DATES:** The meeting will be held on March 20, 1997 at 9:00 a.m. Arrange for oral presentations by March 14, 1997.

**ADDRESSES:** The meeting will be held on the 20th Floor, MIC Room of the Boeing Company, 1700 North Moore Street, Arlington, VA 22202 (Rosslyn Metro stop).

**FOR FURTHER INFORMATION CONTACT:** Jackie Smith, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–9682, FAX (202) 267–5075.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held on March 20, 1997 at Boeing Company, 20th Floor, MIC Room, 1700 North Moore Street, Arlington, VA 22202 (Rosslyn Metro stop).

The agenda will include:

- Opening Remarks.
- Review of Action Items.
- Report on Performance Standards Working Group Activities.

The Emergency Evacuation Issues Group will vote on the Performance Standards Working Group's proposal for revision to Technical Standard Order (TSO) C69b, emergency slides, ramps, and slide/raft combinations. Anyone interested in obtaining a copy of this document should contact the individual listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Attendance is open to the public, but will be limited to space available. The pubic must make arrangements by March 14, 1997 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by providing copies at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 28, 1997.

Joseph A. Hawkins,

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 97–5548 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–13–M

## Federal Highway Administration

### Environmental Impact Statement: Douglas County, KS

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of withdrawal.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice to advise the public, that our October 17, 1994, Notice of Intent to complete a Supplement to the Final Environmental Impact Statement is withdrawn.

**FOR FURTHER INFORMATION CONTACT:** David R. Geiger, P.E., Division Administrator, FHWA 3300 S.W. Topeka Boulevard, Suite 1, Topeka, Kansas 66611–2237, Telephone: (913) 267–7281.

[10] 15 U.S.C. § 78s(b)(2).

[11] 17 C.F.R. 200.30–3(a)(12).

**SUPPLEMENTARY INFORMATION:** It was the intent of FHWA to re-evaluate the Final Environmental Impact Statement for that portion of the South Lawrence Trafficway project from U.S. 59 east to K–10. FHWA wanted to consider the effects of the proposed trafficway on the spiritual sites, cultural issues, and academic programs at the Haskell Indian Nations University. FHWA prepared and circulated a Draft Supplemental Environmental Impact Statement and received many comments. FHWA was in the process of evaluating these comments when Douglas County and the Kansas Department of Transportation decided not to use Federal-aid Highway funds for the project. Therefore, FHWA is no longer the lead Federal agency for this project and is discontinuing the Supplemental Environmental document process.

The Record of Decision dated June 5, 1990, is now valid only for that portion of the Trafficway from the western terminus to U.S. 59.

Issued on: February 27, 1997.

David R. Geiger,

*Division Administrator, Kansas Division, Federal Highway Administration, Topeka, Kansas.*

[FR Doc. 97–5531 Filed 3–5–97; 8:45 am]

**BILLING CODE 4910–22–M**

## Environmental Impact Statement; Orange, Seminole, and Volusia Counties, FL

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Orange County, Seminole County, and Volusia County, Florida.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark D. Bartlett, Program Operations Engineer, Federal Highway Administration, 227 N. Bronough Street, Room 2015, Tallahassee, Florida 32301. Telephone: (904) 942–9598.

**SUPPLEMENTARY INFORMATION:**

Description of Project

The FHWA, in consultation with the Florida Department of Transportation, will prepare an EIS for a proposal to improve Interstate 4 (I–4) in Orange County, Seminole County, and Volusia County, Florida. The project limits are from just west of the State Road 528 (Bee Line Expressway) Interchange in Orange County to just east of the State Road 472 Interchange in Volusia County, a distance of approximately 69 km (43 miles). The project is commonly referred to as the I–4 Project Development and Environmental (PD&E) Study—Section 2. The proposed improvement will involve widening the segment of I–4 to six general use lanes plus two high occupancy vehicle lanes. In addition, the project will evaluate the need for interchange modifications. Improvements to the corridor are considered necessary to provide for the existing and projected travel demand.

There are three independent studies which are being performed concurrently with the I–4 PD&E Study—Section 2. The I–4 PD&E Study—Section 1 involves preparation of an Environmental Assessment for improvements on I–4 from County Road 532 in Osceola County, Florida to State Road 528 in Orange County, Florida. The I–4 PD&E Study—Section 3 involves preparation of a Environmental Assessment for improvements on I–4 from State Road 472 to I–95 in Volusia County, Florida. The Central Florida Light Rail Transit System Study involves preparation of an EIS for Light Rail Transit improvements in Osceola, Orange, and Seminole Counties, Florida. Consideration of the cumulative effects of these actions, as well as other past, present and reasonable foreseeable future actions, will be included in the I–4 PD&E Study—Section 2.

Need for Project

I–4 is considered to be an integral part of Central Florida's transportation system. The Interstate carries the greatest number of people and vehicles of any transportation facility in the region and serves many of the area's primary activity centers. I–4 was originally designed to serve long distance travelers, however, the highway has evolved to one which serves many shorter trips.

Central Florida has experienced tremendous growth in the past two decades. A significant amount of this growth is occurring within close proximity to I–4. In recent years, congestion on I–4 has extended well beyond normal peak hours and major accidents have closed I–4, subsequently resulting in traffic congestion throughout the metropolitan area. Congestion and delays on I–4 and the parallel arterial highways are now considered to be the major transportation problem facing the region. Travel conditions in Central Florida are expected to continue to deteriorate due to the continuing trend of increased growth in population and tourism.

The design concepts and scope of the I–4 improvements were developed as part of the I–4 Major Investment Study (MIS). The MIS was performed in conjunction with the I–4 Multi-Modal Master Plan (I–4 MMMP) and included evaluations of a full range of reasonable alternatives and transportation modes. The specific design concept and scope recommendations identified in the MIS which are pertinent to the I–4 PD&E Study—Section 2 include:

- Six general use lanes plus two high occupancy lanes within the limits of the Section 2 Study,
- Reserved right-of-way for a rail envelope within Volusia County,
- Light rail transit from the city of Sanford to the South, extending beyond the southern limits of the Section 2 study,
- Express bus service between Volusia County and the Orlando metropolitan area.

The need for improvements to I–4 is recognized by local and regional plans. The MIS has been approved by the Orlando Urban Area Metropolitan Planning Organization (MPO) and the Volusia County MPO. The project is also included in the Orlando Urban Area and Volusia County year 2020 Long Range Transportation Plans. Local government comprehensive plans support mobility enhancements to I–4.

Alternative

Alternatives under consideration include: (1) ''No Action'' which involves no change to transportation facilities in the corridor beyond projects already committed; (2) the design concept recommended in the I–4 MIS and I–4 MMMP which consists of widening the segment of I–4 to six general use lanes plus two high occupancy vehicle lanes, and evaluating the need for interchange modifications; and (3) design concept refinements to the recommended I–4 MMMP alternative. The design concept refinements will involve consideration of geometric adjustments which maximize use of the existing infrastructure, reduce project costs, and avoid or minimize environmental impacts.

Probable Effects

FHWA and local joint lead agencies will evaluate in the EIS all significant environmental impacts including analysis of socio-economic, natural, and physical impacts for each of the alternatives. Analysis of socio-economic impacts will include the evaluation of land use and neighborhood impacts, park/recreation area impacts, historic/archaeological impacts, and visual and

aesthetic impacts. Natural impact analysis will include impacts to Outstanding Florida Waters and Wild and Scenic Rivers, aquatic preserves, wetlands, and threatened or endangered species. In addition, within the study limits, I–4 crosses the St. John's River which is a navigable waterway. Consequently, navigation impacts will be evaluated as part of the natural impact analysis. Physical impact analysis will include evaluating impacts to noise, air quality, water quality, floodplain, potentially contaminated sites, and coastal zone. The environmental evaluation will consider both short-term and long-term impacts associated with the alternatives. Measures to mitigate any significant adverse impacts will also be considered.

Environmental issues raised from responses to the Advanced Notification Letter include neighborhood protection, aesthetics, bicycle facilities, recreational greenways, alternative modes of transportation, lake protection, hydrology and stormwater management, cultural features, wildlife corridors, and rare habitat and listed species.

Scoping

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. Interested parties may request project information by contacting Mr. Harold Webb, Florida Department of Transportation, District Five, 719 South Woodland Boulevard, Florida 32720 or by calling him at (904) 943-5554. A series of public meetings will be held in Orange, Seminole, and Volusia Counties between August 1997 and December 1998. In addition, public hearings will be held in Orange, Seminole, and Volusia Counties. Public notice will be given of the time and place of the meetings and hearings. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting will be held at 8:00 a.m. on Tuesday, April 15, 1997 and Wednesday, April 16, 1997 at the Eastmonte Park Recreation & Civic Center located at 830 Magnolia Drive, Altamonte Springs, Florida.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding inter-governmental consultation on Federal programs and activities apply to this program)

Issued on February 27, 1997.

J.R. Skinner,

*Division Administrator, Tallahassee.*

[FR Doc. 97–5530 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–22–M

## Research and Special Programs Administration

**[Docket No. P–97–2W; Notice 1]**

## Liquefied Natural Gas Facilities Petition for Waiver; Northern Eclipse, Inc.

Northern Eclipse, Inc. (NE) has petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with 49 CFR storage tank impounding system. Section 193.2155(c) requires a Class 1 impounding system whenever an LNG storage tank is located within 20,000 feet from the nearest runway serving large aircraft. The petition applies to the Northern Eclipse's proposed LNG storage facility at Fairbanks, Alaska.

The petitioner's rationale for the waiver from compliance rests on the following reasons:

1. Fairbanks does not currently have natural gas service, and given the distance to gas fields and the size of the market, petitioner believes that LNG is the only feasible way to provide natural gas service in the community.

2. Fairbanks is a small town by a lower-48 states standards, however, due to international air transport and reliance of Alaskans on air travel, Fairbanks has an international airport (FIA) with a 11,050 foot long runway. In addition, Fairbanks has a similar runway for a U.S. military base (Fort Wainwright), and other smaller runways in the area. The 20,000 foot restriction requirement eliminates any reasonable site in Fairbanks for an LNG storage tank and it would not be economically feasible to build an impounding system which would withstand a direct impact from a 747, in order to provide gas service to the Fairbanks community.

3. NE does not propose to locate its storage tank in the approach/departure corridor for heavy aircraft. The areas under consideration are approximately two miles to the side of the FIA runway.

4. NE proposes the use of a shop fabricated, heavy outer wall storage tank of less than 70,000 gallon capacity, built to National Aeronautical and Space Administration specifications, and likely to survive even a direct impact from small aircraft.

5. Similar LNG storage tanks and dispensing facilities are routinely allowed at airports without impoundment as they are not subject to Part 193 requirements, but they pose precisely the same risk in the event of a collision, and due to their location at the airport pose a much greater risk of impact from an aircraft. To support this fact, NE provided pictures of an above ground NFPA 59A LNG storage tank at the Dallas/Fort Worth airport.

6. Part 193 contains special provisions for LNG tanks with less than a 70,000 gallon capacity. However, Section 193.2155(c) fails to reflect the vastly different risks posed by different sized LNG storage tanks. A small LNG tank like that proposed by NE poses no significant risk, and certainly no more than any other similar small energy storage tank, such as a propane tank or a non-Part 193 LNG tank.

7. During the December 9, 1996, meeting between NE and OPS on this issue, NE was informed that the origin of the distance of 20,000 feet from the airport was taken from the Federal Aviation Administration's (FAA) Regulations under 14 CFR part 77, which define a critical area surrounding a large airport. According to NE, only § 77.13(a)(2)(i) of 14 CFR part 77, addresses 20,000 ft. restriction, which exists where there are runways of over 3,200 feet in length, and that section refers only to the heights of structures. NE believes that the FAA may be concerned with the height of the structure rather than the contents.

Because of the unusual circumstances described above at NE's proposed LNG facility, relatively low risk to the public safety due to a smaller tank, and the operators's use of a shop fabricated heavy outer wall built to more stringent standards than those specified under part 193, RSPA believes that granting a waiver from the requirements of 49 CFR 193.2155(c) would not be inconsistent with pipeline safety, nor would it lessen public safety in this case. The operator must comply with all other requirements of part 193 including Class 2 impounding system for the storage tank. Therefore, RSPA proposes to grant the waiver.

Interested parties are invited to comment on the proposed waiver by submitting in duplicate such data, views, or arguments as they may desire. Comments should identify the docket number and the RSPA rulemaking number. Comments should be addressed to the Docket Facility, U.S. Department Of Transportation, plaza 401, 400

Seventh Street SW., Washington, DC 20590–0001.

All comments received before April 7, 1997 will be considered before final action is taken. Late filed comments will be considered so far as practicable. No public hearing is contemplated, but one may be held at a time and place set in a notice in the Federal Register if required by an interested person desiring to comment at a public hearing and raising a genuine issue. All comments and other docketed material will be available for inspection and copying in room 401 Plaza between the hours of 10:00 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Authority: 49 App. U.S.C. 2002(h) and 2015; and 49 CFR 1.53.

Issued in Washington, D.C., on March 3, 1997.

Richard B. Felder,

*Associate Administrator for Pipeline Safety.*

[FR Doc. 97–5552 Filed 3–5–97; 8:45 am]

BILLING CODE 4910–60–P

## Surface Transportation Board

**[STB Finance Docket No. 33363]**

## Burlington Northern and Santa Fe Railway Co.; Trackage Rights Exemption; Birmingham Southern Railway Co.

Birmingham Southern Railway Company has agreed to grant overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) from BNSF's rail yard at milepost 147 + 28.00 to milepost 225 + 51.51 in Birmingham, AL, for the purpose of moving loaded and empty cars to the American Cast Iron Pipe Company plant.

The transaction was scheduled to be consummated on February 26, 1997.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33363, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423.[1] In addition, a copy of each pleading must be served on Michael E. Roper, Esq., The Burlington Northern and Santa Fe Railway Company, 3800 Continental Plaza, 777 Main Street, Forth Worth, TX 76102–5384.

Decided: February 27, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 97–5547 Filed 3–5–97; 8:45 am]

BILLING CODE 4915–00–P

**[STB Docket No. AB–55 (Sub–No. 539X)]**

## CSX Transportation, Inc.—Abandonment Exemption—in Harrison County, WV

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon 14.1 miles of its line of railroad between milepost 2.1 at Clarksburg and milepost 16.2 at McWhorter, in Harrison County, WV.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on April 5, 1997, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by March 19, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 26, 1997, with: Office of the Secretary, Case Control Branch, Surface Transportation Board, 1201 Constitution Avenue, N.W., Washington, DC 20423.[4]

A copy of any petition filed with the Board should be sent to applicant's representative: Charles M. Rosenberger, Senior Counsel, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 11, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 3219, Surface Transportation Board, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEA, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify

[1] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

[1] Under 49 CFR 1152.27(c)(2)(i), the expression of intent to file an OFA would normally be due 10 days after publication of notice in the Federal Register. However, due to the Board's scheduled relocation on March 16, 1997, expressions of intent in this proceeding may be filed as late as March 19, 1997.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] The Board will accept late-filed trail use requests as long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[4] Due to the Board's scheduled relocation on March 16, 1997, any filings made after March 16, 1997, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423.

that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by March 6, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: February 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

*Secretary.*

[FR Doc. 97–5546 Filed 3–5–97; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 97–19

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).Currently, the IRS is soliciting comments concerning Notice 97–19, Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

**DATES:** Written comments should be received on or before May 5, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Guidance for Expatriates under Internal Revenue Code sections 877, 2501, 2107 and 6039F.

*OMB Number:* 1545–1531.

*Notice Number:* Notice 97–19.

*Abstract:* Notice 97–19 provides guidance regarding the federal tax consequences for certain individuals who lose U.S. citizenship, cease to be taxed as U.S. lawful permanent residents, or are otherwise subject to tax under Code section 877. The information required by the notice will be used to help make a determination as to whether these taxpayers expatriated with a principal purpose to avoid tax.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 12,300.

*Estimated Time Per Respondent:* 31 minutes.

*Estimated Total Annual Burden Hours:* 6,300.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 25, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97–5553 Filed 3–5–97; 8:45 am]

BILLING CODE 4830–01–U

### Proposed Collection; Comment Request for Revenue Procedure 97–19

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–19, 26 CFR 301.7502–1: Timely mailing treated as timely filing.

**DATES:** Written comments should be received on or before May 5, 1997 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* 26 CFR 301.7502–1: Timely mailing treated as timely filing.

*OMB Number:* 1545–1535.

*Revenue Procedure Number:* Revenue Procedure 97–19.

*Abstract:* Revenue Procedure 97–19 provides the criteria that will be used by the Internal Revenue Service to determine whether a private delivery service qualifies as a designated private delivery service under section 7502 of the Internal Revenue Code.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 5.

*Estimated Time Per Respondent:* 613 hours, 48 minutes.

*Estimated Total Annual Burden Hours:* 3,069.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 28, 1997.

Garrick R. Shear,

*IRS Reports Clearance Officer.*

[FR Doc. 97–5555 Filed 3–5–97; 8:45 am]

**BILLING CODE 4830–01–U**

## Tax on Certain Imported Substances (Epoxy); Notice of Determination

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice announces a determination, under Notice 89–61, that the list of taxable substances in section 4672(a)(3) will be modified to include diglycidyl ether of bisphenol-A.

**EFFECTIVE DATE:** This modification is effective April 1, 1992.

**FOR FURTHER INFORMATION CONTACT:** Ruth Hoffman, Office of Assistant Chief Counsel (Passthroughs and Special Industries), (202) 622–3130 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

Background

Under section 4672(a), an importer or exporter of any substance may request that the Secretary determine whether that substance should be listed as a taxable substance. The Secretary shall add the substance to the list of taxable substances in section 4672(a)(3) if the Secretary determines that taxable chemicals constitute more than 50 percent of the weight, or more than 50 percent of the value, of the materials used to produce the substance. This determination is to be made on the basis of the predominant method of production. Notice 89–61, 1989–1 C.B. 717, sets forth the rules relating to the determination process.

Determination

On February 24, 1997, the Secretary determined that diglycidyl ether of bisphenol-A should be added to the list of taxable substances in section 4672(a)(3), effective April 1, 1992.

The rate of tax prescribed for diglycidyl ether of bisphenol-A , under section 4671(b)(3), is $7.08 per ton. This is based upon a conversion factor for benzene of 0.459, a conversion factor for propylene of 0.494, a conversion factor for chlorine of 0.833, and a conversion factor for sodium hydroxide of 0.705.

The petitioner is Dow Chemical Company, a manufacturer and exporter of this substance. No material comments were received on this petition. The following information is the basis for the determination.

HTS number: 3907.3

CAS number: 025085–99–8

Diglycidyl ether of bisphenol-A (DGEBA) is derived from the taxable chemicals benzene, propylene, chlorine, and sodium hydroxide and produced predominantly from epichlorohydrin and bisphenol-A via a two-step reaction.

The stoichiometric material consumption formula for this substance is:

$$2\ C_6H_6\ (\text{benzene}) + 4\ C_3H_6\ (\text{propylene}) + 4\ Cl_2\ (\text{chlorine}) + 6\ \text{NaOH}\ (\text{sodium hydroxide}) + 2\ O_2\ (\text{oxygen}) \longrightarrow (CH_3)_2C(C_6H_4OC_3H_5O)_2\ (\text{DGEBA}) + CH_3COCH_3\ (\text{acetone}) + 2\ \text{HCl}\ (\text{hydrogen chloride}) + 6\ \text{NaCl}\ (\text{sodium chloride}) + 5\ H_2O\ (\text{water})$$

Diglycidyl ether of bisphenol-A has been determined to be a taxable substance because a review of its stoichiometric material consumption formula shows that, based on the predominant method of production, taxable chemicals constitute 92.95 percent by weight of the materials used in its production.

Dale D. Goode,

*Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).*

[FR Doc. 97–5554 Filed 3–5–97; 8:45 am]

**BILLING CODE 4830–01–U**

Federal Register

Thursday
March 6, 1997

## Part II

# Department of Justice

**Immigration and Naturalization Service and Executve Office for Immigration Review**

**8 CFR Part 1, et al.**

**Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Final Rule**

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**Executive Office for Immigration Review**

**8 CFR Parts 1, 3, 103, 204, 207, 208, 209, 211, 212, 213, 214, 216, 217, 221, 223, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 249, 251, 252, 253, 274a, 286, 287, 299, 316, 318, and 329**

**[INS No. 1788–96; AG ORDER No. 2071–97]**

**RIN 1115–AE47**

# Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures

**AGENCY:** Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

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

**SUMMARY:** This interim rule amends the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) to implement the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) governing expedited and regular removal proceedings, handling of asylum claims, and other activities involving the apprehension, detention, hearing of claims and ultimately the removal of inadmissible and deportable aliens. This rule incorporates a number of changes which are a part of the Administration's reinvention and regulation streamlining initiative.

**DATES:** *Effective date:* This interim rule is effective April 1, 1997.

*Comment date:* Written comments must be submitted on or before July 7, 1997.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1788–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** *For matters relating to the Executive Office for Immigration Review*—Peggy Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone number (703) 305–0470; *for asylum issues*—Michael Shaul, Field Manual Project Office, Immigration and Naturalization Service, 425 I Street NW, ULLB—4th Floor, Washington, DC 20536, telephone number (202) 616–7439; *for inspections issues*—Linda Loveless, Office of Inspections, Immigration and Naturalization Service, 425 I Street NW, Room 4064, Washington, DC 20536, telephone number (202) 616–7489; *for detention and removal issues*—Len Loveless, Office of Detention and Deportation, Immigration and Naturalization Service, 425 I Street NW, Room 3008, Washington, DC 20536, telephone number (202) 616–7799.

**SUPPLEMENTARY INFORMATION:**

## Background

The Immigration and Naturalization Service and the Executive Office for Immigration Review jointly published a proposed rule on January 3, 1997 (62 FR 443–517 (1997)), to implement sections of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208, which was enacted on September 30, 1996. This legislation significantly amended the Immigration and Nationality Act (Act) by revising the asylum process and providing a mechanism for the determination and review of certain applicants who demonstrate a credible fear of persecution if returned to their own country; expanding the grounds of inadmissibility; redefining applicants for admission to include aliens who entered the United States without inspection; creating new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation or without proper documents; consolidating the former exclusion and deportation proceedings into one unified removal proceeding; and reorganizing and renumbering numerous provisions of existing law.

The effective date of most of the provisions affecting asylum, inspection, and removal processes is April 1, 1997, and implementing regulations must be in place by March 1, 1997. The proposed rule allowed only a 30-day comment period. The limited comment period was necessary, given the short statutory deadline and the time needed to draft the rule, coordinate with interested agencies, and complete the regulatory review process by the Office of Management and Budget. In order to meet the statutory deadline for an implementing regulation and yet provide adequate opportunity for public input on the issues addressed in this rulemaking, this rule is being published as an interim rule with an additional 120-day comment period.

The Department received 124 comments on the proposed rule. Most of the commenters represented either attorney organizations or voluntary organizations predominantly involved with refugees and asylum claimants. Commenters addressed a variety of topics, with much of the focus on asylum, expedited removal, and voluntary departure. The Department also received comments from individual members of Congress and Congressional subcommittees. Since many of the comments were duplicative or endorsed the submissions of other commenters, they will be addressed by topic, rather than referencing each specific comment and commenter. Also, because many of the comments were complex and dealt with issues that may be better addressed after the Department has had a period of time to gain operational experience under the new law, suggestions that were not adopted for the interim period will be further considered when a final rule is prepared. A number of comments were received concerning sections of the regulations that were not specifically changed by the proposed rule, but were simply moved to new sections. The Department has not addressed these comments at this time, but will consider them either as part of separate rulemaking initiatives or as part of the final rule rather than the interim rule, after the Service and EOIR more closely study the proposals. This supplementary information will identify significant changes made to the proposed rule and briefly discuss reasons why many other major suggestions were not adopted at this time.

Although the Department has addressed the major comments received, there will be further detailed analysis of these comments, as well as consideration of the additional comments received during the 120-day comment period following publication of the interim regulation. This will ensure every suggestion is more fully explored. Commenters responding to the interim rule may choose to amend or expand on prior comments or address other areas not raised by commenters during the first comment period.

## Definitions

Several sections of the statute, such as sections 212(a)(9), 240B, and 241 of the Act, refer to arriving aliens, even though this term is not defined in statute. After carefully considering these references, the Department felt that the statute

seemed to differentiate more clearly between aliens at ports-of-entry and those encountered elsewhere in the United States. For clarity, ''arriving alien'' was specifically defined in 8 CFR part 1, and the Department invited commentary on the proper scope of the regulatory definition.

One commenter suggested that aliens interdicted in United States waters should not be included in the definition because persons arriving in United States waters have already legally arrived in the United States. The Board of Immigration Appeals (BIA) has consistently held that the mere crossing into the territorial waters of the United States has never satisfied the test of having entered the United States. See *Matter of G,* 20 I&N Dec. 764 (BIA 1993). Aliens who have not yet established physical presence on land in the United States cannot be considered as anything other than arriving aliens. In addition, the Department has for years relied on interdiction efforts to stem the flow of inadmissible aliens and attempted illegal entries by sea. The inclusion of aliens interdicted at sea in the definition of arriving alien will support the Department's mandate to protect the nation's borders against illegal immigration. These provisions in no way alter the Department's current interdiction policy and should not be construed as to require that all interdicted aliens be brought to the United States. Only when an express decision is made, in accordance with existing interdiction policies, to transport an interdicted alien to the United States, will that alien be considered an arriving alien for purposes of the Act.

Another commenter suggested that the definition be expanded to include aliens who have been present for less than 24 hours in the United States without inspection and admission. The Department extensively considered this and similar options, such as a distance-based distinction. For the reasons discussed below relating to the decision not to apply the expedited removal provisions at this time to certain aliens who entered without inspection, and considering the difficulty not only in establishing that the alien entered without inspection, but also in determining the exact time of the alien's arrival, the Department continues to believe the position taken in the proposed rule is correct and will not modify this definition in the interim rule. The definition of ''arriving alien'' will be given further consideration in the final rule, however, drawing upon the experience of the early implementation of the interim rule.

One commenter objected to the inclusion of parolee in the definition of arriving alien. The definition in the proposed rule states ''An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.'' The inclusion of paroled aliens was based on the statutory language in section 212(d)(5) of the Act, which states ''* * * but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he or she was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.'' Existing regulations at § 212.5(d) relating to termination of parole echo this provision, stating ''* * * he or she shall be restored to the status he or she had at the time of parole.'' The Department feels there is solid statutory basis for inclusion of certain paroled aliens in the definition of arriving alien, and so will retain this provision.

The Department has added two additional definitions for the sake of clarity. The term ''Service counsel'' has been added to clarify that although the term refers to any immigration officer designated to represent the Service before the Immigration Court or the BIA. Existing regulations interchangeably use this term and a variety of other terms, including trial attorney, district counsel and assistant district counsel. The term ''aggravated felony'' has also been defined by reference to section 101(a)(43) of the Act as amended by IIRIRA. The regulatory definition clarifies that the amended section 101(a)(43) applies to any proceeding, application, custody determination or adjudication.

Parole of Aliens

This interim rule modifies § 212.5(a) to comport with the statutory change made by IIRIRA to section 212(d)(5)(A) of the Act.

Withdrawal of Application for Admission

The proposed rule contains provisions to implement the longstanding practice used by the Service to permit applicants for admission to voluntarily withdraw their application for admission to the United States in lieu of removal proceedings, now included in section 235(a)(4) of the Act. The withdrawal provisions in the proposed rule were written to conform with rulings of the BIA on withdrawal and with standard practice in many jurisdictions. Several commenters suggested that every alien subject to the expedited removal provisions should automatically be offered the opportunity to withdraw his or her application for admission prior to the secondary inspection interview. Permission to withdraw an application for admission is solely at the discretion of the Attorney General and is not a right of the alien, a premise that has been consistently upheld by the BIA. Only the Attorney General may decide whether to pursue removal charges against an alien who has violated the immigration laws. Withdrawal of application for admission is only one of several discretionary options that may be considered by the Service once the facts of the case are known, and so will not automatically be offered to all aliens subject to expedited removal.

The Department does, however, share the concern of several commenters that aliens who may be inadvertently or unintentionally in violation of the immigration laws or regulations should not be subject to the harsh consequences of a formal removal order. The Department also wishes to ensure that the expedited removal provisions and the discretionary option to permit withdrawal are applied consistently and fairly throughout the nation. Although not included in the regulations at this time, the Department intends to formulate policy guidance and criteria for determining the types of cases in which such permission should or should not be considered.

Classes Subject to Expedited Removal

The Department requested public comment regarding the appropriate use of the authority conferred by the statute upon the Attorney General to expand the class of aliens subject to expedited removal. Most commenters commended the Department on its decision not to apply at this time the expedited removal provisions to aliens in the United States who have not been admitted or paroled and who cannot establish continuous physical presence in the United States for the previous two years. At this time, the Department will apply the provisions only to ''arriving aliens,'' as defined in § 1.1(q). The Department acknowledges that application of the expedited removal provisions to aliens already in the United States will involve more complex determinations of fact and will be more difficult to manage, and therefore wishes to gain insight and experience by initially applying these new provisions on a more limited and controlled basis.

The Department does, however, reserve the right to apply the expedited removal procedures to additional classes of aliens within the limits set by the statute, if, in the Commissioner's discretion, such action is operationally warranted. It is emphasized that a proposed expansion of the expedited removal procedures may occur at any time and may be driven either by specific situations such as a sudden influx of illegal aliens motivated by political or economic unrest or other events or by a general need to increase the effectiveness of enforcement operations at one or more locations.

Although several commenters suggested that imposition of the provisions should only occur after publication of a proposed rule followed by a comment period, the statute does not impose any specific notice requirement in connection with the Attorney General's designation under section 235(b)(1)(A)(3), and certainly does not impose the requirement of a full administrative rulemaking. Indeed, such a requirement would defeat a major purpose of this provision: to allow the Attorney General to respond rapidly, effectively, and flexibly to situations of mass influx or other exigencies. The Attorney General has elected to exercise this authority in connection with publication of a notice in the Federal Register (in advance, where practicable) simply as a matter of sound administration and policy. The provisions contained in § 235.3(b) of this interim rule will apply for now only to arriving aliens.

Several commenters suggested that certain classes of individuals, such as minors, certain nonimmigrant classifications, and aliens claiming to be lawful permanent residents or U.S. citizens, should not be subject to expedited removal, or that it should not be applied where resources or location do not permit optimal inspection conditions. Some stated that aliens in expedited removal should be entitled to a full hearing before an immigration judge. The statute is clear that the expedited removal provisions apply to all aliens inadmissible under sections 212(a)(6)(C) or (7) of the Act, and that such aliens are not entitled to further hearing or review with specific limited exceptions. Although the statute does not require it, the Department has provided for supervisory review and concurrence on all expedited removal orders. The statute itself provides for review of a claim to lawful permanent resident, refugee, or asylee status. In addition, the Department has a certain amount of prosecutorial discretion provided by statute. It may, in lieu of instituting removal proceedings, permit an alien to withdraw his or her application for admission in those cases where there is no fraudulent intent and the alien is inadmissible only through inadvertent error or misinformation. There are also discretionary waivers available in certain cases.

Reorganization of § 235.3(b)(1) and (2)

In order to provide a more logical discussion of the applicability of the expedited removal provisions and the procedures for applying them, § 235.3(b)(1) (determination of inadmissibility) and § 235.3(b)(2) (applicability) as they appeared in the proposed regulation have been interchanged and revised as discussed below.

Expedited Removal Procedures

Many commenters stated that the provisions in § 235.3(b) were not sufficiently explicit to ensure that the expedited removal provisions are fairly and consistently applied. Because most of these commenters represented organizations primarily concerned with refugee and asylum issues, we have addressed this topic in detail below in the section relating to credible fear determinations and claims of asylum or fear of persecution by aliens subject to expedited removal.

Review of Claim of Status as Lawful Permanent Resident, Asylee, or Refugee

Several commenters suggested provisions of § 235.3(b)(5) were not sufficiently clear to provide adequate review of claims by returning lawful permanent residents, asylees, or refugees who are subject to expedited removal. Specifically, the commenters asserted that § 235.3(b)(5)(ii) could be interpreted to imply that an alien whose claim to lawful permanent residence is verified and is not granted a discretionary waiver or provided an opportunity through deferred inspection to present the required documents could be ordered removed under section 235(b) of the Act. These commenters requested that § 235.3(b)(5)(iv) of the proposed regulation be amended to allow that claimed lawful permanent residents, asylees, or refugees (who the Service has been unable to verify ever was admitted in such status) be referred directly to removal proceedings under section 240 of the Act.

For the following reasons, these sections of the proposed regulation will not be changed in the interim rule. Section 235.3(b)(5)(ii) of the proposed regulation relates to those arriving aliens whose prior admission as a lawful permanent resident has been *verified* by the immigration officer by referring to official Service records. The Department intends that when such a prior admission is verified, the individual will not be removed under the expedited removal provisions of section 235(b) of the Act, regardless of the officer's determination as to the individual's current admissibility and/or retention of such lawful permanent status. For that reason the first sentence of § 235.3(b)(5)(ii) sets forth this prohibition. Since the removal provisions under section 235(b) of the Act are not available, the only actions left for the examining officer are to: admit the individual (through the grant of a waiver if need be); defer inspection to allow the individual to retrieve the appropriate documents; or place the person in removal proceedings under section 240 of the Act. This process will allow those individuals verified as having once been admitted as a lawful permanent resident, asylee, or refugee a full evidentiary hearing in removal proceedings under section 240 of the Act before an immigration judge to address the heavily fact-based issues of abandonment of status or other issues concerning loss of status. The language ''may initiate proceedings'' was used here to indicate that the officer is not required to initiate any proceedings but may opt to admit the individual into the United States.

As for those individuals claiming to be returning lawful permanent residents, asylees, or refugees, but who are not verified by the Service as having ever been admitted in such status, the referral to the immigration judge in § 235.3(b)(5)(iv) is for the purpose of allowing the individual to establish such a prior admission in such status, nothing more. If the individual establishes such a prior admission, the immigration judge will terminate the expedited removal order and at that point that person will be in the same position as the person whose prior admission was verified by the inspecting Service officer: the Service can admit the individual or contest his or her current retention of such status in the context of removal proceedings under section 240 of the Act.

Another commenter contended that it is not appropriate to refer aliens who are verified as having been admitted or establish that they were once admitted as lawful permanent residents, asylees, or refugees to proceedings under section 240 of the Act. Section 235(b)(1)(C) of the Act states that the Attorney General shall provide regulations for administrative review of an expedited removal order entered against ''an alien who claims under oath . . .'' to have

been lawfully admitted as a lawful permanent resident, asylee, or refugee. The statute provides no further directive as to how aliens who actually have been admitted in such status are to be processed if, in fact, the Service believes that such status may no longer be valid. If that claim is never verified or established before the inspecting Service officer or an Immigration Judge, the expedited removal order entered against the alien will be effected and the alien will be removed from the United States. However, once an alien establishes admission in such status, it is not inconsistent with the statute for further proceedings against an alien known to have been lawfully admitted as a permanent resident, asylee, or refugee to occur in the context of proceedings under section 240 of the Act. Further, given the greater interests and ties to the United States normally at stake for such aliens compared to those arriving without any previous status, the Department considers it appropriate that verified arriving permanent residents, asylees, and refugees be accorded the protections inherent in proceedings under section 240 of the Act.

Review of Claim to U.S. Citizenship

Several commenters stated that while the statute and regulations provide for review of an expedited removal order of an alien claiming to be a lawful permanent resident, refugee, or asylee, there is no such provision for review of a claim to U.S. citizenship. While U.S. citizens are not subject to the inadmissibility and removal provisions of the Act and the Department makes every effort to prevent the inadvertent removal of U.S. citizens, there are approximately 35,000 false claims to U.S. citizenship made every year at ports-of-entry. Congress recognized this problem in IIRIRA by adding a new ground of inadmissibility to section 212(a)(6)(C)(ii) of the Act specifically designating such aliens as inadmissible and subject to the expedited removal provisions. Existing regulations at § 235.1(b), which have been in place for many years, place the burden of establishing a claim to U.S. citizenship on the person seeking entry. Otherwise, that person is inspected as an alien. To provide an additional level of review and safeguard against a mistaken determination, the Department will institute the same procedures contained in § 235.3(b)(5) for persons who have not been able to establish U.S. citizenship, but who maintain a claim under oath or under penalty of perjury to be U.S. citizens, which are used for persons claiming to be lawfully admitted as permanent residents, refugees, or asylees.

Several commenters stated that the regulations do not provide any criteria for the detention or release of these individuals. The provisions of § 235.3(b)(2)(iii) requiring detention of all aliens subject to the expedited removal provisions and issued a removal order also apply to persons whose claim to lawful permanent resident, refugee, asylee, or U.S. citizen status has not been verified. To clarify that detention is required for these individuals, the interim rule reiterates this requirement in § 235.3(b)(5)(i).

Filing of an Application for a Refugee Travel Document While Outside the United States

Several commenters remarked favorably on the proposal to revise 8 CFR part 223 to allow refugees and asylees to apply for refugee travel documents from outside the United States, after departure from the United States, under certain very limited circumstances. The Department proposed this revision with full awareness of the provision in section 208(c)(1) of the Act under which the Attorney General may allow the alien to travel abroad ''with the prior consent of the Attorney General.'' Despite the implied language of the statute, the Department felt that an exception was warranted for those cases where the alien innocently departed in ignorance of the requirement or, although aware of the requirement, departed without applying for the document due to an urgent humanitarian need, such as the impending death of a close relative. It should be noted that the current regulations only require that an application be filed before departure, not that the applicant delay travel until after the application is approved and the document is received. The Service has always provided the option of allowing the alien to pick up the document overseas at an American consular post.

A few commenters suggested that the decision whether to accept such applications not be left to the discretion of the Service. This change has been made. However, the regulation does not remove the general requirement that the application be filed before departure, nor does it intend that the new procedure be viewed as a routine method of obtaining the document. Although not specifically stated in the regulation, the Department intends that if it is apparent that the alien knew of the general requirement and simply chose to ignore it (e.g., if the alien had previously been issued a refugee travel document through this ''overseas procedure'' and there was no emergency necessitating the more recent departure), the director may determine that favorable exercise of discretionary authority is not warranted. Accordingly, the regulation provides that the district director having jurisdiction over the overseas location, or over the inspection facility in the case of an alien at a port-of-entry, may deny the application as a matter of discretion.

A few commenters suggested that there be no limit on how long after departure the application may be filed. Others suggested that the time limit be shortened from 1 year to 6 months to coincide with the 6 month time frame in section 101(a)(13)(C) of the Act, which is the period during which a lawful permanent resident who meets certain other requirements is not considered to be an applicant for admission. Another commenter stated that the validity of a refugee travel document approved under this process should not be limited to 1 year from the date of the alien's departure from the United States, so long as the application was filed within 1 year of that departure. The 1-year limitation was chosen because it is the maximum validity period for which a document would have been approved had the alien complied with the requirement of filing prior to departure. Allowing an applicant to file from outside the United States more than 1 year after departure would effectively authorize a longer validity period for the person who failed to comply with the requirement than for one who did. This would not be appropriate. Likewise, the 6-month period during which a lawful permanent resident (who meets the other criteria in section 101(a)(13) of the Act) is not deemed to be seeking admission is not analogous to that of the stranded refugee, since the refugee is clearly deemed to be seeking admission. Additionally, 6 months might be too short a time for the alien who realizes his or her error to file the application and for the Service to verify eligibility and approve that application. The Department feels that in those cases where it is proper to allow an exception from the requirement to file before departure, it is appropriate that the document be valid for the same length of time as for the person who complied with that requirement.

Revision of Asylum Procedures

In general, many commenters requested that specific ''step-by-step'' procedural instructions be placed in the regulations regarding the interview process at both the secondary inspection stage and the credible fear

determination stage. Although a number of these suggestions have been adopted, others have not. While the Department appreciates both the necessity for equal and proper treatment of all cases and the advantages of standardization, it must also recognize that not all situations are identical and the interviewing officer must be allowed a certain amount of flexibility in conducting interviews to account for differences in individual situations.

Convention Against Torture

Many commenters urged that there be express reference in several parts of the regulation to the non-refoulement obligation under Article 3 of the Convention Against Torture. This article requires a state not to ''expel, return ('refouler') or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture.'' This article has been in effect for the United States since November 1994. Although Article 3 of the Torture Convention itself is not self-executing, the Attorney General has sufficient administrative authority to ensure that the United States observes the limitations on removal required by this provision. In fact, the Service has received and considered individual requests for relief under the Torture Convention since November 1994 and has arranged for relief where appropriate. For the present, the Department intends to continue to carry out the non-refoulement provision of the Torture Convention through its existing administrative authority rather than by promulgating regulations. The Service is, however, developing thorough guidelines to address Article 3 issues and intends to issue those guidelines soon. These guidelines generally, and the expedited removal process in particular, will be implemented in accordance with Article 3.

Prohibitions on Filing Asylum Applications

There were numerous comments on the prohibitions on the filing of asylum applications in section 208(a)(2) of the Act. Because of the importance of a decision to deny an alien the right to apply for asylum, the Department has chosen to adopt the suggestion that only asylum officers, immigration judges, and the BIA be empowered to make such determinations. The Department has also made clear that, while the alien must establish by clear and convincing evidence that he or she applied within one year of his or her arrival in the United States, the alien's burden of establishing that one of the exceptions in section 208(a)(2)(D) applies must only be to the ''satisfaction of the Attorney General.'' The rule also contemplates that the asylum officer or immigration judge hearing such a case will explore the reasons for the late filing. Finally, and importantly, the Department has decided to follow the recommendation that the date of arrival used to determine the one-year period in section 208(a)(2)(B), consistent with the effective date of that section, be no earlier than April 1, 1997. Thus, the first case to which this prohibition could apply would be one filed on April 2, 1998.

Regarding the changed circumstances exception in section 208(a)(2)(D), the Department has followed the recommendation of numerous commentators to drop the language limiting this exception, for purposes of section 208(a)(2)(B), to circumstances that arise after the one-year period. The Department has also decided to provide a better definition of this exception by indicating that the definition may include either changed conditions in the home country or changes in objective circumstances relating to the applicant in the United States, including changes in applicable U.S. law, that create a reasonable possibility that the applicant may qualify for asylum. Because of inconsistency between the formulation of changed circumstances in section 208(a)(2)(D) and the formulation in section 240(c)(5)(ii) of the Act, which permits an alien to file a motion to reopen beyond the time limit normally applicable to such a motion, the Department has decided to drop the requirement that, for purposes of the prohibition in section 208(a)(2)C), such exception may only be raised through a motion to reopen.

A large number of commenters requested that the Department list examples of what is meant by extraordinary circumstances within the meaning of section 208(a)(2)(D) of the Act, and several commenters suggested examples that they believed were appropriate. Accordingly, the Department has included such a list in the interim rule. It is important to bear two points in mind when reviewing the list. First, the list is not all-inclusive, and it is recognized that there are many other circumstances that might apply if the applicant is able to show that but for such circumstances the application would have been filed within the first year of the alien's arrival in the United States. Second, the alien still has the burden of establishing the existence of the claimed circumstance and that but for that circumstance, the application would have been filed within the year.

Some commenters requested that the Department clarify that failure to establish changed circumstances or extraordinary circumstances might bar an applicant from applying for asylum, it does not bar him or her from applying for withholding of removal. The Department agrees and the interim rule contains this clarification.

Some commenters objected to the requirement that an alien who meets the extraordinary circumstances criteria, file the application ''as soon after the deadline as practicable given those circumstances,'' preferring instead the phrase ''within a reasonable time period given those circumstances.'' The Department has adopted this suggestion and a similar formulation for the ''changed circumstances'' exception.

''Asylum-Only'' Hearings

The Department noted a conflict in the proposed rule between the provisions of § 208.2(b)(1)(i)(C) and § 252.2(b) regarding crewmembers who are granted landing permits prior to April 1, 1997, and subsequently become deportable. The former provision would place such alien in ''asylum-only'' proceedings before the immigration judge, while the latter would place him or her in regular removal proceedings under section 240 of the Act. The interim rule corrects this conflict by specifying that the ''asylum-only'' process applies to those crewmembers granted landing privileges on or after April 1, 1997. Also, § 208.2(b)(2) has been expanded to explain the consequences of failure to appear for an asylum-only hearing and to set forth conditions and limitations on reopening such proceedings.

Discovery and FOIA Issues

Some commenters expressed concern about the statement in 8 CFR 208.12 that ''[n]othing in this part shall be construed to entitle the applicant to conduct discovery directed towards the records, officers, agents, or employees of the Service, the Department of Justice or the Department of States.'' Specifically, they feared that the provision would preclude someone from seeking, or excuse the Service from providing, information under the Freedom of Information Act (FOIA). This fear is totally groundless. FOIA provisions are covered under separate statutory and regulatory bases. The Service is guided by 5 U.S.C. 522 and 8 CFR 103 with regard to FOIA matters, neither of which are in any way affected by this rulemaking.

Persecution for Illegal Departure or Applying for Asylum

Several commenters objected to the proposed elimination of § 208.13(b)(2)(ii) and § 208.16(b)(4), which require asylum officers and immigration judges to give ''due consideration'' to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country. These commenters interpreted this change to mean that the Department does not wish to consider seriously such evidence or to grant asylum or withholding to persons who are at risk of punishment for illegal departure from their countries or for applying for asylum abroad. This is not the case. The Department and the United States Government continue to deplore and oppose certain countries' practice of severely punishing their citizens for illegal departure or for applying for asylum in another country. The Department also acknowledges that persons who face severe punishment for such acts may continue to qualify for asylum or withholding of removal. However, the regulation at issue did not clearly implement this policy. First, it requires only that asylum officers and immigration judges give ''due consideration'' to evidence of such practices; this is a vague and indefinite standard. Second, it obliges adjudicators to consider evidence of whether a country ''persecutes'' its nationals for such actions. Such language begs the very question that an adjudicator must answer in deciding such a case: Does the alleged punishment amount to persecution? It is well-established that not all punishment for illegal departure constitutes persecution. *See, e.g., Sovich* v. *Esperdy*, 319 F. 2d 21 (2d Cir. 1963); *Matter of Chumpitazi,* 16 I&N Dec. 629 (BIA 1978). However, in some cases, it may. Such a question must be resolved on a case-by-case basis. Thus, rather than continue to have an ambiguous regulation on this issue, the Department believes its adjudicators should apply the same standards to these cases as they would to any other case in which the applicant claims a fear that derives from governmental prosecution. This is best accomplished by removing the provisions in question from the regulations.

Exception to the Prohibition on Withholding of Deportation in Certain Cases

Several commenters objected to the proposed rule's limitation in § 208.16(c)(3) on those aliens who may be eligible for relief under section 243(h)(3) of the Act, as amended by Pub. L. 104–132. In particular, these commenters object to the notion that the United States may summarily preclude from eligibility for withholding of deportation aliens convicted of a particularly serious crime, including an aggravated felony, without individually considering their cases. However, it is well established in U.S. law that aliens who have been convicted of an aggravated felony are mandatorily barred from obtaining withholding of deportation. *See, e.g., Kofa* v. *INS*, 60 F. 3d 1084, 1090 (4th Cir. 1995) (en banc). In the proposed regulation implementing section 243(h)(3) of the Act, the Department decided, consistent with the revisions made to the withholding of deportation statute by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, to make relief under this section available only to those persons convicted of an aggravated felony who receive an aggregate sentence of imprisonment of less than 5 years. This proposal is almost entirely consistent with a recent precedent decision issued by the BIA on this issue. *See Matter of Q–T–M–T–*, Int. Dec. 3300 (BIA 1996). Thus, the Department intends to retain the basic approach in the proposed regulation. We have only added a sentence providing that an alien convicted of an aggravated felony shall be presumed to have been convicted of a particularly serious crime. This minor change renders the regulation fully consistent with the Board's decision in *Matter of Q–T–M–T–*, supra.

Admission of the Spouse and Children of an Asylee

The proposed rule reserved § 208.19 for regulations pertaining to the admission of the spouse and children of an asylee. This matter was the subject of a separate proposed rule published July 9, 1996, see 61 FR 35,984 (1996) and the Department had intended to incorporate the revised regulations into this interim rule. However, because analysis of the comments to that earlier proposed rule has not been completed, the Department will instead redesignate the existing regulations at § 208.21 as § 208.19. The revised regulations on the admission of the spouse and children of an asylee will be incorporated into the final regulations, which will be published after the expiration of the comment period for this interim rule.

Credible Fear Standard

Several commenters urged that we adopt regulatory language emphasizing that the credible fear standard is a low one and that cases of certain types should necessarily meet that standard. Since the statute expressly defines the term ''credible fear of persecution,'' we have chosen not to provide in the rule a further refinement of this definition. However, both INS and EOIR will give extensive training to their officials on the purpose of the credible fear standard and how it is to be applied to particular cases. The Department believes that such training will ensure that the standard is implemented in a way which will encourage flexibility and a broad application of the statutory standard.

Employment Authorization for Asylum Applicants

Almost all who chose to comment on the Department's position regarding work authorization for asylum applicants were pleased with the decision to continue to allow the applicant to apply for an employment authorization document once the asylum application has been pending for 150 days. One commenter requested that the 150-day period be abolished, but that suggestion was not deemed viable, especially in light of the new statutorily-mandated 6-month minimum time before granting such authorization contained in section 208(d)(2) of the Act.

The Department has also modified the regulations relating to employment authorization at §§ 208.7(a) and 274a.12(a)(8) to ensure that applicants who appear to an asylum officer to be eligible for asylum but have not yet received a grant of asylum are able to obtain employment authorization. Section 208(d)(5)(A)(i) of the Act obliges the Service, prior to granting asylum, to check the identity of the applicant ''against all appropriate records or databases maintained by the Attorney General and by the Secretary of State * * *.'' Such databases include, among others, the Federal Bureau of Investigation's (FBI) fingerprint database. At present, the Service initiates such a fingerprint check at the time it grants asylum; if the check turns up information that undercuts that decision, asylum is later revoked. The Service's experience is that the FBI's fingerprint checks often take a significant period of time to complete. The new statutory requirement at section 208(d)(5)(A)(i) of the Act thus means that after April 1, 1997, an alien who would otherwise appear to be eligible for asylum may have to wait for a long period of time before he or she can be granted asylum or employment authorization. (A similar problem may

arise in the case of an alien who is determined to be a refugee under the new language in section 101(a)(42) of the Act but is precluded from being granted asylum because of the cap in section 207(a)(5) of the Act.) Such a result is contrary to one of the chief purposes of the asylum reforms brought about by the regulatory changes of January 1995: to ensure that bona fide asylees are eligible to obtain employment authorization as quickly as possible. Thus, consistent with the authority in section 208(d)(2) of the Act, the Department has decided to make employment authorization available to asylum applicants who are recommended for a grant of asylum but have not yet received such grant of asylum or withholding. An alien may apply for employment authorization under these provisions as soon as he or she receives notice of the grant recommendation.

Credible Fear Determinations and Claims of Asylum or Fear of Persecution by Alien Subject to Expedited Removal

Under the new section 235(b)(1)(A)(ii) of the Act, an alien subject to expedited removal who indicates an intention to apply for asylum or who expresses a fear of persecution will be referred to an asylum officer to determine if the alien has a credible fear of persecution. Many commenters stated that the regulation in § 235.3 was not sufficiently detailed in delineating the following procedures for recognizing and referring arriving aliens who may be genuine refugees fleeing persecution: disclosures to arriving aliens; conditions of secondary inspection; use of interpreters; representation during secondary inspection; written record of proceeding; time and place of credible fear interview; detention pending a determination of credible fear; and detention following a determination of credible fear. We will address these concerns individually.

Disclosures to Arriving Aliens

Many commenters expressed the opinion that all arriving aliens should be provided with information concerning the credible fear interview. This contention is based on the language of the statute in section 235(b)(1)(B)(iv) that states: ''The Attorney General shall provide information concerning the asylum interview described in this subparagraph to aliens who may be eligible * * *.'' The commenters' position is that this requirement is not limited only to aliens who ''are'' eligible, but that all aliens who are suspected of qualifying for expedited removal ''may'' be eligible, and that the information should be given before the secondary inspection pre-screening process.

To understand the Service position on this issue, one must understand the general inspection process. All persons entering the United States at ports-of-entry undergo primary inspection. U.S. citizens are exempt from the inspection process, but must nevertheless undergo an examination to determine entitlement to exemption from inspection. In FY 96, the Service conducted more than 475 million primary inspections. During the primary inspection stage, the immigration officer literally has only a few seconds to examine documents, run basic lookout queries, and ask pertinent questions to determine admissibility and issue relevant entry documents. At most land border ports-of-entry, primary inspection duties are shared with U.S. Customs inspectors, who are cross-designated to perform primary immigration inspections. If there appear to be discrepancies in documents presented or answers given, or if there are any other problems, questions, or suspicions that cannot be resolved within the exceedingly brief period allowed for primary inspection, the person must be referred to a secondary inspection procedure, where a more thorough inquiry may be conducted. In addition, aliens are often referred to secondary inspection for routine matters, such as processing immigration documents and responding to inquiries. While millions of aliens (almost 10 million in FY 96) are referred to secondary inspection each year for many reasons, approximately 90 percent of these aliens are ultimately admitted to the United States in a very short period of time once they have been interviewed and have established their admissibility.

The secondary officer often does not know if an alien is likely to be removed under the expedited removal process until he or she has questioned the alien. Congress, in drafting the expedited removal provisions, chose to include both section 212(a)(6)(C) and 212(a)(7) of the Act as the applicable grounds of inadmissibility. The common perception is that most expedited removal cases will involve obvious fraudulent documents, or aliens arriving with no documents at all. This is not necessarily the type of case that most frequently falls within the provisions of sections 212(a)(6)(C) and (7) of the Act. Section 212(a)(6)(C) of the Act includes ''any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act * * *,'' as well as aliens who falsely represent themselves to be citizens of the United States. In addition to the presentation of fraudulent documents, the falsity of which may not be verified until a thorough examination has been conducted, the fraud and misrepresentation referenced in this section may include falsehoods told by the alien concerning his or her admission or other misrepresentations told to Government officials now or in the past.

Section 212(a)(7) of the Act, in addition to covering a lack of valid documents (including expired or incorrect visas or passports), also encompasses the alien ''who is not in possession of a valid unexpired immigrant visa.'' Under immigration law, aliens who cannot establish entitlement to one of the nonimmigrant categories contained in the Act are presumed to be immigrants, and, if not in possession of a valid immigrant visa, are inadmissible under section 212(a)(7) of the Act. The majority of the aliens currently found inadmissible to the United States fall into this category and will now be subject to expedited removal. Again, inadmissibility under this ground often cannot be determined until the secondary inspector has thoroughly questioned the alien.

To fully advise, prior to any secondary questioning, nearly all aliens referred to secondary inspection of the expedited removal procedures and of the possibility of requesting asylum would needlessly delay the millions of aliens who are ultimately found admissible after secondary questioning. For almost all of these people, asylum, fear of persecution, or fear of return is not an issue.

The Service has very carefully considered how best to ensure that bona fide asylum claimants are given every opportunity to assert their claim, while at the same time not unnecessarily burdening the inspections process or encouraging spurious asylum claims. Service procedures require that all expedited removal cases will be documented by creation of an official Service file, to include a complete sworn statement taken from the alien recording all the facts of the case and the reasons for a finding of inadmissibility. This sworn statement will be taken on a new Form I–867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The form will be used in every case where it is determined that an alien

is subject to the expedited removal process, and contains a statement of rights, purpose, and consequences of the process. Among other things, it clearly advises the alien that this may be the only opportunity to present information concerning any fears or concerns about being removed from the United States, and that any information concerning that fear will be heard confidentially by another officer. The final page of the form contains a standard question asking if the alien has any fear or concern of being removed or of being sent home. If, during the course of the sworn statement, or at any time in the process, the alien indicates a fear or concern of being removed, he or she will be given a more detailed written explanation of the credible fear interview process prior to being placed in detention pending the credible fear interview. The *Inspector's Field Manual* will contain detailed instructions and guidance to officers to assist them in recognizing potential asylum claims, and this topic will also be covered in officer training. Every expedited removal case also undergoes supervisory review before the alien is removed from the United States. The Service is confident that these safeguards will adequately protect potential asylum claimants. To ensure that these procedures are followed in every expedited removal case, language has been added to § 235.3(b)(4) outlining the procedures.

Conditions of Secondary Inspection

Numerous commenters indicated that the secondary inspection should be conducted in private, comfortable rooms, and that no secondary inspection should take place before an alien has had time to rest (some commenters suggested 24 hours), eat, and consult with family, friends, counsel, or other representatives. The commenters also suggest that aliens should have access to interpreters before and during the screening process.

At airports, the inspection facilities for the Federal Inspection Services (FIS), which includes the Service, U.S. Customs Service, the U.S. Department of Agriculture, and the U.S. Public Health Service, are provided by the airport authorities. While the Government has input when new facilities are constructed, the inspection areas, especially in older airports, simply do not allow for the amenities suggested by the commenters. The same is true for land border ports, where the facility is usually provided by the General Services Administration and overall space is often extremely limited. The Service has always made every effort to afford as much privacy during sensitive or complex interviews as conditions allow, and will continue to do so.

As for delaying the secondary interview to allow every alien time to rest prior to being questioned, the Service again points out that it conducts more than ten million secondary inspections each year. Most of those questioned are eager to have their inspection completed as quickly as possible. The Department has neither the resources nor the authority to detain all secondary referrals without first conducting a prompt interview to determine inadmissibility.

Use of Interpreters

The issue of language barriers and the use of interpreters is not new to the Service. The Service makes use of interpreters whenever necessary and will continue to do so to ensure that all aliens are fully apprised of the proceedings against them. The Service currently uses its own officers, many of whom are bilingual or multilingual, airport personnel, or telephonic interpretive services when in-person interpreters are not available. Occasionally, family members or persons waiting to meet the arriving alien may be allowed to assist in translation of the interview. The Service will use appropriate means to ensure that aliens being removed are advised of and understand the reasons for the removal and the consequences of such removal.

Representation During Secondary Inspection

Several commenters stated that an alien subject to expedited removal should be able to obtain representation or counsel prior to any secondary inspection interview. As discussed in the section on disclosures to aliens in expedited removal, the secondary inspection officer often does not know that an alien will be subject to expedited removal until such questioning has taken place, nor will all determinations of inadmissibility under section 212(a)(6)(C) or (7) of the Act result in an expedited removal order. Section 292 of the Act provides that in any removal proceeding before an immigration judge, the person concerned shall have the privilege of being represented by counsel, at no expense to the Government. Congress did not amend this section to include proceedings before an immigration officer. In addition, while Congress specifically provided for consultation prior to the credible fear interview, it did not provide for consultation prior to the immigration inspection and issuance of the order. Therefore, the Department will retain its interpretation that an alien in primary or secondary inspection is not entitled to representation, except where the person has become the focus of a criminal investigation and has been taken into custody for that purpose.

Written Record of Proceeding

Several commenters expressed concern that there be a complete record of proceeding to ensure that Service officers are making proper decisions. As previously explained, an official Service file will be created on every expedited removal case. The file will include photographs, fingerprints, copies of any documentary or other evidence presented or discovered, and a complete written sworn statement. The sworn statement will record all facts of the case and the alien's statements. As with all sworn statements taken by the Service, the alien is required to initial each page and any corrections, and sign the statement certifying that he or she has read (or had read to him or her), the statement and that it is true and correct. When necessary, interpreters will be used. The language added to the regulation at § 235.3(b)(2) requires that such sworn statement be taken in every case. Procedures developed for the *Inspector's Field Manual* also contain very specific instructions regarding the record of proceeding.

Time and Place of Credible Fear Interview

Several commenters requested that the regulations state where and when the credible fear interviews will take place. The statute provides that credible fear interviews may take place either at a port-of-entry or at other locations that the Attorney General may designate. The Service intends that most interviews will be conducted at Service detention facilities, but prefers the flexibility to make adjustments to this arrangement as the need arises. Therefore, this operational concern will not be addressed in the regulation. The Service maintains detention facilities near several major airports such as JFK, Miami, and Los Angeles, as well as many locations along the southern border and other sites like Denver, Seattle, and Houston. In circumstances where the port of arrival is not near a Service detention facility and it is impractical to transport the alien to a Service facility, the alien may be detained in other Service-approved detention sites, such as local or county jails. In these instances an asylum

officer will travel to the detention site to conduct the interview.

Several commenters suggest that the Service should conduct credible fear interviews at its local asylum offices whenever possible. The Service declines to be bound by this suggestion because of the prohibitive costs involved in transporting aliens, under escort, to and from detention facilities. However, the Service retains the option to conduct interviews at places designated for asylum officers.

Similarly, the Service intends that aliens will normally be given 48 hours from the time of arrival at the detention facility, in which to contact family members, friends, attorneys, or representatives. During the referral process from the port-of-entry, they will be given a list of pro bono representatives. This list is provided for the purpose of consultation prior to the interview, and does not entitle the alien to formal counsel or representation during the credible fear interview. The aliens will be given access to a telephone to make such contacts. Commenters suggest that aliens be given petty cash or be permitted to make telephone calls at Government expense; however, the statute that provides for such consultation specifically states that the consultation shall be at no expense to the Government.

Detention Pending a Determination of Credible Fear

A few commenters stated that the provisions of § 235.3(b)(4) for detention of aliens awaiting a credible fear determination are too harsh, and asked that the rule be amended to allow for parole of such aliens. However, because section 235(b)(1)(B)(iii)(IV) of the Act requires that an alien in expedited removal proceedings ''shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed,'' the Department feels that parole is appropriate only in the very limited circumstances specified in § 235.3(b)(4). The interim rule has been amended, however, to clarify that aliens found to have a credible fear will be subject to the generally applicable detention and parole standards contained in the Act. Although parole authority is specifically limited while a credible fear determination is pending under § 235.3(b)(4), those found to have a credible fear and referred for a hearing under section 240 of the Act will be subject to the rule generally applicable to arriving aliens in § 235.3(c). In addition, § 235.3(c) has been amended to retain detention authority for aliens whose admissibility will be determined in exclusion proceedings after April 1, 1997.

Review of Credible Fear Determinations

The proposed regulation provides that an alien may receive, upon request, review by an immigration judge of an asylum officer's finding of no credible fear. A number of commenters requested that language be inserted in the interim regulation which presumes that an asylum officer's finding of no credible fear will be reviewed by an immigration judge unless the alien desires to abandon the review and return to his or her home country. If such a suggestion is not adopted, these commenters request that, at a minimum, language be inserted requiring that the asylum officer advise the alien of his or her right to request review of the negative decision and requiring the officer to ask the alien whether he or she desires such review. The language of section 235(b)(1)(B)(iii)(III) of the Act clearly provides that the alien has the obligation to request review of a negative credible fear determination. The Department notes that § 208.30(e) of the proposed regulation requires the asylum officer to inquire whether the alien wishes review of the negative credible fear determination. This provision is appropriated into Form I–589.

A number of commenters asked that the regulation provide that, whenever practicable, the credible fear review be conducted in person; that the alien may be assisted by an attorney or other representative; and that an interpreter be provided when necessary. Another commenter stated, however, that no counsel should be allowed in the review of credible fear determinations; rather, a representative should be allowed to submit a written statement. The Department recognizes the concerns raised by these commenters. However, because the proposed regulation sets forth a procedure for credible fear review that is consistent with the language of section 235(b)(1)(B)(iii)(III) of the Act and provides the Attorney General the flexibility to administer such a procedure, the rule was not changed.

One commenter asserted that the proposed regulation that provides for an alien who demonstrates a credible fear of persecution to be placed in removal proceedings under section 240 of the Act is incorrect. The commenter maintains that IIRIRA contemplates that such aliens will be limited to an ''asylum only'' hearing with an appeal to the Board. This portion of the regulation will not be changed in the interim rule. Section 235(b)(1)(B)(ii) of the Act provides that if an asylum officer determines that an alien has a credible fear of persecution, the alien ''shall be detained for further consideration of the application for asylum. The remainder of section 235(b) of the Act is very specific as to what procedures should be followed if an alien does not establish a credible fear. However, the statute is silent as to the procedures for those who do demonstrate a credible fear of persecution. Once an alien establishes a credible fear of persecution, the purpose behind the expedited removal provisions of section 235 of the Act to screen out arriving aliens with fraudulent documents or no documents and with no significant possibility of establishing a claim to asylum has been satisfied. Therefore, the further consideration of the application for asylum by an alien who has established a credible fear of persecution will be provided for in the context of removal proceedings under section 240 of the Act.

Detention Following a Determination of Credible Fear

Numerous commenters stated that aliens who have established a credible fear of persecution are presumptively eligible for release and should not be detained unless the government can demonstrate that the alien poses a danger to the community or a risk of flight. Some stated that the burden should be on the government to prove that custody is necessary. Again, the clear language of the statute states that such aliens shall be detained. The parole provisions of section 212(d)(5) of the Act provide discretionary authority to the Attorney General to parole into the United States or from custody only on a case-by-case basis. The credible fear standard sets a low threshold of proof of potential entitlement to asylum; many aliens who have passed the credible fear standard will not ultimately be granted asylum. It should also be noted, as stated by one commenter, that these aliens are prima facie inadmissible to the United States. However, the Department intends, as part of the credible fear interview process, to assess the eligibility for parole of aliens who have been determined to have a credible fear. The discretion to release from custody will remain with the district director on a case-by-case basis.

Effect of Initiation of Removal Proceedings

Several commenters objected to the language in section 239.3 providing that the filing of a notice to appear has no

effect in determining periods of unlawful presence. These commenters noted that this section of the regulation could be interpreted to mean that the period of time a respondent is in removal proceedings is not a period ''authorized by the Attorney General,'' which would mean that removal proceedings would not toll the running of time periods for purposes of the bars to admission in section 212(a)(9)(B) of the Act. The result, the commenters assert, would be that people would be compelled to abandon their legitimate claims for relief from removal because, by pursuing such relief before an immigration judge or on appeal to the Board, an individual would risk accruing over 180 days in ''unlawful status'' and thereby becoming inadmissible under section 212(a)(9)(B)(i)(I) of the Act. The commenters recommended that either this language in section 239.2 be deleted or that it be replaced by a statement that the filing of a notice to appear tolls the period of unlawful presence.

Upon review, the Department has concluded that the regulation will be retained without change in the interim rule. Section 212(a)(9)(B)(iv) of the statute is clear that any period of illegal presence may tolled only in very limited circumstances. This section of the statute does not include issuance of a charging document among those circumstances. The Department does not agree that application of this section will deter aliens from pursuing valid claims for relief in removal proceedings. The same forms of relief, including asylum and adjustment of status, remain available in such cases, even after passage of the 180 day and one year time limits. Similarly, availability of voluntary departure is unchanged. Further clarification of the applicability of section 212(a)(9) will be included in a separate proposed rule which the Service is currently drafting.

Motions to Reopen After Departure From United States

A few commenters recommended that motions to reopen be permitted after departure and that the Department delete the language in § 3.2(d) of the proposed rule providing that motions to reopen or reconsider cannot be made by or on behalf of a person after that person's departure from the United States. These commenters contend that this regulation is no longer valid because IIRIRA substituted former section 106(c) of the Act with new section 242. New section 242 of the Act does not contain the provision of former section 106(c) barring judicial review of a final order of deportation or exclusion if the alien departed the United States after issuance of that order. The commenters assert that if a petition for review of habeas corpus is successful, the petitioner should be lawfully entitled to reopen his or her removal case, even though he or she departed from the United States. They argue that such motions will promote judicial efficiency and economy.

The Department has decided not to adopt this suggestion and the interim regulations will not be changed. No provision of the new section 242 of the Act supports reversing the long established rule that a motion to reopen or reconsider cannot be made in immigration proceedings by or on behalf of a person after that person's departure from the United States.

Departure Constituting Withdrawal of Motion

In the proposed regulation, § 3.2(d) did not provide that departure from the United States after the filing of a motion to reopen or a motion to reconsider constitutes a withdrawal of such motion. The Department has reconsidered the advisability of adjudicating motions to reopen and reconsider subsequent to an alien's departure from the United States. The interim regulation retains the long established principal that any departure subsequent to moving to reopen or reconsider constitutes a withdrawal of that motion. The Department believes that the burdens associated with the adjudication of motions to reopen and reconsider on behalf of deported or departed aliens would greatly outweigh any advantages this system might render. Further, the Department is confident that the immigration judge's discretionary authority to stay the deportation or removal of an alien who has filed a motion to reopen or reconsider will safeguard an alien from being inappropriately deported before he is heard on his motion to reopen or motion to reconsider.

Time and Numerical Limitations on Filing Motions

A number of commenters pointed out that §§ 3.2(d) and 3.23(b) subject all parties to time and numerical limits for motions to reopen in deportation and exclusion proceedings, but apply those limits only to aliens in removal proceedings. These commenters argue that the same limitations should apply to all parties in all proceedings.

IIRIRA specifically mandates that ''[a]n alien may only file one motion to reopen'' in removal proceedings. Congress has imposed limits on motions to reopen, where none existed by statute before, and specifically imposed those limits on the alien only. The interim regulations will not be changed.

One commenter suggested that the time and numerical limitations for motions to reopen should be broader than changed country conditions, as provided in § 3.23(b)(4). The commenter asserted that IIRIRA contains a much broader exception for individuals to apply for asylum beyond the one year deadline and that it is inconsistent for the statute to provide these broader exceptions if eligible applicants will be barred from applying for asylum because of the stricter motion to reopen standard. As noted earlier, the Department has decided to drop the requirement that the changed circumstances exception to the one year filing deadline in section 208(a)(2) of the Act be raised only through a motion to reopen. The Department also notes that the standard for reopening an asylum case provided in 8 CFR 3.23(b)(4) is entirely consistent with the asylum reopening standard provided in IIRIRA.

Retention of September 30, 1996 Cut-Off Date on Filing Certain Motions

Some commenters indicated that § 3.2(c)(2) does not retain the September 30, 1996 cut-off date for earlier motions to reopen, while the proposed section 3.2(b)(2) does retain the July 31, 1996 cut-off date for earlier motions to reconsider. The commenters point out that although these dates have passed, they should be retained to ensure the rights of respondents who submitted timely motions that have not yet been adjudicated. Since the commenters demonstrate that the cut-off date in §§ 3.2(c)(2) and 3.23(b)(1) are not necessarily obsolete references, those sections are revised in the interim regulation to retain the appropriate cut-off dates.

Immigration Court Rules of Procedure

One commenter noted that § 3.12 omitted disciplinary proceedings under § 292.3 from the scope of the rules of Immigration Court procedure. The commenter correctly noted that no explanation had been given as to why disciplinary proceedings were omitted from the scope of the rules. Section 292.3 is currently being revised by EOIR and will ultimately be moved into 8 CFR 3. It was thought that the disciplinary proceedings regulations would have been revised and moved into part 3 prior to publication of this interim regulation and that a reference to § 292.3 would not be necessary. The disciplinary proceedings regulation, however, is still in progress. The interim

rule will therefore place the reference to disciplinary proceedings pursuant to § 292.3 back into § 3.12.

One commenter claimed that § 3.25(b), which allows the immigration judge to waive a hearing and enter a decision upon a stipulated request for that order, raises due process concerns because the provision requiring an immigration judge to determine that the alien's waiver is voluntary, knowing and intelligent is not an adequate safeguard. The interim rule does not change this provision. The requirement that the immigration judge determine if an unrepresented alien's waiver is voluntary, knowing and intelligent before granting a stipulated request for an order safeguards against an imprudent waiver of a formal adjudication on the part of an unrepresented alien. Further, the request for the order and waiver of the hearing must not only be stipulated to by both the alien and the Service, but must also be approved by the immigration judge. If an immigration judge is confronted with a stipulated request raising due process concerns, he or she may examine that request in the context of a hearing.

Comments Relating to Removal Hearings Under Section 240 of the Act

Several commenters were concerned with various aspects of the ordinary removal hearing process. One aspect of the removal process that received several comments was the method of service of Form I–862, Notice to Appear. Specifically, commenters were concerned that service of the notice to appear by regular mail would be inadequate. A few commenters have assumed that because service by certified mail is not required in all cases, it will not be used in any case. Both the statute and the regulations, however, allow for service by regular mail only when personal service is ''not practicable.'' Moreover, because the regulatory provisions at issue follow exactly the requirements of the Act, these provisions have not been changed in the interim rule.

Commenters expressed concern over the provision at § 240.8(d) that states that it is the alien's burden to establish that mandatory grounds for denial of any application for relief do not apply. It is well-settled that an alien bears the burden of establishing eligibility for relief or a benefit. This provision merely reflects this well-settled rule. Also, an alien is only required to establish eligibility by a preponderance of the evidence. This provision has not been changed in the interim rule.

One commenter expressed concern that § 240.10 of the proposed regulation does not cross-reference § 236.1(e). Section 236.1(e) requires that every detained alien be notified that he or she has the privilege of communication with consular authorities. The commenter proposed that § 240.10 require the Service to determine whether the alien is covered by § 236.1(e) and therefore must have an opportunity to contact the consular officer before a responsive pleading. The Service is required to comply with this requirement before commencement of removal proceedings. In the unlikely event that the Service failed to comply with this requirement, such a procedure could unduly delay an otherwise routine removal case. Contact with a consular officer is unlikely to have any bearing on a respondent's inadmissibility or deportability. The delay in the proceedings and its attendant cost would generate little substantive benefit for the alien as a result.

One commenter expressed concern over provisions in § 240.10(g) implementing section 241(b) of the Act. Those provisions allow the Attorney General to remove an alien to a country other than as designated by the alien under certain circumstances. The commenter suggests a 30-day waiting period for removal from the time the alien is given notice of the new country of removal. The Service has considered this suggestion and has decided not to change this provision in the interim rule. This procedure is not required by the Act, and would place a significant strain on detention resources.

Another commenter argued that provisions in § 240.7(a) relating to the admissibility of prior statements in removal proceedings were unnecessary. Specifically, the commenter was concerned about criminal pleas resulting in less than a criminal conviction and their effect on removal proceedings. It is always within the authority of the immigration judge to assign the statement a proper weight. Moreover, this provision was carried over from the prior regulations where it formerly existed at § 242.14(c). Thus, this section has not been changed in the interim rule.

Several commenters requested that § 240.12(a) of the proposed regulation include language that was in former § 242.18(a) requiring that the decision of an immigration judge ''shall include a discussion of the evidence and findings as to deportability [inadmissibility].'' The commenters assert that such findings and discussion of the evidence is necessary for the respondent to properly determine whether to file a motion for reconsideration of that decision or to prepare a notice of appeal with sufficient specificity to prevent a summary dismissal by the Board under § 3.1(d)(1)(1–a) of the regulations. The Department disagrees. The proposed regulation allows for an adequate articulation of the immigration judge's basis for his or her decision as well as the underlying reasons for granting or denying the request. The rule provides sufficient information for the respondent to prepare a notice of appeal with sufficient specificity to prevent a summary dismissal of appeal. For these reasons this section has not been changed in the interim rule.

Other comments regarding procedures are not discussed individually and have not been adopted in this interim rule. Most recommended changes to existing procedures or commented on matters which directly resulted from changes to the law itself. These comments will be reviewed and considered in greater detail when the final rule is prepared.

Guardian Ad Litem

In the proposed rulemaking, the Department solicited comments on the advisability of procedures for appointment of guardians ad litem. Several thorough and detailed comments were received. Because the issue is a complex and sensitive one, the Department has decided to further examine the issue and prepare a separate rulemaking at a later date.

Cancellation of Removal

A number of commenters expressed concern with section 240.20(b) of the proposed regulation, which states that an application for cancellation of removal may be filed only with the Immigration Court after jurisdiction has vested pursuant to section 8 CFR 3.14. Section 3.14(a) provides that jurisdiction vests when a charging document is filed with the Immigration Court by the Service. The practical concern raised by the commenters arise if the Service serves Form I–862, Notice to Appear, on a respondent but does not file it with the Immigration Court. If the Service does not file a notice to appear which has been served, a respondent would not have access to the Immigration Court to obtain forms of relief such as cancellation of removal or adjustment of status. Moreover, the service of the notice to appear will cut off the accrual of time in continuous residence or continuous physical presence for that respondent under new section 240A(d)(1) of the Act. The commenters proposed that language be added to § 3.14(a) of the regulation allowing for jurisdiction to vest and

proceedings to commence when a charging document is filed by the Service or by a respondent. The commenters added that § 3.14(a) already permits immigration judges to conduct bond proceedings and credible fear determinations without a charging document being filed with the court. Thus, they assert, there is no rational basis to permit the initiation of those two types of proceedings and not permit an immigration judge to consider an application for cancellation of removal after a respondent files a charging document that previously has been served on the respondent by the Service. The ability to file a charging document has rested exclusively with the Service for a number of years, without problem. This portion of the proposed regulation will not be changed in the interim rule. The issue of the initiation of removal proceedings lies within the prosecutorial discretion of the Service. The Service needs to have control over when charging documents are filed with the Immigration Courts in order to best manage its administrative resources.

Apprehension, Custody, and Detention of Aliens

The IIRIRA extended the mandatory detention provisions to additional classes of inadmissible and deportable aliens but provided an exception for certain witnesses. It also allowed the Attorney General the option of a transition period for implementation of mandatory detention. The Service exercised this discretion and implemented the transition period custody rules on October 9, 1996, effective for 1 year. This interim rule amends the regulations to comply with the amended Act by removing the release from custody provisions for aliens who may no longer be released. These amendments to the regulations will take effect upon the termination of the transition period. As for non-criminal aliens, the rule reflects the new $1,500 minimum bond amount specified by IIRIRA. Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination.

Several commenters complained that the Service has no national standards of detention. They stated that policies, practices, and decisions regarding outside communication are bewildering, arbitrary, and inconsistent. Consistent with its focus on providing safe, secure, and humane detention environments, the Service has implemented detention facility improvements and has set as a goal the accreditation of each of its facilities. The Krome Service Processing Center (SPC) has received accreditation with commendation from the Joint Commission of Healthcare Organizations (JCHO), the most prestigious medical accreditation that can be awarded. Currently, six SPCs are accredited by the National Commission on Correctional Health Care (NCCHC), and accreditation is pending at the remaining three SPCs. The Denver contract facility is also NCCHC accredited. Six contract facilities have American Correctional Association (ACA) accreditation and two others have begun the accreditation process.

Several commenters stated that the Service should require ACA standards in local detention facilities used. Approximately 46 percent of the detention space used by the Service is with state and local facilities. Formal ACA accreditation of a state or local facility is a matter for the state or local government. The Service could not meet its detention requirements by using only facilities that have been formally accredited. The Service has established its own rigorous inspection program that uses ACA standards for evaluation of a facility. The Service will not use a facility that fails to pass our inspection.

Several commenters stated that § 236 of the proposed rule as written is a reversal of long established procedure that provides that a noncriminal alien is presumptively eligible for release. The Service has been strongly criticized for its failure to remove aliens who are not detained. A recent report by the Department of Justice Inspector General shows that when aliens are released from custody, nearly 90 percent abscond and are not removed from the United States. The mandate of Congress, as evidenced by budget enhancements and other legislation, is increased detention to ensure removal. Accordingly, because the Service believes that the regulation as written is consistent with the intent of Congress, the interim rule has not modified the proposed rule in this regard.

Several commenters noticed a discrepancy between the discussion in the supplementary information and the substance of § 236.1(c)(5) of the proposed regulation. The supplementary information stated the Department's intended approach, and clause (i) of the proposed regulation was in error. Accordingly, the interim rule removes paragraph (c)(5)(i) of § 236.1 and renumbers the remaining paragraphs (c)(5)(ii), (iii), and (iv). The effect of this change is that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not. This procedure maintains the status quo regarding release decisions for aliens in proceedings, as discussed in the supplementary information of the proposed regulation.

One commenter stated that no criminal alien may be released pursuant to the Transition Period Custody Rules in section 303(b)(3) of IIRIRA where there is sufficient space to detain the individual alien. The same commenter stated that it was not the intention of Congress that EOIR continue to exercise bond redetermination authority under the Transition Rules. Aside from the classes of aliens covered by the Transition Rules, however, the basic structure of the Rules is essentially that of section 242(a)(2) of the Act as it stood prior to AEDPA, providing for the release of ''lawfully admitted'' criminal aliens (as well as unremovable criminal aliens), in the exercise of the Attorney General's discretion, when such aliens can demonstrate the absence of a danger to the community or a flight risk upon release. The Department intends to issue a separate proposed rule in the near future establishing both substantive limitations and procedural safeguards concerning the release of criminal aliens eligible to be considered for release under the Transition Rules. Accordingly, the interim rule has not been modified.

Expedited Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

The interim rule amends the Service's regulations to comply with the Act, as amended, by: including aliens who have lawful permanent residence on a conditional basis under section 216 of the Act as being subject to expedited administrative deportation procedures; removing references to prima facie eligibility for relief; and eliminating references to release from custody, since aliens subject to these proceedings are now statutorily ineligible for release as a result of changes to other sections of the Act.

Several commenters addressed the time period for response, the role of the deciding Service officer, the risk of deporting U.S. citizens or permanent residents, and other aspects of the procedure. These procedures were not changed from the regulation as it was written at § 242.25. These comments were previously addressed when the regulation was published on August 24, 1995.

Voluntary Departure and Employment Authorization

The proposed rule outlined how voluntary departure would be handled at various stages of proceedings. Since new section 240B of the Act and the corresponding proposed regulations represented a significant departure from the predecessor provisions for voluntary departure, public comments regarding the Department's approach to implementation of this provision were particularly welcomed.

Several commenters wrote in opposition to the language in § 240.25 providing that ''[t[he Service may attach to the granting of voluntary departure any conditions it deems necessary to ensure the alien's timely departure from the United States.'' Many based their opposition on their contention that the language was ''beyond the scope of the legislation.'' However, a similar provision already exists in regulation. The present § 242.5(b) states that ''officers * * * may deny or grant the application and determine the conditions under which the alien's departure shall be effected.'' Similarly, current § 244.1 states that voluntary departure may be authorized ''under such conditions as the district director shall direct.'' Basically, the language of the proposed rule merely stated what was already in regulation. In addition, it is noted that voluntary departure is a privilege granted by the Service and is not an entitlement to be claimed by the alien. An alien must establish both that he or she is statutorily eligible for voluntary departure and that he or she merits voluntary departure in the exercise of discretion. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980). The ability to attach conditions to a grant of voluntary departure is necessary to the Service's ability to consider the request and is fully consistent with the intent of Congress in enacting section 240B of the Act, which tightens the previously applicable voluntary departure provisions in order better to assure actual departure. Therefore, the language will not be changed for the interim rule.

Several commenters objected to the maximum time limits for voluntary departure of 120 days prior to completion of removal proceedings, and 60 days at the completion of removal proceedings. Those commenters indicated that the statutory language limiting voluntary departure to 120 and 60 days did not preclude an interpretation authorizing additional extensions of voluntary departure in increments of 120 or 60 days. Several commenters, however, wrote in support of the voluntary departure provisions contained in the proposed rule. One commenter stated that ''it would be unlawful to extend or renew voluntary departure beyond the single period of 60 or 120 days specified in that section.'' Another commenter stated that ''These changes represent nothing more or less than what has been mandated by Congress, and there is no basis on which they can be substantively altered or amended in the promulgation of the interim rule.''

In its proper form, voluntary departure serves several functions. First, it allows the Service to allocate its enforcement resources more efficiently through case management. Second, it saves resources by allowing aliens to depart at their own expense rather than at the expense of the government. Finally, it benefits the aliens involved by allowing them to avoid the harsh consequences of a formal order of removal. Too often, however, voluntary departure has been sought and obtained by persons who have no real intention to depart. The IIRIRA was intended as a comprehensive reform of the immigration system and was specifically designed to curb abuses of voluntary departure. A reading of the voluntary departure provisions allowing for extensions of voluntary departure in multiple increments of 120 or 60 days inconsistent with the purpose of the statute and would be at best difficult to reconcile with the language of section 240B of the Act.

Prior to IIRIRA, the authority for voluntary departure was found in section 244(e) of the Act, which contained no time limitation. Now, for the first time, there are statutory restrictions limiting the time for which voluntary departure may be authorized. The Conference Report on H.R. 2202 stated that under section 240B(a) of the Act, ''[p]ermission to depart voluntarily under this subsection shall not be valid for a period exceeding 120 days * * *.'' Similarly, the Conference Report stated that under section 240B(b) of the Act, ''[t]he period for voluntary departure cannot exceed 60 days * * *. The Department concludes that the total period, including all extensions, may not exceed 120 days for voluntary departure granted prior to completion of proceedings or 60 days for voluntary departure granted at the conclusion of proceedings.

Several commenters objected to the elimination of employment authorization for aliens who have been granted voluntary departure. Several other commenters wrote in favor of the elimination. Prior to April 1, 1997, voluntary departure was often granted by EOIR and the Service for extended periods of time. With grants and extensions of voluntary departure for extended periods of time, it was reasonable to allow for employment authorization. Now, voluntary departure is limited to a maximum of 120 days. Moreover, it has long been recognized that employment provides a magnet that draws aliens to this country. Voluntary departure provides an opportunity for an alien to complete the process of departure from the United States and should not be seen as a new opportunity for employment authorization. Although the granting of voluntary departure will not, in and of itself, cause any previously approved employment authorization to be terminated, neither will the granting of voluntary departure provide a new opportunity to apply for employment authorization. Therefore, the interim rule will eliminate the general provision found at § 274a.12(c)(12) for employment authorization for aliens who have been granted voluntary departure. Employment authorization will be retained only for beneficiaries of the Family Unity Program (section 301 of the Immigration Act of 1990, Pub. L. 101–649).

Several commenters expressed concern about the consequences for certain abused immigrant spouses and children of lawful permanent residents with properly filed self-petitions who were granted voluntary departure and work authorization pending availability of an immigrant visa. The Department shares the concerns of the commenters and is looking at how best to address them outside the context of voluntary departure.

Several commenters objected to the provisions for appeals, generally stating that the Service could appeal approvals, yet aliens cannot appeal denials. In § 240.25 (voluntary departure by the Service), the appeal procedure at paragraph (e) states that a denial of an application for voluntary departure may not be appealed, but such denial shall be without prejudice to the alien's right to apply to the immigration judge in accordance with § 240.26. Section 240.26(g)(1) (voluntary departure by EOIR) places limitations for appeals only on the Service, and places none on the alien. Section 240.26(g)(2) discusses an appeal of a grant or denial of voluntary departure. Therefore, the appeal procedures in §§ 240.25(e) and 240.26(g)(1) and (2) do not allow the Service to appeal approvals while precluding aliens from appealing denials. In reviewing the comments, however, it became apparent that the language of 240.26(g) appeared to

prohibit the Service from appealing a grant of voluntary departure on the ground that the alien was not eligible for the relief. Any such implication was unintended, and the language has been corrected to reflect that both the alien and the Government may appeal issues of both eligibility and discretion, but that neither may appeal the length of the voluntary departure period granted by the immigration judge.

One commenter expressed concern about the dangerous intersection between the voluntary departure time limits and new section 212(a)(9)(B) of the Act, which imposes a 3- to 10-year bar to admission upon any alien unlawfully present in the United States from 180 days to more than 1 year. The commenter pointed out that individuals now granted voluntary departure for extended periods of time for humanitarian reasons will become unlawfully present after 120 days of voluntary departure. The commenter stated that if deferred action is to be the sole avenue of relief, the Service needs to develop policy guidelines so that district directors will not be afraid to use it to enable the sick and the dying to receive treatment and to enable their parents to work for health insurance. The Department acknowledges that there will be some compelling humanitarian cases for which voluntary departure cannot be extended. A district director will be able to give individual consideration for a recommendation for deferred action to the regional director. If approved by the regional director, employment authorization may be granted under the provisions of § 274a.12(c)(14).

Several commenters objected to the provision for revocation found in § 240.25(f), and stated that revocation of voluntary departure should require notice and the opportunity to be heard. However, this provision already exists in the current § 242.5(c), which provides for revocation of a grant of voluntary departure without notice. The revocation is an adverse action initiated by the Service; therefore, personal service of the decision is required in accordance with § 103.5a(c). However, a notice of intent to revoke will not be issued. The interim rule will be amended to point out that the revocation shall be communicated in writing, and shall cite the statutory basis for revocation.

Several commenters objected to the limits in § 240.26(b)(1) on grants of voluntary departure under section 240B(a) of the Act, particularly the requirement that a request for such relief be made at or before a master calendar hearing, and decided by the immigration judge within 30 days thereafter. Other commenters stated that these provisions were confusing.

The regulation has not been changed substantively based on these comments but has been revised to clarify the applicable time periods. The revisions make it clear that in order to obtain voluntary departure from an immigration judge under section 240B(a) of the Act, an alien must request it prior to or at the master calendar hearing at which the case is initially calendared for a merits hearing, which is not necessarily the first master calendar hearing. This ensures that the alien is not obligated to request voluntary departure at preliminary stages of the process, before the case is ready to be scheduled for a merits hearing. The Department believes that this allows sufficient time for the alien to consider voluntary departure and other options and to discuss them with counsel. If such requests cannot be resolved at the master calendar hearing the immigration judge may take an additional 30 day period in case he or she desires additional time to consider the voluntary departure request or to complete the processing. In the event that the alien decides only after the specified master calendar hearing that he or she wishes to request voluntary departure, such a request can still be made later, but requires the concurrence of the Service under § 240.26(b)(2). Finally, even without Service concurrence, the immigration judge may grant voluntary departure under section 240B(b) of the Act upon conclusion of the proceeding.

Several commenters objected to the language at § 240.26(b)(1)(iv) authorizing the grant of voluntary departure by immigration judges pursuant to section 240B(a) of the Act only if the alien waives appeal of all issues. The Department believes that voluntary departure authorized by immigration judges prior to completion of proceedings should be for the purpose of settling cases in the interests of economy and justice. If an alien wishes to contest any issues, the proper forum will be a merits hearing. Once a case proceeds to a merits hearing and contested issues are settled, voluntary departure remains a form of relief; however, it may be authorized only pursuant to the provisions of section 240B(b) of the Act for voluntary departure granted at the completion of removal proceedings.

Several commenters wrote that the regulation should provide an exemption for an alien who would otherwise have a removal order issued against him or her for failing to depart when the alien, through no fault of his own, has not obtained travel documents. The regulation already provides, at § 240.26(b)(3)(ii), that the Service in its discretion may extend the period within which the alien must provide such documentation. However, the provision for extension is discretionary and not an entitlement. The alien in removal proceedings bears the responsibility to demonstrate eligibility for any relief requested. The alien is encouraged to work with the government of his or her home country to obtain a valid passport or other travel authorization if a travel document is necessary for return to that country. Failure to obtain necessary travel documentation will leave the Department no option but to enforce the alternate order of removal.

Several commenters pointed out that in a case involving an alien who was previously granted voluntary departure and failed to depart, the proposed regulation correctly reflects the statutory language that such an alien is not eligible for voluntary departure or relief under sections 240A, 245, 248, and 249 of the Act. The commenters pointed out, however, that the proposed regulation fails to include the statutory requirement that the alien must receive notice of the penalty for failing to depart. The Department agrees with the commenters, and will change the language in the interim rule to reflect the requirement that a voluntary departure order permitting an alien to depart voluntarily shall inform the alien of the penalties under section 240B(d) of the Act.

Sections 240B(a)(1) and 240B(b)(1)(C) of the statute bar aliens deportable under section 237(a)(2)(A)(iii) of the Act from voluntary departure. Because aliens entering without inspection are no longer considered deportable, however, the statutory bar might be read as allowing such aliens to obtain voluntary departure despite an aggravated felony conviction. The statute would thus create the anomaly of more favorable treatment for aggravated felons who enter without inspection. The Department does not believe that Congress intended such an anomaly. In any event, having become aware of the problem, the Department now exercises its discretion to bar such aliens from receiving this form of relief.

Finally, several commenters requested clarification regarding the effect of a motion or appeal to the Immigration Court, BIA, or a federal court on any period of voluntary departure already granted. Since an alien granted voluntary departure prior to completion of proceedings must concede removeability and agree to waive

pursuit of any alternative form of relief, no such appeal or motion would be possible in this situation. Regarding post-hearing voluntary departure, the Department considered several options, but has not adopted any position or modified the interim rule. The Department has identified three possible options: no tolling of any period of voluntary departure; tolling the voluntary departure period for any period that an appeal or motion is pending; or setting a brief, fixed period of voluntary departure (for example, 10 days) after any appeal or motion is resolved. The Department wishes to solicit additional public comments on these or other possible approaches to this issue so that it can be resolved when a final rule is promulgated.

Detention and Removal of Aliens Ordered Removed

This rule provides for the assumption of custody during the removal period, allows detention beyond the period, and provides conditions for discretionary release and supervision of aliens who cannot be removed during the period.

Several commenters stated that the wording of the statute provides for release of noncriminal aliens during the removal period and suggested that the Service adopt a policy of allowing the alien to remain at liberty during the 90-day removal period. One commenter stated that the proposed rule is consistent with the language and intent of IIRIRA and should be retained in the interim rule. The plain language of the statute requires that an alien be held in custody during the 90-day removal period and not be released. Accordingly, the proposed language is retained in the interim rule.

Several commenters stated that the statute requires release on an order of supervision after the expiration of the 90-day removal period. One commenter stated that the proposed rule is consistent with the language and intent of IIRIRA and should be retained in the interim rule. Taken together, sections 241(a)(3) and (a)(6) of the Act provide that any alien who is inadmissible or who is deportable on the grounds enumerated in paragraph (a)(6) may be detained beyond the removal period. Additionally, any alien who is a risk to the community or is unlikely to appear for removal may be detained regardless of the charge of inadmissibility or deportability. Accordingly, the proposed language is retained in the interim rule.

Reinstatement of Removal Orders Against Aliens Illegally Reentering

Several commenters suggested that aliens caught illegally reentering the United States after removal should be provided a hearing before an immigration judge. They expressed concern that issues such as identity and the propriety of the earlier removal order would not be addressed. One commenter argued that new section 241(a)(5) of the Act was not intended to be a substantive revision of former section 242(f) of the Act, which also dealt with reinstatement of deportation orders, but was merely taken from a bill proposing to recodify the Act without substantive change. One commenter wrote in support of these provisions, stating that they were consistent with the language and intent of IIRIRA.

A review of the relevant statutory provisions reveals that a substantive change was in fact effected in the transition from section 242(f) of the Act to section 241(a)(5) of the Act. Section 242(f) of the Act provided only that the deportation order was to be reinstated upon illegal entry. New section 241(a)(5) of the Act provides that the removal order is reinstated from its original date, but adds the provision ''and is not subject to being reopened or reviewed.''

The Service has taken steps to ensure the positive identification of an alien apprehended and removed under this section. In § 241.8(a)(2), the regulation requires fingerprint identification before an alien can be removed under section 241(a)(5) of the Act. In cases where no fingerprints are available and the alien disputes that he or she was previously removed, the alien will not be removed under section 241(a)(5) of the Act. Because the process mandated by the proposed rule adequately addresses the concerns expressed by the commenters, this provision remains unchanged in the interim rule.

Detention and Removal of Stowaways

Section 241.11 implements section 305 of IIRIRA, defining the responsibilities for stowaways and costs of detention in the new section 241 of the Act. All stowaways are deemed to be inadmissible under the Act and are not entitled to a hearing on admissibility. Those with a credible fear of persecution may seek asylum in accordance with 8 CFR part 208 in special proceedings before an immigration judge. The statute is very specific regarding most detention and removal responsibilities of the carriers.

Several commenters stated that the regulations do not contain a definition of stowaway. Since IIRIRA added a clear definition of stowaway in section 101(a)(49) of the Act, the Department saw no need to repeat the definition in the regulations. One commenter objected to the 15-day detention period for asylum-seeking stowaways, for which the owner of the vessel or aircraft bringing the stowaway is obligated for the costs of detention. As this time frame is mandated by statute in section 241(c)(3)(A)(ii)(III) of the Act, the Department is bound by it.

One commenter suggested that the regulation clearly define the situations where the Service should allow the carrier to remove, by aircraft, a stowaway who arrived by vessel. The regulation at § 241.11(c)(1) has been amended to include general circumstances where the Service might favorably consider such request. These circumstances will also be more thoroughly addressed in the *Inspector's Field Manual.*

One commenter stated that the regulations should define how the Service will make a determination that the necessary travel documents for the stowaway cannot be obtained, so as to shift the costs of the stowaway's detention from the carrier to the Service, as stated in section 241(c)(3)(A)(ii)(II) of the Act. The Department has not had sufficient time to consider this issue and so will address it in the final rule.

Adjustment of Status

Some commenters objected to the policy statement contained in the proposed rule that amended § 245.1(c)(8) and indicated that, as an exercise of discretion, the Attorney General would not adjust the status of arriving aliens ordered removed under section 235(b)(1) of the Act or in proceedings under section 240 of the Act. Those commenters believed that such a statement exceeded the Attorney General's authority by eliminating an immigration benefit that has not been eliminated by an act of Congress. Other commenters suggested that the policy statement did not go far enough and that the policy should be expanded to include all inadmissible aliens in section 240 proceedings, not just arriving aliens. In this interim rule, the Department will maintain the position taken in the proposed rule. This position promotes the Department's objective of taking steps to preserve the integrity of the visa issuance process while preserving the current additional avenue for review of discretionary denials of adjustment applications filed by aliens present without inspection and admission. The Department continues to believe this position is

consistent with the intent of Congress when it passed IIRIRA.

In response to the commenters who suggested this policy exceeded the Attorney General's statutory authority, it is noted that section 245 of the Act clearly and unambiguously states that adjustment of status is a discretionary decision, subject to such regulatory limitations as the Attorney General may prescribe. The same commenters stated that aliens who depart using an advance parole authorization and whose applications are subsequently denied would no longer be able to renew their adjustment application before an immigration judge. However, the revisions to § 245.2(a)(5)(ii) contained in the proposed rule preserved this procedure.

Rescission of Adjustment of Status

The interim rule includes several changes to 8 CFR part 246 that update obsolete references and bring the regulation into agreement with the statute. References to special inquiry officer were updated to refer to immigration judges. References to status of permanent residence acquired through outdated sections of law, and any related procedures for special report to Congress, were eliminated. In § 246.2, the provision that limited the rescission authority of the district director to cases that had been adjusted under section 245 of 249 or the Act was expanded to include all types of adjustment, thereby bringing the regulation into accord with the statute. In § 246.6, the requirements for immigration judges' decisions were changed to comport with the requirements of immigration judges' decisions found in § 240.12. The reference to Form I–151 in § 246.9 was removed because Form I–151 is no longer a valid document.

Elimination of Mexican Border Visitor's Permit

The proposed rule eliminated the Form I–444, Mexican Border Visitor's Permit, which is issued at land border ports-of-entry along the United States/Mexico border to Mexican nationals traveling for more than 72 hours but less than 30 days in duration or for more than 25 miles from the United States/Mexico border but within the five states of Arizona, California, Nevada, New Mexico, or Texas. The elimination was proposed because the Form I–444 does not have adequate security features to deter counterfeiting, and provides no tracking or enforcement benefits.

One commenter suggested that since the elimination of the Form I–444 was not mandated by IIRIRA and represented a significant departure from past procedure, it should be removed from this rule and proposed in a separate rulemaking. The commenter specifically objected to the elimination of the time and distance controls imposed on Mexican nationals inherent in the issuance of the Form I–444. As stated in the proposed rule, the Service has been unable to demonstrate that there is any connection between the limits on travel by persons issued Forms I–444 and immigration violations. Mexican nationals must undergo the same interview process to obtain a Border Crossing Card (BCC) or nonimmigrant visa as any other applicant from any other country. New validity periods have been imposed in recent years on the BCC, requiring periodic renewal. A Mexican national entering with a BCC undergoes the same inspection process as any other applicant for admission and must establish eligibility as a visitor for business or pleasure upon each entry to the United States. Presently, Mexican nationals who request entry at a Mexican land border port-of-entry to travel more than 30 days or beyond the five-state area, and who establish admissibility as a visitor, are issued Form I–94, Arrival/Departure Record, and allowed to proceed anywhere in the United States with no additional restrictions. Mexican BCC holders entering the United States by air or via the Canadian land border are also admitted with no restrictions. The elimination of the Form I–444 does not expand the possible use of the BCC in any way; it merely standardizes the entry documentation issued. The Department can see no reason to continue to impose specific controls on Mexican nationals seeking admission only at Mexican border ports-of-entry, and so accordingly will retain in the interim rule the elimination of Form I–444 in favor of more thoroughly documenting entry with Form I–94.

Visa Waiver Pilot Program (VWPP)

The provisions relating to the VWPP in 8 CFR part 217 were included in the proposed rule primarily as part of the review intended to streamline and eliminate duplication in Department regulations. In addition, several changes were made to conform to new statutory terminology and to include certain new procedures created as a result of IIRIRA. One commenter expressed concern that there could be confusion in § 217.4 as to what constitutes fraudulent or counterfeit documents and that aliens could be removed without the opportunity for review by an immigration judge. The language in this section was not changed from what has existed in the regulations for years. Moreover, aliens applying under the VWPP are, by statute, not entitled to a hearing before an immigration judge, except on the basis of an asylum claim. The only change that the proposed rule made to this provision was that the hearing provided for VWPP asylum claimants is now more clearly limited to asylum issues only. In addition, inadmissible VWPP applicants may be temporarily refused permission to enter the United States, but are not subject to the formal expedited removal provisions of section 235(b)(1) of the Act.

One commenter objected to several aspects of the amended language in § 217.6 relating to carrier agreements. Since most of the language in this section is already contained on the Form I–775, Visa Waiver Pilot Program Agreement, which is signed by all carriers participating in the VWPP, much of this section has been removed from the interim rule. The commenter objected to the elimination of due process safeguards in allowing termination of agreements by the Commissioner, with 5 days notice to the carrier, for failure to meet the terms of the agreement. This is not a new provision. The exact language has existed in the regulations since at least 1991 and has also been part of the existing Form I–775 for years, and will be retained. The definition of round (return) trip ticket has been revised to conform with terminology used elsewhere in the regulation and carrier agreement, and to provide for electronic ticketing technology.

Miscellaneous Changes

The proposed rule contemplated removing 8 CFR part 215, Controls of Aliens Departing from the United States, because it was also contained in the Department of State regulations. The Department has decided to retain 8 CFR part 215.

The proposed rule contained § 240.39, which retained material previously found in § 242.22, and § 240.54, which preserved the former § 242.23. These sections have been removed from the interim rule since the subjects are encompassed by §§ 3.23 and 241.8, respectively.

One commenter correctly noted that § 216.5(e)(3)(ii) had been amended to allow an alien in exclusion, deportation, or removal proceedings to file a petition for waiver only until such time as there is a final order of deportation or removal. In § 216.5(e)(3), adjudication of a waiver is based upon the alien's claim of having been battered or subjected to extreme mental cruelty. The commenter stated that there is no reason to shorten

the period allotted for a battered woman and child to file a battered spouse waiver. The proposed rule change was meant to apply generally to all aliens filing a petition for a waiver, and was intended to add a point of finality to the time when the petition could be filed. Therefore, the interim rule has been amended to clarify the general applicability to all petitions for waiver. The regulation will permit filing of a petition for waiver at any time prior to the second anniversary of obtaining permanent resident status and up to the point of receiving a final order in exclusion, deportation, or removal proceedings, which includes any possible Federal court review.

Several commenters were concerned about removing language at § 204.2(a)(1)(iii)(A) through (C), which dealt with commencement and termination of proceedings, and exemptions from the general prohibition against approval of visa petitions filed on the basis of marriages during proceedings. The language was removed as part of the Service's streamlining initiative because it was duplicative of language in § 245.1(c)(8). The interim rule does clarify that in visa petition proceedings the burden of proof remains on the petitioner to establish eligibility for the exemption found at section 204(g) of the Act. In addition, § 204.2(a)(1)(iii) introductory text has been amended reflecting that § 245.1(c)(8) has been renumbered as § 245.1(c)(9).

Streamlining, Updating, and Reorganization

Several commenters expressed concern about sections of the regulation that were identified in the Supplementary Information of the proposed regulation as being revised solely for the purpose of streamlining: elimination of unnecessary recitation of statutory provisions; discussion of procedural matters; elimination of duplication; or general updating. It is emphasized that these streamlining changes neither created new requirements nor abolished any existing ones. Similarly, several comments concerned regulatory provisions that were simply carried over from the existing regulation, but relocated to new sections in order to conform with the general regulatory outline for the affected sections. Although the Department reviewed these comments, none resulted in further amendments to the streamlined or reorganized paragraphs. Other commenters proposed changes to current regulations that are beyond the scope of this rulemaking. These suggestions will be considered for inclusion in separate regulations after implementation of IIRIRA.

The Department solicited comments on the general organization and restructuring contained in the proposed regulation. No comments were received on this topic. Accordingly, the organizational structure has not been revised in the interim rule.

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 the rule will not have a significant adverse economic impact on a substantial number of small entities because of the following factors. This rule affects only federal government operations by codifying statutory amendments to the Immigration and Nationality Act primarily regarding the examination, detention, and removal of aliens from the United States. It affects only individuals and does not impose any reporting or compliance requirements on small entities.

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 million 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.

Executive Order 12866

This rule is considered by the Department of Justice to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), because it will have a significant economic impact on the federal government in excess of $100 million. No economic impact is anticipated for state and local governments. The Service projects significant increases in detention-related costs due to the provisions of IIRIRA that mandate the custody of criminal aliens who have committed two or more crimes involving moral turpitude, aliens convicted of firearms offenses, and aliens who have been convicted of an aggravated felony. The type of crime that will qualify as an ''aggravated felony'' has been greatly expanded under IIRIRA. In addition, all aliens, even non-criminal aliens, who are subject to a final administrative order of removal must be held in custody until the alien can be removed from the United States. If the person is not removed within 90 days he or she may be released from custody.

The Commissioner has notified Congress pursuant to section 303(b) of IIRIRA that the Service lacks sufficient space to immediately implement the mandatory custody provisions. This notification will delay for 1-year full implementation of the new mandatory custody provisions. Section 303(b) also provides for an additional 1-year delay in implementation of the mandatory custody provisions upon a second certification that space and personnel are inadequate to comply with the requirement. The Service estimates that the cost to enforce the requirement to detain all criminal aliens will be at least $205,000,000. Of that total, personnel costs account for $65,284,000 and include detention and deportation officers ($32,873,000), investigators ($25,501,000), legal proceedings personnel ($4,968,000), and administrative support ($1,942,000). Non-personnel requirements are projected to be at least $139,732,000 and includes increases in bed space and related alien custody requirements ($82,782,000—funds 3,600 beds @ $63.00 per day), increases in alien travel expenses ($36,000,000—3,600 removals @ $1,000 each), and detention vehicle expenses ($20,950,000). The Service is currently in the process of projecting the costs of the IIRIRA requirement that we detain all aliens with administratively final orders of deportation pending their removal.

In addition to these detention related costs, the Service estimates that the expenses for training employees on the provisions of the new law and the regulations will be $2,977,500. The cost to the Service related to additional forms or changes needed to current forms is estimated to be $2,000,000 (until the final list of form requirements is completed it is not possible to more accurately assess this cost). Finally, the Department believes there may be some increases needed for immigration judges to review credible fear determinations made under section 235(b) of the Act.

The EOIR estimates increases in its costs related to IIRIRA-mandated immigration judge review of credible fear determinations (which must be made under stringent time frames) and the prompt immigration judge review that IIRIRA requires of certain expedited removal orders entered against aliens claiming to be, lawful permanent residents, asylees, or refugees. Further, EOIR projects costs associated with the possible need for an Immigration Court presence at certain ports-of-entry and additional detention centers, which will result from the above-mentioned

credible fear review and expedited removal review process. Also, there will be costs related to the overall need for an increased Immigration Court presence at existing Service detention centers to support the processing of the additional detainees that will result from the implementation of this rule. Similarly, EOIR anticipates a need for construction of new Immigration Courts at new detention facilities the Service may open as a result of this rule's implementation.

Although there are still a number of unknown variables which could effect the total costs to EOIR to implement its part of the new expedited removal process and to respond to the increased number of detained individuals in proceedings under this rule, EOIR estimates that the total annual cost for EOIR could be as high as $25,000,000. Of that total, the cost for hiring new immigration judges and legal support staff is projected to be $21,300,000. The cost for new video and audio teleconferencing equipment is estimated at $3,000,000. Training costs are expected to be approximately $400,000. Finally, forms and other support requirements are estimated to cost $300,000.

Small Business Regulatory Enforcement Fairness Act of 1996

The Department of Justice considers this rule to be a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 in view of the projected expenditures for the federal government as discussed in the preceding section. The Department finds good cause to make this rule effective on April 1, 1997, in order to meet the statutory deadline. These rules are essential for the implementation of the provisions of Title III-A of IIRIRA, which become effective on that date pursuant to Section 309(a) of IIRIRA.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. 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

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

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

*8 CFR Part 1*

Administrative practice and procedure, Immigration.

*8 CFR Part 3*

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

*8 CFR Part 204*

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 207*

Administrative practice and procedure, Refugees, Reporting and recordkeeping requirements.

*8 CFR Part 208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 209*

Aliens, Immigration, Refugees.

*8 CFR Part 211*

Immigration, Passports and visas, Reporting and recordkeeping requirements.

*8 CFR Part 212*

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

*8 CFR Part 213*

Immigration, Surety bonds.

*8 CFR Part 214*

Administrative practice and procedure, Aliens.

*8 CFR Part 216*

Administrative practice and procedure, Aliens.

*8 CFR Part 217*

Air carriers, Aliens, Maritime carriers, Passports and visas.

*8 CFR Part 221*

Aliens, Surety bonds.

*8 CFR Part 223*

Aliens, Reporting and recordkeeping requirements.

*8 CFR Part 232*

Aliens, Public health.

*8 CFR Part 233*

Administrative practice and procedure, Air carriers, Government contracts, Travel.

*8 CFR Part 234*

Air carriers, Aircraft, Airports, Aliens.

*8 CFR Part 235*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 236*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 237*

Aliens.

*8 CFR Part 238*

Administrative practice and procedure, Aliens.

*8 CFR Part 239*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 240*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 241*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 242*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 243*

Administrative practice and procedure, Aliens.

*8 CFR Part 244*

Administrative practice and procedure, Aliens.

*8 CFR Part 245*

Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 246*

Administrative practice and procedure, Aliens, Immigration.

*8 CFR Part 248*

Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 249*

Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 251*

Air carriers, Aliens, Crewmen, Maritime carriers, Reporting and recordkeeping requirements.

*8 CFR Part 252*

Air carriers, Airmen, Aliens, Crewmen, Maritime carriers, Reporting and recordkeeping requirements.

*8 CFR Part 253*

Air carriers, Airmen, Aliens, Maritime carriers, Reporting and recordkeeping requirements, Seamen.

*8 CFR Part 274a*

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

*8 CFR Part 286*

Air carriers, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 287*

Immigration, Law enforcement officers.

*8 CFR Part 299*

Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 316*

Citizenship and naturalization, Reporting and recordkeeping requirements.

*8 CFR Part 318*

Citizenship and naturalization.

*8 CFR Part 329*

Citizenship and naturalization, Military Personnel, Veterans.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 1—DEFINITIONS

1. The authority citation for part 1 is revised to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

2. Section 1.1 is amended by revising paragraph (l), and by adding new paragraphs (q) through (t) to read as follows:

### § 1.1 Definitions.

* * * * *

(l) The term *immigration judge* means an attorney whom the Attorney General appoints as an administrative judge within the Executive Office for Immigration Review, qualified to conduct specified classes of proceedings, including a hearing under section 240 of the Act. An immigration judge shall be subject to such supervision and shall perform such duties as the Attorney General shall prescribe, but shall not be employed by the Immigration and Naturalization Service.

* * * * *

(q) The term *arriving alien* means an alien who seeks admission to or transit through the United States, as provided in 8 CFR part 235, at a port-of-entry, or an alien who is interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act.

(r) The term *respondent* means a person named in a Notice to Appear issued in accordance with section 239(a) of the Act, or in an Order to Show Cause issued in accordance with § 242.1 of this chapter as it existed prior to April 1, 1997.

(s) The term *Service counsel* means any immigration officer assigned to represent the Service in any proceeding before an immigration judge or the Board of Immigration Appeals.

(t) The term *aggravated felony* means a crime (or a conspiracy or attempt to commit a crime) described in section 101(a)(43) of the Act. This definition is applicable to any proceeding, application, custody determination, or adjudication pending on or after September 30, 1996, but shall apply under section 276(b) of the Act only to violations of section 276(a) of the Act occurring on or after that date.

## PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002.

4. Section 3.1 is amended by revising paragraphs (b)(1), (b)(2), (b)(3), (b)(7), (b)(9), and (b)(10) to read as follows:

### § 3.1 General authorities.

* * * * *

(b) * * *

(1) Decisions of Immigration Judges in exclusion cases, as provided in 8 CFR part 240, Subpart D.

(2) Decisions of Immigration Judges in deportation cases, as provided in 8 CFR part 240, Subpart E, except that no appeal shall lie seeking review of a length of a period of voluntary departure granted by an Immigration Judge under section 244E of the Act as it existed prior to April 1, 1997.

(3) Decisions of Immigration Judges in removal proceedings, as provided in 8 CFR part 240, except that no appeal shall lie seeking review of the length of a period of voluntary departure granted by an immigration judge under section 240B of the Act or part 240 of this chapter.

* * * * *

(7) Determinations relating to bond, parole, or detention of an alien as provided in 8 CFR part 236, Subpart A and 8 CFR part 240, Subpart E.

* * * * *

(9) Decisions of Immigration Judges in asylum proceedings pursuant to § 208.2(b) of this chapter.

(10) Decisions of Immigration Judges relating to Temporary Protected Status as provided in 8 CFR part 244.

* * * * *

5. Section 3.2 is amended by:

a. Revising the section heading;

b. Revising paragraph (b)(2);

c. Revising paragraph (c)(2) and (c)(3), and by

d. Revising paragraphs (d) through (g)(1), to read as follows:

### § 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(b) * * *

(2) A motion to reconsider a decision must be filed with the Board within 30 days after the mailing of the Board decision or on or before July 31, 1996, whichever is later. A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. In removal proceedings pursuant to section 240 of the Act, an alien may file only one motion to reconsider a decision that the alien is removable from the United States.

(c) * * *

(2) Except as provided in paragraph (c)(3) of this section, a party may file only one motion to reopen deportation or exclusion proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened, or on or before September 30, 1996, whichever is later. Except as provided in paragraph (c)(3)

of this section, an alien may file only one motion to reopen removal proceedings (whether before the Board or the Immigration Judge) and that motion must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.

(3) In removal proceedings pursuant to section 240 of the Act, the time limitation set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen filed pursuant to the provisions of § 3.23(b)(4)(ii). The time and numerical limitations set forth in paragraph (c)(2) of this section shall not apply to a motion to reopen proceedings:

(i) Filed pursuant to the provisions of § 3.23(b)(4)(iii)(A)(*1*) or § 3.23(b)(4)(iii)(A)(*2*);

(ii) To apply or reapply for asylum or withholding of deportation based on changed circumstances arising in the country of nationality or in the country to which deportation has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing;

(iii) Agreed upon by all parties and jointly filed. Notwithstanding such agreement, the parties may contest the issues in a reopened proceeding; or

(iv) Filed by the Service in exclusion or deportation proceedings when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with § 208.22(f) of this chapter.

* * * * *

(d) *Departure, deportation, or removal.* A motion to reopen or a motion to reconsider shall not be made by or on behalf of a person who is the subject of exclusion, deportation, or removal proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation or removal of a person who is the subject of exclusion, deportation, or removal proceedings, occurring after the filing of a motion to reopen or a motion to reconsider, shall constitute a withdrawal of such motion.

(e) *Judicial proceedings.* Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding. If a motion to reopen or reconsider seeks discretionary relief, the motion shall include a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is being filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution.

(f) *Stay of deportation.* Except where a motion is filed pursuant to the provisions of §§ 3.23(b)(4)(ii) and 3.23(b)(4)(iii)(A), the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board, the Immigration Judge, or an authorized officer of the Service.

(g) *Filing procedures.* (1) English language, entry of appearance, and proof of service requirements. A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than the Service, is represented, Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the motion. In all cases, the motion shall include proof of service on the opposing party of the motion and all attachments. If the moving party is not the Service, service of the motion shall be made upon the Office of the District Counsel for the district in which the case was completed before the Immigration Judge.

* * * * *

6. The following sentence is added to the end of § 3.4:

**§ 3.4 Withdrawal of appeal.**

* * * Departure from the United States of a person who is the subject of deportation or removal proceedings, except for arriving aliens as defined in § 1.1(q) of this chapter, subsequent to the taking of an appeal, but prior to a decision thereon, shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

## Subpart B—Immigration Court

7. In Part 3, the heading of Subpart B is revised as set forth above.

8. Section 3.9 is revised to read as follows:

**§ 3.9 Chief Immigration Judge.**

The Chief Immigration Judge shall be responsible for the general supervision, direction, and scheduling of the Immigration Judges in the conduct of the various programs assigned to them. The Chief Immigration Judge shall be assisted by Deputy Chief Immigration Judges and Assistant Chief Immigration Judges in the performance of his or her duties. These shall include, but are not limited to:

(a) Establishment of operational policies; and

(b) Evaluation of the performance of Immigration Courts, making appropriate reports and inspections, and taking corrective action where indicated.

9. Section 3.10 is revised to read as follows:

**§ 3.10 Immigration Judges.**

Immigration Judges, as defined in 8 CFR part 1, shall exercise the powers and duties in this chapter regarding the conduct of exclusion, deportation, removal, and asylum proceedings and such other proceedings which the Attorney General may assign them to conduct.

10. Section 3.11 is revised to read as follows:

**§ 3.11 Administrative control Immigration Courts.**

An administrative control Immigration Court is one that creates and maintains Records of Proceedings for Immigration Courts within an assigned geographical area. All documents and correspondence pertaining to a Record of Proceeding shall be filed with the Immigration Court having administrative control over that Record of Proceeding and shall not be filed with any other Immigration Court. A list of the administrative control Immigration Courts with their assigned geographical areas will be made available to the public at any Immigration Court.

## Subpart C—Immigration Court—Rules of Procedure

11. In part 3, the heading of Subpart C is revised as set forth above.

12. Section 3.12 is amended by revising the last sentence, and adding a new sentence at the end of the section, to read as follows:

**§ 3.12 Scope of rules.**

* * * Except where specifically stated, the rules in this subpart apply to matters before Immigration Judges, including, but not limited to, deportation, exclusion, removal, bond, rescission, departure control, asylum proceedings, and disciplinary

proceedings under § 292.3 of this chapter. The sole procedures for review of credible fear determinations by Immigration Judges are provided for in § 3.42.

13. Section 3.13 is revised to read as follows:

**§ 3.13 Definitions.**

As used in this subpart:

*Administrative control* means custodial responsibility for the Record of Proceeding as specified in § 3.11.

*Charging document* means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

*Filing* means the actual receipt of a document by the appropriate Immigration Court.

*Service* means physically presenting or mailing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney and a Notice to Appear or Notice of Removal Hearing shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

14. Section § 3.14 is amended by:

a. Revising paragraph (a), and by

b. Adding a new paragraph (c) to read as follows:

**§ 3.14 Jurisdiction and commencement of proceedings.**

(a) Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. The charging document must include a certificate showing service on the opposing party pursuant to § 3.32 which indicates the Immigration Court in which the charging document is filed. However, no charging document is required to be filed with the Immigration Court to commence bond proceedings pursuant to §§ 3.19, 236.1(d) and 240.2(b) of this chapter.

* * * * *

(c) Immigration Judges have jurisdiction to administer the oath of allegiance in administrative naturalization ceremonies conducted by the Service in accordance with § 337.2(b) of this chapter.

15. Section 3.15 is amended by:

a. Revising the section heading;

b. Amending paragraph (b) introductory text and paragraph (b)(6), by adding the phrase ''and Notice to Appear'' immediately after the phrase ''Order to Show Cause'';

c. Redesignating paragraph (c) as (d);

d. Adding a new paragraph (c); and by

e. Revising newly redesignated paragraph (d), to read as follows:

**§ 3.15 Contents of the order to show cause and notice to appear and notification of change of address.**

* * * * *

(c) *Contents of the Notice to Appear for Removal Proceedings.* In the Notice to Appear for removal proceedings, the Service shall provide the following administrative information to the Immigration Court. Failure to provide any of these items shall not be construed as affording the alien any substantive or procedural rights.

(1) The alien's names and any known aliases;

(2) The alien's address;

(3) The alien's registration number, with any lead alien registration number with which the alien is associated;

(4) The alien's alleged nationality and citizenship; and

(5) The language that the alien understands.

(d) *Address and telephone number.* (1) If the alien's address is not provided on the Order to Show Cause or Notice to Appear, or if the address on the Order to Show Cause or Notice to Appear is incorrect, the alien must provide to the Immigration Court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. The alien may satisfy this requirement by completing and filing Form EOIR–33.

(2) Within five days of any change of address, the alien must provide written notice of the change of address on Form EOIR–33 to the Immigration Court where the charging document has been filed, or if venue has been changed, to the Immigration Court to which venue has been changed.

**§ 3.16 [Amended]**

16. Section 3.16(b) is amended by revising the term ''respondent/applicant'' to read ''alien''.

**§ 3.17 [Amended]**

17. Section 3.17(a) is amended in the first sentence by revising the term ''respondent/applicant'' to read ''alien'', and by revising the phrase ''the appropriate EOIR form'' to read ''Form EOIR–28''.

18. Section 3.18 is revised to read as follows:

**§ 3.18 Scheduling of cases.**

(a) The Immigration Court shall be responsible for scheduling cases and providing notice to the government and the alien of the time, place, and date of hearings.

(b) In removal proceedings pursuant to section 240 of the Act, the Service shall provide in the Notice to Appear, the time, place and date of the initial removal hearing, where practicable. If that information is not contained in the Notice to Appear, the Immigration Court shall be responsible for scheduling the initial removal hearing and providing notice to the government and the alien of the time, place, and date of hearing. In the case of any change or postponement in the time and place of such proceeding, the Immigration Court shall provide written notice to the alien specifying the new time and place of the proceeding and the consequences under section 240(b)(5) of the Act of failing, except under exceptional circumstances as defined in section 240(e)(1) of the Act, to attend such proceeding. No such notice shall be required for an alien not in detention if the alien has failed to provide the address required in section 239(a)(1)(F) of the Act.

**§ 3.19 [Amended]**

19. Section 3.19(a) is amended by revising the reference to ''part 242 of this chapter'' to read ''8 CFR part 236'' wherever it appears in the paragraph.

20. Section 3.19(d) is amended in the first sentence by adding the term ''or removal'' immediately after the word ''deportation''.

21. Section 3.19 is amended by removing paragraph (h).

22. In § 3.20, paragraph (a) is revised to read as follows:

**§ 3.20 Change of venue.**

(a) Venue shall lie at the Immigration Court where jurisdiction vests pursuant to § 3.14.

* * * * *

23. Section 3.23 is amended by revising the section heading and paragraph (b) to read as follows:

**§ 3.23 Reopening or Reconsideration before the Immigration Court.**

(a) * * *

(b) *Before the Immigration Court.* (1) *In general.* An Immigration Judge may upon his or her own motion at any time, or upon motion of the Service or the

alien, reopen or reconsider any case in which he or she has made a decision, unless jurisdiction is vested with the Board of Immigration Appeals. Subject to the exceptions in this paragraph and paragraph (b)(4), a party may file only one motion to reconsider and one motion to reopen proceedings. A motion to reconsider must be filed within 30 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before July 31, 1996, whichever is later. A motion to reopen must be filed within 90 days of the date of entry of a final administrative order of removal, deportation, or exclusion, or on or before September 30, 1996, whichever is later. A motion to reopen or to reconsider shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States. Any departure from the United States, including the deportation or removal of a person who is the subject of exclusion, deportation, or removal proceedings, occurring after the filing of a motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion. The time and numerical limitations set forth in this paragraph do not apply to motions by the Service in removal proceedings pursuant to section 240 of the Act. Nor shall such limitations apply to motions by the Service in exclusion or deportation proceedings, when the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum in accordance with § 208.22(f) of this chapter.

(i) *Form and contents of the motion.* The motion shall be in writing and signed by the affected party or the attorney or representative of record, if any. The motion and any submission made in conjunction with it must be in English or accompanied by a certified English translation. Motions to reopen or reconsider shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. In any case in which an exclusion, deportation, or removal order is in effect, any motion to reopen or reconsider such order shall include a statement by or on behalf of the moving party declaring whether the subject of the order is also the subject of any pending criminal proceeding under the Act, and, if so, the current status of that proceeding.

(ii) *Filing.* Motions to reopen or reconsider a decision of an Immigration Judge must be filed with the Immigration Court having administrative control over the Record of Proceeding. A motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments. If the moving party is not the Service, service of the motion shall be made upon the Office of the District Counsel for the district in which the case was completed. If the moving party, other than the Service, is represented, a Form EOIR–28, Notice of Appearance as Attorney or Representative Before an Immigration Judge must be filed with the motion. The motion must be filed in duplicate with the Immigration Court, accompanied by a fee receipt.

(iii) *Assignment to an Immigration Judge.* If the Immigration Judge is unavailable or unable to adjudicate the motion to reopen or reconsider, the Chief Immigration Judge or his or her delegate shall reassign such motion to another Immigration Judge.

(iv) *Replies to motions; decision.* The Immigration Judge may set and extend time limits for replies to motions to reopen or reconsider. A motion shall be deemed unopposed unless timely response is made. The decision to grant or deny a motion to reopen or a motion to reconsider is within the discretion of the Immigration Judge.

(v) *Stays.* Except in cases involving in absentia orders, the filing of a motion to reopen or a motion to reconsider shall not stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Immigration Judge, the Board, or an authorized officer of the Service.

(2) *Motion to reconsider.* A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority. Such motion may not seek reconsideration of a decision denying previous motion to reconsider.

(3) *Motion to reopen.* A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. A motion to reopen will not be granted unless the Immigration Judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing. A motion to reopen for the purpose of providing the alien an opportunity to apply for any form of discretionary relief will not be granted if it appears that the alien's right to apply for such relief was fully explained to him or her by the Immigration Judge and an opportunity to apply therefore was afforded at the hearing, unless the relief is sought on the basis of circumstances that have arisen subsequent to the hearing. Pursuant to section 240A(d)(1) of the Act, a motion to reopen proceedings for consideration or further consideration of an application for relief under section 240A(a) (cancellation of removal for certain permanent residents) or 240A(b) (cancellation of removal and adjustment of status for certain nonpermanent residents) may be granted only if the alien demonstrates that he or she was statutorily eligible for such relief prior to the service of a notice to appear, or prior to the commission of an offense referred to in section 212(a)(2) of the Act that renders the alien inadmissible or removable under sections 237(a)(2) of the Act or (a)(4), whichever is earliest. The Immigration Judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief.

(4) *Exceptions to filing deadlines.*—(i) *Asylum.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply if the basis of the motion is to apply for relief under section 208 or 241(b)(3) of the Act and is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen under this section shall not automatically stay the removal of the alien. However, the alien may request a stay and, if granted by the Immigration Judge, the alien shall not be removed pending disposition of the motion by the Immigration Judge. If the original asylum application was denied based upon a finding that it was frivolous, then the alien is ineligible to file either a motion to reopen or reconsider, or for a stay of removal.

(ii) *Order entered in absentia in asylum proceedings or removal proceedings.* An order of removal entered in absentia in asylum proceedings pursuant to § 208.2(b) of this chapter or in removal proceedings pursuant to section 240(b)(5) of the Act may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal, if the alien

demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act. An order entered in absentia pursuant to § 208.2(b) of this chapter or pursuant to section 240(b)(5) may be rescinded upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice in accordance with sections 239(a)(1) or (2) of the Act, or the alien demonstrates that he or she was in Federal or state custody and the failure to appear was through no fault of the alien. However, in accordance with section 240(b)(5)(B) of the Act, no written notice of a change in time or place of proceeding shall be required if the alien has failed to provide the address required under section 239(a)(1)(F) of the Act. The filing of a motion under this paragraph shall stay the removal of the alien pending disposition of the motion by the Immigration Judge. An alien may file only one motion pursuant to this paragraph.

(iii) *Order entered in absentia in deportation or exclusion proceedings.* (A) An order entered in absentia in deportation proceedings may be rescinded only upon a motion to reopen filed:

(*1*) Within 180 days after the date of the order of deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances beyond the control of the alien (e.g., serious illness of the alien or serious illness or death of an immediate relative of the alien, but not including less compelling circumstances); or

(*2*) At any time if the alien demonstrates that he or she did not receive notice or if the alien demonstrates that he or she was in federal or state custody and the failure to appear was through no fault of the alien.

(B) A motion to reopen exclusion hearings on the basis that the Immigration Judge improperly entered an order of exclusion in absentia must be supported by evidence that the alien had reasonable cause for his failure to appear.

(C) The filing of a motion to reopen under paragraph (b)(4)(iii)(A) of this section shall stay the deportation of the alien pending decision on the motion and the adjudication of any properly filed administrative appeal.

(D) The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen filed pursuant to the provisions of paragraph (b)(4)(iii)(A) of this section.

(iv) *Jointly filed motions.* The time and numerical limitations set forth in paragraph (b)(1) of this section shall not apply to a motion to reopen agreed upon by all parties and jointly filed.

24. Section 3.25 is revised to read as follows:

**§ 3.25 Form of the proceeding.**

(a) *Waiver of presence of the parties.* The Immigration Judge may, for good cause, and consistent with section 240(b) of the Act, waive the presence of the alien at a hearing when the alien is represented or when the alien is a minor child at least one of whose parents or whose legal guardian is present. When it is impracticable by reason of an alien's mental incompetency for the alien to be present, the presence of the alien may be waived provided that the alien is represented at the hearing by an attorney or legal representative, a near relative, legal guardian, or friend.

(b) *Stipulated request for order; waiver of hearing.* An Immigration Judge may enter an order of deportation, exclusion or removal stipulated to by the alien (or the alien's representative) and the Service. The Immigration Judge may enter such an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any. If the alien is unrepresented, the Immigration Judge must determine that the alien's waiver is voluntary, knowing, and intelligent. The stipulated request and required waivers shall be signed on behalf of the government and by the alien and his or her attorney or representative, if any. The attorney or representative shall file a Notice of Appearance in accordance with § 3.16(b). A stipulated order shall constitute a conclusive determination of the alien's deportability or removability from the United States. The stipulation shall include:

(1) An admission that all factual allegations contained in the charging document are true and correct as written;

(2) A concession of deportability or inadmissibility as charged;

(3) A statement that the alien makes no application for relief under the Act;

(4) A designation of a country for deportation or removal under section 241(b)(2)(A)(i) of the Act;

(5) A concession to the introduction of the written stipulation of the alien as an exhibit to the Record of Proceeding;

(6) A statement that the alien understands the consequences of the stipulated request and that the alien enters the request voluntarily, knowingly, and intelligently;

(7) A statement that the alien will accept a written order for his or her deportation, exclusion or removal as a final disposition of the proceedings; and

(8) A waiver of appeal of the written order of deportation or removal.

(c) *Telephonic or video hearings.* An Immigration Judge may conduct hearings through video conference to the same extent as he or she may conduct hearings in person. An Immigration Judge may also conduct a hearing through a telephone conference, but an evidentiary hearing on the merits may only be conducted through a telephone conference with the consent of the alien involved after the alien has been advised of the right to proceed in person or, where available, through a video conference, except that credible fear determinations may be reviewed by the Immigration Judge through a telephone conference without the consent of the alien.

25. Section 3.26 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

**§ 3.26 In absentia hearings.**

* * * * *

(c) In any removal proceeding before an Immigration Judge in which the alien fails to appear, the Immigration Judge shall order the alien removed *in absentia* if:

(1) The Service establishes by clear, unequivocal, and convincing evidence that the alien is removable; and

(2) The Service establishes by clear, unequivocal, and convincing evidence that written notice of the time and place of proceedings and written notice of the consequences of failure to appear were provided to the alien.

(d) Written notice to the alien shall be considered sufficient for purposes of this section if it was provided at the most recent address provided by the alien. If the respondent fails to provide his or her address as required under § 3.15(d), no written notice shall be required for an Immigration Judge to proceed with an *in absentia* hearing. This paragraph shall not apply in the event that the Immigration Judge waives the appearance of an alien under § 3.25.

26. Section 3.27 is amended by revising paragraph (c) to read as follows:

**§ 3.27 Public access to hearings.**

* * * * *

(c) In any proceeding before an Immigration Judge concerning an abused alien spouse, the hearing and the Record of Proceeding shall be closed to the public unless the abused spouse agrees that the hearing and the Record of Proceeding shall be open to the public. In any proceeding before an

Immigration Judge concerning an abused alien child, the hearing and the Record of Proceeding shall be closed to the public.

27. Section 3.30 is revised to read as follows:

**§ 3.30 Additional charges in deportation or removal hearings.**

At any time during deportation or removal proceedings, additional or substituted charges of deportability and/or factual allegations may be lodged by the Service in writing. The alien shall be served with a copy of these additional charges and/or allegations and the Immigration Judge shall read them to the alien. The Immigration Judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented. The alien may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 240.10(b) of this chapter relating to pleading shall apply to the additional factual allegations and charges.

28. Section 3.35 is revised to read as follows:

**§ 3.35 Depositions and subpoenas.**

(a) *Depositions.* If an Immigration Judge is satisfied that a witness is not reasonably available at the place of hearing and that said witness' testimony or other evidence is essential, the Immigration Judge may order the taking of deposition either at his or her own instance or upon application of a party. Such order shall designate the official by whom the deposition shall be taken, may prescribe and limit the content, scope, or manner of taking the deposition, and may direct the production of documentary evidence.

(b) *Subpoenas issued subsequent to commencement of proceedings.* (1) *General.* In any proceeding before an Immigration Judge, other than under 8 CFR part 335, the Immigration Judge shall have exclusive jurisdiction to issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both. An Immigration Judge may issue a subpoena upon his or her own volition or upon application of the Service or the alien.

(2) *Application for subpoena.* A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he or she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he or she has made diligent effort, without success, to produce the same.

(3) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the Immigration Judge shall issue a subpoena. The subpoena shall state the title of the proceeding and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. The subpoena may also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena.

(4) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witness' appearance at the Immigration Court nearest to the witness to respond to oral or written interrogatories, unless there is no objection by any party to the witness' appearance at the proceeding.

(5) *Service.* A subpoena issued under this section may be served by any person over 18 years of age not a party to the case.

(6) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the Immigration Judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpoena.

29. In Subpart C, a new § 3.42 is added to read as follows:

**§ 3.42 Review of credible fear determination.**

(a) *Referral.* Jurisdiction for an Immigration Judge to review an adverse credible fear finding by an asylum officer pursuant to section 235(b)(1)(B) of the Act shall commence with the filing by the Service of Form I–863, Notice of Referral to Immigration Judge. The Service shall also file with the notice of referral a copy of the written record of determination as defined in section 235(b)(1)(B)(iii)(II) of the Act, including a copy of the alien's written request for review, if any.

(b) *Record of proceeding.* The Immigration Court shall create a Record of Proceeding for a review of an adverse credible fear determination. This record shall not be merged with any later proceeding pursuant to section 240 of the Act involving the same alien.

(c) *Procedures and evidence.* The Immigration Judge may receive into evidence any oral or written statement which is material and relevant to any issue in the review. The testimony of the alien shall be under oath or affirmation administered by the Immigration Judge. If an interpreter is necessary, one will be provided by the Immigration Court. The Immigration Judge shall determine whether the review shall be in person, or through telephonic or video connection (where available). The alien may consult with a person or persons of the alien's choosing prior to the review.

(d) *Standard of review.* The Immigration Judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the Immigration Judge, that the alien could establish eligibility for asylum under section 208 of the Act.

(e) *Timing.* The Immigration Judge shall conclude the review to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date the supervisory asylum officer has approved the asylum officer's negative credible fear determination issued on Form I–869, Record of Negative Credible Fear Finding and Request for Review.

(f) *Decision.* If an Immigration Judge determines that an alien has a credible fear of persecution, the Immigration Judge shall vacate the order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. Subsequent to the order being vacated, the Service shall issue and file Form I–862, Notice to Appear, with the Immigration Court to commence removal proceedings. The alien shall have the opportunity to apply for asylum in the course of removal proceedings pursuant to section 240 of the Act. If an Immigration Judge determines that an alien does not have a credible fear of persecution, the Immigration Judge shall affirm the asylum officer's determination and remand the case to the Service for execution of the removal order entered pursuant to section 235(b)(1)(B)(iii)(I) of the Act. No appeal shall lie from a review of an adverse credible fear determination made by an Immigration Judge.

(g) *Custody.* An Immigration Judge shall have no authority to review an alien's custody status in the course of a review of an adverse credible fear determination made by the Service.

## PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

30. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356; 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

31. In § 103.1, paragraph (g)(3)(ii) is revised to read as follows:

**§ 103.1 Delegations of authority.**

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum officers.* Asylum officers constitute a professional corps of officers who serve under the supervision and direction of the Director of International Affairs and shall be specially trained as required in § 208.1(b) of this chapter. Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act and applications for asylum and for withholding of removal, as provided under 8 CFR part 208.

* * * * *

**§ 103.5 [Amended]**

32. Section 103.5 is amended by:

a. Removing paragraph (a)(1)(iii)(B);

b. Redesignating paragraphs (a)(1)(iii)(C) through (F) as paragraphs (a)(1)(iii)(B) through (E), respectively; and

c. Removing paragraph (a)(5)(iii).

33. In § 103.5a, paragraph (c)(1) is revised to read as follows:

**§ 103.5a Service of notification, decisions, and other papers by the Service.**

* * * * *

(c) * * *

(1) *Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service, except as provided in section 239 of the Act.

* * * * *

34. In § 103.6, paragraph (a) is revised to read as follows:

**§ 103.6 Surety bonds.**

(a) *Posting of surety bonds.*—(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on Form I–352, Immigration Bond, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I–312, Designation of Attorney in Fact. All other matters relating to bonds, including a power of attorney not executed on Form I–312 and a request for delivery of collateral security to other than the depositor or his or her approved attorney in fact, shall be forwarded to the regional director for approval.

(2) *Bond riders.*—(i) *General.* Bond riders shall be prepared on Form I–351, Bond Riders, and attached to Form I–352. If a condition to be included in a bond is not on Form I–351, a rider containing the condition shall be executed.

* * * * *

35. Section 103.7(b)(1) is amended by:

a. Removing the entry to ''Form I–444'', and by

b. Adding the entry for ''Form EOIR–42'' to the listing of forms, in proper numerical sequence, to read as follows:

**§ 103.7 Fees**

* * * * *

(b) * * *

(1) * * *

* * * * *

Form EOIR–42. For filing application for cancellation of removal under section 240A of the Act—$100.00. (A single fee of $100.00 will be charged whenever cancellation of removal applications are filed by two or more aliens in the same proceedings).

* * * * *

## PART 204—IMMIGRANT PETITIONS

36. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

37. Section 204.2 is amended by:

a. Revising paragraph (a)(1)(iii) introductory text;

b. Removing paragraphs (a)(1)(iii)(A) through (C); and

c. Redesignating paragraphs (a)(1)(iii)(D) through (I) as paragraphs (a)(1)(iii)(A) through (F) respectively, to read as follows:

**§ 204.2 Petitions for relatives, widows, and widowers, and abused spouses and children.**

(a) * * *

(1) * * *

(iii) *Marriage during proceedings—general prohibition against approval of visa petition.* A visa petition filed on behalf of an alien by a United States citizen or a lawful permanent resident spouse shall not be approved if the marriage creating the relationship occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto. Determination of commencement and termination of proceedings and exemptions shall be in accordance with § 245.1(c)(9) of this chapter, except that the burden in visa petition proceedings to establish eligibility for the exemption in § 245.1(c)(9)(iii)(F) of this chapter shall rest with the petitioner.

* * * * *

## PART 207—ADMISSION OF REFUGEES

38. The authority citation for part 207 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

39. Section 207.1 is amended by removing paragraph (e), and by revising paragraph (a) to read as follows:

**§ 207.1 Eligibility.**

(a) *Filing jurisdiction.* Any alien who believes he or she is a refugee as defined in section 101(a)(42) of the Act, and is included in a refugee group identified in section 207(a) of the Act, may apply for admission to the United States by filing an application in accordance with § 207.2 with the Service office having jurisdiction over the area where the applicant is located. In those areas too distant from a Service office, the application may be filed at a designated United States consular office.

* * * * *

40. Section 207.3 is revised to read as follows:

**§ 207.3 Waivers of inadmissibility.**

(a) *Authority.* Section 207(c)(3) of the Act sets forth grounds of inadmissibility under section 212(a) of the Act which are not applicable and those which may be waived in the case of an otherwise qualified refugee and the conditions under which such waivers may be approved. Officers in charge of overseas offices are delegated authority to initiate the necessary investigations to establish the facts in each waiver application pending before them and to approve or deny such waivers.

(b) *Filing requirements.* The applicant for a waiver must submit Form I–602, Application by Refugee for Waiver of Grounds of Inadmissibility, with the Service office processing his or her case. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family

unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial, if the application is denied. There is no appeal from such decision.

**§ 207.8 [Amended]**

41. Section 207.8 is amended in the last sentence by revising the reference to ''sections 235, 236, and 237'' to read ''sections 235, 240, and 241''.

42. Part 208 is revised to read as follows:

## PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

### Subpart A—Asylum and Withholding of Removal

Sec.
208.1 General.
208.2 Jurisdiction.
208.3 Form of application.
208.4 Filing the application.
208.5 Special duties toward aliens in custody of the Service.
208.6 Disclosure to third parties.
208.7 Employment authorization.
208.8 Limitations on travel outside the United States.
208.9 Procedure for interview before an asylum officer.
208.10 Failure to appear at an interview before an asylum officer.
208.11 Comments from the Department of State.
208.12 Reliance on information compiled by other sources.
208.13 Establishing asylum eligibility.
208.14 Approval, denial, or referral of application.
208.15 Definition of ''firm resettlement.''
208.16 Withholding of removal.
208.17 Decisions.
208.18 Determining if an asylum application is frivolous.
208.19 Admission of the asylee's spouse and children.
208.20 Effect on exclusion, deportation, and removal proceedings.
208.21 Restoration of status.
208.22 Termination of asylum or withholding of removal or deportation.
208.23—29 [Reserved]

### Subpart B—Credible Fear of Persecution

208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

### Subpart A—Asylum and Withholding or Removal

**§ 208.1 General.**

(a) *Applicability.* Unless otherwise provided in this chapter, this subpart shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(c). Such applications are hereinafter referred to generically as asylum applications. The provisions of this part shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part except by motion granted in the exercise of discretion by the Board of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(5) and (c)(6) of the Act, and 8 CFR parts 3 and 103, where applicable.

(b) *Training of asylum officers.* The Director of International Affairs shall ensure that asylum officers receive special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles. The Director of International Affairs shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, as well as other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

**§ 208.2 Jurisdiction.**

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction over an asylum application filed by, or a credible fear determination pertaining to, an alien physically present in the United States or seeking admission at a port-of-entry. An application that is complete within the meaning of § 208.3(c)(3) shall be either adjudicated or referred by asylum officers under this part in accordance with § 208.14. An application that is incomplete within the meaning of § 208.3(c)(3) shall be returned to the applicant. Except as provided in § 208.16(a), an asylum officer shall not decide whether an alien is entitled to withholding of removal under section 241(b)(3) of the Act.

(b) *Immigration Court*—(1) *Certain aliens not entitled to proceedings under section 240 of the Act.* After Form I–863, Notice of Referral to Immigration Judge, has been filed with the Immigration Court, an immigration judge shall have exclusive jurisdiction over any asylum application filed on or after April 1, 1997, by:

(i) An alien crewmember who:

(A) Is an applicant for a landing permit;

(B) Has been refused permission to land under section 252 of the Act; or

(C) On or after April 1, 1997, was granted permission to land under section 252 of the Act, regardless of whether the alien has remained in the United States longer than authorized;

(ii) An alien stowaway who has been found to have a credible fear of persecution pursuant to the procedure set forth in subpart B of this part;

(iii) An alien who is an applicant for admission pursuant to the Visa Waiver Pilot Program under section 217 of the Act;

(iv) An alien who was admitted to the United States pursuant to the Visa Waiver Pilot Program under section 217 of the Act and has remained longer than authorized or has otherwise violated his or her immigration status;

(v) An alien who has been ordered removed under section 235(c) of the Act; or

(vi) An alien who is an applicant for admission, or has been admitted, as an alien classified under section 101(a)(15)(S) of the Act.

(2) *Rules of procedure.* (i) *General.* Proceedings falling under the jurisdiction of the immigration judge pursuant to paragraph (b)(1) of this section shall be conducted in accordance with the same rules of procedure as proceedings conducted under 8 CFR part 240, except the scope of review shall be limited to a determination of whether the alien is eligible for asylum or withholding of removal and whether asylum shall be granted in the exercise of discretion. During such proceedings all parties are prohibited from raising or considering any other issues, including but not limited to issues of admissibility, removability, eligibility for waivers, and eligibility for any form of relief other than asylum or withholding of removal.

(ii) *Notice of hearing procedures and in-absentia decisions.* The alien will be provided with notice of the time and place of the proceeding. The request for asylum and withholding of removal

submitted by an alien who fails to appear for the hearing shall be denied. The denial of asylum and withholding of removal for failure to appear may be reopened only upon a motion filed with the immigration judge with jurisdiction over the case. Only one motion to reopen may be filed, and it must be filed within 90 days, unless the alien establishes that he or she did not receive notice of the hearing date or was in Federal or State custody on the date directed to appear. The motion must include documentary evidence which demonstrates that:

(A) The alien did not receive the notice;

(B) The alien was in Federal or State custody and the failure to appear was through no fault of the alien; or

(C) ''Exceptional circumstances,'' as defined in section 240(e)(1) of the Act, caused the failure to appear.

(iii) *Relief.* The filing of a motion to reopen shall not stay removal of the alien unless the immigration judge grants a written request for a stay pending disposition of the motion. An alien who fails to appear for a proceeding under this section shall not be eligible for relief under section 208, 212(h), 212(i), 240A, 240B, 245, 248, or 249 for a period of 10 years after the date of the denial.

(3) *Other aliens.* Immigration judges shall have exclusive jurisdiction over asylum applications filed by an alien who has been served Form I–221, Order to Show Cause; Form I–122, Notice to Applicant for Admission Detained for a Hearing before an Immigration Judge; or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration Court. Immigration judges shall also have jurisdiction over any asylum applications filed prior to April 1, 1997, by alien crewmembers who have remained in the United States longer than authorized, by applicants for admission under the Visa Waiver Pilot Program, and by aliens who have been admitted to the United States under the Visa Waiver Pilot Program.

**§ 208.3 Form of application.**

(a) An asylum applicant must file Form I–589, Application for Asylum or Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

(b) An asylum application shall be deemed to constitute at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997. In such instances, the asylum application shall be deemed to constitute an application for withholding of deportation under section 243(h) of the Act, as that section existed prior to April 1, 1997. Where a determination is made that an applicant is ineligible to apply for asylum under section 208(a)(2) of the Act, an asylum application shall be construed as an application for withholding of removal.

(c) Form I–589 shall be filed under the following conditions and shall have the following consequences:

(1) If the application was filed on or after January 4, 1995, information provided in the application may be used as a basis for the initiation of removal proceedings, or to satisfy any burden of proof in exclusion, deportation, or removal proceedings;

(2) The applicant and anyone other than a spouse, parent, son, or daughter of the applicant who assists the applicant in preparing the application must sign the application under penalty of perjury. The applicant's signature establishes a presumption that the applicant is aware of the contents of the application. A person other than a relative specified in this paragraph who assists the applicant in preparing the application also must provide his or her full mailing address;

(3) An asylum application that does not include a response to each of the questions contained in the Form I–589, is unsigned, or is unaccompanied by the required materials specified in paragraph (a) of this section is incomplete. The filing of an incomplete application shall not commence the 150-day period after which the applicant may file an application for employment authorization in accordance with § 208.7. An application that is incomplete shall be returned by mail to the applicant within 30 days of the receipt of the application by the Service. If the Service has not mailed the incomplete application back to the applicant within 30 days, it shall be deemed complete. An application returned to the applicant as incomplete shall be resubmitted by the applicant with the additional information if he or she wishes to have the application considered;

(4) Knowing placement of false information on the application may subject the person placing that information on the application to criminal penalties under title 18 of the United States Code and to civil penalties under section 274C of the Act; and

(5) Knowingly filing a frivolous application on or after April 1, 1997, so long as the applicant has received the notice required by section 208(d)(4) of the Act, shall render the applicant permanently ineligible for any benefits under the Act pursuant to § 208.18.

**§ 208.4 Filing the application.**

Except as prohibited in paragraph (a) of this section, asylum applications shall be filed in accordance with paragraph (b) of this section.

(a) *Prohibitions on filing.* Section 208(a)(2) of the Act prohibits certain aliens from filing for asylum on or after April 1, 1997, unless the alien can demonstrate to the satisfaction of the Attorney General that one of the exceptions in section 208(a)(2)(D) of the Act applies. Such prohibition applies only to asylum applications under section 208 of the Act and not to applications for withholding of removal under section 241 of the Act. If an applicant submits an asylum application and it appears that one or more of the prohibitions contained in section 208(a)(2) of the Act apply, an asylum officer or an immigration judge shall review the application to determine if the application should be rejected or denied. For the purpose of making determinations under section 208(a)(2) of the Act, the following rules shall apply:

(1) *Authority.* Only an asylum officer, an immigration judge, or the Board of Immigration Appeals is authorized to make determinations regarding the prohibitions contained in section 208(a)(2)(B) or (C) of the Act;

(2) *One-year filing deadline.* (i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving

(A) By clear and convincing evidence that he or she applied within one year of the alien's arrival in the United States or

(B) To the satisfaction of the asylum officer, immigration judge, or Board of Immigration Appeals that he or she qualifies for an exception to the one-year deadline.

(ii) The one-year period shall be calculated from the date of the alien's last arrival in the United States or April 1, 1997, whichever is later. In the case of an application that appears to have been filed more than a year after the applicant arrived in the United States, an asylum officer or immigration judge will determine whether the applicant qualifies under one of the exceptions to the deadline;

(3) *Prior denial of application.* For purposes of section 208(a)(2)(C) of the Act, an asylum application has not been denied unless denied by an immigration judge or the Board of Immigration Appeals;

(4) *Changed circumstances.* (i) The term ''changed circumstances'' in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include:

(A) Changes in conditions in the applicant's country of nationality or, if the person is stateless, country of last habitual residence or

(B) Changes in objective circumstances relating to the applicant in the United States, including changes in applicable U.S. law, that create a reasonable possibility that applicant may qualify for asylum.

(ii) The applicant shall apply for asylum within a reasonable period given those ''changed circumstances.''

(5) The term *extraordinary circumstances* in section 208(a)(2)(D) of the Act shall refer to events or factors beyond the alien's control that caused the failure to meet the 1-year deadline. Such circumstances shall excuse the failure to file within the 1-year period so long as the alien filed the application within a reasonable period given those circumstances. The burden of proof is on the applicant to establish to the satisfaction of the asylum officer or immigration judge that the circumstances were both beyond his or her control and that, but for those circumstances, he or she would have filed within the 1-year period. These circumstances may include:

(i) Serious illness or mental or physical disability of significant duration, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival;

(ii) Legal disability (e.g., the applicant was an unaccompanied minor or suffered from a mental impairment) during the first year after arrival;

(iii) Ineffective assistance of counsel, provided that:

(A) The alien files an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard;

(B) The counsel whose integrity or competence is being impugned has been informed of the allegations leveled against him or her and given an opportunity to respond; and

(C) The alien indicates whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not;

(iv) The applicant maintained Temporary Protected Status until a reasonable period before the filing of the asylum application; and

(v) The applicant submitted an asylum application prior to the expiration of the 1-year deadline, but that application was rejected by the Service as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter.

(b) *Filing location*—(1) *With the service center by mail.* Except as provided in paragraphs (b)(2), (b)(3), (b)(4) and (b)(5) of this section, asylum applications shall be filed directly by mail with the service center servicing the asylum office with jurisdiction over the place of the applicant's residence or, in the case of an alien without a United States residence, the applicant's current lodging or the land border port-of-entry through which the alien seeks admission to the United States.

(2) *With the asylum office.* Asylum applications shall be filed directly with the asylum office having jurisdiction over the matter in the case of an alien who has received the express consent of the Director of Asylum to do so.

(3) *With the immigration judge.* Asylum applications shall be filed directly with the Immigration Court having jurisdiction over the case in the following circumstances:

(i) During exclusion, deportation, or removal proceedings, with the Immigration Court having jurisdiction over the port, district office, or sector after service and filing of the appropriate charging document.

(ii) After completion of exclusion, deportation, or removal proceedings, and in conjunction with a motion to reopen pursuant to 8 CFR part 3 where applicable, with the Immigration Court having jurisdiction over the prior proceeding. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(iii) In asylum proceedings pursuant to § 208.2(b)(1) and after the Notice of Referral to Immigration Judge has been served on the alien and filed with the Immigration Court having jurisdiction over the case.

(4) *With the Board of Immigration Appeals.* In conjunction with a motion to remand or reopen pursuant to §§ 3.2 and 3.8 of this chapter where applicable, an initial asylum application shall be filed with the Board of Immigration Appeals if jurisdiction over the proceedings is vested in the Board of Immigration Appeals under 8 CFR part 3. Any such motion must reasonably explain the failure to request asylum prior to the completion of the proceedings.

(5) *With the district director.* In the case of any alien described in § 208.2(b)(1) and prior to the service on the alien of Form I–863, any asylum application shall be submitted to the district director having jurisdiction pursuant to 8 CFR part 103. The district director shall forward such asylum application to the appropriate Immigration Court with the Form I–863 being filed with that Immigration Court.

(c) *Amending an application after filing.* Upon request of the alien and as a matter of discretion, the asylum officer or immigration judge having jurisdiction may permit an asylum applicant to amend or supplement the application, but any delay caused by such request shall extend the period within which the applicant may not apply for employment authorization in accordance with § 208.7(a).

**§ 208.5 Special duties toward aliens in custody of the Service.**

(a) *General.* When an alien in the custody of the Service requests asylum or withholding of removal or expresses a fear of persecution or harm upon return to his or her country of origin or to agents thereof, the Service shall make available the appropriate application forms and shall provide the applicant with the information required by section 208(d)(4) of the Act, except in the case of an alien who is in custody pending a credible fear of persecution determination under section 235(b)(1)(B) of the Act. Where possible, expedited consideration shall be given to applications of detained aliens. Except as provided in paragraph (c) of this section, such alien shall not be excluded, deported, or removed before a decision is rendered on his or her asylum application.

(b) *Certain aliens aboard vessels.* (1) If an alien crewmember or alien stowaway on board a vessel or other conveyance alleges, claims, or otherwise makes known to an immigration inspector or other official making an examination on the conveyance that he or she is unable or unwilling to return to his or her country of nationality or last habitual residence (if not a national of any country) because of persecution or a fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, the alien shall be promptly removed from the conveyance. If the alien makes such fear known to an official while off such conveyance, the

alien shall not be returned to the conveyance but shall be retained in or transferred to the custody of the Service.

(i) An alien stowaway will be referred to an asylum officer for a credible fear determination under § 208.30.

(ii) An alien crewmember shall be provided the appropriate application forms and information required by section 208(d)(4) of the Act and may then have 10 days within which to submit an asylum application to the district director having jurisdiction over the port of entry. The district director, pursuant to § 208.4(b), shall serve Form I–863 on the alien and immediately forward any such application to the appropriate Immigration Court with a copy of the Form I–863 being filed with that court.

(2) Pending adjudication of the application, and, in the case of a stowaway the credible fear determination and any review thereof, the alien may be detained by the Service or otherwise paroled in accordance with § 212.5 of this chapter. However, pending the credible fear determination, parole of an alien stowaway may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(c) *Exception to prohibition on removal.* A motion to reopen or an order to remand accompanied by an asylum application pursuant to § 208.4(b)(3)(iii) shall not stay execution of a final exclusion, deportation, or removal order unless such stay is specifically granted by the Board of Immigration Appeals or the immigration judge having jurisdiction over the motion.

**§ 208.6 Disclosure to third parties.**

(a) Information contained in or pertaining to any asylum application shall not be disclosed without the written consent of the applicant, except as permitted by this section or at the discretion of the Attorney General.

(b) The confidentiality of other records kept by the Service that indicate that a specific alien has applied for asylum shall also be protected from disclosure. The Service will coordinate with the Department of State to ensure that the confidentiality of these records is maintained if they are transmitted to Department of State offices in other countries.

(c) This section shall not apply to any disclosure to:

(1) Any United States Government official or contractor having a need to examine information in connection with:

(i) The adjudication of asylum applications;

(ii) The defense of any legal action arising from the adjudication of or failure to adjudicate the asylum application;

(iii) The defense of any legal action of which the asylum application is a part; or

(iv) Any United States Government investigation concerning any criminal or civil matter; or

(2) Any Federal, state, or local court in the United States considering any legal action:

(i) Arising from the adjudication of or failure to adjudicate the asylum application; or

(ii) Arising from the proceedings of which the asylum application is a part.

**§ 208.7 Employment authorization.**

(a) *Application and approval.* (1) Subject to the restrictions contained in sections 208(d) and 236(a) of the Act, an applicant for asylum who is not an aggravated felon shall be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to submit a Form I–765, Application for Employment Authorization. Except in the case of an alien whose asylum application has been recommended for approval, or in the case of an alien who filed an asylum application prior to January 4, 1995, the application shall be submitted no earlier than 150 days after the date on which a complete asylum application submitted in accordance with §§ 208.3 and 208.4 has been received. In the case of an applicant whose asylum application has been recommended for approval, the applicant may apply for employment authorization when he or she receives notice of the recommended approval. If an asylum application has been returned as incomplete in accordance with § 208.3(c)(3), the 150-day period will commence upon receipt by the Service of a complete asylum application. An applicant whose asylum application has been denied by an asylum officer or by an immigration judge within the 150-day period shall not be eligible to apply for employment authorization. If an asylum application is denied prior to a decision on the application for employment authorization, the application for employment authorization shall be denied. If the asylum application is not so denied, the Service shall have 30 days from the date of filing of the Form I–765 to grant or deny that application, except that no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997.

(2) The time periods within which the alien may not apply for employment authorization and within which the Service must respond to any such application and within which the asylum application must be adjudicated pursuant to section 208(d)(5)(A)(iii) of the Act shall begin when the alien has filed a complete asylum application in accordance with §§ 208.3 and 208.4. Any delay requested or caused by the applicant shall not be counted as part of these time periods. Such time periods also shall be extended by the equivalent of the time between issuance of a request for evidence under § 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

(3) The provisions of paragraphs (a)(1) and (a)(2) of this section apply to applications for asylum filed on or after January 4, 1995.

(4) Employment authorization pursuant to § 274a.12(c)(8) of this chapter may not be granted to an alien who fails to appear for a scheduled interview before an asylum officer or a hearing before an immigration judge, unless the applicant demonstrates that the failure to appear was the result of exceptional circumstances.

(b) *Renewal and termination.* Employment authorization shall be renewable, in increments to be determined by the Commissioner, for the continuous period of time necessary for the asylum officer or immigration judge to decide the asylum application and, if necessary, for completion of any administrative or judicial review.

(1) If the asylum application is denied by the asylum officer, the employment authorization shall terminate at the expiration of the employment authorization document or 60 days after the denial of asylum, whichever is longer.

(2) If the application is denied by the immigration judge, the Board of Immigration Appeals, or a Federal court, the employment authorization terminates upon the expiration of the employment authorization document, unless the applicant has filed an appropriate request for administrative or judicial review.

(c) *Supporting evidence for renewal of employment authorization.* In order for employment authorization to be renewed under this section, the alien must provide the Service (in accordance with the instructions on or attached to the employment authorization application) with a Form I–765, the required fee (unless waived in accordance with § 103.7(c) of this chapter), and (if applicable) proof that

he or she has continued to pursue his or her asylum application before an immigration judge or sought administrative or judicial review. For purposes of employment authorization, pursuit of an asylum application is established by presenting to the Service one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending in proceedings before the immigration judge, and the alien wishes to continue to pursue his or her asylum application, a copy of any asylum denial, referral notice, or charging document placing the alien in such proceedings;

(2) If the immigration judge has denied asylum, a copy of the document issued by the Board of Immigration Appeals to show that a timely appeal has been filed from a denial of the asylum application by the immigration judge; or

(3) If the Board of Immigration Appeals has dismissed the alien's appeal of a denial of asylum, or sustained an appeal by the Service of a grant of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 242 of the Act, date stamped by the appropriate court.

(d) In order for employment authorization to be renewed before its expiration, the application for renewal must be received by the Service 90 days prior to expiration of the employment authorization.

**§ 208.8 Limitations on travel outside the United States.**

(a) An applicant who leaves the United States without first obtaining advance parole under § 212.5(e) of this chapter shall be presumed to have abandoned his or her application under this section.

(b) An applicant who leaves the United States pursuant to advance parole under § 212.5(e) of this chapter and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return.

**§ 208.9 Procedure for interview before an asylum officer.**

(a) The Service shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(c)(3) and is within the jurisdiction of the Service.

(b) The asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. At the time of the interview, the applicant must provide complete information regarding his or her identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(d) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in his or her discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, the applicant shall be informed that he or she must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision shall be treated as delay caused by the applicant for purposes of § 208.7(a)(3) and shall extend the period within which the applicant may not apply for employment authorization by the number of days until the applicant does appear to receive and acknowledge receipt of the decision or until the applicant appears before an immigration judge in response to the issuance of a charging document under § 208.14(b).

(e) The asylum officer shall consider evidence submitted by the applicant together with his or her asylum application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence. Any such extension shall extend by an equivalent time the periods specified by § 208.7 for the filing and adjudication of any employment authorization application.

(f) The asylum application, all supporting information provided by the applicant, any comments submitted by the Department of State or by the Service, and any other information specific to the applicant's case and considered by the asylum officer shall comprise the record.

(g) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 208.10.

**§ 208.10 Failure to appear at an interview before an asylum officer.**

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to appear shall be excused if the notice of the interview was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview. Failure to appear will be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

**§ 208.11 Comments from the Department of State.**

(a) The Service shall forward to the Department of State a copy of each completed application it receives. At its option, the Department of State may provide detailed country conditions information relevant to eligibility for asylum or withholding of removal.

(b) At its option, the Department of State may also provide:

(1) An assessment of the accuracy of the applicant's assertions about conditions in his or her country of nationality or habitual residence and his or her particular situation;

(2) Information about whether persons who are similarly situated to the applicant are persecuted in his or her country of nationality or habitual

residence and the frequency of such persecution; or

(3) Such other information as it deems relevant.

(c) Asylum officers and immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate.

(d) Any such comments received pursuant to paragraphs (b) and (c) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

**§ 208.12 Reliance on information compiled by other sources.**

(a) In deciding an asylum application, or whether the alien has a credible fear of persecution pursuant to section 235(b)(1)(B) of the Act, the asylum officer may rely on material provided by the Department of State, the Office of International Affairs, other Service offices, or other credible sources, such as international organizations, private voluntary agencies, news organizations, or academic institutions.

(b) Nothing in this part shall be construed to entitle the applicant to conduct discovery directed toward the records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

**§ 208.13 Establishing asylum eligibility.**

(a) *Burden of proof.* The burden of proof is on the applicant for asylum to establish that he or she is a refugee as defined in section 101(a)(42) of the Act. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The fact that the applicant previously established a credible fear of persecution for purposes of section 235(b)(1)(B) of the Act does not relieve the alien of the additional burden of establishing eligibility for asylum.

(b) *Persecution.* The applicant may qualify as a refugee either because he or she has suffered past persecution or because he or she has a well-founded fear of future persecution.

(1) *Past persecution.* An applicant shall be found to be a refugee on the basis of past persecution if he or she can establish that he or she has suffered persecution in the past in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country owing to such persecution.

(i) If it is determined that the applicant has established past persecution, he or she shall be presumed also to have a well-founded fear of persecution unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the applicant's country of nationality or last habitual residence have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he or she were to return.

(ii) An application for asylum shall be denied if the applicant establishes past persecution under this paragraph but it is also determined that he or she does not have a well-founded fear of future persecution under paragraph (b)(2) of this section, unless it is determined that the applicant has demonstrated compelling reasons for being unwilling to return to his or her country of nationality or last habitual residence arising out of the severity of the past persecution. If the applicant demonstrates such compelling reasons, he or she may be granted asylum unless such a grant is barred by paragraph (c) of this section .

(2) *Well-founded fear of persecution.* An applicant shall be found to have a well-founded fear of persecution if he or she can establish first, that he or she has a fear of persecution in his or her country of nationality or last habitual residence on account of race, religion, nationality, membership in a particular social group, or political opinion; second, that there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and third, that he or she is unable or unwilling to return to or avail himself or herself of the protection of that country because of such fear. In evaluating whether the applicant has sustained his or her burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for persecution if:

(i) The applicant establishes that there is a pattern or practice in his or her country of nationality or last habitual residence of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that his or her fear of persecution upon return is reasonable.

(c) *Mandatory denials.* (1) *Applications filed on or after April 1, 1997.* For applications filed on or after April 1, 1997, an applicant shall not qualify for asylum if section 208(a)(2) or 208(b)(2) of the Act applies to the applicant. If the applicant is found to be ineligible for asylum under either section 208(a)(2) or 208(b)(2) of the Act, the applicant shall be considered for eligibility for withholding of removal under section 241(b)(3) of the Act.

(2) *Applications filed before April 1, 1997.* (i) An immigration judge or asylum officer shall not grant asylum to any applicant who filed his or her application before April 1, 1997, if the alien:

(A) Having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(B) Has been firmly resettled within the meaning of § 208.15;

(C) Can reasonably be regarded as a danger to the security of the United States;

(D) Has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act; or

(E) Ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

(ii) If the evidence indicates that one of the above grounds apply to the applicant, he or she shall have the burden of proving by a preponderance of the evidence that he or she did not so act.

(d) *Discretionary denial.* An asylum application may be denied in the discretion of the Attorney General if the alien can be removed to a third country which has offered resettlement and in which the alien would not face harm or persecution.

**§ 208.14 Approval, denial, or referral of application.**

(a) *By an immigration judge.* Unless otherwise prohibited in § 208.13(c), an immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(b) *By an asylum officer.* Unless otherwise prohibited in § 208.13(c):

(1) An asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act.

(2) If the alien appears to be deportable, excludable or removable under section 240 of the Act, the asylum

officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation, exclusion, or removal proceedings. An asylum officer may refer such an application after an interview conducted in accordance with § 208.9 or if, in accordance with § 208.10, the applicant is deemed to have waived his or her right to an interview.

(3) If the applicant is maintaining valid nonimmigrant status at the time the application is decided, the asylum officer may grant or deny asylum, except in the case of an applicant described in § 208.2(b)(1).

(c) *Applicability of § 103.2(b) of this chapter.* No application for asylum or withholding of deportation shall be subject to denial pursuant to § 103.2(b) of this chapter.

(d) *Duration.* If the alien's asylum application is granted, the grant will be effective for an indefinite period, subject to termination as provided in § 208.22.

(e) *Effect of denial of principal's application on separate applications by dependents.* The denial of an asylum application filed by a principal applicant for asylum shall also result in the denial of asylum status to any dependents of that principal applicant who are included in that same application. Such denial shall not preclude a grant of asylum for an otherwise eligible dependent who has filed a separate asylum application, nor shall such denial result in an otherwise eligible dependent becoming ineligible to apply for asylum due to the provisions of section 208(a)(2)(C) of the Act.

**§ 208.15 Definition of ''firm resettlement.''**

An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he or she establishes:

(a) That his or her entry into that nation was a necessary consequence of his or her flight from persecution, that he or she remained in that nation only as long as was necessary to arrange onward travel, and that he or she did not establish significant ties in that nation; or

(b) That the conditions of his or her residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he or she was not in fact resettled. In making his or her determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

**§ 208.16 Withholding of removal.**

(a) *Consideration of application for withholding of removal.* An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section 207(a)(5) of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) *Eligibility for withholding of removal; burden of proof.* The burden of proof is on the applicant for withholding of removal to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his or her life or freedom was threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his or her life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his or her life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that there is a pattern or practice in the country of proposed removal of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return.

(c) *Approval or denial of application.* (1) *General.* Subject to paragraphs (c)(2) and (c)(3) of this section, an application for withholding of deportation or removal to a country of proposed removal shall be granted if the applicant's eligibility for withholding is established pursuant to paragraph (b) of this section.

(2) *Mandatory denials.* Except as provided in paragraph (c)(3) of this section, an application for withholding of removal shall be denied if the applicant falls within section 241(b)(3)(B) of the Act or, for applications for withholding of deportation adjudicated in proceedings commenced prior to April 1, 1997, within section 243(h)(2) of the Act as it appeared prior to that date. For purposes of section 241(b)(3)(B)(ii) of the Act, or section 243(h)(2)(B) of the Act as it appeared prior to April 1, 1997, an alien who has been convicted of a particularly serious crime shall be considered to constitute a danger to the community. If the evidence indicates the applicability of one or more of the grounds for denial enumerated in the Act, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(3) *Exception to the prohibition on withholding of deportation in certain cases.* Section 243(h)(3) of the Act, as added by section 413 of Public Law 104–132, shall apply only to applications adjudicated in proceedings commenced before April 1, 1997, and in which final action had not been taken before April 24, 1996. The discretion permitted by that section to override section 243(h)(2) of the Act shall be exercised only in the case of an applicant convicted of an aggravated felony (or felonies) where he or she was

sentenced to an aggregate term of imprisonment of less than 5 years and the immigration judge determines on an individual basis that the crime (or crimes) of which the applicant was convicted does not constitute a particularly serious crime. Nevertheless, it shall be presumed that an alien convicted of an aggravated felony has been convicted of a particularly serious crime. Except in the cases specified in this paragraph, the grounds for denial of withholding of deportation in section 243(h)(2) of the Act as it appeared prior to April 1, 1997, shall be deemed to comply with the 1967 Protocol Relating to the Status of Refugees.

(d) *Reconsideration of discretionary denial of asylum*. In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant's spouse or minor children following to join him or her, the denial of asylum shall be reconsidered. Factors to be considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country.

**§ 208.17 Decisions.**

The decision of an asylum officer to grant or to deny asylum or withholding of removal, or to refer an asylum application in accordance with § 208.14(b), shall be communicated in writing to the applicant. Notices of decisions to grant or deny asylum, or to refer an application, by asylum officers shall generally be served in person unless, in the discretion of the asylum office director, routine service by mail is appropriate. A letter communicating denial of the application shall state the basis for denial of the asylum application. The letter also shall contain an assessment of the applicant's credibility, unless the denial is the result of the applicant's conviction of an aggravated felony. Pursuant to § 208.9(d), an applicant must appear in person to receive and to acknowledge receipt of the decision.

**§ 208.18 Determining if an asylum application is frivolous.**

For applications filed on or after April 1, 1997, an applicant is subject to the provisions of section 208(d)(6) of the Act only if a final order by an immigration judge or the Board of Immigration Appeals specifically finds that the alien knowingly filed a frivolous asylum application. For purposes of this section, an asylum application is frivolous if any of its material elements is deliberately fabricated. Such finding shall only be made if the immigration judge or the Board is satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to account for any discrepancies or implausible aspects of the claim.

**§ 208.19 Admission of the asylee's spouse and children.**

(a) *Eligibility*. A spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1)(A), (B), (C), (D), (E), or (F) of the Act, also may be granted asylum if accompanying or following to join the principal alien who was granted asylum, unless it is determined that:

(1) The spouse or child ordered, incited, assisted, or otherwise participated in the persecution of any persons on account of race, religion, nationality, membership in a particular social group, or political opinion;

(2) The spouse or child, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community of the United States;

(3) The spouse or child has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act; or

(4) There are reasonable grounds for regarding the spouse or child a danger to the security of the United States.

(b) *Relationship*. The relationship of spouse and child as defined in section 101(b)(1) of the Act must have existed at the time the principal alien's asylum application was approved, except for children born to or legally adopted by the principal alien and spouse after approval of the principal alien's asylum application.

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States but was not included in the principal alien's application, the principal alien may request asylum for the spouse or child by filing Form I–730 with the District Director having jurisdiction over his only place of residence, regardless of the status of that spouse or child in the United States.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the principal alien may request asylum for the spouse or child by filing form I–730 with the District Director, setting forth the full name, relationship, date and place of birth, and current location of each such person. Upon approval of the request, the District Director shall notify the Department of State, which will send an authorization cable to the American Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located.

(e) *Denial.* If the spouse or child is found to be ineligible for the status accorded under section 208(c) of the Act, a written notice stating the basis for denial shall be forwarded to the principal alien. No appeal shall lie from this decision.

(f) *Burden of proof.* To establish the claim of relationship of spouse or child as defined in section 101(b)(1) of the Act, evidence must be submitted with the request as set forth in part 204 of this chapter. Where possible this will consist of the documents specified in 8 CFR 204.2(c) (2) and (3). The burden of proof is on the principal alien to establish by a preponderance of the evidence that any person on whose behalf he or she is making a request under this section is an eligible spouse or child.

(g) *Duration.* The spouse or child qualifying under section 208(c) of the Act shall be granted asylum for an indefinite period unless the principal's status is revoked.

**§ 208.20 Effect on exclusion, deportation, and removal proceedings.**

(a) An alien who has been granted asylum may not be deported or removed unless his or her asylum status is terminated pursuant to § 208.22. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation may not be deported or removed to the country to which his or her deportation or removal is ordered withheld unless the withholding order is terminated pursuant to § 208.22.

(b) When an alien's asylum status or withholding of removal or deportation is terminated under this chapter, the Service shall initiate removal proceedings under section 235 or 240 of the Act, as appropriate, if the alien is not already in exclusion, deportation, or removal proceedings. Removal proceedings may also be in conjunction with a termination hearing scheduled under § 208.22(e).

**§ 208.21 Restoration of status.**

An alien who was maintaining his or her nonimmigrant status at the time of filing an asylum application and has such application denied may continue in or be restored to that status, if it has not expired.

**§ 208.22 Termination of asylum or withholding of removal or deportation.**

(a) *Termination of asylum by the Service.* Except as provided in

paragraph (e) of this section, an asylum officer may terminate a grant of asylum made under the jurisdiction of an asylum officer or a district director if following an interview, the asylum officer determines that:

(1) There is a showing of fraud in the alien's application such that he or she was not eligible for asylum at the time it was granted;

(2) As to applications filed on or after April 1, 1997, one or more of the conditions described in section 208(c)(2) of the Act exist; or

(3) As to applications filed before April 1, 1997, the alien no longer has a well-founded fear of persecution upon return due to a change of country conditions in the alien's country of nationality or habitual residence or the alien has committed any act that would have been grounds for denial of asylum under § 208.13(c)(2).

(b) *Termination of withholding of deportation or removal by the Service.* Except as provided in paragraph (e) of this section, an asylum officer may terminate a grant of withholding of deportation or removal made under the jurisdiction of an asylum officer or a district director if the asylum officer determines, following an interview, that:

(1) The alien is no longer entitled to withholding of deportation or removal due to a change of conditions in the country to which removal was withheld;

(2) There is a showing of fraud in the alien's application such that the alien was not eligible for withholding of removal at the time it was granted;

(3) The alien has committed any other act that would have been grounds for denial of withholding of removal under section 241(b)(3)(B) of the Act had it occurred prior to the grant of withholding of removal; or

(4) For applications filed in proceedings commenced before April 1, 1997, the alien has committed any act that would have been grounds for denial of withholding of deportation under section 243(h)(2) of the Act.

(c) *Procedure.* Prior to the termination of a grant of asylum or withholding of deportation or removal, the alien shall be given notice of intent to terminate, with the reasons therefor, at least 30 days prior to the interview specified in paragraph (a) of this section before an asylum officer. The alien shall be provided the opportunity to present evidence showing that he or she is still eligible for asylum or withholding of deportation or removal. If the asylum officer determines that the alien is no longer eligible for asylum or withholding of deportation or removal, the alien shall be given written notice that asylum status or withholding of deportation or removal and any employment authorization issued pursuant thereto, are terminated.

(d) *Termination of derivative status.* The termination of asylum status for a person who was the principal applicant shall result in termination of the asylum status of a spouse or child whose status was based on the asylum application of the principal. Such termination shall not preclude the spouse or child of such alien from separately asserting an asylum or withholding of deportation or removal claim.

(e) *Termination of asylum or withholding of deportation or removal by the Executive Office for Immigration Review.* An immigration judge or the Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 3.23 of this chapter for the purpose of terminating a grant of asylum or withholding of deportation or removal made under the jurisdiction of an immigration judge. In such a reopened proceeding, the Service must establish, by a preponderance of evidence, one or more of the grounds set forth in paragraphs (a) or (b) of this section. In addition, an immigration judge may terminate a grant of asylum or withholding of deportation or removal made under the jurisdiction of the Service at any time after the alien has been provided a notice of intent to terminate by the Service. Any termination under this paragraph may occur in conjunction with an exclusion, deportation or removal proceeding.

(f) *Termination of asylum for arriving aliens.* If the Service determines that an applicant for admission who had previously been granted asylum in the United States falls within conditions set forth in section 208(c)(2) of the Act and is inadmissible, the Service shall issue a notice of intent to terminate asylum and initiate removal proceedings under section 240 of the Act. The alien shall present his or her response to the intent to terminate during proceedings before the immigration judge.

**§§ 208.23—208.29 [Reserved]**

## Subpart B—Credible Fear of Persecution

### § 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, the Service has exclusive jurisdiction to make credible fear determinations, and the Executive Office for Immigration Review has exclusive jurisdiction to review such determinations. Except as otherwise provided in this subpart, paragraphs (b) through (e) of this section are the exclusive procedures applicable to credible fear interviews, determinations, and review under section 235(b)(1)(B) of the Act.

(b) *Interview and procedure.* The asylum officer, as defined in section 235(b)(1)(E) of the Act, will conduct the interview in a nonadversarial manner, separate and apart from the general public. At the time of the interview, the asylum officer shall verify that the alien has received Form M–444, Information about Credible Fear Interview in Expedited Removal Cases. The officer shall also determine that the alien has an understanding of the credible fear determination process. The alien may be required to register his or her identity electronically or through any other means designated by the Attorney General. The alien may consult with a person or persons of the alien's choosing prior to the interview or any review thereof, and may present other evidence, if available. Such consultation shall be at no expense to the Government and shall not unreasonably delay the process. Any person or persons with whom the alien chooses to consult may be present at the interview and may be permitted, in the discretion of the asylum officer, to present a statement at the end of the interview. The asylum officer, in his or her discretion, may place reasonable limits on the number of such persons who may be present at the interview and on the length of statement or statements made. If the alien is unable to proceed effectively in English, and if the asylum officer is unable to proceed competently in a language chosen by the alien, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter may not be a representative or employee of the applicant's country of nationality or, if the applicant is stateless, the applicant's country of last habitual residence. The asylum officer shall create a summary of the material facts as stated by the applicant. At the conclusion of the interview, the officer shall review the summary with the alien and provide the alien with an opportunity to correct errors therein. The asylum officer shall create a written record of his or her determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien

has established a credible fear of persecution. The decision shall not become final until reviewed by a supervisory asylum officer.

(c) *Authority.* Asylum officers conducting credible fear interviews shall have the authorities described in § 208.9(c).

(d) *Referral for an asylum hearing.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution, the asylum officer will so inform the alien and issue a Form I–862, Notice to Appear, for full consideration of the asylum claim in proceedings under section 240 of the Act. Parole of the alien may only be considered in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter. If an alien stowaway is found to have a credible fear of persecution, the asylum officer will so inform the alien and issue a Form I–863, Notice to Referral to Immigration Judge, for full consideration of the asylum claim in proceedings under § 208.2(b)(1).

(e) *Removal of aliens with no credible fear of persecution.* If an alien is found not to have a credible fear of persecution, the asylum officer shall provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative decision, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge, on which the alien shall indicate whether he or she desires such review. If the alien is not a stowaway, the officer shall also order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal. If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall also refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(f) *Review by immigration judge.* The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. If the alien requests such review, the asylum officer shall arrange for the detention of the alien and serve him or her with a Form I–863, Notice of Referral to Immigration Judge. The record of determination, including copies of the Form I–863, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. Upon review of the asylum officer's negative credible fear determination:

(1) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution, the case shall be returned to the Service for removal of the alien.

(2) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution, the immigration judge shall vacate the order of the asylum officer issued on Form I–860 and the Service may commence removal proceedings under section 240 of the Act, during which time the alien may file an asylum application in accordance with § 208.4(b)(3)(i).

(3) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution, the alien shall be allowed to file an asylum application before the immigration judge in accordance with § 208.4(b)(3)(iii). The immigration judge shall decide the asylum application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If and when a denial of the asylum application becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If and when an approval of the asylum application becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

## PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

43. The authority citation for part 209 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

### § 209.1 [Amended]

44. In § 209.1, paragraph (a)(1) is amended in the first sentence by revising the reference to ‘‘, 236, and 237’’ to read ‘‘and 240’’.

45. In § 209.2, the last sentence of paragraph (c) is revised to read as follows:

### § 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* * * * If an alien has been placed in deportation, exclusion, or removal proceedings under any section of this Act (as effective on the date such proceedings commenced), the application can be filed and considered only in those proceedings.

* * * * *

## PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

46. Part 211 is revised to read as follows:

Sec.
211.1 Visas.
211.2 Passports.
211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Forms I–551.
211.4 Waiver of documents for returning residents.
211.5 Alien commuters.

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

### § 211.1 Visas.

(a) *General.* Except as provided in paragraph (b) of this section, each arriving alien applying for admission (or boarding the vessel or aircraft on which he or she arrives) into the United States for lawful permanent residence, or as a lawful permanent resident returning to an unrelinquished lawful permanent residence in the United States, shall present one of the following:

(1) A valid, unexpired immigrant visa;

(2) A valid, unexpired Form I–551, Alien Registration Receipt Card, if seeking readmission after a temporary absence of less than 1 year, or in the case of a crewmember regularly serving on board a vessel or aircraft of United States registry seeking readmission after any temporary absence connected with his or her duties as a crewman;

(3) A valid, unexpired Form I–327, Permit to Reenter the United States;

(4) A valid, unexpired Form I–571, Refugee Travel Document, properly endorsed to reflect admission as a lawful permanent resident;

(5) An expired Form I–551, Alien Registration Receipt Card, accompanied by a filing receipt issued within the previous 6 months for either a Form I–751, Petition to Remove the Conditions on Residence, or Form I–829, Petition by Entrepreneur to Remove Conditions, if seeking admission or readmission after a temporary absence of less than 1 year;

(6) A Form I–551, whether or not expired, presented by a civilian or military employee of the United States Government who was outside the United States pursuant to official orders, or by the spouse or child of such employee who resided abroad while the employee or serviceperson was on overseas duty and who is preceding, accompanying or following to join within 4 months the employee, returning to the United States; or

(7) Form I–551, whether or not expired, or a transportation letter issued by an American consular officer,

presented by an employee of the American University of Beirut, who was so employed immediately preceding travel to the United States, returning temporarily to the United States before resuming employment with the American University of Beirut, or resuming permanent residence in the United States.

(b) *Waivers.* (1) A waiver of the visa required in paragraph (a) of this section shall be granted without fee or application by the district director, upon presentation of the child's birth certificate, to a child born subsequent to the issuance of an immigrant visa to his or her accompanying parent who applies for admission during the validity of such a visa; or a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(2) For an alien described in paragraph (b)(1) of this section, recordation of the child's entry shall be on Form I–181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The carrier of such alien shall not be liable for a fine pursuant to section 273 of the Act.

(3) If an immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad believes that good cause exists for his or her failure to present an immigrant visa, Form I–551, or reentry permit, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter, except that if the alien's Form I–551 was lost or stolen, the alien shall instead file Form I–90, Application to Replace Alien Registration Receipt Card, with the fee prescribed in § 103.7(b)(1) of this chapter, provided the temporary absence did not exceed 1 year. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of an immigrant visa, Form I–551, or reentry permit and admit the alien as a returning resident, if the district director is satisfied that the alien has established good cause for the alien's failure to present an immigrant visa, Form I–551, or reentry permit. Filing the Form I–90 will serve as both application for replacement and as application for waiver of passport and visa, without the obligation to file a separate waiver application.

(c) *Immigrants having occupational status defined in section 101(a)(15) (A), (E), or (G) of the Act.* An immigrant visa, reentry permit, or Form I–551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15) (A), (E), or (G) of the Act, unless he or she has previously submitted, or submits at the time he or she applies for admission to the United States, the written waiver required by section 247(b) of the Act and 8 CFR part 247.

(d) *Returning temporary residents.* (1) Form I–688, Temporary Resident Card, may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 210.1 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within one year after a temporary absence abroad.

(2) Form I–688 may be presented in lieu of an immigrant visa by an alien whose status has been adjusted to that of a temporary resident under the provisions of § 245a.2 of this chapter, such status not having changed, and who is returning to an unrelinquished residence within 30 days after a temporary absence abroad, provided that the aggregate of all such absences abroad during the temporary residence period has not exceeded 90 days.

**§ 211.2 Passports.**

(a) A passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of his or her immigrant visa shall be presented by each immigrant except an immigrant who:

(1) Is the parent, spouse, or unmarried son or daughter of a United States citizen or of an alien lawful permanent resident of the United States;

(2) Is entering under the provisions of § 211.1(a)(2) through (a)(7);

(3) Is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided that the child's application for admission to the United States is made within 2 years of birth, the child is accompanied by the parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States;

(4) Is a stateless person or a person who because of his or her opposition to Communism is unwilling or unable to obtain a passport from the country of his or her nationality, or is the accompanying spouse or unmarried son or daughter of such immigrant; or

(5) Is a member of the Armed Forces of the United States.

(b) Except as provided in paragraph (a) of this section, if an alien seeking admission as an immigrant with an immigrant visa believes that good cause exists for his or her failure to present a passport, the alien may file an application for a waiver of this requirement with the district director in charge of the port-of-entry. To apply for this waiver, the alien must file Form I–193, Application for Waiver of Passport and/or Visa, with the fee prescribed in § 103.7(b)(1) of this chapter. In the exercise of discretion, the district director in charge of the port-of-entry may waive the alien's lack of passport and admit the alien as an immigrant, if the district director is satisfied that the alien has established good cause for the alien's failure to present a passport.

**§ 211.3 Expiration of immigrant visas, reentry permits, refugee travel documents, and Forms I–551.**

An immigrant visa, reentry permit, refugee travel document, or Form I—551 shall be regarded as unexpired if the rightful holder embarked or enplaned before the expiration of his or her immigrant visa, reentry permit, or refugee travel document, or with respect to Form I—551, before the first anniversary of the date on which he or she departed from the United States, provided that the vessel or aircraft on which he or she so embarked or enplaned arrives in the United States or foreign contiguous territory on a continuous voyage. The continuity of the voyage shall not be deemed to have been interrupted by scheduled or emergency stops of the vessel or aircraft en route to the United States or foreign contiguous territory, or by a layover in foreign contiguous territory necessitated solely for the purpose of effecting a transportation connection to the United States.

**§ 211.4 Waiver of documents for returning residents.**

(a) Pursuant to the authority contained in section 211(b) of the Act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence was inadmissible because of failure to have or to present

a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director if the district director determines that such alien:

(1) Was not otherwise inadmissible at the time of entry, or having been otherwise inadmissible at the time of entry is with respect thereto qualified for an exemption from deportability under section 237(a)(1)(H) of the Act; and

(2) Is not otherwise subject to removal.

(b) Denial of a waiver by the district director is not appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before the immigration judge.

**§ 211.5 Alien commuters.**

(a) *General.* An alien lawfully admitted for permanent residence or a special agricultural worker lawfully admitted for temporary residence under section 210 of the Act may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his or her place of employment in the United States. An alien commuter engaged in seasonal work will be presumed to have taken up residence in the United States if he or she is present in this country for more than 6 months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his or her actual residence address even though it is not in the United States.

(b) *Loss of residence status.* An alien commuter who has been out of regular employment in the United States for a continuous period of 6 months shall be deemed to have lost residence status, notwithstanding temporary entries in the interim for other than employment purposes. An exception applies when employment in the United States was interrupted for reasons beyond the individual's control other than lack of a job opportunity or the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States. Upon loss of status, Form I–551 or I–688 shall become invalid and must be surrendered to an immigration officer.

(c) *Eligibility for benefits under the immigration and nationality laws.* Until he or she has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his or her own behalf or on behalf of his or her relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he or she shall no longer be regarded as a commuter. He or she may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his or her first reentry for that purpose. Application for issuance of a new alien registration receipt card to show that he or she has taken up residence in the United States shall be made on Form I–90.

## PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

47. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

48. Section 212.5 is amended by:

a. Revising paragraph (a) and (b);

b. Revising introductory text in paragraph (c);

c. Revising paragraph (c)(1); and by

d. Revising paragraph (d)(2)(i), to read as follows:

**§ 212.5 Parole of aliens into the United States.**

(a) The parole of aliens within the following groups who have been or are detained in accordance with § 235.3(b) or (c) of this chapter would generally be justified only on a case-by-case basis for ''urgent humanitarian reasons'' or ''significant public benefit,'' provided the aliens present neither a security risk nor a risk of absconding:

(1) Aliens who have serious medical conditions in which continued detention would not be appropriate;

(2) Women who have been medically certified as pregnant;

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The district director or chief patrol agent shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (a)(3)(i) through (iii) of this section in determining under what conditions a juvenile should be paroled from detention:

(i) Juveniles may be released to a relative (brother, sister, aunt, uncle, or grandparent) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that the juvenile has a relative who is in detention.

(ii) If a relative who is not in detention cannot be located to sponsor the minor, the minor may be released with an accompanying relative who is in detention.

(iii) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minor has identified a non-relative in detention who accompanied him or her on arrival, the question of releasing the minor and the accompanying non-relative adult shall be addressed on a case-by-case basis;

(4) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or

(5) Aliens whose continued detention is not in the public interest as determined by the district director or chief patrol agent.

(b) In the cases of all other arriving aliens, except those detained under § 235.3(b) or (c) of this chapter and paragraph (a) of this section, the district director or chief patrol agent may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (c) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (e) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3(b) or (c) of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(c) *Conditions.* In any case where an alien is paroled under paragraph (a) or (b) of this section, the district director or chief patrol agent may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director or chief patrol agent should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I–352 in such amount as the district director or chief patrol agent may deem appropriate;

* * * * *

(d) * * *

(2)(i) *On notice.* In cases not covered by paragraph (d)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director or chief patrol agent in charge of the area in which the alien is located, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed by removal within a reasonable time, the alien shall again be released on parole unless in the opinion of the district director or the chief patrol agent the public interest requires that the alien be continued in custody.

* * * * *

49. In § 212.6, paragraph (a)(2) is revised to read as follows:

**§ 212.6 Nonresident alien border crossing cards.**

(a) * * *

(2) *Mexican border crossing card, Form I–186 or I–586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I–186 or I–586, may be admitted under § 235.1(f) of this chapter if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall be issued Form I–94 if the alien is applying for admission from:

(i) A country other than Mexico or Canada, or

(ii) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

* * * * *

## PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

50. The authority citation for part 213 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

**§ 213.1 [Amended]**

51. Section 213.1 is amended in the last sentence by revising the term ''part 103'' to read ''§ 103.6''.

## PART 214—NONIMMIGRANT CLASSES

52. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

53. Section 214.1 is amended by revising paragraph (c)(4)(iv) to read as follows:

**§ 214.1 Requirements for admission, extension, and maintenance of status.**

* * * * *

(c) * * *

(4) * * *

(iv) The alien is not the subject of deportation proceedings under section 242 of the Act (prior to April 1, 1997) or removal proceedings under section 240 of the Act.

* * * * *

## PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

54. The authority citation for part 216 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

55. Section 216.3 is revised to read as follows:

**§ 216.3 Termination of conditional resident status.**

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a notice of intent to terminate an alien's conditional resident status, the director shall not adjudicate Form I–751 or Form I–829 until it has been determined that the alien's status will not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the notice of termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in removal proceedings. In addition to the notice of termination, the director shall issue a notice to appear in accordance with 8 CFR part 239. During the ensuing removal proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or removal proceedings under section 240 of the Act.

56. Section 216.4 is amended by:

a. Revising paragraphs (a)(6), and (b)(3);

b. Revising paragraph, (c)(4);

c. Removing the unnumbered paragraph immediately after paragraph (c)(4); and by

d. Revising paragraph (d)(2) to read as follows:

**§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.**

(a) * * *

(6) *Termination of status for failure to file petition.* Failure to properly file Form I–751 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I–751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I–751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in removal proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding notice to appear in accordance with § 239.2 of this chapter. If the joint petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) * * *

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and a notice to appear shall be issued placing the alien under removal proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements. If the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) * * *

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence. If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence, and issue a notice to appear to initiate removal proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for removal.

(d) * * *

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue a notice to appear under section 239 of the Act and 8 CFR part 239. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in removal proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true or that the petition was properly denied.

57. Section 216.5 is amended by revising paragraphs (a), (d), (e)(1), (e)(3)(ii), and (f) to read as follows:

**§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.**

(a) *General.* (1) A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file Form I–751, Petition to Remove the Conditions on Residence, if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

(i) Deportation or removal from the United States would result in extreme hardship;

(ii) The marriage upon which his or her status was based was entered into in good faith by the conditional resident alien, but the marriage was terminated other than by death, and the conditional resident was not at fault in failing to file a timely petition; or

(iii) The qualifying marriage was entered into in good faith by the conditional resident but during the marriage the alien spouse or child was battered by or subjected to extreme cruelty committed by the citizen or permanent resident spouse or parent.

(2) A conditional resident who is in exclusion, deportation, or removal proceedings may apply for the waiver only until such time as there is a final order of exclusion, deportation or removal.

* * * * *

(d) *Interview.* The service center director may refer the application to the appropriate local office and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate removal proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application.* (1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's removal from the United States, the director shall take into account only those factors that arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any removal from the United States is likely to result in a certain degree of hardship, and that only in those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

* * * * *

(3) * * *

(ii) A conditional resident or former conditional resident who has not departed the United States after termination of resident status may apply for the waiver. The conditional resident may apply for the waiver regardless of

his or her present marital status. The conditional resident may still be residing with the citizen or permanent resident spouse, or may be divorced or separated.

* * * * *

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefor, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue a notice to appear placing the alien in removal proceedings. No appeal shall lie from the decision of the director; however, the alien may seek review of such decision in removal proceedings.

## PART 217—VISA WAIVER PILOT PROGRAM

58. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

59. Section 217.1 is revised to read as follows:

### § 217.1 Scope.

The Visa Waiver Pilot Program (VWPP) described in this section is established pursuant to the provisions of section 217 of the Act.

60. Section 217.2 is revised to read as follows:

### § 217.2 Eligibility.

(a) *Definitions.* As used in this part, the term:

*Carrier* refers to the owner, charterer, lessee, or authorized agent of any commercial vessel or commercial aircraft engaged in transporting passengers to the United States from a foreign place.

*Designated country* refers to Andorra, Argentina, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, San Marino, Spain, Sweden, Switzerland, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. Effective April 1, 1995, until September 30, 1998, or the expiration of the Visa Waiver Pilot Program, whichever comes first, Ireland has been designated as a Visa Waiver Pilot Program country with Probationary Status in accordance with section 217(g) of the Act.

*Round trip ticket* means any return trip transportation ticket in the name of an arriving Visa Waiver Pilot Program applicant on a participating carrier valid for at least 1 year, electronic ticket record, airline employee passes indicating return passage, individual vouchers for return passage, group vouchers for return passage for charter flights, and military travel orders which include military dependents for return to duty stations outside the United States on U.S. military flights. A period of validity of 1 year need not be reflected on the ticket itself, provided that the carrier agrees that it will honor the return portion of the ticket at any time, as provided in Form I–775, Visa Waiver Pilot Program Agreement.

(b) *Special program requirements.* (1) *General.* In addition to meeting all of the requirements for the Visa Waiver Pilot Program specified in section 217 of the Act, each applicant must possess a valid, unexpired passport issued by a designated country and present a completed, signed Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form.

(2) *Persons previously removed as deportable aliens.* Aliens who have been deported or removed from the United States, after having been determined deportable, require the consent of the Attorney General to apply for admission to the United States pursuant to section 212(a)(9)(A)(iii) of the Act. Such persons may not be admitted to the United States under the provisions of this part notwithstanding the fact that the required consent of the Attorney General may have been secured. Such aliens must secure a visa in order to be admitted to the United States as nonimmigrants, unless otherwise exempt.

(c) *Restrictions on manner of arrival.* (1) *Applicants arriving by air and sea.* Applicants must arrive on a carrier that is signatory to a Visa Waiver Pilot Program Agreement and at the time of arrival must have a round trip ticket that will transport the traveler out of the United States to any other foreign port or place as long as the trip does not terminate in contiguous territory or an adjacent island; except that the round trip ticket may transport the traveler to contiguous territory or an adjacent island, if the traveler is a resident of the country of destination.

(2) *Applicants arriving at land border ports-of-entry.* Any Visa Waiver Pilot Program applicant arriving at a land border port-of-entry must provide evidence to the immigration officer of financial solvency and a domicile abroad to which the applicant intends to return. An applicant arriving at a land-border port-of-entry will be charged a fee as prescribed in § 103.7(b)(1) of this chapter for issuance of Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form. A round-trip transportation ticket is not required of applicants at land border ports-of-entry.

(d) *Aliens in transit.* An alien who is in transit through the United States is eligible to apply for admission under the Visa Waiver Pilot Program, provided the applicant meets all other program requirements.

61. Section 217.3 is revised to read as follows:

### § 217.3 Maintenance of status.

(a) *Satisfactory departure.* If an emergency prevents an alien admitted under this part from departing from the United States within his or her period of authorized stay, the district director having jurisdiction over the place of the alien's temporary stay may, in his or her discretion, grant a period of satisfactory departure not to exceed 30 days. If departure is accomplished during that period, the alien is to be regarded as having satisfactorily accomplished the visit without overstaying the allotted time.

(b) *Readmission after departure to contiguous territory or adjacent island.* An alien admitted to the United States under this part may be readmitted to the United States after a departure to foreign contiguous territory or adjacent island for the balance of his or her original Visa Waiver Pilot Program admission period if he or she is otherwise admissible and meets all the conditions of this part with the exception of arrival on a signatory carrier.

62. Section 217.4 is amended by:

a. Revising the section heading:

b. Removing paragraph (a);

c. Redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c) respectively;

d. Revising newly redesignated paragraph (a)(1);

e. Adding a new paragraph (a)(3);

f. Revising newly redesignated paragraph (b); and by

g. Revising newly redesignated paragraph (c) to read as follows:

### § 217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.* (1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for

admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act, who applies for asylum in the United States must be issued a Form I–863, Notice of Referral to Immigration Judge, for a proceeding in accordance with § 208.2(b)(1) and (2) of this chapter.

* * * * *

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be determined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien admitted as a Visa Waiver Pilot Program visitor who applies for asylum in the United States must be issued a Form I–863 for a proceeding in accordance with § 208.2(b)(1) and (2) of this chapter.

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

**§ 217.5 [Removed and reserved]**

63. Section 217.5 is removed and reserved.

64. Section 217.6 is revised to read as follows:

**§ 217.6 Carrier agreements.**

(a) *General.* The carrier agreements referred to in section 217(e) of the Act shall be made by the Commissioner on behalf of the Attorney General and shall be on Form I–775, Visa Waiver Pilot Program Agreement.

(b) *Termination of agreements.* The Commissioner, on behalf of the Attorney General, may terminate any carrier agreement under this part, with 5 days notice to a carrier, for the carrier's failure to meet the terms of such agreement. As a matter of discretion, the Commissioner may notify a carrier of the existence of a basis for termination of a carrier agreement under this part and allow the carrier a period not to exceed 15 days within which the carrier may bring itself into compliance with the terms of the carrier agreement. The agreement shall be subject to cancellation by either party for any reason upon 15 days' written notice to the other party.

## PART 221—ADMISSION OF VISITORS OR STUDENTS

65. The authority citation for part 221 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1201; 8 CFR part 2.

**§ 221.1 [Amended]**

66. Section 221.1 is amended in the last sentence by revising the term ''part 103'' to read ''§ 103.6''.

## PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

67. The authority citation for part 223 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS) 6577; 8 CFR part 2.

68. In § 223.1, paragraph (b) is revised to read as follows:

**§ 223.1 Purpose of documents.**

* * * * *

(b) *Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

69. In § 223.2, paragraph (b)(2) is revised to read as follows:

**§ 223.2 Processing.**

* * * * *

(b) * * *

(2) *Refugee travel document.* (i) *General.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

(ii) *Discretionary authority to adjudicate an application from an alien not within the United States.* As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed from the United States without having applied for such refugee travel document, provided:

(A) The alien submits a Form I–131, Application for Travel Document, with the fee required under § 103.7(b)(1) of this chapter;

(B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;

(C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status; and

(D) The alien has been outside the United States for less than 1 year since his or her last departure.

* * * * *

70. In § 223.3, paragraph (d)(2) is revised to read as follows:

**§ 223.3 Validity and effect on admissibility.**

* * * * *

(d) * * *

(2) *Refugee travel document.* (i) *Inspection and immigration status.* Upon arrival in the United States, an alien who presents a valid unexpired refugee travel document, or who has been allowed to file an application for a refugee travel document and this application has been approved under the procedure set forth in § 223.2(b)(2)(ii), shall be examined as to his or her admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document, or (in the case of an alien discussed in § 223.2(b)(2)(ii)) which will be endorsed in such document, unless he or she is no longer eligible for that status, or he or she applies for and is found eligible for some other immigration status.

(ii) *Inadmissibility.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be inadmissible, he or she shall be referred for proceedings under section 240 of the Act. Section 235(c) of the Act shall not be applicable.

## PART 232—DETENTION OF ALIENS FOR PHYSICAL AND MENTAL EXAMINATION

71. The heading for part 232 is revised to read as set forth above.

72. The authority citation for part 232 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1222, 1224, 1252; 8 CFR part 2.

**§ 232.1 [Redesignated and revised]**

73. Section 232.1 is redesignated as § 232.3, and is revised to read as follows:

**§ 232.3 Arriving aliens.**

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he or she shall, after consultation with the United States Public Health Service at the port-of-entry, notify the master or agent of the arriving vessel or aircraft of his or her intention to effect such detention by serving on the master or agent Form I–259 in accordance with § 235.3(a) of this chapter.

**§§ 234.1 and 234.2 [Redesignated as §§ 232.1 and 232.2 respectively]**

74. Sections 234.1 and 234.2 are redesignated as §§ 232.1 and 232.2 respectively.

## PART 234—[REMOVED]

75. Part 234 is removed.

76. The following parts are redesignated as set forth in the table below:

| Old part | New part |
|---|---|
| Part 238 | Part 233. |
| Part 239 | Part 234. |

## PART 233—CONTRACTS WITH TRANSPORTATION LINES

77. The authority citation for newly designated part 233 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR part 2.

78. Newly redesignated § 233.1 is revised to read as follows:

**§ 233.1 Contracts.**

The contracts with transportation lines referred to in section 233(c) of the Act may be entered into by the Executive Associate Commissioner for Programs, or by an immigration officer designated by the Executive Associate Commissioner for Programs on behalf of the government and shall be documented on Form I–420. The contracts with transportation lines referred to in section 233(a) of the Act shall be made by the Commissioner on behalf of the government and shall be documented on Form I–426. The contracts with transportation lines desiring their passengers to be preinspected at places outside the United States shall be made by the Commissioner on behalf of the government and shall be documented on Form I–425; except that contracts for irregularly operated charter flights may be entered into by the Associate Commissioner for Examinations or an immigration officer designated by the Executive Associate Commissioner for Programs and having jurisdiction over the location where the inspection will take place.

79. In newly redesignated § 233.3, paragraph (b) is revised to read as follows (the list of agreements is removed):

**§ 233.3 Aliens in immediate and continuous transit.**

* * * * *

(b) *Signatory lines.* A list of currently effective Form I–426 agreements is maintained by the Service's Headquarters Office of Inspections and is available upon written request.

* * * * *

80. Newly redesignated § 233.4 is revised to read as follows:

**§ 233.4 Preinspection outside the United States.**

(a) *Form I–425 agreements.* A transportation line bringing applicants for admission to the United States through preinspection sites outside the United States shall enter into an agreement on Form I–425. Such an agreement shall be negotiated directly by the Service's Headquarters Office of Inspections and the head office of the transportation line.

(b) *Signatory lines.* A list of transportation lines with currently valid transportation agreements on Form I–425 is maintained by the Service's Headquarters Office of Inspections and is available upon written request.

81. Newly redesignated § 233.5 is revised to read as follows:

**§ 233.5 Aliens entering Guam pursuant to section 14 of Public Law 99–396, ''Omnibus Territories Act.'**

A transportation line bringing aliens to Guam under the visa waiver provisions of § 212.1(e) of this chapter shall enter into an agreement on Form I–760. Such agreements shall be negotiated directly by the Service's Headquarters and head offices of the transportation lines.

## PART 234—DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

82. The heading for newly redesignated part 234 is revised as set forth above.

83. The authority citation for newly designated part 234 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

**§ 234.3 [Amended]**

84. Newly redesignated § 234.3 is amended by removing the last sentence.

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

85. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

86. Section 235.1 is revised to read as follows:

**§ 235.1 Scope of examination.**

(a) *General.* Application to lawfully enter the United States shall be made in

person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section.

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the removal provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected and his or her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his or her entry shall not be recorded.

(d) *Alien applicants for admission.* (1) Each alien seeking admission at a United States port-of-entry shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he or she is not subject to removal under the immigration laws, Executive Orders, or Presidential Proclamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States. A person claiming to have been lawfully admitted for permanent residence must establish that fact to the satisfaction of the inspecting immigration officer and must present proper documents in accordance with § 211.1 of this chapter.

(2) An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of section 212(a) of the Act and to removal under section 235(b) or 240 of the Act.

(3) An alien who is brought to the United States, whether or not to a designated port-of-entry and regardless of the means of transportation, after having been interdicted in international or United States waters, is considered an applicant for admission and shall be examined under section 235(b) of the Act.

(4) An alien stowaway is not an applicant for admission and may not be admitted to the United States. A stowaway shall be removed from the United States under section 235(a)(2) of the Act. The provisions of section 240 of the Act are not applicable to stowaways, nor is the stowaway entitled to further hearing or review of the removal, except that an alien stowaway who indicates an intention to apply for asylum shall be referred to an asylum officer for a determination of credible fear of persecution in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. An alien stowaway who is determined to have a credible fear of persecution shall have his or her asylum application adjudicated in accordance with § 208.2(b)(2) of this chapter. Nothing in this section shall be construed to require expedited removal proceedings in accordance with section 235(b)(1) of the Act. A stowaway who absconds either prior to inspection by an immigration officer or after being ordered removed as a stowaway pursuant to section 235(a)(2) of the Act is not entitled to removal proceedings under section 240 of the Act and shall be removed under section 235(a)(2) of the Act as if encountered upon arrival. A stowaway who has been removed pursuant to section 235(a)(2) of the Act and this section shall be considered to have been formally removed from the United States for all purposes under the Act.

(e) *U.S. citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, upon application and payment of a fee prescribed under § 103.7(b)(1) of this chapter, Form I–68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I–68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I–68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar areas adjacent to the immediate shore area of the United States. If the bearer of Form I–68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port-of-entry.

(f) *Form I–94, Arrival Departure Record.* (1) Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States shall be issued, upon payment of a fee prescribed in § 103.7(b)(1) of this chapter for land border admissions, a Form I–94 as evidence of the terms of admission. A Form I–94 issued at a land border port-of-entry shall be considered issued for multiple entries unless specifically annotated for a limited number of entries. A Form I–94 issued at other than a land border port-of-entry, unless issued for multiple entries, must be surrendered upon departure from the United States in accordance with the instructions on the form. Form I–94 is not required by:

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under § 212.1(b) of this chapter;

(iii) Any Mexican national in possession of a valid nonresident alien Mexican border crossing card, or a valid Mexican passport and a multiple-entry nonimmigrant visa issued under section 101(a)(15)(B) of the Act, who is admitted as a nonimmigrant visitor at a Mexican border port of entry for a

period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Bearers of Mexican diplomatic or official passports described in § 212.1(c–1) of this chapter.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94, endorsed with the parole stamp.

87. Section 235.2 is revised to read as follows:

**§ 235.2 Parole for deferred inspection.**

(a) A district director may, in his or her discretion, defer the inspection of any vessel or aircraft, or of any alien, to another Service office or port-of-entry. Any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was deferred, shall be regarded as an applicant for admission at that onward port.

(b) An examining immigration officer may defer further examination and refer the alien's case to the district director having jurisdiction over the place where the alien is seeking admission, or over the place of the alien's residence or destination in the United States, if the examining immigration officer has reason to believe that the alien can overcome a finding of inadmissibility by:

(1) Posting a bond under section 213 of the Act;

(2) Seeking and obtaining a waiver under section 211 or 212(d)(3) or (4) of the Act; or

(3) Presenting additional evidence of admissibility not available at the time and place of the initial examination.

(c) Such deferral shall be accomplished pursuant to the provisions of section 212(d)(5) of the Act for the period of time necessary to complete the deferred inspection.

(d) Refusal of a district director to authorize admission under section 213 of the Act, or to grant an application for the benefits of section 211 or section 212(d) (3) or (4) of the Act, shall be without prejudice to the renewal of such application or the authorizing of such admission by the immigration judge without additional fee.

(e) Whenever an alien on arrival is found or believed to be suffering from a disability that renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his or her family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

88. Section 235.3 is revised to read as follows:

**§ 235.3 Inadmissible aliens and expedited removal.**

(a) *Detention prior to inspection.* All persons arriving at a port-of-entry in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required. The owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft shall deliver every alien requiring examination to an immigration officer for inspection or to a medical officer for examination. The Service will not be liable for any expenses related to such detention or presentation or for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissibility by a Service officer.

(b) *Expedited removal.* (1) *Applicability.* The expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section 212(a)(6)(C) or (7) of the Act:

(i) Arriving aliens, as defined in § 1.1(q) of this chapter, except for citizens of Cuba arriving at a United States port-of-entry by aircraft;

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the Federal Register. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the Federal Register as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. An alien who was not inspected and admitted or paroled into the United States but who establishes that he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

(2) *Determination of inadmissibility.* (i) *Record of proceeding.* An alien who is arriving in the United States, or other alien as designated pursuant to paragraph (b)(1)(ii) of this section, who is determined to be inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act (except an alien for whom documentary requirements are waived under § 211.1(b)(3) or § 212.1 of this chapter), shall be ordered removed from the United States in accordance with section 235(b)(1) of the Act. In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accomplished by means of a sworn statement using Form I–867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The examining immigration officer shall read (or have read) to the alien all information contained on Form I–867A. Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien's response to the questions contained on Form I–867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction. The examining immigration officer shall advise the alien of the charges against him or her

on Form I–860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges in the sworn statement. After obtaining supervisory concurrence in accordance with paragraph (b)(7) of this section, the examining immigration official shall serve the alien with Form I–860 and the alien shall sign the reverse of the form acknowledging receipt. Interpretative assistance shall be used if necessary to communicate with the alien.

(ii) *No entitlement to hearings and appeals.* Except as otherwise provided in this section, such alien is not entitled to a hearing before an immigration judge in proceedings conducted pursuant to section 240 of the Act, or to an appeal of the expedited removal order to the Board of Immigration Appeals.

(iii) *Detention and parole of alien in expedited removal.* An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal, except that parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(3) *Additional charges of inadmissibility.* In the expedited removal process, the Service may not charge an alien with any additional grounds of inadmissibility other than section 212(a)(6)(C) or 212(a)(7) of the Act. If an alien appears to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all charges. Once the alien is in removal proceedings under section 240 of the Act, the Service is not precluded from lodging additional charges against the alien. Nothing in this paragraph shall preclude the Service from pursuing such additional grounds of inadmissibility against the alien in any subsequent attempt to reenter the United States, provided the additional grounds of inadmissibility still exist.

(4) *Claim of asylum or fear of persecution.* If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, a fear of persecution, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with § 208.30 of this chapter to determine if the alien has a credible fear of persecution. The examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern, and to establish the alien's inadmissibility.

(i) *Referral.* The referring officer shall provide the alien with a written disclosure on Form M–444, Information About Credible Fear Interview, describing:

(A) The purpose of the referral and description of the credible fear interview process;

(B) The right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government;

(C) The right to request a review by an immigration judge of the asylum officer's credible fear determination; and

(D) The consequences of failure to establish a credible fear of persecution.

(ii) *Detention pending credible fear interview.* Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained. Parole of such alien in accordance with section 212(d)(5) of the Act may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Prior to the interview, the alien shall be given time to contact and consult with any person or persons of his or her choosing. Such consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained, shall be at no expense to the government, and shall not unreasonably delay the process.

(5) *Claim to lawful permanent resident, refugee, or asylee status or U.S. citizenship.*—(i) *Verification of status.* If an applicant for admission who is subject to expedited removal pursuant to section 235(b)(1) of the Act claims to have been lawfully admitted for permanent residence, admitted as a refugee under section 207 of the Act, granted asylum under section 208 of the Act, or claims to be a U.S. citizen, the immigration officer shall attempt to verify the alien's claim. Such verification shall include a check of all available Service data systems and any other means available to the officer. An alien whose claim to lawful permanent resident, refugee, asylee status, or U.S. citizen status cannot be verified will be advised of the penalties for perjury, and will be placed under oath or allowed to make a declaration as permitted under 28 U.S.C. 1746, concerning his or her lawful admission for permanent residence, admission as a refugee under section 207 of the Act, grant of asylum status under section 208 of the Act, or claim to U.S. citizenship. A written statement shall be taken from the alien in the alien's own language and handwriting, stating that he or she declares, certifies, verifies, or states that the claim is true and correct. The immigration officer shall issue an expedited order of removal under section 235(b)(1)(A)(i) of the Act and refer the alien to the immigration judge for review of the order in accordance with paragraph (b)(5)(iv) of this section and § 235.6(a)(2)(ii). The person shall be detained pending review of the expedited removal order under this section. Parole of such person, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(ii) *Verified lawful permanent residents.* If the claim to lawful permanent resident status is verified, and such status has not been terminated in exclusion, deportation, or removal proceedings, the examining immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. The examining immigration officer will determine in accordance with section 101(a)(13)(C) of the Act whether the alien is considered to be making an application for admission. If the alien is determined to be seeking admission and the alien is otherwise admissible, except that he or she is not in possession of the required documentation, a discretionary waiver of documentary requirements may be considered in accordance with section 211(b) of the Act and § 211.1(b)(3) of this chapter or the alien's inspection may be deferred to an onward office for presentation of the required documents. If the alien appears to be inadmissible, the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iii) *Verified refugees and asylees.* If a check of Service records or other means indicates that the alien has been granted refugee status or asylee status, and such status has not been terminated in deportation, exclusion, or removal proceedings, the immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act.

If the alien is not in possession of a valid, unexpired refugee travel document, the examining immigration officer may accept an application for a refugee travel document in accordance with § 223.2(b)(2)(ii) of this chapter. If accepted, the immigration officer shall readmit the refugee or asylee in accordance with § 223.3(d)(2)(i) of this chapter. If the alien is determined not to be eligible to file an application for a refugee travel document the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iv) *Review of order for claimed lawful permanent residents, refugees, asylees, or U.S. citizens.* A person whose claim to U.S. citizenship has been verified may not be ordered removed. When an alien whose status has not been verified but who is claiming under oath or under penalty of perjury to be a lawful permanent resident, refugee, asylee, or U.S. citizen is ordered removed pursuant to section 235(b)(1) of the Act, the case will be referred to an immigration judge for review of the expedited removal order under section 235(b)(1)(C) of the Act and § 235.6(a)(2)(ii). If the immigration judge determines that the alien has never been admitted as a lawful permanent resident or as a refugee, granted asylum status, or is not a U.S. citizen, the order issued by the immigration officer will be affirmed and the Service will remove the alien. There is no appeal from the decision of the immigration judge. If the immigration judge determines that the alien was once so admitted as a lawful permanent resident or as a refugee, or was granted asylum status, or is a U.S. citizen, and such status has not been terminated by final administrative action, the immigration judge will terminate proceedings and vacate the expedited removal order. The Service may initiate removal proceedings against such an alien, but not against a person determined to be a U.S. citizen, in proceedings under section 240 of the Act. During removal proceedings, the immigration judge may consider any waivers, exceptions, or requests for relief for which the alien is eligible.

(6) *Opportunity for alien to establish that he or she was admitted or paroled into the United States.* If the Commissioner determines that the expedited removal provisions of section 235(b)(1) of the Act shall apply to any or all aliens described in paragraph (b)(2)(ii) of this section, such alien will be given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following inspection at a port-of-entry. The alien will be allowed to present evidence or provide sufficient information to support the claim. Such evidence may consist of documentation in the possession of the alien, the Service, or a third party. The examining immigration officer will consider all such evidence and information, make further inquiry if necessary, and will attempt to verify the alien's status through a check of all available Service data systems. The burden rests with the alien to satisfy the examining immigration officer of the claim of lawful admission or parole. If the alien establishes that he or she was lawfully admitted or paroled, the case will be examined to determine if grounds of deportability under section 237(a) of the Act are applicable, or if paroled, whether such parole has been, or should be, terminated, and whether the alien is inadmissible under section 212(a) of the Act. An alien who cannot satisfy the examining officer that he or she was lawfully admitted or paroled will be ordered removed pursuant to section 235(b)(1) of the Act.

(7) *Review of expedited removal orders.* Any removal order entered by an examining immigration officer pursuant to section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final. Such supervisory review shall not be delegated below the level of the second line supervisor, or a person acting in that capacity. The supervisory review shall include a review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return. The supervisory review and approval of an expedited removal order for an alien described in section 235(b)(1)(A)(iii) of the Act must include a review of any claim of lawful admission or parole and any evidence or information presented to support such a claim, prior to approval of the order. In such cases, the supervisor may request additional information from any source and may require further interview of the alien.

(8) *Removal procedures relating to expedited removal.* An alien ordered removed pursuant to section 235(b)(1) of the Act shall be removed from the United States in accordance with section 241(c) of the Act and 8 CFR part 241.

(9) *Waivers of documentary requirements.* Nothing in this section limits the discretionary authority of the Attorney General, including authority under sections 211(b) or 212(d) of the Act, to waive the documentary requirements for arriving aliens.

(10) *Applicant for admission under section 217 of the Act.* The provisions of § 235.3(b) do not apply to an applicant for admission under section 217 of the Act.

(c) *Arriving aliens placed in proceedings under section 240 of the Act.* Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act. Parole of such alien shall only be considered in accordance with § 212.5(a) of this chapter. This paragraph shall also apply to any alien who arrived before April 1, 1997, and who was placed in exclusion proceedings.

(d) *Service custody.* The Service will assume custody of any alien subject to detention under paragraph (b) or (c) of this section. In its discretion, the Service may require any alien who appears inadmissible and who arrives at a land border port-of-entry from Canada or Mexico, to remain in that country while awaiting a removal hearing. Such alien shall be considered detained for a proceeding within the meaning of section 235(b) of the Act and may be ordered removed in absentia by an immigration judge if the alien fails to appear for the hearing.

(e) *Detention in non-Service facility.* Whenever an alien is taken into Service custody and detained at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are:

(1) 24-Hour supervision,

(2) Conformance with safety and emergency codes,

(3) Food service, and

(4) Availability of emergency medical care.

(f) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to § 236.1(e) of this chapter apply when an inadmissible alien is detained for removal proceedings, including for purpose of conducting the credible fear determination.

89. Section 235.4 is revised to read as follows:

**§ 235.4 Withdrawal of application for admission.**

(a) The Attorney General may, in his or her discretion, permit any alien applicant for admission to withdraw his or her application for admission in lieu of removal proceedings under section 240 of the Act or expedited removal under section 235(b)(1) of the Act. The alien's decision to withdraw his or her application for admission must be made voluntarily, but nothing in this section shall be construed as to give an alien the right to withdraw his or her application for admission. Permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately. An alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted in accordance with § 212.5(a) of this chapter.

(b) An immigration judge may allow only an arriving alien to withdraw an application for admission. Once the issue of inadmissibility has been resolved, permission to withdraw an application for admission should ordinarily be granted only with the concurrence of the Service. An immigration judge shall not allow an alien to withdraw an application for admission unless the alien, in addition to demonstrating that he or she possesses both the intent and the means to depart immediately from the United States, establishes that factors directly relating to the issue of inadmissibility indicate that the granting of the withdrawal would be in the interest of justice. During the pendency of an appeal from the order of removal, permission to withdraw an application for admission must be obtained from the immigration judge or the Board.

90. Section 235.5 is revised to read as follows:

**§ 235.5 Preinspection.**

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the examining immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination shall be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

(b) *In foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a port-of-entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in the foreign territory and shall have the same effect under the Act as though made at the destined port-of-entry in the United States.

91. Section 235.6 is revised to read as follows:

**§ 235.6 Referral to immigration judge.**

(a) *Notice.* (1) *Referral by Form I–862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I–862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If, in accordance with section 235(b)(1)(B)(ii) of the Act, an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution and refers the case to the immigration judge for consideration of the application for asylum.

(iii) If, in accordance with section 235(b)(1)(B)(iii)(III) of the Act, the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution and vacates the expedited removal order issued by the asylum officer pursuant to section 235(b)(1)(B)(iii) of the Act.

(iv) If an immigration officer verifies that an alien subject to expedited removal under section 235(b)(1) of the Act has been admitted as a lawful permanent resident refugee, or asylee, or upon review pursuant to § 235.3(b)(5)(iv) an immigration judge determines that the alien was once so admitted, provided that such status has not been terminated by final administrative action, and the Service initiates removal proceedings against the alien under section 240 of the Act.

(2) *Referral by Form I–863, Notice of Referral to Immigration Judge.* An immigration officer will sign and deliver a Form I–863 to an alien in the following cases:

(i) If, in accordance with section 235(b)(1)(B)(iii)(III) of the Act, an asylum officer determines that an alien does not have a credible fear of persecution, and the alien requests a review of that determination by an immigration judge; or

(ii) If, in accordance with section 235(b)(1)(C) of the Act, an immigration officer refers an expedited removal order entered on an alien claiming to be a lawful permanent resident, refugee, asylee, or U.S. citizen for whom the officer could not verify such status to an immigration judge for review of the order.

(iii) If an immigration officer refers an applicant described in § 208.2(b)(1) of this chapter to an immigration judge for an asylum hearing under § 208.2(b)(2) of this chapter.

(b) *Certification for mental condition; medical appeal.* An alien certified under sections 212(a)(1) and 232(b) of the Act shall be advised by the examining immigration officer that he or she may appeal to a board of medical examiners of the United States Public Health Service pursuant to section 232 of the Act. If such appeal is taken, the district director shall arrange for the convening of the medical board.

**§ 235.7 [Removed]**

92. Section 235.7 is removed.

**§ 235.13 [Redesignated as § 235.7]**

93. Section 235.13 is redesignated as § 235.7.

94. Section 235.8 is revised to read as follows:

**§ 235.8 Inadmissibility on security and related grounds.**

(a) *Report.* When an immigration officer or an immigration judge suspects that an arriving alien appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B), or (C) of the

Act, the immigration officer or immigration judge shall order the alien removed and report the action promptly to the district director who has administrative jurisdiction over the place where the alien has arrived or where the hearing is being held. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I–147, Notice of Temporary Inadmissibility, of the action taken and the right to submit a written statement and additional information for consideration by the Attorney General. The district director shall forward the report to the regional director for further action as provided in paragraph (b) of this section.

(b) *Action by regional director.* (1) In accordance with section 235(c)(2)(B) of the Act, the regional director may deny any further inquiry or hearing by an immigration judge and order the alien removed by personal service of Form I–148, Notice of Permanent Inadmissibility, or issue any other order disposing of the case that the regional director considers appropriate.

(2) If the regional director concludes that the case does not meet the criteria contained in section 235(c)(2)(B) of the Act, the regional director may direct that:

(i) An immigration officer shall conduct a further examination of the alien, concerning the alien's admissibility; or,

(ii) The alien's case be referred to an immigration judge for a hearing, or for the continuation of any prior hearing.

(3) The regional director's decision shall be in writing and shall be signed by the regional director. Unless the written decision contains confidential information, the disclosure of which would be prejudicial to the public interest, safety, or security of the United States, the written decision shall be served on the alien. If the written decision contains such confidential information, the alien shall be served with a separate written order showing the disposition of the case, but with the confidential information deleted.

(c) *Finality of decision.* The regional director's decision under this section is final when it is served upon the alien in accordance with paragraph (b)(3) of this section. There is no administrative appeal from the regional director's decision.

(d) *Hearing by immigration judge.* If the regional director directs that an alien subject to removal under this section be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 240 of the Act and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer. In a case where the immigration judge ordered the alien removed pursuant to paragraph (a) of this section, the Service shall refer the case back to the immigration judge and proceedings shall be automatically reopened upon receipt of the notice of referral. If confidential information, not previously considered in the matter, is presented supporting the inadmissibility of the alien under section 212(a)(3)(A) (other than clause (ii)), (B) or (C) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again order the alien removed under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

(e) *Nonapplicability.* The provisions of this section shall apply only to arriving aliens, as defined in § 1.1(q) of this chapter. Aliens present in the United States who have not been admitted or paroled may be subject to proceedings under Title V of the Act.

**§ 235.9 [Removed]**

95. Section 235.9 is removed.

**§ 235.12 [Redesignated as § 235.9 and revised]**

96. Section 235.12 is redesignated as § 235.9 and is revised to read as follows:

**§ 235.9 Northern Marianas identification card.**

During the two-year period that ended July 1, 1990, the Service issued Northern Marianas Identification Cards to aliens who acquired United States citizenship when the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States entered into force on November 3, 1986. These cards remain valid as evidence of United States citizenship. Although the Service no longer issues these cards, a United States citizen to whom a card was issued may file Form I–777, Application for Issuance or Replacement of Northern Marianas Card, to obtain replacement of a lost, stolen, or mutilated Northern Marianas Identification Card.

97. Section 235.10 is revised to read as follows:

**§ 235.10 U.S. Citizen Identification Card.**

(a) *General.* Form I–197, U.S. Citizen Identification Card, is no longer issued by the Service but valid existing cards will continue to be acceptable documentation of U.S. citizenship. Possession of the identification card is not mandatory for any purpose. A U.S. Citizen Identification Card remains the property of the United States. Because the identification card is no longer issued, there are no provisions for replacement cards.

(b) *Surrender and voidance.* (1) *Institution of proceeding under section 240 or 342 of the Act.* A U.S. Citizen Identification Card must be surrendered provisionally to a Service office upon notification by the district director that a proceeding under section 240 or 342 of the Act is being instituted against the person to whom the card was issued. The card shall be returned to the person if the final order in the proceeding does not result in voiding the card under this paragraph. A U.S. Citizen Identification Card is automatically void if the person to whom it was issued is determined to be an alien in a proceeding conducted under section 240 of the Act, or if a certificate, document, or record relating to that person is canceled under section 342 of the Act.

(2) *Investigation of validity of identification card.* A U.S. Citizen Identification Card must be surrendered provisionally upon notification by a district director that the validity of the card is being investigated. The card shall be returned to the person who surrendered it if the investigation does not result in a determination adverse to his or her claim to be a United States citizen. When an investigation results in a tentative determination adverse to the applicant's claim to be a United States citizen, the applicant shall be notified by certified mail directed to his or her last known address. The notification shall inform the applicant of the basis for the determination and of the intention of the district director to declare the card void unless within 30 days the applicant objects and demands an opportunity to see and rebut the adverse evidence. Any rebuttal, explanation, or evidence presented by the applicant must be included in the record of proceeding. The determination whether the applicant is a United States citizen must be based on the entire record and the applicant shall be notified of the determination. If it is determined that the applicant is not a United States citizen, the applicant shall be notified of the reasons, and the card deemed void. There is no appeal from the district director's decision.

(3) *Admission of alienage.* A U.S. Citizen Identification Card is void if the person to whom it was issued admits in a statement signed before an

immigration officer that he or she is an alien and consents to the voidance of the card. Upon signing the statement the card must be surrendered to the immigration officer.

(4) *Surrender of void card.* A void U.S. Citizen Identification Card which has not been returned to the Service must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(c) *U.S. Citizen Identification Card previously issued on Form I–179.* A valid Form I–179, U.S. Citizen Identification Card, continues to be valid subject to the provisions of this section.

98. Section 235.11 is revised to read as follows:

**§ 235.11 Admission of conditional permanent residents.**

(a) *General.* (1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Form I–751, Petition to Remove the Conditions on Residence, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Form I–829, Petition by Entrepreneur to Remove Conditions, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien shall be admitted as a lawful permanent resident on a conditional basis, if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216 of the Act, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien shall be admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional permanent resident status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Form I–751, Petition to Remove the Conditions on Residence or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), Form I–829, Petition by Entrepreneur to Remove Conditions. Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under removal proceedings. However, in a case where conditional residence was based on a marriage, removal proceedings may be terminated and the alien may be admitted as a returning resident if the required Form I–751 is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, removal proceedings may be terminated and the alien admitted as a returning resident if the required Form I–829 is filed by the alien entrepreneur and approved by the Service.

99. Part 236 is revised to read as follows:

## PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

**Subpart A—Detention of Aliens Prior to Order of Removal**

Sec.

236.1 Apprehension, custody, and detention.
236.2 Confined aliens, incompetents, and minors.
236.3 Detention and release of juveniles.
236.4 Removal of S–5, S–6, and S–7 nonimmigrants.
236.5 Fingerprints and photographs.
236.6–236.9 Reserved.

**Subpart B—Family Unity Program**

236.10 Description of program.
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236.13 Ineligible aliens.
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236.15 Voluntary departure and eligibility for employment.
236.16 Travel outside the United States.
236.17 Eligibility for Federal financial assistance programs.
236.18 Termination of Family Unity Program benefits.

Authority: 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; 8 CFR part 2.

**Subpart A—Detention of Aliens Prior to Order of Removal**

**§ 236.1 Apprehension, custody, and detention.**

(a) *Detainers.* The issuance of a detainer under this section shall be governed by the provisions of § 287.7 of this chapter.

(b) *Warrant of arrest.* (1) *In general.* At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I–200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of this chapter and may be served only by those immigration officers listed in § 287.5(e)(3) of this chapter.

(2) If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation.

(c) *Custody issues and release procedures.* (1) After the expiration of the Transition Period Custody Rules under Public Law 104–208, no alien described in section 236(c)(1) of the Act shall be released from custody during removal proceedings except pursuant to section 236(c)(2) of the Act.

(2) Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien not described in section 236(c)(1) of the Act, under the conditions at section 236(a)(2) and (3) of the Act; provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.

(3) When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge (except foreign), in which event the alien may be taken into physical custody and detained. If

detained, unless a breach has occurred, any outstanding bond shall be revoked and canceled.

(4) The provisions of § 103.6 of this chapter shall apply to any bonds authorized. Subject to the provisions of this section, the provisions of § 3.19 of this chapter shall govern availability to the respondent of recourse to other administrative authority for release from custody.

(5) An immigration judge may not exercise authority provided in this section and the review process described in paragraph (d) of this section shall not apply with respect to:

(i) Arriving aliens, as described in § 1.1(q) of this chapter, including aliens paroled pursuant to section 212(d)(5) of the Act, in removal proceedings,

(ii) Aliens described in section 237(a)(4) of the Act, or

(iii) After the expiration of section 303(b)(3) of Public Law 104–208, aliens described in section 236(c)(1) of the Act.

(d) *Appeals from custody decisions.* (1) *Application to immigration judge.* After an initial custody determination by the district director, including the setting of a bond, the respondent may, at any time before an order under 8 CFR part 240 becomes final, request amelioration of the conditions under which he or she may be released. Prior to such final order, and except as otherwise provided in this chapter, the immigration judge is authorized to exercise the authority in section 236 of the Act to detain the alien in custody, release the alien, and determine the amount of bond, if any, under which the respondent may be released, as provided in § 3.19 of this chapter. If the alien has been released from custody, an application for amelioration of the terms of release must be filed within 7 days of release. Once a removal order becomes administratively final, determinations regarding custody and bond are made by the district director.

(2) *Application to the district director.* (i) After expiration of the 7-day period in paragraph (d)(1) of this section, the respondent may request review by the district director of the conditions of his or her release.

(ii) After an order becomes administratively final, the respondent may request review by the district director of the conditions of his or her release.

(3) *Appeal to the Board of Immigration Appeals.* An appeal relating to bond and custody determinations may be filed to the Board of Immigration Appeals in the following circumstances:

(i) In accordance with § 3.38 of this chapter, the alien or the Service may appeal the decision of an immigration judge pursuant to paragraph (d)(1) of this section.

(ii) The alien, within 10 days, may appeal from the district director's decision under paragraph (d)(2)(i) of this section.

(iii) The alien, within 10 days, may appeal from the district director's decision under paragraph (d)(2)(ii) of this section, except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute an order of removal and takes the alien into custody for that purpose.

(4) *Effect of filing an appeal.* The filing of an appeal from a determination of an immigration judge or district director under this paragraph shall not operate to delay compliance with the order, nor stay the administrative proceedings or removal.

(e) *Privilege of communication.* Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties with the following countries require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in removal proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf. When notifying consular or diplomatic officials, Service officers shall not reveal the fact that any detained alien has applied for asylum or withholding of removal.

Albania [1]
Antigua
Armenia
Azerbaijan
Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria
China (People's Republic of) [2]
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland
Romania
Russian Federation
St. Kitts/Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
South Korea
Tajikistan
Tanzania
Tonga
Trinidad/Tobago
Turkmenistan
Tuvalu
Ukraine
United Kingdom [3]
U.S.S.R. [4]
Uzbekistan
Zambia

(f) *Notification to Executive Office for Immigration Review of change in custody status.* The Service shall notify the Immigration Court having administrative control over the Record of Proceeding of any change in custody location or of release from, or subsequent taking into, Service custody of a respondent/applicant pursuant to § 3.19(g) of this chapter.

**§ 236.2 Confined aliens, incompetents, and minors.**

(a) *Service.* If the respondent is confined, or if he or she is an incompetent, or a minor under the age of 14, the notice to appear, and the warrant of arrest, if issued, shall be served in the manner prescribed in § 239.1 of this chapter upon the person or persons specified by § 103.5a(c) of this chapter.

(b) *Service custody and cost of maintenance.* An alien confined because of physical or mental disability in an institution or hospital shall not be

[1] Arrangements with these countries provide that U.S. authorities shall notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.

[2] When Taiwan nationals (who carry ''Republic of China'' passports) are detained, notification should be made to the nearest office of the Taiwan Economic and Cultural Representative's Office, the unofficial entity representing Taiwan's interests in the United States.

[3] British dependencies are also covered by this agreement. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

[4] All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

accepted into physical custody by the Service until an order of removal has been entered and the Service is ready to remove the alien. When such an alien is an inmate of a public or private institution at the time of the commencement of the removal proceedings, expenses for the maintenance of the alien shall not be incurred by the Government until he or she is taken into physical custody by the Service.

**§ 236.3 Detention and release of juveniles.**

(a) *Juveniles.* A juvenile is defined as an alien under the age of 18 years.

(b) *Release.* Juveniles for whom bond has been posted, for whom parole has been authorized, or who have been ordered released on recognizance, shall be released pursuant to the following guidelines:

(1) Juveniles shall be released, in order of preference, to:

(i) A parent;

(ii) Legal guardian; or

(iii) An adult relative (brother, sister, aunt, uncle, grandparent) who is not presently in Service detention, unless a determination is made that the detention of such juvenile is required to secure his or her timely appearance before the Service or the Immigration Court or to ensure the juvenile's safety or that of others. In cases where the parent, legal guardian, or adult relative resides at a location distant from where the juvenile is detained, he or she may secure release at a Service office located near the parent, legal guardian, or adult relative.

(2) If an individual specified in paragraphs (b)(1)(i) through (iii) of this section cannot be located to accept custody of a juvenile, and the juvenile has identified a parent, legal guardian, or adult relative in Service detention, simultaneous release of the juvenile and the parent, legal guardian, or adult relative shall be evaluated on a discretionary case-by-case basis.

(3) In cases where the parent or legal guardian is in Service detention or outside the United States, the juvenile may be released to such person as is designated by the parent or legal guardian in a sworn affidavit, executed before an immigration officer or consular officer, as capable and willing to care for the juvenile's well-being. Such person must execute an agreement to care for the juvenile and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(4) In unusual and compelling circumstances and in the discretion of the district director or chief patrol agent, a juvenile may be released to an adult, other than those identified in paragraphs (b)(1)(i) through (iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

(c) *Juvenile coordinator.* The case of a juvenile for whom detention is determined to be necessary should be referred to the ''Juvenile Coordinator,'' whose responsibilities should include, but not be limited to, finding suitable placement of the juvenile in a facility designated for the occupancy of juveniles. These may include juvenile facilities contracted by the Service, state or local juvenile facilities, or other appropriate agencies authorized to accommodate juveniles by the laws of the state or locality.

(d) *Detention.* In the case of a juvenile for whom detention is determined to be necessary, for such interim period of time as is required to locate suitable placement for the juvenile, whether such placement is under paragraph (b) or (c) of this section, the juvenile may be temporarily held by Service authorities or placed in any Service detention facility having separate accommodations for juveniles.

(e) *Refusal of release.* If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and shall be afforded an opportunity to present their views to the district director, chief patrol agent, or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director or immigration judge before a determination is made as to the merits of the request for relief.

(g) *Voluntary departure.* Each juvenile, apprehended in the immediate vicinity of the border, who resides permanently in Mexico or Canada, shall be informed, prior to presentation of the voluntary departure form or being allowed to withdraw his or her application for admission, that he or she may make a telephone call to a parent, close relative, a friend, or to an organization found on the free legal services list. A juvenile who does not reside in Mexico or Canada who is apprehended shall be provided access to a telephone and must in fact communicate either with a parent, adult relative, friend, or with an organization found on the free legal services list prior to presentation of the voluntary departure form. If such juvenile, of his or her own volition, asks to contact a consular officer, and does in fact make such contact, the requirements of this section are satisfied.

(h) *Notice and request for disposition.* When a juvenile alien is apprehended, he or she must be given a Form I–770, Notice of Rights and Disposition. If the juvenile is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the juvenile in a language he or she understands. In the event a juvenile who has requested a hearing pursuant to the notice subsequently decides to accept voluntary departure or is allowed to withdraw his or her application for admission, a new Form I–770 shall be given to, and signed by the juvenile.

**§ 236.4 Removal of S–5, S–6, and S–7 nonimmigrants.**

(a) *Condition of classification.* As a condition of classification and continued stay in classification pursuant to section 101(a)(15)(S) of the Act, nonimmigrants in S classification must have executed Form I–854, Part B, Inter-agency Alien Witness and Informant Record, certifying that they have knowingly waived their right to a removal hearing and right to contest, other than on the basis of an application for withholding of deportation or removal, any removal action, including detention pending deportation or removal, instituted before lawful permanent resident status is obtained.

(b) *Determination of deportability.* (1) A determination to remove a deportable alien classified pursuant to section 101(a)(15)(S) of the Act shall be made by the district director having jurisdiction over the place where the alien is located.

(2) A determination to remove such a deportable alien shall be based on one or more of the grounds of deportability listed in section 237 of the Act based on conduct committed after, or conduct or a condition not disclosed to the Service prior to, the alien's classification as an S nonimmigrant under section 101(a)(15)(S) of the Act, or for a

violation of, or failure to adhere to, the particular terms and conditions of status in S nonimmigrant classification.

(c) *Removal procedures.* (1) A district director who determines to remove an alien witness or informant in S nonimmigrant classification shall notify the Commissioner, the Assistant Attorney General, Criminal Division, and the relevant law enforcement agency in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant law enforcement agency have a right of appeal from any decision to remove.

(2) A district director who has provided notice as set forth in paragraph (c)(1) of this section and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected shall issue a Warrant of Removal. The alien shall immediately be arrested and taken into custody by the district director initiating the removal. An alien classified under the provisions of section 101(a)(15)(S) of the Act who is determined, pursuant to a warrant issued by a district director, to be deportable from the United States shall be removed from the United States to his or her country of nationality or last residence. The agency that requested the alien's presence in the United States shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure.

(d) *Withholding of removal.* An alien classified pursuant to section 101(a)(15)(S) of the Act who applies for withholding of removal shall have 10 days from the date the Warrant of Removal is served upon the alien to file an application for such relief with the district director initiating the removal order. The procedures contained in §§ 208.2 and 208.16 of this chapter shall apply to such an alien who applies for withholding of removal.

(e) *Inadmissibility.* An alien who applies for admission under the provisions of section 101(a)(15)(S) of the Act who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act and which have not been previously waived by the Commissioner will be taken into custody. The district director having jurisdiction over the port-of-entry shall follow the notification procedures specified in paragraph (c)(1) of this section. A district director who has provided such notice and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected shall remove the alien without further hearing. An alien may not contest such removal, other than by applying for withholding of removal.

### § 236.5 Fingerprints and photographs.

Every alien 14 years of age or older against whom proceedings based on deportability under section 237 of the Act are commenced under this part by service of a notice to appear shall be fingerprinted and photographed. Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies upon request to the district director or chief patrol agent having jurisdiction over the alien's record. Any such alien, regardless of his or her age, shall be photographed and/or fingerprinted if required by any immigration officer authorized to issue a notice to appear. Every alien 14 years of age or older who is found to be inadmissible to the United States and ordered removed by an immigration judge shall be fingerprinted, unless during the preceding year he or she has been fingerprinted at an American consular office.

### §§ 236.6—236.9 [Reserved]

## Subpart B—Family Unity Program

### § 236.10 Description of program.

The family unity program implements the provisions of section 301 of the Immigration Act of 1990, Public Law 101–649. This Act is referred to in this subpart as ''IMMACT 90''.

### § 236.11 Definitions.

In this subpart, the term:

*Eligible immigrant* means a qualified immigrant who is the spouse or unmarried child of a legalized alien.

*Legalized alien* means an alien who:

(1) Is a temporary or permanent resident under section 210 or 245A of the Act; or

(2) Is a permanent resident under section 202 of the Immigration Reform and Control Act of 1986 (Cuban/Haitian Adjustment).

### § 236.12 Eligibility.

(a) *General.* An alien who is not a lawful permanent resident is eligible to apply for benefits under the Family Unity Program if he or she establishes:

(1) That he or she entered the United States before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), and has been continuously residing in the United States since that date; and

(2) That on May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), he or she was the spouse or unmarried child of a legalized alien, and that he or she has been eligible continuously since that time for family-sponsored second preference immigrant status under section 203(a)(2) of the Act based on the same relationship.

(b) *Legalization application pending as of May 5, 1988 or December 1, 1988.* An alien whose legalization application was filed on or before May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), but not approved until after that date will be treated as having been a legalized alien as of May 5, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(B) or (b)(2)(C) of section 301 of IMMACT 90), or as of December 1, 1988 (in the case of a relationship to a legalized alien described in subsection (b)(2)(A) of section 301 of IMMACT 90), for purposes of the Family Unity Program.

### § 236.13 Ineligible aliens.

The following categories of aliens are ineligible for benefits under the Family Unity Program:

(a) An alien who is deportable under any paragraph in section 237(a) of the Act, except paragraphs (1)(A), (1)(B), (1)(C), and (3)(A); provided that an alien who is deportable under section 237(a)(1)(A) of such Act is also ineligible for benefits under the Family Unity Program if deportability is based

upon a ground of inadmissibility described in section 212(a)(2) or (3) of the Act;

(b) An alien who has been convicted of a felony or three or more misdemeanors in the United States; or

(c) An alien described in section 241(b)(3)(B) of the Act.

**§ 236.14 Filing.**

(a) *General.* An application for voluntary departure under the Family Unity Program must be filed at the service center having jurisdiction over the alien's place of residence. A Form I–817, Application for Voluntary Departure under the Family Unity Program, must be filed with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. A separate application with appropriate fee and documentation must be filed for each person claiming eligibility.

(b) *Decision.* The service center director has sole jurisdiction to adjudicate an application for benefits under the Family Unity Program. The director will provide the applicant with specific reasons for any decision to deny an application. Denial of an application may not be appealed. An applicant who believes that the grounds for denial have been overcome may submit another application with the appropriate fee and documentation.

(c) *Referral of denied cases for consideration of issuance of notice to appear.* If an application is denied, the case will be referred to the district director with jurisdiction over the alien's place of residence for consideration of whether to issue a notice to appear. After an initial denial, an applicant's case will not be referred for issuance of a notice to appear until 90 days from the date of the initial denial, to allow the alien the opportunity to file a new Form I–817 application in order to attempt to overcome the basis of the denial. However, if the applicant is found not to be eligible for benefits under § 236.13(b), the Service reserves the right to issue a notice to appear at any time after the initial denial.

**§ 236.15 Voluntary departure and eligibility for employment.**

(a) *Authority.* Voluntary departure under this section implements the provisions of section 301 of IMMACT 90, and authority to grant voluntary departure under the family unity program derives solely from that section. Voluntary departure under the family unity program shall be governed solely by this section, notwithstanding the provisions of section 240B of the Act and 8 CFR part 240.

(b) *Children of legalized aliens.* Children of legalized aliens residing in the United States, who were born during an authorized absence from the United States of mothers who are currently residing in the United States under voluntary departure pursuant to the Family Unity Program, may be granted voluntary departure under section 301 of IMMACT 90 for a period of 2 years.

(c) *Duration of voluntary departure.* An alien whose application for benefits under the Family Unity Program is approved will receive voluntary departure for 2 years, commencing with the date of approval of the application. Voluntary departure under this section shall be considered effective from the date on which the application was properly filed.

(d) *Employment authorization.* An alien granted benefits under the Family Unity Program is authorized to be employed in the United States and may apply for an employment authorization document on Form I–765, Application for Employment Authorization. The application may be filed concurrently with Form I–817. The application must be accompanied by the correct fee required by § 103.7(b)(1) of this chapter. The validity period of the employment authorization will coincide with the period of voluntary departure.

(e) *Extension of voluntary departure.* An application for an extension of voluntary departure under the Family Unity Program must be filed by the alien on Form I–817 along with the correct fee required in § 103.7(b)(1) of this chapter and the required supporting documentation. The submission of a copy of the previous approval notice will assist in shortening the processing time. An extension may be granted if the alien continues to be eligible for benefits under the Family Unity Program. However, an extension may not be approved if the legalized alien is a lawful permanent resident, and a petition for family-sponsored immigrant status has not been filed in behalf of the applicant. In such case the Service will notify the alien of the reason for the denial and afford him or her the opportunity to file another Form I–817 once the petition, Form I–130, has been filed in behalf of him or her. No charging document will be issued for a period of 90 days.

(f) *Supporting documentation for extension application.* Supporting documentation need not include documentation provided with the previous application(s). The extension application need only include changes to previous applications and evidence of continuing eligibility since the date of the prior approval.

**§ 236.16 Travel outside the United States.**

An alien granted Family Unity Program benefits who intends to travel outside the United States temporarily must apply for advance authorization using Form I–131, Application for Travel Document. The authority to grant an application for advance authorization for an alien granted Family Unity Program benefits rests solely with the district director. An alien who is granted advance authorization and returns to the United States in accordance with such authorization, and who is found not to be inadmissible under section 212(a)(2) or (3) of the Act, shall be inspected and admitted in the same immigration status as the alien had at the time of departure, and shall be provided the remainder of the voluntary departure period previously granted under the Family Unity Program.

**§ 236.17 Eligibility for Federal financial assistance programs.**

An alien granted Family Unity Program benefits based on a relationship to a legalized alien as defined in § 236.11 is ineligible for public welfare assistance in the same manner and for the same period as the legalized alien who is ineligible for such assistance under section 245A(h) or 210(f) of the Act, respectively.

**§ 236. 18 Termination of Family Unity Program benefits.**

(a) *Grounds for termination.* The Service may terminate benefits under the Family Unity Program whenever the necessity for the termination comes to the attention of the Service. Such grounds will exist in situations including, but not limited to, those in which:

(1) A determination is made that Family Unity Program benefits were acquired as the result of fraud or willful misrepresentation of a material fact;

(2) The beneficiary commits an act or acts which render him or her inadmissible as an immigrant or who are ineligible for benefits under the Family Unity Program;

(3) The legalized alien upon whose status benefits under the Family Unity Program were based loses his or her legalized status;

(4) The beneficiary is the subject of a final order of exclusion, deportation, or removal issued subsequent to the grant of Family Unity benefits unless such final order is based on entry without inspection; violation of status; or failure to comply with section 265 of the Act;

or inadmissibility at the time of entry other than inadmissibility pursuant to section 212(a)(2) or 212(a)(3) of the Act, regardless of whether the facts giving rise to such ground occurred before or after the benefits were granted; or

(5) A qualifying relationship to a legalized alien no longer exists.

(b) *Notice procedure.* Notice of intent to terminate and of the grounds thereof shall be served pursuant to the provisions of § 103.5a of this chapter. The alien shall be given 30 days to respond to the notice and may submit to the Service additional evidence in rebuttal. Any final decision of termination shall also be served pursuant to the provisions of § 103.5a of this chapter. Nothing in this section shall preclude the Service from commencing exclusion or deportation proceedings prior to termination of Family Unity Program benefits.

(c) *Effect of termination.* Termination of benefits under the Family Unity Program, other than as a result of a final order of removal, shall render the alien amenable to removal proceedings under section 240 of the Act. If benefits are terminated, the period of voluntary departure under this section is also terminated.

## PART 237—[REMOVED AND RESERVED]

100. Part 237 is removed and reserved.

101. Part 238 is added to read as follows:

## PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

Sec.

238.1 Proceedings under section 238(b) of the Act.

Authority: 8 U.S.C. 1228; 8 CFR part 2.

### § 238.1 Proceedings under section 238(b) of the Act.

(a) *Definitions.* As used in this part:

*Deciding Service officer* means a district director, chief patrol agent, or another immigration officer designated by a district director or chief patrol agent, who is not the same person as the issuing Service officer.

*Issuing Service officer* means any Service officer listed in § 239.1 of this chapter as authorized to issue notices to appear.

(b) *Preliminary consideration and Notice of Intent to Issue a Final Administrative Deportation Order; commencement of proceedings.*—(1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon an alien a Form I–851, Notice of Intent to Issue a Final Administrative Deportation Order (Notice of Intent), if the officer is satisfied that there is sufficient evidence, based upon questioning of the alien by an immigration officer and upon any other evidence obtained, to support a finding that the individual:

(i) Is an alien;

(ii) Has not been lawfully admitted for permanent residence, or has conditional permanent resident status under section 216 of the Act;

(iii) Has been convicted (as defined in section 101(a)(48) of the Act and as demonstrated by any of the documents or records listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final; and

(iv) Is deportable under section 237(a)(2)(A)(iii) of the Act, including an alien who has neither been admitted nor paroled, but who is conclusively presumed deportable under section 237(a)(2)(A)(iii) by operation of section 238(c) of the Act (''Presumption of Deportability'').

(2) *Notice.* (i) Removal proceedings under section 238(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by §§ 103.5a(a)(2) and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intention to issue a Form I–851A, Final Administrative Removal Order, without a hearing before an immigration judge. This Notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien: has the privilege of being represented, at no expense to the Government, by counsel of the alien's choosing, as long as counsel is authorized to practice in deportation proceedings; may inspect the evidence supporting the Notice of Intent; and may rebut the charges within 10 calendar days after service of such Notice (or 13 calendar days if service of the Notice was by mail).

(ii) The Notice of Intent also shall advise the alien that he or she may designate in writing, within the rebuttal period, the country to which he or she chooses to be deported in accordance with section 241 of the Act, in the event that a Final Administrative Removal Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 241 of the Act.

(iii) The Service must determine that the person served with the Notice of Intent is the person named on the notice.

(iv) The Service shall provide the alien with a list of available free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to 8 CFR part 292, located within the district or sector where the Notice of Intent is issued.

(v) The Service must either provide the alien with a written translation of the Notice of Intent or explain the contents of the Notice of Intent to the alien in the alien's native language or in a language that the alien understands.

(c) *Alien's response.* (1) *Time for response.* The alien will have 10 calendar days from service of the Notice of Intent, or 13 calendar days if service is by mail, to file a response to the Notice of Intent. In the response, the alien may: designate his or her choice of country for removal; submit a written response rebutting the allegations supporting the charge and/or requesting the opportunity to review the Government's evidence; and/or request in writing an extension of time for response, stating the specific reasons why such an extension is necessary. Alternatively, the alien may, in writing, choose to accept immediate issuance of a Final Administrative Removal Order. The deciding Service officer may extend the time for response for good cause shown. A request for extension of time for response will not automatically extend the period for the response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien must send the response to the deciding Service officer at the address provided in the Notice of Intent.

(2) *Nature of rebuttal or request to review evidence.* (i) If an alien chooses to rebut the allegations contained in the Notice of Intent, the alien's written response must indicate which finding(s) are being challenged and should be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge.

(ii) If an alien's written response requests the opportunity to review the Government's evidence, the Service shall serve the alien with a copy of the evidence in the record of proceeding upon which the Service is relying to support the charge. The alien may, within 10 calendar days following service of the Government's evidence (13 calendar days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. If the alien's final response is a rebuttal of the allegations, such a final response should be accompanied by affidavit(s), documentary information, or other

specific evidence supporting the challenge.

(d) *Determination by deciding Service officer.* (1) *No response submitted or concession of deportability.* If the deciding Service officer does not receive a timely response and the evidence in the record of proceeding establishes deportability by clear, convincing, and unequivocal evidence, or if the alien concedes deportability, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the deportation decision. The alien may, in writing, waive the 14-day waiting period before execution of the final order of removal provided in a paragraph (f) of this section.

(2) *Response submitted.* (i) *Insufficient rebuttal; no genuine issue of material fact.* If the alien timely submits a rebuttal to the allegations, but the deciding Service officer finds that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the decision of deportability.

(ii) *Additional evidence required.* (A) If the deciding Service officer finds that the record of proceeding, including the alien's timely rebuttal, raises a genuine issue of material fact regarding the preliminary findings, the deciding Service officer may either obtain additional evidence from any source, including the alien, or cause to be issued a notice to appear to initiate removal proceedings under section 240 of the Act. The deciding Service officer may also obtain additional evidence from any source, including the alien, if the deciding Service officer deems that such additional evidence may aid the officer in the rendering of a decision.

(B) If the deciding Service officer considers additional evidence from a source other than the alien, that evidence shall be made a part of the record of proceeding, and shall be provided to the alien. If the alien elects to submit a response to such additional evidence, such response must be filed with the Service within 10 calendar days of service of the additional evidence (or 13 calendar days if service is by mail). If the deciding Service officer finds, after considering all additional evidence, that deportability is established by clear, convincing, and unequivocal evidence in the record of proceeding, the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Removal Order that states the reasons for the decision of deportability.

(iii) *Conversion to proceedings under section 240 of the Act.* If the deciding Service officer finds that the alien is not amenable to removal under section 238 of the Act, the deciding Service officer shall terminate the expedited proceedings under section 238 of the Act and shall, where appropriate, cause to be issued a notice to appear for the purpose of initiating removal proceedings before an immigration judge under section 240 of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 238 of the Act, in accordance with this section.

(e) *Proceedings commenced under section 240 of the Act.* In any proceeding commenced under section 240 of the Act which is based on deportability under section 237 of the Act, if it appears that the respondent alien is subject to removal pursuant to section 238 of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 238 of the Act. However, in the absence of any such request, the immigration judge shall complete the proceeding commenced under section 240 of the Act.

(f) *Executing final removal order of deciding Service officer.* (1) *Time of execution.* Upon the issuance of a Final Administrative Removal Order, the Service shall issue a Warrant of Removal in accordance with § 241.2 of this chapter; such warrant shall be executed no sooner than 14 calendar days after the date the Final Administrative Removal Order is issued, unless the alien knowingly, voluntarily, and in writing waives the 14-day period.

(2) *Country to which alien is to be removed.* The deciding Service officer shall designate the country of removal in the manner prescribed by section 241 of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a Warrant of Removal, the alien may be arrested and taken into custody under the authority of a Warrant of Arrest issued by an officer listed in § 287.5(e)(2) of this chapter. The decision of the Service concerning custody or bond shall not be administratively appealable during proceedings initiated under section 238 of the Act and this part.

(h) *Record of proceeding.* The Service shall maintain a record of proceeding for judicial review of the Final Administrative Removal Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to: the charging document (Notice of Intent); the Final Administrative Removal Order (including any supplemental memorandum of decision); the alien's response, if any; all evidence in support of the charge; and any admissible evidence, briefs, or documents submitted by either party respecting deportability. The executed duplicate of the Notice of Intent in the record of proceedings shall be retained as evidence that the individual upon whom the notice for the proceeding was served was, in fact, the alien named in the notice.

102. Part 239 is added to read as follows:

## PART 239—INITIATION OF REMOVAL PROCEEDINGS

Sec.
239.1 Notice to appear.
239.2 Cancellation of notice to appear.
239.3 Effect of filing notice to appear.

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

### § 239.1 Notice to appear.

(a) *Commencement.* Every removal proceeding conducted under section 240 of the Act to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the Immigration Court. Any immigration officer performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such an alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

(1) District directors (except foreign);

(2) Deputy district directors (except foreign);

(3) Assistant district directors for investigations;

(4) Deputy assistant district directors for investigations;

(5) Assistant district directors for deportation;

(6) Deputy assistant district directors for deportation;

(7) Assistant district directors for examinations;

(8) Deputy assistant district directors for examinations;

(9) Officers in charge (except foreign);

(10) Assistant officers in charge (except foreign);

(11) Chief patrol agents;

(12) Deputy chief patrol agents;

(13) Associate chief patrol agents;

(14) Assistant chief patrol agents;
(15) Patrol agents in charge;
(16) The Assistant Commissioner, Investigations;
(17) Service center directors;
(18) Deputy center directors;
(19) Assistant center directors for examinations;
(20) Supervisory asylum officers;
(21) Institutional Hearing Program directors; or
(22) Deputy Institutional Hearing Program directors.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

**§ 239.2 Cancellation of notice to appear.**

(a) Any officer authorized by § 239.1(a) to issue a notice to appear may cancel such notice prior to jurisdiction vesting with the immigration judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;
(2) The respondent is not deportable or inadmissible under immigration laws;
(3) The respondent is deceased;
(4) The respondent is not in the United States;
(5) The notice was issued for the respondent's failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act;
(6) The notice to appear was improvidently issued, or
(7) Circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government.

(b) A notice to appear issued pursuant to section 235(b)(3) of the Act may be canceled under provisions in paragraphs (a)(2) and (a)(6) of this section only by the issuing officer, unless it is impracticable for the issuing officer to cancel the notice.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to § 3.14 of this chapter, Service counsel, or any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

(d) *Motion for remand.* After commencement of the hearing, Service counsel, or any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Service.

(e) *Warrant of arrest.* When a notice to appear is canceled or proceedings are terminated under this section any outstanding warrant of arrest is canceled.

(f) *Termination of removal proceedings by immigration judge.* An immigration judge may terminate removal proceedings to permit the alien to proceed to a final hearing on a pending application or petition for naturalization when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors; in every other case, the removal hearing shall be completed as promptly as possible notwithstanding the pendency of an application for naturalization during any state of the proceedings.

**§ 239.3 Effect of filing notice to appear.**

The filing of a notice to appear shall have no effect in determining periods of unlawful presence as defined in section 212(a)(9)(B) of the Act.

**§§ 240.1–240.20 [Redesignated as §§ 244.3–244.22]**

103. Sections 240.1 through 240.20 are redesignated as §§ 244.3 through 244.22.

104. Part 240 is revised to read as follows:

## PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

**Subpart A—Removal Proceedings**

Sec.
240.1 Immigration judges.
240.2 Service counsel.
240.3 Representation by counsel.
240.4 Incompetent respondents.
240.5 Interpreter.
240.6 Postponement and adjournment of hearing.
240.7 Evidence in removal proceedings under section 240 of the Act.
240.8 Burdens of proof in removal proceedings.
240.9 Contents of record.
240.10 Hearing.
240.11 Ancillary matters, applications.
240.12 Decision of the immigration judge.
240.13 Notice of decision.
240.14 Finality of order.
240.15 Appeals.
240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208.
240.17–240.19 [Reserved]

**Subpart B—Cancellation of Removal**

240.20 Cancellation of removal and adjustment of status under section 240A of the Act.
240.21–240.24 [Reserved]

**Subpart C—Voluntary Departure**

240.25 Voluntary departure—authority of the Service.
240.26 Voluntary departure—authority of the Executive Office for Immigration Review.
240.27–240.29 [Reserved]

**Subpart D—Exclusion of Aliens (for proceedings commenced prior to April 1, 1997)**

240.30 Proceedings prior to April 1, 1997.
240.31 Authority of immigration judges.
240.32 Hearing.
240.33 Applications for asylum or withholding of deportation.
240.34 Renewal of application for adjustment of status under section 245 of the Act.
240.35 Decision of the immigration judge; notice to the applicant.
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**Subpart E—Proceedings to determine deportability of aliens in the United States: Hearing and Appeal (for proceedings commenced prior to April 1, 1997)**

240.40 Proceedings commenced prior to April 1, 1997.
240.41 Immigration judges.
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240.53 Appeals.
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**Subpart F—Suspension of Deportation and Voluntary Departure (for proceedings commenced prior to April 1, 1997)**

240.55 Proceedings commenced prior to April 1, 1997.
240.56 Application.
240.57 Extension of time to depart.

**Subpart G—Civil Penalties for Failure to Depart [Reserved]**

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; 8 CFR part 2.

### Subpart A—Removal Proceedings

**§ 240.1 Immigration judges.**

(a) *Authority.* In any removal proceeding pursuant to section 240 of the Act, the immigration judge shall have the authority to: determine removability pursuant to section

240(a)(1) of the Act; to make decisions, including orders of removal as provided by section 240(c)(1)(A) of the Act; to determine applications under sections 208, 212(a)(2)(F), 212(a)(6)(F)(ii), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(g), 212(h), 212(i), 212(k), 237(a)(1)(E)(iii), 237(a)(1)(H), 237(a)(3)(C)(ii), 240A(a) and (b), 240B, 245, and 249 of the Act; to order withholding of removal pursuant to section 241(b)(3) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. In determining cases referred for further inquiry, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases. An immigration judge may certify his or her decision in any case under section 240 of the Act to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under sections 101(b)(4) and 103 of the Act.

(b) *Withdrawal and substitution of immigration judges.* The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified. If an immigration judge becomes unavailable to complete his or her duties, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she has done so.

(c) *Conduct of hearing.* The immigration judge shall receive and consider material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

**§ 240.2 Service counsel.**

(a) *Authority.* Service counsel shall present on behalf of the government evidence material to the issues of deportability or inadmissibility and any other issues that may require disposition by the immigration judge. The duties of the Service counsel include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the respondent or other witnesses. Nothing contained in this subpart diminishes the authority of an immigration judge to conduct proceedings under this part. The Service counsel is authorized to appeal from a decision of the immigration judge pursuant to § 3.38 of this chapter and to move for reopening or reconsideration pursuant to § 3.23 of this chapter.

(b) *Assignment.* In a removal proceeding, the Service shall assign an attorney to each case within the provisions of § 240.10(d), and to each case in which an unrepresented respondent is incompetent or is under 18 years of age, and is not accompanied by a guardian, relative, or friend. In a case in which the removal proceeding would result in an order of removal, the Service shall assign an attorney to each case in which a respondent's nationality is in issue. A Service attorney shall be assigned in every case in which the Commissioner approves the submission of non-record information under § 240.11(a)(3). In his or her discretion, whenever he or she deems such assignment necessary or advantageous, the General Counsel may assign a Service attorney to any other case at any stage of the proceeding.

**§ 240.3 Representation by counsel.**

The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 292.

**§ 240.4 Incompetent respondents.**

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the attorney, legal representative, legal guardian, near relative, or friend who was served with a copy of the notice to appear shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

**§ 240.5 Interpreter.**

Any person acting as an interpreter in a hearing before an immigration judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

**§ 240.6 Postponement and adjournment of hearing.**

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

**§ 240.7 Evidence in removal proceedings under section 240 of the Act.**

(a) *Use of prior statements.* The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(b) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the immigration judge.

(c) *Depositions.* The immigration judge may order the taking of depositions pursuant to § 3.35 of this chapter.

**§ 240.8 Burdens of proof in removal proceedings.**

(a) *Deportable aliens.* A respondent charged with deportability shall be found to be removable if the Service proves by clear and convincing evidence that the respondent is deportable as charged.

(b) *Arriving aliens.* In proceedings commenced upon a respondent's arrival in the Untied States or after the revocation or expiration of parole, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.

(c) *Aliens present in the United States without being admitted or paroled.* In the case of a respondent charged as being in the United States without being admitted or paroled, the Service must first establish the alienage of the respondent. Once alienage has been established, unless the respondent demonstrates by clear and convincing evidence that he or she is lawfully in the United States pursuant to a prior admission, the respondent must prove that he or she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged.

(d) *Relief from removal.* The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

**§ 240.9 Contents of record.**

The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all

written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge. In his or her discretion, the immigration judge may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

**§ 240.10 Hearing.**

(a) *Opening.* In a removal proceeding, the immigration judge shall:

(1) Advise the respondent of his or her right to representation, at no expense to the government, by counsel of his or her own choice authorized to practice in the proceedings and require the respondent to state then and there whether he or she desires representation;

(2) Advise the respondent of the availability of free legal services provided by organizations and attorneys qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the removal hearing is being held;

(3) Ascertain that the respondent has received a list of such programs, and a copy of appeal rights;

(4) Advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the government (but the respondent shall not be entitled to examine such national security information as the government may proffer in opposition to the respondent's admission to the United States or to an application by the respondent for discretionary relief);

(5) Place the respondent under oath;

(6) Read the factual allegations and the charges in the notice to appear to the respondent and explain them in non-technical language; and

(7) Enter the notice to appear as an exhibit in the Record of Proceeding.

(b) *Public access to hearings.* Removal hearings shall be open to the public, except that the immigration judge may, in his or her discretion, close proceedings as provided in § 3.27 of this chapter.

(c) *Pleading by respondent.* The immigration judge shall require the respondent to plead to the notice to appear by stating whether he or she admits or denies the factual allegations and his or her removability under the charges contained therein. If the respondent admits the factual allegations and admits his or her removability under the charges and the immigration judge is satisfied that no issues of law or fact remain, the immigration judge may determine that removability as charged has been established by the admissions of the respondent. The immigration judge shall not accept an admission of removability from an unrepresented respondent who is incompetent or under the age of 18 and is not accompanied by an attorney or legal representative, a near relative, legal guardian, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the immigration judge does not accept an admission of removability, he or she shall direct a hearing on the issues.

(d) *Issues of removability.* When removability is not determined under the provisions of paragraph (c) of this section, the immigration judge shall request the assignment of an Service counsel, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading. The alien shall provide a court certified copy of a Judicial Recommendation Against Deportation (JRAD) to the immigration judge when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the alien. No JRAD is effective against a charge of deportability under former section 241(a)(11) of the Act or if the JRAD was granted on or after November 29, 1990.

(e) *Additional charges in removal hearings.* At any time during the proceeding, additional or substituted charges of inadmissibility and/or deportability and/or factual allegations may be lodged by the Service in writing. The alien in removal proceedings shall be served with a copy of these additional charges and allegations. The immigration judge shall read the additional factual allegations and charges to the alien and explain them to him or her. The immigration judge shall advise the alien, if he or she is not represented by counsel, that the alien may be so represented, and that he or she may be given a reasonable continuance to respond to the additional factual allegations and charges. Thereafter, the provision of § 240.6(b) relating to pleading shall apply to the additional factual allegations and charges.

(f) *Country of removal.* The immigration judge shall notify the alien that if he or she is finally ordered removed, the country of removal will in the first instance be directed pursuant to section 241(b) of the Act to the country designated by the alien, unless section 241(b)(2)(C) of the Act applies, and shall afford him or her an opportunity then and there to make such designation. The immigration judge shall then specify and state for the record the country, or countries in the alternative, to which the alien's removal will be directed pursuant to section 241(b) of the Act if the country of his or her designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the alien declines to designate a country.

(g) In the event that the Service is unable to remove the alien to the specified or alternative country or countries, the Service may remove the alien to any other country as permitted by section 241(b) of the Act.

**§ 240.11 Ancillary matters, applications.**

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* (1) In a removal proceeding, an alien may apply to the immigration judge for cancellation of removal under section 240A of the Act, adjustment of status under section 245 of the Act, adjustment of status under section 1 of the Act of November 2, 1966 (as modified by section 606 of Public Law 104–132) or under section 101 or 104 of the Act of October 28, 1977, or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of § 240.20, and 8 CFR parts 245 and 249. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act) shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act, or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8 CFR part 216.

(2) In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the alien is inadmissible under any provision of section 212(a) of the Act, and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or

she may apply to the immigration judge for such waiver. The immigration judge shall inform the alien of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the alien an opportunity to make application during the hearing.

(3) In exercising discretionary power when considering an application for status as a permanent resident under this chapter, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the alien, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the alien of the general nature of the information in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The alien may apply to the immigration judge for voluntary departure in lieu of removal pursuant to section 240B of the Act and subpart C of this part.

(c) *Applications for asylum and withholding of removal.* (1) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be removed pursuant to § 240.10(f), and the alien has not previously filed an application for asylum or withholding of removal that has been referred to the immigration judge by an asylum officer in accordance with § 208.14 of this chapter, the immigration judge shall:

(i) Advise the alien that he or she may apply for asylum in the United States or withholding of removal to those countries;

(ii) Make available the appropriate application forms; and

(iii) Advise the alien of the privilege of being represented by counsel at no expense to the government and of the consequences, pursuant to section 208(d)(6) of the Act, of knowingly filing a frivolous application for asylum. The immigration judge shall provide to the alien a list of persons who have indicated their availability to represent aliens in asylum proceedings on a *pro bono* basis.

(2) An application for asylum or withholding of removal must be filed with the Immigration Court, pursuant to § 208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the alien and to the Service counsel representing the government.

(3) Applications for asylum and withholding of removal so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 of this chapter after an evidentiary hearing to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.14 or § 208.16 of this chapter is not necessary once the immigration judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of removal will be open to the public unless the alien expressly requests that the hearing be closed pursuant to § 3.27 of this chapter. The immigration judge shall inquire whether the alien requests such closure.

(ii) Nothing in this section is intended to limit the authority of the immigration judge to properly control the scope of any evidentiary hearing.

(iii) During the removal hearing, the alien shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf. The alien has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standards set forth in § 208.13 of this chapter.

(iv) Service counsel may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information, he or she shall inform the alien. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the alien, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its sources. The summary should be as detailed as possible, in order that the alien may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(4) The decision of an immigration judge to grant or deny asylum or withholding of removal shall be communicated to the alien and to the Service counsel. An adverse decision shall state why asylum or withholding of removal was denied.

(d) *Application for relief under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from removal under sections 237(a)(1)(H) and 237(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his or her alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation or removal submitted to the Service on or after January 4, 1995, as the basis for issuance of a charging document or to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The alien shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. Nothing contained in this section is intended to foreclose the respondent from applying for any benefit or privilege that he or she believes himself or herself eligible to receive in proceedings under this part. Nothing in this section is intended to limit the Attorney General's authority to remove an alien to any country permitted by section 241(b) of the Act.

(f) *Fees.* The alien shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee.

**§ 240.12 Decision of the immigration judge.**

(a) *Contents.* The decision of the immigration judge may be oral or written. The decision of the immigration judge shall include a finding as to inadmissibility or deportability. The formal enumeration of findings is not required. The decision shall also contain reasons for granting or denying the request. The decision shall be

concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where inadmissibility or deportability is determined on the pleadings pursuant to § 240.10(b) and the respondent does not make an application under § 240.11, the alien is statutorily ineligible for relief, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision or, if voluntary departure is granted, a summary decision with an alternate order of removal.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's removal, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When removal is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's removal shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

**§ 240.13 Notice of decision.**

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the Service counsel, if any, at the conclusion of the hearing. A copy of the summary written order shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 240.12(b), he or she shall serve a copy thereof upon the respondent and the Service counsel at the conclusion of the hearing.

(d) *Decision to remove.* If the immigration judge decides that the respondent is removable and orders the respondent to be removed, the immigration judge shall advise the respondent of such decision, and of the consequences for failure to depart under the order of removal, including civil and criminal penalties described at sections 274D and 243 of the Act. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.15.

**§ 240.14 Finality of order.**

The order of the immigration judge shall become final in accordance with § 3.39 of this chapter.

**§ 240.15 Appeals.**

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge to the Board of Immigration Appeals, except that no appeal shall lie from an order of removal entered in absentia. The procedures regarding the filing of a Form EOIR 26, Notice of Appeal, fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board of Immigration Appeals. The reasons for the appeal shall be stated in the Notice of Appeal in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1–a) of this chapter.

**§ 240.16 Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208.**

The Attorney General shall have the sole discretion to apply the provisions of section 309(c) of Public Law 104–208, which provides for the application of new removal procedures to certain cases in exclusion or deportation proceedings and for the termination of certain cases in exclusion or deportation proceedings and initiation of new removal proceedings. The Attorney General's application of the provisions of section 309(c) shall become effective upon publication of a notice in the Federal Register. However, if the Attorney General determines, in the exercise of his or her discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Attorney General's application shall become effective immediately upon issuance, and shall be published in the Federal Register as soon as practicable thereafter.

**§§ 240.17—240.19 [Reserved]**

## Subpart B—Cancellation of removal

**§ 240.20 Cancellation of removal and adjustment of status under section 240A of the Act.**

(a) *Jurisdiction.* An application for the exercise of discretion under section 240A of the Act shall be submitted on Form EOIR–42, Application for Cancellation of Removal, to the Immigration Court having administrative control over the Record of Proceeding of the underlying removal proceeding under section 240 of the Act. The application must be accompanied by payment of the filing fee as set forth in § 103.7(b) of this chapter or a request for a fee waiver.

(b) *Filing the application.* The application may be filed only with the Immigration Court after jurisdiction has vested pursuant to § 3.14 of this chapter.

**§§ 240.21—240.24 [Reserved]**

## Subpart C—Voluntary Departure

**§ 240.25 Voluntary departure—authority of the Service.**

(a) *Authorized officers.* The authority contained in section 240B(a) of the Act to permit aliens to depart voluntarily from the United States may be exercised in lieu of being subject to proceedings under section 240 of the Act by district directors, assistant district directors for investigations, assistant district directors for examinations, officers in charge, chief patrol agents, service center directors, and assistant center directors for examinations.

(b) *Conditions.* The Service may attach to the granting of voluntary departure any conditions it deems necessary to ensure the alien's timely departure from the United States, including the posting of a bond, continued detention pending departure, and removal under safeguards. The alien shall be required to present to the Service, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. The Service may hold the passport or documentation for sufficient time to investigate its authenticity. A voluntary departure order permitting an alien to depart voluntarily shall inform the alien of the penalties under section 240B(d) of the Act.

(c) *Decision.* The authorized officer, in his or her discretion, shall specify the period of time permitted for voluntary departure, and may grant extensions thereof, except that the total period allowed, including any extensions, shall not exceed 120 days. Every decision regarding voluntary departure shall be communicated in writing on Form I–210, Notice of Action—Voluntary Departure. Voluntary departure may not be granted unless the alien requests such voluntary departure and agrees to its terms and conditions.

(d) *Application.* Any alien who believes himself or herself to be eligible

for voluntary departure under this section may apply therefor at any office of the Service. After the commencement of removal proceedings, the application may be communicated through the Service counsel. If the Service agrees to voluntary departure after proceedings have commenced, it may either:

(1) Join in a motion to terminate the proceedings, and if the proceedings are terminated, grant voluntary departure; or

(2) Join in a motion asking the immigration judge to permit voluntary departure in accordance with § 240.26.

(e) *Appeals.* An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply to the immigration judge for voluntary departure in accordance with § 240.26 or for relief from removal under any provision of law.

(f) Revocation. If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without advance notice by any officer authorized to grant voluntary departure under § 240.25(a). Such revocation shall be communicated in writing, citing the statutory basis for revocation. No appeal shall lie from revocation.

**§ 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.**

(a) *Eligibility: general.* An alien previously granted voluntary departure under section 240B of the Act, including by the Service under § 240.25, and who fails to depart voluntarily within the time specified, shall thereafter be ineligible, for a period of ten years, for voluntary departure or for relief under sections 240A, 245, 248, and 249 of the Act.

(b) *Prior to completion of removal proceedings.*—(1) *Grant by the immigration judge.* (i) An alien may be granted voluntary departure by an immigration judge pursuant to section 240B(a) of the Act only if the alien:

(A) Makes such request prior to or at the master calendar hearing at which the case is initially calendared for a merits hearing;

(B) Makes no additional requests for relief (or if such requests have been made, such requests are withdrawn prior to any grant of voluntary departure pursuant to this section);

(C) Concedes removability;

(D) Waives appeal of all issues; and

(E) Has not been convicted of a crime described in section 101(a)(43) of the Act and is not deportable under section 237(a)(4).

(ii) The judge may not grant voluntary departure under section 240B(a) of the Act beyond 30 days after the master calendar hearing at which the case is initially calendared for a merits hearing, except pursuant to a stipulation under paragraph (b)(2) of this section.

(2) *Stipulation.* At any time prior to the completion of removal proceedings, the Service counsel may stipulate to a grant of voluntary departure under section 240B(a) of the Act.

(3) *Conditions.* (i) The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States, including the posting of a voluntary departure bond to be canceled upon proof that the alien has departed the United States within the time specified. The alien shall be required to present to the Service, for inspection and photocopying, his or her passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing, unless:

(A) A travel document is not necessary to return to his or her native country or to which country the alien is departing; or

(B) The document is already in the possession of the Service.

(ii) The Service may hold the passport or documentation for sufficient time to investigate its authenticity. If such documentation is not immediately available to the alien, but the immigration judge is satisfied that the alien is making diligent efforts to secure it, voluntary departure may be granted for a period not to exceed 120 days, subject to the condition that the alien within 60 days must secure such documentation and present it to the Service. The Service in its discretion may extend the period within which the alien must provide such documentation. If the documentation is not presented within the 60-day period or any extension thereof, the voluntary departure order shall vacate automatically and the alternate order of removal will take effect, as if in effect on the date of issuance of the immigration judge order.

(c) *At the conclusion of the removal proceedings.*—(1) *Required findings.* An immigration judge may grant voluntary departure at the conclusion of the removal proceedings under section 240B(b) of the Act, if he or she finds that:

(i) The alien has been physically present in the United States for period of at least one year preceding the date the Notice to Appear was served under section 239(a) of the Act;

(ii) The alien is, and has been, a person of good moral character for at least five years immediately preceding the application;

(iii) The alien has not been convicted of a crime described in section 101(a)(43) of the Act and is not deportable under section 237(a)(4); and

(iv) The alien has established by clear and convincing evidence that the alien has the means to depart the United States and has the intention to do so.

(2) *Travel documentation.* Except as otherwise provided in paragraph (b)(3) of this section, the clear and convincing evidence of the means to depart shall include in all cases presentation by the alien of a passport or other travel documentation sufficient to assure lawful entry into the country to which the alien is departing. The Service shall have full opportunity to inspect and photocopy the documentation, and to challenge its authenticity or sufficiency before voluntary departure is granted.

(3) *Conditions.* The judge may impose such conditions as he or she deems necessary to ensure the alien's timely departure from the United States. In all cases under section 240B(b) of the Act, the alien shall be required to post a voluntary departure bond, in an amount necessary to ensure that the alien departs within the time specified, but in no case less than $500. The voluntary departure bond shall be posted with the district director within 5 business days of the immigration judge's order granting voluntary departure, and the district director may, at his or her discretion, hold the alien in custody until the bond is posted. If the bond is not posted within 5 business days, the voluntary departure order shall vacate automatically and the alternate order of removal will take effect on the following day. In order for the bond to be canceled, the alien must provide proof of departure to the district director.

(d) *Alternate order of removal.* Upon granting a request made for voluntary departure either prior to the completion of proceedings or at the conclusion of proceedings, the immigration judge shall also enter an alternate order or removal.

(e) *Periods of time.* If voluntary departure is granted prior to the completion of removal proceedings, the immigration judge may grant a period not to exceed 120 days. If voluntary departure is granted at the conclusion of proceedings, the immigration judge may grant a period not to exceed 60 days.

(f) *Extension of time to depart.* Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of

the district director. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntary departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act.

(g) *Administrative Appeals.* No appeal shall lie regarding the length of a period of voluntary departure (as distinguished from issues of whether to grant voluntary departure).

(h) *Reinstatement of voluntary departure.* An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making application for voluntary departure, if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act and paragraph (a) of this section.

**§§ 240.27–240.29 [Reserved]**

## Subpart D—Exclusion of Aliens (for proceedings commenced prior to April 1, 1997)

### § 240.30 Proceedings prior to April 1, 1997.

Subpart D of 8 CFR part 240 applies to exclusion proceedings commenced prior to April 1, 1997, pursuant to the former section 236 of the Act. An exclusion proceeding is commenced by the filing of Form I–122 with the Immigration Court, and an alien is considered to be in exclusion proceedings only upon such filing. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

### § 240.31 Authority of immigration judges.

In determining cases referred for further inquiry as provided in section 235 of the Act, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases.

### § 240.32 Hearing.

(a) *Opening.* Exclusion hearings shall be closed to the public, unless the alien at his or her own instance requests that the public, including the press, be permitted to attend; in that event, the hearing shall be open, provided that the alien states for the record that he or she is waiving the requirement in section 236 of the Act that the inquiry shall be kept separate and apart from the public. When the hearing is to be open, depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The immigration judge shall ascertain whether the applicant for admission is the person to whom Form I–122 was previously delivered by the examining immigration officer as provided in 8 CFR part 235; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him or her of the privilege of being represented by an attorney of his or her own choice at no expense to the Government, and of the availability of free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter located in the district where his or her exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs; and request him or her to ascertain then and there whether he or she desires representation; advise him or her that he or she will have a reasonable opportunity to present evidence in his or her own behalf, to examine and object to evidence against him or her, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

(b) *Procedure.* The immigration judge shall receive and adduce material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

(c) *Attorney for the Service.* The Service shall assign an attorney to each case in which an applicant's nationality is in issue and may assign an attorney to any case in which such assignment is deemed necessary or advantageous. The duties of the Service counsel include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained in this section diminishes the authority of an immigration judge to conduct proceedings under this part.

(d) *Depositions.* The procedures specified in § 240.48(e) shall apply.

(e) *Record.* The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge.

### § 240.33 Applications for asylum or withholding of deportation.

(a) If the alien expresses fear of persecution or harm upon return to his or her country of origin or to a country to which the alien may be deported after a determination of excludability from the United States pursuant to this subpart, and the alien has not been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall:

(1) Advise the alien that he or she may apply for asylum in the United States or withholding of deportation to that other country; and

(2) Make available the appropriate application forms.

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 208.4(c) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to the Service counsel representing the government.

(c) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 after an evidentiary hearing that is necessary to resolve material factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.13(c) of this chapter is not necessary once the immigration judge has determined that such denial is required.

(1) Evidentiary hearings on applications for asylum or withholding of deportation will be closed to the public unless the applicant expressly requests that it be open pursuant to § 236.3 of this chapter.

(2) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(3) During the exclusion hearing, the applicant shall be examined under oath on his or her application and may

present evidence and witnesses on his or her own behalf. The applicant has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(4) The Service counsel for the government may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. The applicant shall be informed when the immigration judge receives such classified information. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Service counsel for the government. An adverse decision will state why asylum or withholding of deportation was denied.

**§ 240.34 Renewal of application for adjustment of status under section 245 of the Act.**

An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997) before an immigration judge under the following two conditions: first, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I–512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

**§ 240.35 Decision of the immigration judge; notice to the applicant.**

(a) *Decision.* The immigration judge shall inform the applicant of his or her decision in accordance with § 3.37 of this chapter.

(b) *Advice to alien ordered excluded.* An alien ordered excluded shall be furnished with Form I–296, Notice to Alien Ordered Excluded by Immigration Judge, at the time of an oral decision by the immigration judge or upon service of a written decision.

(c) *Holders of refugee travel documents.* Aliens who are the holders of valid unexpired refugee travel documents may be ordered excluded only if they are found to be inadmissible under section 212(a)(2), 212(a)(3), or 212(a)(6)(E) of the Act, and it is determined that on the basis of the acts for which they are inadmissible there are compelling reasons of national security or public order for their exclusion. If the immigration judge finds that the alien is inadmissible but determines that there are no compelling reasons of national security or public order for exclusion, the immigration judge shall remand the case to the district director for parole.

**§ 240.36 Finality of order.**

The decision of the immigration judge shall become final in accordance with § 3.37 of this chapter.

**§ 240.37 Appeals.**

Except for temporary exclusions under section 235(c) of the Act, an appeal from a decision of an Immigration Judge under this part may be taken by either party pursuant to § 3.38 of this chapter.

**§ 240.38 Fingerprinting of excluded aliens.**

Every alien 14 years of age or older who is excluded from admission to the United States by an immigration judge shall be fingerprinted, unless during the preceding year he or she has been fingerprinted at an American consular office.

**§ 240.39 [Reserved]**

## Subpart E—Proceedings to Determine Deportability of Aliens in the United States: Hearing and Appeal (for proceedings commenced prior to April 1, 1997)

**§ 240.40 Proceedings commenced prior to April 1, 1997.**

Subpart E of 8 CFR part 240 applies only to deportation proceedings commenced prior to April 1, 1997. A deportation proceeding is commenced by the filing of Form I–221 (Order to Show Cause) with the Immigration Court, and an alien is considered to be in deportation proceedings only upon such filing, except in the case of an alien admitted to the United States under the provisions of section 217 of the Act. All references to the Act contained in this subpart pertain to the Act as in effect prior to April 1, 1997.

**§ 240.41 Immigration judges.**

(a) *Authority.* In any proceeding conducted under this part the immigration judge shall have the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) and 242B of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine applications under sections 208, 212(k), 241(a)(1)(E)(iii), 241(a)(1)(H), 244, 245 and 249 of the Act; to determine the country to which an alien's deportation will be directed in accordance with section 243(a) of the Act; to order temporary withholding of deportation pursuant to section 243(h) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. An immigration judge may certify his or her decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under section 103 of the Act.

(b) *Withdrawal and substitution of immigration judges.* The immigration judge assigned to conduct the hearing shall at any time withdraw if he or she deems himself or herself disqualified. If an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she has done so.

**§ 240.42 Representation by counsel.**

The respondent may be represented at the hearing by an attorney or other representative qualified under 8 CFR part 292.

**§ 240.43 Incompetent respondents.**

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

**§ 240.44 Interpreter.**

Any person acting as interpreter in a hearing before an immigration judge under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the United States Government, in which event no such oath shall be required.

**§ 240.45 Postponement and adjournment of hearing.**

After the commencement of the hearing, the immigration judge may grant a reasonable adjournment either at his or her own instance or, for good cause shown, upon application by the respondent or the Service.

**§ 240.46 Evidence.**

(a) *Sufficiency.* A determination of deportability shall not be valid unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true.

(b) *Use of prior statements.* The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(c) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the immigration judge.

(d) *Depositions.* The immigration judge may order the taking of depositions pursuant to § 3.35 of this chapter.

**§ 240.47 Contents of record.**

The hearing before the immigration judge, including the testimony, exhibits, applications, proffers, and requests, the immigration judge's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge. In his or her discretion, the immigration judge may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

**§ 240.48 Hearing.**

(a) *Opening.* The immigration judge shall advise the respondent of his or her right to representation, at no expense to the Government, by counsel of his or her own choice authorized to practice in the proceedings and require him or her to state then and there whether he or she desires representation; advise the respondent of the availability of free legal services programs qualified under 8 CFR part 3 and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the respondent has received a list of such programs, and a copy of Form I–618, Written Notice of Appeal Rights; advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be open to the public, except that the immigration judge may, in his or her discretion and for the purpose of protecting witnesses, respondents, or the public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

(b) *Pleading by respondent.* The immigration judge shall require the respondent to plead to the order to show cause by stating whether he or she admits or denies the factual allegations and his or her deportability under the charges contained therein. If the respondent admits the factual allegations and admits his or her deportability under the charges and the immigration judge is satisfied that no issues of law or fact remain, the immigration judge may determine that deportability as charged has been established by the admissions of the respondent. The immigration judge shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the immigration judge may not accept an admission of deportability, he or she shall direct a hearing on the issues.

(c) *Issues of deportability.* When deportability is not determined under the provisions of paragraph (b) of this section, the immigration judge shall request the assignment of a Service counsel, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading. The respondent shall provide a court certified copy of a Judicial Recommendation Against Deportation (JRAD) to the immigration judge when such recommendation will be the basis of denying any charge(s) brought by the Service in the proceedings against the respondent. No JRAD is effective against a charge of deportability under section 241(a)(11) of the Act or if the JRAD was granted on or after November 29, 1990.

(d) *Additional charges.* The Service may at any time during a hearing lodge additional charges of deportability, including factual allegations, against the respondent. Copies of the additional factual allegations and charges shall be submitted in writing for service on the respondent and entry as an exhibit in the record. The immigration judge shall read the additional factual allegations and charges to the respondent and explain them to him or her. The immigration judge shall advise the respondent if he or she is not represented by counsel that he or she may be so represented and also that he or she may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he or she desires a continuance for either of these reasons. Thereafter, the provisions of paragraph (b) of this section shall apply to the additional factual allegations and lodged charges.

**§ 240.49 Ancillary matters, applications.**

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of 8 CFR parts 240, 245, and 249. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on

Residence required by section 216(c) of the Act or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with 8 CFR part 216. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under the applicable Executive Order as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The respondent may apply to the immigration judge for voluntary departure in lieu of deportation pursuant to section 244(e) of the Act and § 240.56.

(c) *Applications for asylum or withholding of deportation.* (1) The immigration judge shall notify the respondent that if he or she is finally ordered deported, his or her deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by the respondent and shall afford him or her an opportunity then and there to make such designation. The immigration judge shall then specify and state for the record the country, or countries in the alternative, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his or her designation will not accept him or her into its territory, or fails to furnish timely notice of acceptance, or if the respondent declines to designate a country.

(2) If the alien expresses fear of persecution or harm upon return to any of the countries to which the alien might be deported pursuant to paragraph (c)(1) of this section, and the alien has not previously filed an application for asylum or withholding of deportation that has been referred to the immigration judge by an asylum officer in accordance with § 208.14(b) of this chapter, the immigration judge shall:

(i) Advise the alien that he or she may apply for asylum in the United States or withholding of deportation to those countries; and

(ii) Make available the appropriate application forms.

(3) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 208.4(b) of this chapter. Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, of the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to the Service counsel representing the government.

(4) Applications for asylum or withholding of deportation so filed will be decided by the immigration judge pursuant to the requirements and standards established in 8 CFR part 208 after an evidentiary hearing that is necessary to resolve factual issues in dispute. An evidentiary hearing extending beyond issues related to the basis for a mandatory denial of the application pursuant to § 208.13 or § 208.16 of this chapter is not necessary once the immigration judge has determined that such a denial is required.

(i) Evidentiary hearings on applications for asylum or withholding of deportation will be open to the public unless the applicant expressly requests that it be closed.

(ii) Nothing in this section is intended to limit the authority of the immigration judge properly to control the scope of any evidentiary hearing.

(iii) During the deportation hearing, the applicant shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf. The applicant has the burden of establishing that he or she is a refugee as defined in section 101(a)(42) of the Act pursuant to the standard set forth in § 208.13 of this chapter.

(iv) The Service counsel for the government may call witnesses and present evidence for the record, including information classified under the applicable Executive Order, provided the immigration judge or the Board has determined that such information is relevant to the hearing. When the immigration judge receives such classified information he or she shall inform the applicant. The agency that provides the classified information to the immigration judge may provide an unclassified summary of the information for release to the applicant, whenever it determines it can do so consistently with safeguarding both the classified nature of the information and its source. The summary should be as detailed as possible, in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state whether such information is material to the decision.

(5) The decision of an immigration judge to grant or deny asylum or withholding of deportation shall be communicated to the applicant and to the Service counsel for the government. An adverse decision will state why asylum or withholding of deportation was denied.

(d) *Application for relief under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.* The respondent may apply to the immigration judge for relief from deportation under sections 241(a)(1)(H) and 241(a)(1)(E)(iii) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his alienage or deportability. However, nothing in this section shall prohibit the Service from using information supplied in an application for asylum or withholding of deportation submitted to an asylum officer pursuant to § 208.2 of this chapter on or after January 4, 1995, as the basis for issuance of an order to show cause or a notice to appear to establish alienage or deportability in a case referred to an immigration judge under § 208.14(b) of this chapter. The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. The respondent shall not be required to pay a fee on more than one application within paragraphs (a)

and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. Nothing contained in this section is intended to foreclose the respondent from applying for any benefit or privilege which he or she believes himself or herself eligible to receive in proceedings under this part.

**§ 240.50 Decision of the immigration judge.**

(a) *Contents.* The decision of the immigration judge may be oral or written. Except when deportability is determined on the pleadings pursuant to § 240.48(b), the decision of the immigration judge shall include a finding as to deportability. The formal enumeration of findings is not required. The decision shall also contain the reasons for granting or denying the request. The decision shall be concluded with the order of the immigration judge.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 240.48(b) and the respondent does not make an application under § 240.49, or the respondent applies for voluntary departure only and the immigration judge grants the application, the immigration judge may enter a summary decision on Form EOIR–7, Summary Order of Deportation, if deportation is ordered, or on Form EOIR–6, Summary Order of Voluntary Departure, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the immigration judge.* The order of the immigration judge shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the immigration judge shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The immigration judge is authorized to issue orders in the alternative or in combination as he or she may deem necessary.

**§ 240.51 Notice of decision.**

(a) *Written decision.* A written decision shall be served upon the respondent and the Service counsel, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the immigration judge in the presence of the respondent and the trail attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.53. A printed copy of the oral decision shall be furnished at the request of the respondent or the Service counsel.

(c) *Summary decision.* When the immigration judge renders a summary decision as provided in § 240.51(b), he or she shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Form EOIR–26, Notice of Appeal, and advised of the provisions of § 240.54.

**§ 240.52 Finality of order.**

The decision of the immigration judge shall become final in accordance with § 3.39 of this chapter.

**§ 240.53 Appeals.**

(a) Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Form EOIR–26, Notice of Appeal, fees, and briefs are set forth in §§ 3.3, 3.31, and 3.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board. The reasons for the appeal shall be stated in the Form EOIR–26, Notice of Appeal, in accordance with the provisions of § 3.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 3.1(d)(1-a) of this chapter.

(b) *Prohibited appeals; legalization or applications.* An alien respondent defined in § 245a.2(c)(6) or (7) of this chapter who fails to file an application for adjustment of status to that of a temporary resident within the prescribed period(s), and who is thereafter found to be deportable by decision of an immigration judge, shall not be permitted to appeal the finding of deportability based solely on refusal by the immigration judge to entertain such an application in deportation proceedings.

**§ 240.54 [Reserved]**

## Subpart F—Suspension of Deportation and Voluntary Departure (for proceedings commenced prior to April 1, 1997)

**§ 240.55 Proceedings commenced prior to April 1, 1997.**

Subpart F of 8 CFR part 240 applies to deportation proceedings commenced prior to April 1, 1997. A deportation proceeding is commenced by the filing of Form I–221 (Order to Show Cause) with the Immigration Court, and an alien is considered to be in deportation proceedings only upon such filing, except in the case of an alien admitted to the United States under the provisions of section 217 of the Act. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

**§ 240.56 Application.**

Notwithstanding any other provision of this chapter, an alien who is deportable because of a conviction on or after November 18, 1988, for an aggravated felony as defined in section 101(a)(43) of the Act, shall not be eligible for voluntary departure as prescribed in 8 CFR part 240 and section 244 of the Act. Pursuant to subpart F of this part and section 244 of the Act, an immigration judge may authorize the suspension of an alien's deportation; or, if the alien establishes that he or she is willing and has the immediate means with which to depart promptly from the United States, an immigration judge may authorize the alien to depart voluntarily from the United States in lieu of deportation within such time as may be specified by the immigration judge when first authorizing voluntary departure, and under such conditions as the district director shall direct. An application for suspension of deportation shall be made on Form EOIR–40.

**§ 240.57 Extension of time to depart.**

Authority to reinstate or extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is within the sole jurisdiction of the district director, except that an immigration judge or the Board may reinstate voluntary departure in a deportation proceeding that has been reopened for a purpose other than solely making an application for voluntary departure. A request by an alien for reinstatement or an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision

shall be served upon the alien and no appeal may be taken therefrom.

## Subpart G—Civil Penalties for Failure to Depart [Reserved]

105. Part 241 is revised to read as follows:

# PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

### Subpart A—Post-hearing Detention and Removal

Sec.
241.1 Final order of removal.
241.2 Warrant of removal.
241.3 Detention of aliens during removal period.
241.4 Continued detention beyond the removal period.
241.5 Conditions of release after removal period.
241.6 Administrative stay of removal.
241.7 Self-removal.
241.8 Reinstatement of removal orders.
241.9 Notice to transportation line of alien's removal.
241.10 Special care and attention of removable aliens.
241.11 Detention and removal of stowaways.
241.12 Nonapplication of costs of detention and maintenance.
241.13—241.19 [Reserved]

### Subpart B—Deportation of Excluded Aliens (for hearings commenced prior to April 1, 1997)

241.20 Proceedings commenced prior to April 1, 1997.
241.21 Stay of deportation of excluded alien.
241.22 Notice to surrender for deportation.
241.23 Cost of maintenance not assessed.
241.24 Notice to transportation line of alien's exclusion.
241.25 Deportation.
241.26—241.29 [Reserved]

### Subpart C—Deportation of Aliens in the United States (for hearings commenced prior to April 1, 1997)

241.30 Proceedings commenced prior to April 1, 1997.
241.31 Final order of deportation.
241.32 Warrant of deportation.
241.33 Expulsion.

Authority: 8 U.S.C. 1103, 1223, 1227, 1251, 1253, 1255, and 1330; 8 CFR part 2.

## Subpart A—Post-hearing Detention and Removal

### § 241.1 Final order of removal.

An order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final:

(a) Upon dismissal of an appeal by the Board of Immigration Appeals;

(b) Upon waiver of appeal by the respondent;

(c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time;

(d) If certified to the Board or Attorney General, upon the date of the subsequent decision ordering removal;

(e) If an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order; or

(f) If an immigration judge issues an alternate order of removal in connection with a grant of voluntary departure, upon overstay of the voluntary departure period except where the respondent has filed a timely appeal with the Board. In such a case, the order shall become final upon an order of removal by the Board or the Attorney General, or upon overstay of any voluntary departure period granted or reinstated by the Board or the Attorney General.

### § 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* A Form I–205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall be issued by a district director. The district director shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

(b) *Execution of the warrant of removal.* Any officer authorized by § 287.5(e) of this chapter to execute administrative warrants of arrest may execute a warrant of removal.

### § 241.3 Detention of aliens during removal period.

(a) *Assumption of custody.* Once the removal period defined in section 241(a)(1) of the Act begins, an alien in the United States will be taken into custody pursuant to the warrant of removal.

(b) *Cancellation of bond.* Any bond previously posted will be canceled unless it has been breached or is subject to being breached.

(c) *Judicial stays.* The filing of (or intention to file) a petition or action in a Federal court seeking review of the issuance or execution of an order of removal shall not delay execution of the Warrant of Removal except upon an affirmative order of the court.

### § 241.4 Continued detention beyond the removal period.

(a) *Continuation of custody for inadmissible or criminal aliens.* The district director may continue in custody any alien inadmissible under section 212(a) of the Act or removable under section 237(a)(1)(C), 237(a)(2), or 237(a)(4) of the Act, or who presents a significant risk of noncompliance with the order of removal, beyond the removal period, as necessary, until removal from the United States. If such an alien demonstrates by clear and convincing evidence that the release would not pose a danger to the community or a significant flight risk, the district director may, in the exercise of discretion, order the alien released from custody on such conditions as the district director may prescribe, including bond in an amount sufficient to ensure the alien's appearance for removal. The district may consider, but is not limited to considering, the following factors:

(1) The nature and seriousness of the alien's criminal convictions;

(2) Other criminal history;

(3) Sentence(s) imposed and time actually served;

(4) History of failures to appear for court (defaults);

(5) Probation history;

(6) Disciplinary problems while incarcerated;

(7) Evidence of rehabilitative effort or recidivism;

(8) Equities in the United States; and

(9) Prior immigration violations and history.

(b) *Continuation of custody for other aliens.* Any alien removable under any section of the Act other than section 212(a), 237(a)(1)(C), 237(a)(2), or 237(a)(4) may be detained beyond the removal period, in the discretion of the district director, unless the alien demonstrates to the satisfaction of the district director that he or she is likely to comply with the removal order and is not a risk to the community.

### § 241.5 Conditions of release after removal period.

(a) *Order of supervision.* An alien released pursuant to § 241.4 shall be released pursuant to an order of supervision. A district director, acting district director, deputy district director, assistant district director for investigations, assistant district director for detention and deportation, or officer in charge may issue an order of supervision on Form I–220B. The order shall specify conditions of supervision including, but not limited to, the following:

(1) A requirement that the alien report to a specified officer periodically and provide relevant information under oath as directed;

(2) A requirement that the alien continue efforts to obtain a travel document and assist the Service in obtaining a travel document;

(3) A requirement that the alien report as directed for a mental or physical examination or examinations as directed by the Service;

(4) A requirement that the alien obtain advance approval of travel beyond previously specified times and distances; and

(5) A requirement that the alien provide the Service with written notice of any change of address on Form AR–11 within ten days of the change.

(b) *Posting of bond.* An officer authorized to issue an order of supervision may require the posting of a bond in an amount determined by the officer to be sufficient to ensure compliance with the conditions of the order, including surrender for removal.

(c) *Employment authorization.* An officer authorized to issue an order of supervision may, in his or her discretion, grant employment authorization to an alien released under an order of supervision if the officer specifically finds that:

(1) The alien cannot be removed because no country will accept the alien; or

(2) The removal of the alien is impracticable or contrary to public interest.

**§ 241.6 Administrative stay of removal.**

Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I–246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The district director, in his or her discretion and in consideration of factors such as are listed in § 212.5 of this chapter and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under such conditions as he or she may deem appropriate. Neither the request nor the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal. Denial by the district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in 8 CFR part 3. The Service shall take all reasonable steps to comply with a stay granted by an immigration judge or the Board. However, such a stay shall cease to have effect if granted (or communicated) after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed.

**§ 241.7 Self-removal.**

A district director may permit an alien ordered removed (including an alien ordered excluded or deported in proceedings prior to April 1, 1997) to depart at his or her own expense to a destination of his or her own choice. Any alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to have been so deported or removed.

**§ 241.8 Reinstatement of removal orders.**

(a) *Applicability.* An alien who illegally reenters the United States after having been removed, or having departed voluntarily, while under an order of exclusion, deportation, or removal shall be removed from the United States by reinstating the prior order. The alien has no right to a hearing before an immigration judge in such circumstances. In establishing whether an alien is subject to this section, the immigration officer shall determine the following:

(1) Whether the alien has been subject to a prior order of removal. The immigration officer must obtain the prior order of exclusion, deportation, or removal relating to the alien.

(2) The identity of the alien, i.e., whether the alien is in fact an alien who was previously removed, or who departed voluntarily while under an order of exclusion, deportation, or removal. In disputed cases, verification of identity shall be accomplished by a comparison of fingerprints between those of the previously excluded, deported, or removed alien contained in Service records and those of the subject alien. In the absence of fingerprints in a disputed case the alien shall not be removed pursuant to this paragraph.

(3) Whether the alien unlawfully reentered the United States. In making this determination, the officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The immigration officer shall attempt to verify an alien's claim, if any, that he or she was lawfully admitted, which shall include a check of Service data systems available to the officer.

(b) *Notice.* If an officer determines that an alien is subject to removal under this section, he or she shall provide the alien with written notice of his or her determination. The officer shall advise the alien that he or she may make a written or oral statement contesting the determination. If the alien wishes to make such a statement, the officer shall allow the alien to do so and shall consider whether the alien's statement warrants reconsideration of the determination.

(c) *Order.* If the requirements of paragraph (a) of this section are met, the alien shall be removed under the previous order of exclusion, deportation, or removal in accordance with section 241(a)(5) of the Act.

(d) *Exception for withholding of removal.* If an alien whose prior order of removal has been reinstated under this section expresses a fear of returning to the country designated in that order, the alien shall be immediately referred to an asylum officer to determine whether the alien's removal to that country must be withheld under section 241(b)(3) of the Act. The alien's claim will be granted or denied by an asylum officer in accordance with § 208.16 of this chapter. If the alien has previously had a claim to withholding of deportation or removal denied, then that decision shall prevail unless the alien can establish the existence of changed circumstances that materially affect the alien's eligibility for withholding. The alien's case shall not be referred to an immigration judge, and there is no appeal from the decision of the asylum officer. If the alien is found to merit withholding of removal, the Service shall not enforce the reinstated order.

(e) *Execution of reinstated order.* Execution of the reinstated order of removal and detention of the alien shall be administered in accordance with this part.

**§ 241.9 Notice to transportation line of alien's removal.**

(a) An alien who has been ordered removed shall, immediately or as promptly as the circumstances permit, be offered for removal to the owner, agent, master, commanding officer, person in charge, purser, or consignee of the vessel or aircraft on which the alien is to be removed, as determined by the district director, with a written notice specifying the cause of inadmissibility or deportability, the class of travel in which such alien arrived and is to be removed, and with the return of any documentation that will assist in effecting his or her removal. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered removed shall result in the carrier being assessed any costs incurred by the

Service for detention after the carrier's failure to accept the alien for removal, including the cost of any transportation as required under section 241(e) of the Act. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 241 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the alien for an additional 7 days beyond the date of the removal order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

**§ 241.10 Special care and attention of removable aliens.**

When, in accordance with section 241(c)(3) of the Act, a transportation line is responsible for the expenses of an inadmissible or deportable alien's removal, and the alien requires special care and attention, the alien shall be delivered to the owner, agent, master, commanding officer, person in charge, purser, or consignee of the vessel or aircraft on which the alien will be removed, who shall be given Forms I–287, I–287A, and I–287B. The reverse of Form I–287A shall be signed by the officer of the vessel or aircraft to whom the alien has been delivered and immediately returned to the immigration officer effecting delivery. Form I–287B shall be retained by the receiving officer and subsequently filled out by the agents or persons therein designated and returned by mail to the district director named on the form. The transportation line shall at its own expense forward the alien from the foreign port of disembarkation to the final destination specified on Form I–287. The special care and attention shall be continued to such final destination, except when the foreign public officers decline to allow such attendant to proceed and they take charge of the alien, in which case this fact shall be recorded by the transportation line on the reverse of Form I–287B. If the transportation line fails, refuses, or neglects to provide the necessary special care and attention or comply with the directions of Form I–287, the district director shall thereafter and without notice employ suitable persons, at the expense of the transportation line, and effect such removal.

**§ 241.11 Detention and removal of stowaways.**

(a) *Presentation of stowaways.* The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft (referred to in this section as the carrier) bringing any alien stowaway to the United States is required to detain the stowaway on board the vessel or aircraft, at the expense of the owner of the vessel or aircraft, until completion of the inspection of the alien by an immigration officer. If detention on board the vessel or aircraft pending inspection is not possible, the carrier shall advise the Service of this fact without delay, and the Service may authorize that the carrier detain the stowaway at another designated location, at the expense of the owner, until the immigration officer arrives. No notice to detain the alien shall be required. Failure to detain an alien stowaway pending inspection shall result in a civil penalty under section 243(c)(1)(A) of the Act. The owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft must present the stowaway for inspection, along with any documents or evidence of identity or nationality in the possession of the alien or obtained by the carrier relating to the alien stowaway, and must provide any available information concerning the alien's boarding or apprehension.

(b) *Removal of stowaways from vessel or aircraft for medical treatment.* The district director may parole an alien stowaway into the United States for medical treatment, but the costs of detention and treatment of the alien stowaway shall be at the expense of the owner of the vessel or aircraft, and such removal of the stowaway from the vessel or aircraft does not relieve the carrier of the requirement to remove the stowaway from the United States once such medical treatment has been completed.

(c) *Repatriation of stowaways*—(1) *Requirements of carrier.* Following inspection, an immigration officer may order the owner, agent, master, commanding officer, charterer, or consignee of a vessel or aircraft bringing any alien stowaway to the United States to remove the stowaway on the vessel or aircraft of arrival, unless it is impracticable to do so or other factors exist which would preclude removal on the same vessel or aircraft. Such factors may include, but are not limited to, sanitation, health, and safety concerns for the crew and/or stowaway, whether the stowaway is a female or a juvenile, loss of insurance coverage on account of the stowaway remaining aboard, need for repairs to the vessel, and other similar circumstances. If the owner, agent, master, commanding officer, charterer, or consignee requests that he or she be allowed to remove the stowaway by other means, the Service shall favorably consider any such request, provided the carrier has obtained, or will obtain in a timely manner, any necessary travel documents and has made or will make all transportation arrangements. The owner, agent, master, commanding officer, charterer, or consignee shall transport the stowaway or arrange for secure escort of the stowaway to the vessel or aircraft of departure to ensure that the stowaway departs the United States. All expenses relating to removal shall be borne by the owner. Other than requiring compliance with the detention and removal requirements contained in section 241(d)(2) of the Act, the Service shall not impose additional conditions on the carrier regarding security arrangements. Failure to comply with an order to remove an alien stowaway shall result in a civil penalty under section 243(c)(1)(A) of the Act.

(2) *Detention of stowaways ordered removed.* If detention of the stowaway is required pending removal on other than the vessel or aircraft of arrival, or if the stowaway is to be removed on the vessel or aircraft of arrival but departure of the vessel or aircraft is not imminent and circumstances preclude keeping the stowaway on board the vessel or aircraft, the Service shall take the stowaway into Service custody. The owner is responsible for all costs of maintaining and detaining the stowaway pending removal, including costs for stowaways seeking asylum as described in paragraph (d) of this section. Such costs will be limited to those normally incurred in the detention of an alien by the Service, including, but not limited to, housing, food, transportation, medical expenses, and other reasonable costs incident to the detention of the stowaway. The Service may require the posting of a bond or other surety to ensure payment of costs of detention.

(d) *Stowaways claiming asylum*—(1) *Referral for credible fear determination.* A stowaway who indicates an intention to apply for asylum or a fear of persecution shall be removed from the vessel or aircraft of arrival in accordance with § 208.5(b) of this chapter. The immigration officer shall refer the alien to an asylum officer for a determination of credible fear in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. The stowaway shall be detained in the custody of the Service pending the credible fear

determination and any review thereof. Parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. A stowaway who has established a credible fear of persecution in accordance with § 208.30 of this chapter may be detained or paroled pursuant to § 212.5 of this chapter during any consideration of the asylum application. In determining whether to detain or parole the alien, the Service shall consider the likelihood that the alien will abscond or pose a security risk.

(2) *Costs of detention of asylum-seeking stowaways.* The owner of the vessel or aircraft that brought the stowaway to the United States shall reimburse the Service for the costs of maintaining and detaining the stowaway pending a determination of credible fear under section 235(b)(1)(B) of the Act, up to a maximum period of 72 hours. The owner is also responsible for the costs of maintaining and detaining the stowaway during the period in which the stowaway is pursuing his or her asylum application, for a maximum period of 15 working days, excluding Saturdays, Sundays, and holidays. The 15-day period shall begin on the day following the day in which the alien is determined to have a credible fear of persecution by the asylum officer, or by the immigration judge if such review was requested by the alien pursuant to section 235(b)(1)(B)(iii)(III) of the Act, but not later than 72 hours after the stowaway was initially presented to the Service for inspection. Following the determination of credible fear, if the stowaway's application for asylum is not adjudicated within 15 working days, the Service shall pay the costs of detention beyond this time period. If the stowaway is determined not to have a credible fear of persecution, or if the stowaway's application for asylum is denied, including any appeals, the carrier shall be notified and shall arrange for repatriation of the stowaway at the expense of the owner of the vessel or aircraft on which the stowaway arrived.

**§ 241.12 Nonapplication of costs of detention and maintenance.**

The owner of a vessel or aircraft bringing an alien to the United States who claims to be exempt from payment of the costs of detention and maintenance of the alien pursuant to section 241(c)(3)(B) of the Act shall establish to the satisfaction of the district director in charge of the port of arrival that such costs should not be applied. The district director shall afford the owner a reasonable time within which to submit affidavits and briefs to support the claim. There is no appeal from the decision of the district director.

**§§ 241.13—241.19 [Reserved]**

## Subpart B—Deportation of Excluded Aliens (for hearings commenced prior to April 1, 1997)

**§ 241.20 Proceedings commenced prior to April 1, 1997.**

Subpart B of 8 CFR part 241 applies to exclusion proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

**§ 241.21 Stay of deportation of excluded alien.**

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the Act under such conditions as he or she may prescribe.

**§ 241.22 Notice to surrender for deportation.**

An alien who has been finally excluded pursuant to 8 CFR part 240, subpart D may at any time surrender himself or herself to the custody of the Service and shall surrender to such custody upon notice in writing of the time and place for his or her surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his or her consent thereto filed in writing with the district director in charge of the place of his or her detention. An alien in foreign contiguous territory shall be informed that he or she may remain there in lieu of surrendering to the Service, but that he or she will be deemed to have acknowledged the execution of the order of exclusion and deportation in his or her case upon his or her failure to surrender at the time and place prescribed.

**§ 241.23 Cost of maintenance not assessed.**

A claim pursuant to section 237(a)(1) of the Act shall be established to the satisfaction of the district director in charge of the port of arrival, from whose adverse decision no appeal shall lie. The district director shall afford the line a reasonable time within which to submit affidavits and briefs to support its claim.

**§ 241.24 Notice to transportation line of alien's exclusion.**

(a) An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the district director, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation that will assist in effecting his or her deportation. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the excluded alien for an additional 7 days beyond the date of the deportation/exclusion order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the excluded alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

**§ 241.25 Deportation.**

(a) *Definitions of terms.* For the purposes of this section, the following terms mean:

(1) *Adjacent island*—as defined in section 101(b)(5) of the Act.

(2) *Foreign contiguous territory*—any country sharing a common boundary with the United States.

(3) *Residence in foreign contiguous territory or adjacent island*—any physical presence, regardless of intent, in a foreign contiguous territory or an adjacent island if the government of such territory or island agrees to accept the alien.

(4) *Aircraft or vessel*—any conveyance and other mode of travel by which arrival is effected.

(5) *Next available flight*—the carrier's next regularly scheduled departure to

the excluded alien's point of embarkation regardless of seat availability. If the carrier's next regularly scheduled departure to the excluded aliens point of embarkation is full, the carrier has the option of arranging for return transportation on other carriers which service the excluded aliens point of embarkation.

(b) *Place to which deported.* Any alien (other than an alien crewmember or an alien who boarded an aircraft or vessel in foreign contiguous territory or an adjacent island) who is ordered excluded shall be deported to the country where the alien boarded the vessel or aircraft on which the alien arrived in the United States. If that country refuses to accept the alien, the alien shall be deported to:

(1) The country of which the alien is a subject, citizen, or national;

(2) The country where the alien was born;

(3) The country where the alien has a residence; or

(4) Any country willing to accept the alien.

(c) *Contiguous territory and adjacent islands.* Any alien ordered excluded who boarded an aircraft or vessel in foreign contiguous territory or in any adjacent island shall be deported to such foreign contiguous territory or adjacent island if the alien is a native, citizen, subject, or national of such foreign contiguous territory or adjacent island, or if the alien has a residence in such foreign contiguous territory or adjacent island. Otherwise, the alien shall be deported, in the first instance, to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island.

(d) *Land border pedestrian arrivals.* Any alien ordered excluded who arrived at a land border on foot shall be deported in the same manner as if the alien had boarded a vessel or aircraft in foreign contiguous territory.

**§§ 241.26–241.29 [Reserved]**

## Subpart C—Deportation of Aliens in the United States (for hearings commenced prior to April 1, 1997)

**§ 241.30 Proceedings commenced prior to April 1, 1997.**

Subpart C of 8 CFR part 241 applies to deportation proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

**§ 241.31 Final order of deportation.**

Except as otherwise required by section 242(c) of the Act for the specific purposes of that section, an order of deportation, including an alternate order of deportation coupled with an order of voluntary departure, made by the immigration judge in proceedings under 8 CFR part 240 shall become final upon dismissal of an appeal by the Board of Immigration Appeals, upon waiver of appeal, or upon expiration of the time allotted for an appeal when no appeal is taken; or, if such an order is issued by the Board or approved by the Board upon certification, it shall be final as of the date of the Board's decision.

**§ 241.32 Warrant of deportation.**

A Form I–205, Warrant of Deportation, based upon the final administrative order of deportation in the alien's case shall be issued by a district director. The district director shall exercise the authority contained in section 243 of the Act to determine at whose expense the alien shall be deported and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

**§ 241.33 Expulsion.**

(a) *Execution of order.* Except in the exercise of discretion by the district director, and for such reasons as are set forth in § 212.5(a) of this chapter, once an order of deportation becomes final, an alien shall be taken into custody and the order shall be executed. For the purposes of this part, an order of deportation is final and subject to execution upon the date when any of the following occurs:

(1) A grant of voluntary departure expires;

(2) An immigration judge enters an order of deportation without granting voluntary departure or other relief, and the alien respondent waives his or her right to appeal;

(3) The Board of Immigration Appeals enters an order of deportation on appeal, without granting voluntary departure or other relief; or

(4) A Federal district or appellate court affirms an administrative order of deportation in a petition for review or habeas corpus action.

(b) *Service of decision.* In the case of an order entered by any of the authorities enumerated above, the order shall be executed no sooner than 72 hours after service of the decision, regardless of whether the alien is in Service custody, provided that such period may be waived on the knowing and voluntary request of the alien. Nothing in this paragraph shall be construed, however, to preclude assumption of custody by the Service at the time of issuance of the final order.

## PART 242—[REMOVED AND RESERVED]

106. Part 242 is removed and reserved.

## PART 243—[REMOVED AND RESERVED]

107. Part 243 is removed and reserved.

## PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

108. The heading for part 244 is revised as set forth above.

109. The authority citation for part 244 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

**§§ 244.1 and 244.2 [Removed]**

110. Sections 244.1 and 244.2 are removed.

**§§ 244.3 through 244.22 [Redesignated as §§ 244.1 through 244.20]**

111. Newly designated §§ 244.3 through 244.22 are further redesignated as §§ 244.1 through 244.20, respectively.

## PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

112. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

113. Section 245.1 is amended by:

a. Removing the word ''and'' at the end of the paragraph (c)(3);

b. Removing the ''.'' at the end of paragraphs (c)(4) through (c)(7), and replacing it with a '';'';

c. Redesignating paragraph (c)(8) as paragraph (c)(9);

d. Adding a new paragraph (c)(8);

e. Revising newly redesignated paragraph (c)(9) introductory text;

f. Revising newly redesignated paragraphs (c)(9)(i) through (c)(9)(iii); and by

g. Revising paragraph (f), to read as follows:

**§ 245.1 Eligibility.**

* * * * *

(c) * * *

(8) Any arriving alien who is in removal proceedings pursuant to section 235(b)(1) or section 240 of the Act; and

(9) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986, and while the alien was in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto.

(i) *Commencement of proceedings.* The period during which the alien is in

deportation, exclusion, or removal proceedings or judicial proceedings relating thereto, commences:

(A) With the issuance of the Form I–221, Order to Show Cause and Notice of Hearing prior to June 20, 1991;

(B) With the filing of a Form I–221, Order to Show Cause and Notice of Hearing, issued on or after June 20, 1991, with the Immigration Court;

(C) With the issuance of Form I–122, Notice to Applicant for Admission Detained for Hearing Before Immigration Judge, prior to April 1, 1997,

(D) With the filing of a Form I–862, Notice to Appear, with the Immigration Court, or

(E) With the issuance and service of Form I–860, Notice and Order of Expedited Removal.

(ii) *Termination of proceedings.* The period during which the alien is in exclusion, deportation, or removal proceedings, or judicial proceedings relating thereto, terminates:

(A) When the alien departs from the United States while an order of exclusion, deportation, or removal is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation or removal;

(B) When the alien is found not to be inadmissible or deportable from the United States;

(C) When the Form I–122, I–221, I–860, or I–862 is canceled;

(D) When proceedings are terminated by the immigration judge or the Board of Immigration Appeals; or

(E) When a petition for review or an action for habeas corpus is granted by a Federal court on judicial review.

(iii) *Exemptions.* This prohibition shall no longer apply if:

(A) The alien is found not to be inadmissible or deportable from the United States;

(B) Form I–122, I–221, I–860, or I–862, is canceled;

(C) Proceedings are terminated by the immigration judge or the Board of Immigration Appeals;

(D) A petition for review or an action for habeas corpus is granted by a Federal court on judicial review;

(E) The alien has resided outside the United States for 2 or more years following the marriage; or

(F) The alien establishes the marriage is bona fide by providing clear and convincing evidence that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place, was not entered into for the purpose of procuring the alien's entry as an immigrant, and no fee or other consideration was given (other than to an attorney for assistance in preparation of a lawful petition) for the filing of a petition.

* * * * *

(f) *Concurrent applications to overcome grounds of inadmissibility.* Except as provided in 8 CFR parts 235 and 249, an application under this part shall be the sole method of requesting the exercise of discretion under sections 212(g), (h), (i), and (k) of the Act, as they relate to the inadmissibility of an alien in the United States. No fee is required for filing an application to overcome the grounds of inadmissibility of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

* * * * *

114. Section 245.2 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(4)(ii);

c. Revising paragraph (a)(5)(ii) and (iii); and by

d. Revising paragraph (c), to read as follows:

**§ 245.2 Application.**

(a) * * * (1) *Jurisdiction.* An alien who believes he or she meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, and § 245.1 shall apply to the director having jurisdiction over his or her place of residence unless otherwise instructed in 8 CFR part 245, or by the instruction on the application form. After an alien, other than an arriving alien, is in deportation or removal proceedings, his or her application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 shall be made and considered only in those proceedings. An arriving alien, other than an alien in removal proceedings, who believes he or she meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, and § 245.1 shall apply to the director having jurisdiction over his or her place of arrival. An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the director, may be renewed in removal proceedings under 8 CFR part 240 only if:

(i) The denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; and

(ii) The applicant's later absence from and return to the United States was under the terms of an advance parole authorization on Form I–512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

* * * * *

(4) * * *

(ii) *Under section 245 of the Act.* The departure from the United States of an applicant who is under exclusion, deportation, or removal proceedings shall be deemed an abandonment of the application constituting grounds for termination of the proceeding by reason of the departure. The departure of an applicant who is not under exclusion, deportation, or removal proceedings shall be deemed an abandonment of his or her application constituting grounds for termination, unless the applicant was previously granted advance parole by the Service for such absence, and was inspected upon returning to the United States. If the application of an individual granted advance parole is subsequently denied, the applicant will be treated as an applicant for admission, and subject to the provisions of sections 212 and 235 of the Act.

* * * * *

(5) * * *

(ii) *Under section 245 of the Act.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status, as a preference alien, shall not be approved until an immigrant visa number has been allocated by the Department of State, except when the applicant has established eligibility for the benefits of Public Law 101–238. No appeal lies from the denial of an application by the director, but the applicant, if not an arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility. At the time of renewal of the application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or § 245.1(g), if, in fact, those requirements were met at the time the renewed application was initially filed with the director. Nothing in this section shall entitle an alien to proceedings under section 240 of the Act who is not otherwise so entitled.

(iii) *Under the Act of November 2, 1966.* If the application is approved, the applicant's permanent residence shall be recorded in accordance with the provisions of section 1. No appeal lies from the denial of an application by the director, but the applicant, if not an

arriving alien, retains the right to renew his or her application in proceedings under 8 CFR part 240. Also, an applicant who is a parolee and meets the two conditions described in § 245.2(a)(1) may renew a denied application in proceedings under 8 CFR part 240 to determine admissibility.

* * * * *

(c) *Application under section 214(d) of the Act.* An application for permanent resident status pursuant to section 214(d) of the Act shall be filed on Form I–485 with the director having jurisdiction over the applicant's place of residence. A separate application shall be filed by each applicant. If the application is approved, the director shall record the lawful admission of the applicant as of the date of approval. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. No appeal shall lie from the denial of an application by the director but such denial shall be without prejudice to the alien's right to renew his or her application in proceedings under 8 CFR part 240.

115. Section 245.5 is amended by revising the first sentence to read as follows:

**§ 245.5 Medical examination.**

Pursuant to section 232(b) of the Act, an applicant for adjustment of status shall be required to have a medical examination by a designated civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant, including compliance with section 212(a)(1)(A)(ii) of the Act, shall be incorporated into the record. * * *

116. Section 245.8 is amended by revising paragraph (e), to read as follows:

**§ 245.8 Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act.**

* * * * *

(e) *Removal provisions of section 237 of the Act.* If the Service is made aware by notification from the appropriate executive department or by any other means that a section 101(a)(27)(K) special immigrant who has already been granted permanent residence fails to complete his or her total active duty service obligation for reasons other than an honorable discharge, the alien may become subject to the removal provisions of section 237 of the Act, provided the alien is in one or more of the classes of deportable aliens specified in section 237 of the Act. The Service shall obtain a current Form DD–214, Certificate of Release or Discharge from Active Duty, from the appropriate executive department for verification of the alien's failure to maintain eligibility.

* * * * *

117. Section 245.9 is amended by revising paragraphs (d) and (m), to read as follows:

**§ 245.9 Adjustment of Status of Certain Nationals of the People's Republic of China under Public Law 102–404.**

* * * * *

(d) *Waivers of inadmissibility under section 212(a) of the Act.* An applicant for the benefits of the adjustment of status provisions of Pub. L. 102–404 is automatically exempted from compliance with the requirements of sections 212(a)(5) and 212(a)(7)(A) of the Act. A Pub. L. 102–404 applicant may also apply for one or more waivers of inadmissibility under section 212(a) of the Act, except for inadmissibility under section 212(a)(2)(C), 212(a)(3)(A), 212(a)(3)(B), 212(a)(3)(C) or 212(a)(3)(E) of the Act.

* * * * *

(m) *Effect of enactment on family members other than qualified family members.* The adjustment of status benefits and waivers provided by Pub. L. 102–404 do not apply to a spouse or child who is not a qualified family member as defined in paragraph (c) of this section. However, a spouse or child whose relationship to the principal alien was established prior to the approval of the principal's adjustment of status application may be accorded the derivative priority date and preference category of the principal alien, in accordance with the provisions of section 203(d) of the Act. The spouse or child may use the priority date and category when it becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act. Persons who are unable to maintain lawful nonimmigrant status in the United States and are not immediately eligible to apply for adjustment of status may request voluntary departure pursuant to 8 CFR part 240.

118. Section 245.10 is amended by:

a. Revising paragraphs (a) (3) and (6); and by

b. Revising introductory text in paragraph (b), to read as follows:

**§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.**

(a) * * *

(3) Is not inadmissible from the United States under any provision of section 212 of the Act, or all grounds for inadmissibility have been waived;

* * * * *

(6) Remits the sum specified in section 245(i) of the Act, unless payment of the sum is waived under section 245(i) of the Act; and

* * * * *

(b) *Payment of additional sum.* An applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment of status filing fee, as shown on Form I–485 and contained in § 103.7(b)(1) of this chapter. The applicant must also pay the additional sum specified in section 245(i) of the Act, unless at the time the application for adjustment of status is filed, the alien is:

* * * * *

119. Section 245.11 is amended by:

a. Revising paragraph (a)(4)(ii)(B);

b. Revising paragraph (b)(1)(iii);

c. Revising the introductory text in paragraph (c); and by

d. Revising paragraphs (h) and (i), to read as follows:

**§ 245.11 Adjustment of aliens in S nonimmigrant classification.**

(a) * * *

(4) * * *

(ii) * * *

(B) Be admissible to the United States as an immigrant, unless the ground of inadmissibility has been waived;

* * * * *

(b) * * *

(1) * * *

(iii) The family member is not inadmissible from the United States as a participant in Nazi persecution or genocide as described in section 212(a)(3)(E) of the Act;

* * * * *

(c) *Waivers of inadmissibility.* An alien seeking to adjust status pursuant to the provisions of section 101(a)(15)(S) of the Act may not be denied adjustment of status for conduct or a condition that:

* * * * *

(h) *Removal under section 237 of the Act.* Nothing in this section shall prevent an alien adjusted pursuant to the terms of these provisions from being removed for conviction of a crime of moral turpitude committed within 10 years after being provided lawful permanent residence under this section or for any other ground under section 237 of the Act.

(i) *Denial of application.* In the event the district director decides to deny an application on Form I–485 and an approved Form I–854 to allow an S nonimmigrant to adjust status, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to

that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny. A denial of an adjustment application under this paragraph may not be renewed in subsequent removal proceedings.

120. Part 246 is revised to read as follows:

## PART 246—RESCISSION OF ADJUSTMENT OF STATUS

Sec.
246.1 Notice.
246.2 Allegations admitted; no answer filed; no hearing requested.
246.3 Allegations contested or denied; hearing requested.
246.4 Immigration judge's authority; withdrawal and substitution.
246.5 Hearing.
246.6 Decision and order.
246.7 Appeals.
246.8 [Reserved]
246.9 Surrender of Form I–551.

Authority: Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

### § 246.1 Notice.

If it appears to a district director that a person residing in his or her district was not in fact eligible for the adjustment of status made in his or her case, a proceeding shall be commenced by the personal service upon such person of a notice of intent to rescind which shall inform him or her of the allegations upon which it is intended to rescind the adjustment of his or her status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he or she may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he or she may, within such period, request a hearing before an immigration judge in support of, or in lieu of, his or her written answer. The respondent shall further be informed that he or she may have the assistance of or be represented by counsel or representative of his or her choice qualified under part 292 of this chapter, at no expense to the Government, in the preparation of his or her answer or in connection with his or her hearing, and that he or she may present such evidence in his or her behalf as may be relevant to the rescission.

### § 246.2 Allegations admitted; no answer filed; no hearing requested.

If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, the district director shall rescind the adjustment of status previously granted, and no appeal shall lie from his decision.

### § 246.3 Allegations contested or denied; hearing requested.

If, within the prescribed time following service of the notice pursuant to § 246.1, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to § 246.5 shall be conducted by an immigration judge, and the requirements contained in §§ 240.3, 240.4, 240.5, 240.6, 240.7, and 240.9 of this chapter shall be followed.

### § 246.4 Immigration judge's authority; withdrawal and substitution.

In any proceeding conducted under this part, the immigration judge shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges by the Act. The immigration judge assigned to conduct a hearing shall, at any time, withdraw if he or she deems himself or herself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to §§ 246.1 and 246.2, or if an immigration judge becomes unavailable to complete his or her duties within a reasonable time, or if at any time the respondent consents to a substitution, another immigration judge may be assigned to complete the case. The new immigration judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she is familiar with the record in the case.

### § 246.5 Hearing.

(a) *Service counsel.* The Government shall be represented at the hearing by a Service counsel who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The Service counsel is authorized to appeal from a decision of the immigration judge pursuant to § 246.7 and to move for reopening or reconsideration pursuant to § 3.23 of this chapter.

(b) *Opening.* The immigration judge shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his or her right to representation, at no expense to the Government, by counsel or representative of his or her own choice qualified under part 292 of this chapter and require him or her to state then and there whether he or she desires representation; advise the respondent that he or she will have a reasonable opportunity to examine and object to the evidence against him or her, to present evidence in his or her own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(c) *Pleading by respondent.* The immigration judge shall require the respondent to state for the record whether he or she admits or denies the allegations contained in the notice, or any of them, and whether he or she concedes that his or her adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his or her case should be rescinded under the allegations set forth in the notice, and the immigration judge is satisfied that no issues of law or fact remain, he or she may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

### § 246.6 Decision and order.

The decision of the immigration judge may be oral or written. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. Service of the decision and finality of the order of the immigration judge shall be in accordance with, and as stated in §§ 240.13 (a) and (b) and 240.14 of this chapter.

**§ 246.7 Appeals.**

Pursuant to 8 CFR part 3, an appeal shall lie from a decision of an immigration judge under this part to the Board of Immigration Appeals. An appeal shall be taken within 30 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be specifically identified in the Notice of Appeal (Form EOIR 26); failure to do so may constitute a ground for dismissal of the appeal by the Board.

**§ 246.8 [Reserved]**

**§ 246.9 Surrender of Form I–551.**

A respondent whose status as a permanent resident has been rescinded in accordance with section 246 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken, the Form I–551 issued to him or her at the time of the grant of permanent resident status.

## PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

121. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

122. Section 248.1 is amended by revising paragraph (b)(4) to read as follows:

**§ 248.1 Eligibility.**

* * * * *

(b) * * *

(4) The alien is not the subject of removal proceedings under 8 CFR part 240.

* * * * *

## PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

123. The authority citation for part 249 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

124. Section 249.2 is amended by revising the first sentence in paragraph (a) and by revising paragraph (b), to read as follows:

**§ 249.2 Application.**

(a) *Jurisdiction.* An application by an alien, other than an arriving alien, who has been served with a notice to appear or warrant of arrest shall be considered only in proceedings under 8 CFR part 240. * * *

(b) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. If the application is granted, a Form I–551, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall not be issued until the applicant surrenders any other document in his or her possession evidencing compliance with the alien registration requirements of former or existing law. No appeal shall lie from the denial of an application by the district director. However, an alien, other than an arriving alien, may renew the denied application in proceedings under 8 CFR part 240.

## PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

125. The authority citation for part 251 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1221, 1281, 1282, 8 CFR part 2.

126. Section 251.1 is revised to read as follows:

**§ 251.1 Arrival manifests and lists.**

(a) *Vessels*—(1) *General.* The master or agent of every vessel arriving in the United States from a foreign place or an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmen on board on Form I–418, Passenger List and Crew List, in accordance with the instructions contained thereon.

(2) *Longshore work notations.* The master or agent of the vessel shall indicate in writing immediately below the name of the last alien listed on the Form I–418 whether or not crewmen aboard the vessel will be used to perform longshore work at any United States port before the vessel departs the United States.

(i) If no longshore work will be performed, no further notation regarding longshore work is required.

(ii) If longshore work will be performed, the master or agent shall note which exception listed in section 258 of the Act permits the work. The exceptions are:

(A) The hazardous cargo exception;

(B) The prevailing practice exception in accordance with a port's collective bargaining agreements;

(C) The prevailing practice exception at a port where there is no collective bargaining agreement, but for which the vessel files an attestation;

(D) The prevailing practice exception for automated vessels; and

(E) The reciprocity exception.

(iii) If longshore work will be performed under the hazardous cargo exception, the vessel must either be a tanker or be transporting dry bulk cargo that qualifies as hazardous. All tankers qualify for the hazardous cargo exception, except for a tanker that has been gas-freed to load non-hazardous dry bulk commodities.

(A) To invoke the exception for tankers, the master or agent shall note on the manifest that the vessel is a qualifying tanker.

(B) If the vessel is transporting dry bulk hazardous cargo, the master or agent shall note on the manifest that the vessel's dry bulk cargo is hazardous and shall show the immigration officer the dangerous cargo manifest that is signed by the master or an authorized representative of the owner, and that under 46 CFR 148.02 must be kept in a conspicuous place near the bridge house.

(iv) If longshore work will be performed under the prevailing practice exception, the master or agent shall note on the manifest each port at which longshore work will be performed under this exception. Additionally, for each port the master or agent shall note either that:

(A) The practice of nonimmigrant crewmen doing longshore work is in accordance with all collective bargaining agreements covering 30 percent or more of the longshore workers in the port;

(B) The port has no collective bargaining agreement covering 30 percent or more of the longshore workers in the port and an attestation has been filed with the Secretary of Labor;

(C) An attestation that was previously filed is still valid and the vessel continues to comply with the conditions stated in that attestation; or

(D) The longshore work consists of operating an automated, self-unloading conveyor belt or a vacuum-actuated system.

(v) If longshore work will be performed under the reciprocity exception, the master or agent shall note on the manifest that the work will be done under the reciprocity exception, and will note the nationality of the vessel's registry and the nationality or nationalities of the holders of a majority of the ownership interest in the vessel.

(3) *Exception for certain Great Lakes vessels.* (i) A manifest shall not be required for a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes or the St. Lawrence River and connecting waterways, herein designated as a Great Lakes vessel, unless:

(A) The vessel employs nonimmigrant crewmen who will do longshore work at a port in the United States; or

(B) The vessel employs crewmen of other than United States, Canadian, or British citizenship.

(ii) In either situation, the master shall note the manifest in the manner prescribed in paragraph (a)(2) of this section.

(iii) After submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless a nonimmigrant crewman of other than Canadian or British citizenship is employed on the vessel who was not aboard and listed on the last prior manifest, or a change has occurred regarding the performance of longshore work in the United States by nonimmigrant crewmen, or a change has occurred in the exception that the master or agent of the vessel wishes to invoke which was not noted on the last prior manifest.

(4) The master or agent of a vessel that only bunkers at a United States port en route to another United States port shall annotate Form I–418 presented at the onward port to indicate the time, date, and place of bunkering.

(5) If documentation is required to support an exception, as described in § 258.2 of this chapter, it must accompany the manifest.

(b) *Aircraft.* The captain or agent of every aircraft arriving in the United States from a foreign place or from an outlying possession of the United States, except an aircraft arriving in the United States directly from Canada on a flight originating in that country, shall present to the immigration officer at the port where the inspection is performed a manifest on United States Customs Service Form 7507 or on the International Civil Aviation Organization's General Declaration of all the alien crewmembers on board, including alien crewmembers who are returning to the United States after taking an aircraft of the same line from the United States to a foreign place or alien crewmembers who are entering the United States as passengers solely for the purpose of taking an aircraft of the same line from the United States to a foreign port. The captain or agent of an aircraft that only refuels at the United States en route to another United States port must annotate the manifest presented at the onward port to indicate the time, date, and place of refueling. The surname, given name, and middle initial of each alien crewman listed also shall be shown on the manifest. In addition, the captain or agent of the aircraft shall indicate the total number of United States citizen crewmembers and total number of alien crewmembers.

(c) *Additional documents.* The master, captain, or agent shall prepare as a part of the manifest, when one is required for presentation to an immigration officer, a completely executed set of Forms I–95, Conditional Landing Permit, for each nonimmigrant alien crewman on board, except:

(1) A Canadian or British citizen crewman serving on a vessel plying solely between Canada and the United States; or

(2) A nonimmigrant crewman who is in possession of an unmutilated Form I–184, Alien Crewman Landing Permit and Identification Card, or an unmutilated Form I–95 with space for additional endorsements previously issued to him or her as a member of the crew of the same vessel or an aircraft of the same line on his or her last prior arrival in the United States, following which he or she departed from the United States as a member of the crew of the same vessel or an aircraft of the same line.

127. Section 251.2 is revised to read as follows:

**§ 251.2 Notification of illegal landings.**

As soon as discovered, the master or agent of any vessel from which an alien crewman has illegally landed or deserted in the United States shall inform the immigration officer in charge of the port where the illegal landing or desertion occurred, in writing, of the name, nationality, passport number and, if known, the personal description, circumstances and time of such illegal landing or desertion of such alien crewman, and furnish any other information and documents that might aid in his or her apprehension, including any passport surrendered pursuant to § 252.1(d) of this chapter. Failure to file notice of illegal landing or desertion and to furnish any surrendered passport within 24 hours of the time of such landing or desertion becomes known shall be regarded as lack of compliance with section 251(d) of the Act.

128. Section 251.3 is revised to read as follows:

**§ 251.3 Departure manifests and lists for vessels.**

(a) *Form I–418, Passenger List-Crew List.* The master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to some foreign place or outlying possession of the United States, except when a manifest is not required pursuant to § 251.1(a), a single Form I–418 completed in accordance with the instructions on the form. Submission of a Form I–418 that lacks any required endorsement shall be regarded as lack of compliance with section 251(c) of the Act.

(b) *Exception for certain Great Lakes vessels.* The required list need not be submitted for Canadian or British crewmembers of Great Lakes vessels described in § 251.1(a)(3).

129. Section 251.4 is revised to read as follows:

**§ 251.4 Departure manifests and lists for aircraft.**

(a) *United States Customs Service Form 7507 or International Civil Aviation Organization's General Declaration.* The captain or agent of every aircraft departing from the United States for a foreign place or an outlying possession of the United States, except on a flight departing for and terminating in Canada, shall submit to the immigration officer at the port from which such aircraft is to depart a completed United States Customs Service Form 7507 or the International Civil Aviation Organization's General Declaration. The form shall contain a list of all alien crewmen on board, including alien crewmen who arrived in the United States as crewmen on an aircraft of the same line and who are departing as passengers. The surname, given name, and middle initial of each such alien crewman listed shall be shown. In addition, the captain or agent of the aircraft shall indicate the total number of alien crewmembers and the total number of United States citizen crewmembers.

(b) *Notification of changes in employment for aircraft.* The agent of the air transportation line shall immediately notify in writing the nearest immigration office of the termination of employment in the United States of each alien employee of the line furnishing the name, birth date, birthplace, nationality, passport number, and other available information concerning such alien. The procedure to follow in obtaining permission to pay off or discharge an alien crewman in the United States after initial immigration inspection, other than an alien lawfully admitted for permanent residence, is set forth in § 252.1(f) of this chapter.

130. Section 251.5 is revised to read as follows:

**§ 251.5 Exemptions for private vessels and aircraft.**

The provisions of this part relating to submission of arrival and departure manifests and lists shall not apply to a private vessel or a private aircraft not

engaged directly or indirectly in the carriage of persons or cargo for hire.

## PART 252—LANDING OF ALIEN CREWMEN

131. The authority citation for part 252 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1184, 1258, 1281, 1282; 8 CFR part 2.

132. Section 252.1 is amended by revising paragraphs (a) through (c) to read as follows:

### § 252.1 Examination of crewmen.

(a) *Detention prior to examination.* All persons employed in any capacity on board any vessel or aircraft arriving in the United States shall be detained on board the vessel or at the airport of arrival by the master or agent of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service.

(b) *Classes of aliens subject to examination under this part.* The examination of every nonimmigrant alien crewman arriving in the United States shall be in accordance with this part except that the following classes of persons employed on vessels or aircraft shall be examined in accordance with the provisions of 8 CFR parts 235 and 240:

(1) Canadian or British citizen crewmen serving on vessels plying solely between Canada and the United States; or

(2) Canadian or British citizen crewmen of aircraft arriving in a State of the United States directly from Canada on flights originating in that country. The crew of a vessel arriving at a United States port that may not require inspection by or clearance from the United States Customs Service is, nevertheless, subject to examination under this part; however, the master of such a vessel is not required to present Form I–95 for any crewman who is not an applicant for a conditional landing permit.

(c) *Requirements for landing permits.* Every alien crewman applying for landing privileges in the United States must make his or her application in person before an immigration officer, present whatever documents are required, be photographed and fingerprinted as the district director may require, and establish to the satisfaction of the immigration officer that he or she is not inadmissible under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

* * * * *

133. Section 252.2 is revised to read as follows:

### § 252.2 Revocation of conditional landing permits; removal.

(a) *Revocation and removal while vessel is in the United States.* A crewman whose landing permit is subject to revocation pursuant to section 252(b) of the Act may be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel of arrival, if the vessel is in any port in the United States and has not departed foreign since the crewman was issued his or her conditional landing permit. Detention and removal of the crewman shall be at the expense of the transportation line on which the crewman arrived. Removal may be effected on the vessel of arrival or, if the master of the vessel has requested in writing, by alternate means if removal on the vessel of arrival is impractical.

(b) *Revocation and removal after vessel has departed the United States.* A crewman who was granted landing privileges prior to April 1, 1997, and who has not departed foreign on the vessel of arrival, or on another vessel or aircraft if such permission was granted pursuant to § 252.1(f), is subject to removal proceedings under section 240 of the Act as an alien deportable pursuant to section 237(a)(1)(C)(i) of the Act. A crewman who was granted landing privileges on or after April 1, 1997, and who has not departed foreign on the vessel of arrival, or on another vessel or aircraft if such permission was granted pursuant to § 252.1(f), shall be removed from the United States without a hearing, except as provided in § 208.2(b)(1) of this chapter. In either case, if the alien is removed within 5 years of the date of landing, removal of the crewman shall be at the expense of the owner of the vessel. In the case of a crewman ordered removed more than 5 years after the date of landing, removal shall be at the expense of the appropriation for the enforcement of the Act.

134. Section 252.3 is revised to read as follows:

### § 252.3 Great Lakes vessels and tugboats arriving in the United States from Canada; special procedures.

(a) *United States vessels and tugboats.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel of United States registry or a tugboat of United States registry arriving from Canada at a port of the United States who has been examined and admitted by an immigration officer as a member of the crew of the same vessel or tugboat or of any other vessel or tugboat of the same company during the current calendar year.

(b) *Canadian or British vessels or tugboats.* An alien crewman need not be presented for inspection if the alien crewman:

(1) Serves aboard a Great Lakes vessel of Canadian or British registry or aboard a tugboat of Canadian or British registry arriving at a United States port-of-entry from Canada;

(2) Seeks admission for a period of less than 29 days;

(3) Has, during the current calendar year, been inspected and admitted by an immigration officer as a member of the crew of the same vessel or tugboat, or of any other vessel or tugboat of the same company;

(4) Is either a British or Canadian citizen or is in possession of a valid Form I–95 previously issued to him or her as a member of the crew of the same vessel or tugboat, or of any other vessel or tugboat of the same company;

(5) Does not request or require landing privileges in the United States beyond the time the vessel or tugboat will be in port; and,

(6) Will depart to Canada with the vessel or tugboat.

135. Section 252.4 is revised to read as follows:

### § 252.4 Permanent landing permit and identification card.

A Form I–184 is valid until revoked. It shall be revoked when an immigration officer finds that the crewman is in the United States in willful violation of the terms and conditions of his or her permission to land, or that he or she is inadmissible to the United States. On revocation, the Form I–184 shall be surrendered to an immigration officer. No appeal shall lie from the revocation of Form I–184.

136. Section 252.5 is revised to read as follows:

### § 252.5 Special procedures for deserters from Spanish or Greek ships of war.

(a) *General.* Under E.O. 11267 of January 19, 1966 (31 FR 807) and 28 CFR 0.109, and E.O. 11300 of August 17, 1966, (31 FR 11009), and 28 CFR 0.110, the Commissioner and immigration officers (as defined in § 103.1(j) of this chapter) are designated as ''competent national authorities'' on the part of the United States within the meaning of Article XXIV of the 1903 Treaty of Friendship and General Relations between the United States and Spain (33 Stat. 2105, 2117), and ''local authorities'' and ''competent officers'' on the part of the United States within the meaning of Article XIII of the Convention between the United States and Greece (33 Stat. 2122, 2131).

(b) *Application for restoration.* On application of a Consul General, Consul, Vice-Consul, or Consular-Agent of the Spanish or Greek Government, made in writing pursuant to Article XXIV of the treaty, or Article XIII of the Convention, respectively, stipulating for the restoration of crewmen deserting, stating that the person named therein has deserted from a ship of war of that government, while in any port of the United States, and on proof by the exhibition of the register, crew list, or official documents of the vessel, or a copy or extract therefrom, duly certified, that the person named belonged, at the time of desertion, to the crew of such vessel, such person shall be taken into custody by any immigration officer without a warrant of arrest. Written notification of charges shall be served on the alien when he or she is taken into custody or as soon as practical thereafter.

(c) *Examination.* Within a reasonable period of time after the arrest, the alien shall be accorded an examination by the district director, acting district director, or the deputy district director having jurisdiction over the place of arrest. The alien shall be informed that he or she may have the assistance of or be represented by a counsel or representative of his or her choice qualified under 8 CFR part 292 without expense to the Government, and that he or she may present such evidence in his or her behalf as may be relevant to this proceeding. If, upon the completion of such examination, it is determined that:

(1) The individual sought by the Spanish or Greek authorities had deserted from a Spanish or Greek ship of war in a United States port;

(2) The individual actually arrested and detained is the person sought;

(3) The individual is not a citizen of the United States; and

(4) The individual had not previously been arrested for the same cause and set at liberty because he or she had been detained for more than 3 months, or more than 2 months in the case of a deserter from a Greek ship of war, from the day of his or her arrest without the Spanish or Greek authorities having found an opportunity to send him or her home, the individual shall be served with a copy of the findings, from which no appeal shall lie, and be surrendered forthwith to the Spanish or Greek authorities if they are prepared to remove him or her from the United States. On written request of the Spanish or Greek authorities, the individual shall be detained, at their expense, for a period not exceeding 3 months or 2 months, respectively, from the day of arrest to afford opportunity to arrange for his or her departure from the United States.

(d) *Timely departure not effected.* If the Spanish authorities delay in sending the individual home for more than 3 months, or if the Greek authorities delay in sending the individual home for more than 2 months, from the day of his or her arrest, the individual shall be dealt with as any other alien unlawfully in the United States under the removal provisions of the Act, as amended.

(e) *Commission of crime.* If the individual has committed any crime or offense in the United States, he or she shall not be placed at the disposal of the consul until after the proper tribunal having jurisdiction in his or her case shall have pronounced sentence, and such sentence shall have been executed.

PART 253—PAROLE OF ALIEN CREWMEN

137. The authority citation for part 253 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1282, 1283, 1285; 8 CFR part 2.

138. In § 253.1, paragraph (f) is revised to read as follows:

**§ 253.1 Parole.**

* * * * *

(f) *Crewman, stowaway, or alien removable under section 235(c) alleging persecution.* Any alien crewman, stowaway, or alien removable under section 235(c) of the Act who alleges that he or she cannot return to his or her country of nationality or last habitual residence (if not a national of any country) because of fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, is eligible to apply for asylum or withholding of removal under 8 CFR part 208. Service officers shall take particular care to ensure that the provisions of § 208.5(b) of this chapter regarding special duties toward aliens aboard certain vessels are closely followed.

* * * * *

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

139. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

140. Section 274a.12 is amended by:

a. Revising paragraphs (a)(10) and (12);

b. Revising paragraphs (c)(8) and (10);

c. Revising paragraph (c)(12); and by

d. Revising paragraph (c)(18), to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

(a) * * *

(10) An alien granted withholding of deportation or removal for the period of time in that status, as evidenced by an employment authorization document issued by the Service;

* * * * *

(12) An alien granted Temporary Protected Status under section 244 of the Act for the period of time in that status, as evidenced by an employment authorization document issued by the Service; or

* * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to 8 CFR part 208, whose application:

(i) Has not been decided, and who is eligible to apply for employment authorization under § 208.7 of this chapter because the 150-day period set forth in that section has expired. Employment authorization may be granted according to the provisions of § 208.7 of this chapter in increments to be determined by the Commissioner and shall expire on a specified date; or

(ii) Has been recommended for approval, but who has not yet received a grant of asylum or withholding or deportation or removal;

* * * * *

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997) or cancellation of removal pursuant to section 240A of the Act. Employment authorization shall be granted in increments not exceeding one year during the period the application is pending (including any period when an administrative appeal or judicial review is pending) and shall expire on a specified date;

* * * * *

(12) An alien granted benefits under the Family Unity provisions of section 301 of IMMACT 90 and the provisions of part 236, Subpart B of this chapter.

* * * * *

(18) An alien against whom a final order of deportation or removal exists and who is released on an order of supervision under the authority contained in section 241(a)(3) of the Act may be granted employment authorization in the discretion of the district director only if the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien, or because the removal of the alien is otherwise impracticable or

contrary to the public interest. Additional factors which may be considered by the district director in adjudicating the application for employment authorization include, but are not limited to, the following:

(i) The existence of economic necessity to be employed;

(ii) The existence of a dependent spouse and/or children in the United States who rely on the alien for support; and

(iii) The anticipated length of time before the alien can be removed from the United States.

* * * * *

## PART 286—IMMIGRATION USER FEE

141. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

142. In § 286.9, paragraph (b)(3) is revised to read as follows:

### § 286.9 Fee for processing applications and issuing documentation at land border Ports-of-Entry.

* * * * *

(b) * * *

(3) A Mexican national in possession of a valid nonresident alien border crossing card or nonimmigrant B–1/B–2 visa who is required to be issued Form I–94, Arrival/Departure Record, pursuant to § 235.1(f) of this chapter, must remit the required fee for issuance of Form I–94 upon determination of admissibility.

* * * * *

## PART 287—FIELD OFFICERS; POWERS AND DUTIES

143. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

144. Section 287.3 is revised to read as follows:

### § 287.3 Disposition of cases of aliens arrested without warrant.

(a) *Examination.* An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Act will be examined by an officer other than the arresting officer. If no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, the arresting officer, if the conduct of such examination is a part of the duties assigned to him or her, may examine the alien.

(b) *Determination of proceedings.* If the examining officer is satisfied that there is prima facie evidence that the arrested alien was entering, attempting to enter, or is present in the United States in violation of the immigration laws, the examining officer will refer the case to an immigration judge for further inquiry in accordance with 8 CFR parts 235, 239, or 240, order the alien removed as provided for in section 235(b)(1) of the Act and § 235.3(b) of this chapter, or take whatever other action may be appropriate or required under the laws or regulations applicable to the particular case.

(c) *Notifications and information.* Except in the case of an alien subject to the expedited removal provisions of section 235(b)(1)(A) of the Act, an alien arrested without warrant and placed in formal proceedings under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government. The examining officer will provide the alien with a list of the available free legal services provided by organizations and attorneys qualified under 8 CFR part 3 and organizations recognized under § 292.2 of this chapter that are located in the district where the hearing will be held. The examining officer shall note on Form I–862 that such a list was provided to the alien. The officer will also advise the alien that any statement made may be used against him or her in a subsequent proceeding.

(d) *Custody procedures.* Unless voluntary departure has been granted pursuant to subpart C of 8 CFR part 240, a determination will be made within 24 hours of the arrest whether the alien will be continued in custody or released on bond or recognizance and whether a notice to appear and warrant of arrest as prescribed in 8 CFR parts 236 and 239 will be issued.

145. In § 287.4, paragraph (d) is revised to read as follows:

### § 287.4 Subpoena.

* * * * *

(d) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him or her in accordance with the provisions of this section, the officer or immigration judge issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers, or documents designated in the subpoena.

146. In § 287.5, paragraphs (b) through (f) are revised to read as follows:

### § 287.5 Exercise of power by immigration officers.

* * * * *

(b) *Power and authority to patrol the border.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to patrol the border conferred by section 287(a)(3) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Immigration inspectors (seaport operations only);

(4) Adjudications officers and deportation officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections (seaport operations only);

(5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(c) *Power and authority to arrest*—(1) *Arrests of aliens under section 287(a)(2) of the Act for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(2) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(2) *Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise

the arrest power conferred by section 287(a)(4) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(3) *Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(A) of the Act and in accordance with § 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors (permanent full-time immigration inspectors only);

(v) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(4) *Arrests of persons under section 287(a)(5)(B) of the Act for any felony.* (i) Section 287(a)(5)(B) of the Act authorizes designated immigration officers, as listed in paragraph (c)(4)(iii) of this section, to arrest persons, without warrant, for any felony cognizable under the laws of the United States if:

(A) The immigration officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(B) The immigration officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest;

(C) There is a likelihood of the person escaping before a warrant can be obtained for his or her arrest; and

(D) The immigration officer has been certified as successfully completing a training program that covers such arrests and the standards with respect to the enforcement activities of the Service as defined in § 287.8.

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(B) of the Act and in accordance with § 287.8(c):

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors (permanent full-time immigration inspectors only);

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified by the Director of Training as successfully completing a training course encompassing such arrests and the standards for enforcement activities as defined in § 287.8. Such certification shall be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner or the Commissioner's designee for just cause.

(5) *Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.* (i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law. When making an arrest, the designated immigration officer shall adhere to the provisions of the enforcement standard governing the conduct of arrests in § 287.8(c).

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are authorized and designated to exercise the arrest power conferred by section 274(a) of the Act:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors;

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(6) *Custody and transportation of previously arrested persons.* In addition to the authority to arrest pursuant to a warrant of arrest in paragraph (e)(3)(iv) of this section, detention enforcement officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to take and maintain custody of and transport any person who has been arrested by an immigration officer pursuant to paragraphs (c)(1) through (c)(5) of this section.

(d) *Power and authority to conduct searches.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to conduct searches conferred by section 287(c) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(7) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to

effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner.

(e) *Power and authority to execute warrants*—(1) *Search warrants.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to execute a search warrant:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph, and

(iv) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(2) *Issuance of arrest warrants for immigration violations.* A warrant of arrest may be issued only by the following immigration officers:

(i) District directors (except foreign);

(ii) Deputy district directors (except foreign);

(iii) Assistant district directors for investigations;

(iv) Deputy assistant district directors for investigations;

(v) Assistant district directors for deportation;

(vi) Deputy assistant district directors for deportation;

(vii) Assistant district directors for examinations;

(viii) Deputy assistant district directors for examinations;

(ix) Officers in charge (except foreign);

(x) Assistant officers in charge (except foreign);

(xi) Chief patrol agents;

(xii) Deputy chief patrol agents;

(xiii) Associate chief patrol agents;

(xiv) Assistant chief patrol agents;

(xv) Patrol agents in charge;

(xvi) The Assistant Commissioner, Investigations;

(xvii) Institutional Hearing Program directors;

(xviii) Area port directors;

(xix) Port directors; or

(xx) Deputy port directors.

(3) *Service of warrant of arrests for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to section 287(a) of the Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Detention enforcement officers (warrants of arrest for administrative immigration violations only);

(v) Immigration inspectors;

(vi) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner, for warrants of arrest for administrative immigration violations, and with the approval of the Deputy Attorney General, for warrants of criminal arrest.

(4) *Service of warrant of arrests for non-immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to execute warrants of criminal arrest for non-immigration violations issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(v) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

(f) *Power and authority to carry firearms.* The following immigration officers who have successfully completed basic immigration enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to carry firearms provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force in § 287.8(a):

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Detention enforcement officers;

(5) Immigration inspectors;

(6) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner with the approval of the Deputy Attorney General.

147. Section 287.7 is revised to read as follows:

**§ 287.7 Detainer provisions under section 287(d)(3) of the Act.**

(a) *Detainers in general.* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter. Any authorized Service official may at any time issue a Form I–247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Service seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Service, prior to release of the alien, in order for the Service to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) *Authority to issue detainers.* The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(7) Immigration officers who need the authority to issue detainers under

section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner.

(c) *Availability of records.* In order for the Service to accurately determine the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Service of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Service with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) *Temporary detention at Service request.* Upon a determination by the Service to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Service.

(e) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter shall incur any fiscal obligation on the part of the Service, until actual assumption of custody by the Service, except as provided in paragraph (d) of this section.

## PART 299—IMMIGRATION FORMS

148. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

149. Section 299.1 is amended by:

a. Revising the entries for Forms ''I–147'', ''I–205'', ''I–246'', ''I–247'', ''I–259'', ''I–284'', ''I–286'', ''I–291'', ''I–296'', ''I–408'', ''I–541'', ''I–589'', ''I–775'', ''I–851'', and ''I–851A'';

b. Removing the entries for Forms I–122'', ''I–221'', ''I–259C'', ''I–290A'', and ''I–444'', and by

c. Adding the entries for Forms ''I–94T'', ''I–99'', ''I–148'', ''I–160'', ''I–210'', ''I–213'', ''I–217'', ''I–220A'', ''I–220B'', ''I–241'', ''I–261'', ''I–270'', ''I–275'', ''I–294'', ''I–407'', ''I–546'', ''I–701'', ''I–770'', ''I–771'', ''I–826'', ''I–827B'', ''I–860'', ''I–862'', ''I–863'', ''I–867AB'', and ''I–869'' in proper numerical sequence, to the listing of forms, to read as follows:

**§ 299.1 Prescribed forms.**

* * * * *

| Form No. | Edition date | Title |
|---|---|---|
| * | * | * |
| I–94T | 09–22–87 | Arrival-Departure Record (Transit without visa). |
| * | * | * |
| I–99 | 04–01–97 | Notice of Revocation and Penalty. |
| * | * | * |
| I–147 | 04–01–97 | Notice of Temporary Inadmissibility to U.S. |
| I–148 | 04–01–97 | Notice of Permanent Inadmissibility. |
| I–160 | 04–01–97 | Notice of Parole/Lookout Intercept. |
| * | * | * |
| I–205 | 04–01–97 | Warrant of Removal. |
| I–210 | 04–01–97 | Notice of Action—Voluntary Departure. |
| * | * | * |
| I–213 | 04–01–97 | Record of Deportable/Inadmissible Alien. |
| I–217 | 04–01–97 | Information for Travel Document or Passport. |
| I–220A | 04–01–97 | Order of Release on Recognizance. |
| I–220B | 04–01–97 | Order of Supervision. |
| * | * | * |
| I–241 | 04–01–97 | Request for Travel Document to Country Designated by Alien. |
| * | * | * |
| I–246 | 04–01–97 | Application for Stay of Removal. |
| I–247 | 04–01–97 | Immigration Detainer—Notice of Action. |
| I–259 | 04–01–97 | Notice to Detain, Deport, Remove, or Present Aliens. |
| * | * | * |
| I–261 | 04–01–97 | Additional Charges of Removability. |
| I–270 | 04–01–97 | Request for Consent to Return Person to Canada. |
| I–275 | 04–01–97 | Withdrawal of Application/Consular Notification. |
| I–284 | 04–01–97 | Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Alien. |
| I–286 | 04–01–97 | Notification to Alien of Conditions of Release or Detention. |
| * | * | * |
| I–291 | 04–01–97 | Decision on Application for Status as Permanent Resident. |
| * | * | * |
| I–294 | 04–01–97 | Notice of Country to Which Deportation has been Directed and Penalty for Reentry without Permission. |
| I–296 | 04–01–97 | Notice to Alien Ordered Removed. |
| * | * | * |
| I–407 | 04–01–97 | Abandonment by Alien of Status as Lawful Permanent Resident. |
| I–408 | 04–01–97 | Application to Pay Off or Discharge Alien Crewman. |

| Form No. | Edition date | Title |
|---|---|---|
| * | * | * * * * * * * |
| I–541 | 04–01–97 | Order of Denial of Application for Extension of Stay or Student Employment or Student Transfer. |
| * | * | * * * * * * * |
| I–546 | 04–01–97 | Order to Appear—Deferred Inspection. |
| * | * | * * * * * * * |
| I–589 | 04–01–97 | Application for Asylum and Withholding of Removal. |
| * | * | * * * * * * * |
| I–701 | 04–01–97 | Detainee Transfer Worksheet. |
| * | * | * * * * * * * |
| I–770 | 04–01–97 | Notice of Rights and Request for Disposition. |
| I–771 | 04–01–97 | Bond Computation Worksheet. |
| I–775 | 04–01–97 | Visa Waiver Pilot Program Agreement. |
| * | * | * * * * * * * |
| I–826 | 04–01–97 | Notice of Rights and Request for Disposition |
| I–851 | 04–01–97 | Notice of Intent to Issue Final Administrative Removal Order. |
| I–851A | 04–01–97 | Final Administrative Removal Order. |
| * | * | * * * * * * * |
| I–860 | 04–01–97 | Notice and Order of Expedited Removal. |
| I–862 | 04–01–97 | Notice to Appear. |
| I–863 | 04–01–97 | Notice of Referral to Immigration Judge. |
| I–867AB | 04–01–97 | Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. |
| I–869 | 04–01–97 | Record of Negative Credible Fear Finding and Request for Review by Immigration Judge. |
| * | * | * * * * * * * |

150. Section 299.5 is amended by:

a. Removing the entry for Form ''I–259C''; and by

b. Revising the entries for Forms ''I–246'' and ''I–589'', and to read as follows:

**§ 299.5 Display of control numbers.**

* * * * *

| INS form no. | INS form title | Currently assigned OMB control no. |
|---|---|---|
| * | * * * * * * * | |
| I–246 | Application for Stay of Removal | 1115–0055 |
| * | * * * * * * * | |
| I–589 | Application for Asylum and Withholding of Removal | 1115–0086 |
| * | * * * * * * * | |

## PART 316—GENERAL REQUIREMENTS FOR NATURALIZATION

151. The authority citation for part 316 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1181, 1182, 1443, 1447; 8 CFR part 2.

152. Section 316.5 is amended by revising paragraph (c)(3) to read as follows:

**§ 316.5 Residence in the United States.**

* * * * *

(c) * * *

(3) *Removal and return.* Any departure from the United States while under an order of removal (including previously issued orders of exclusion or deportation) terminates the applicant's status as a lawful permanent resident and, therefore, disrupts the continuity of residence for purposes of this part.

* * * * *

## PART 318—PENDING REMOVAL PROCEEDINGS

153. The heading for part 318 is revised as set forth above.

154. The authority citation for part 318 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1252, 1429, 1443; 8 CFR part 2.

155. Section 318.1 is revised to read as follows:

**§ 318.1 Warrant of arrest.**

For the purposes of section 318 of the Act, a notice to appear issued under 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) shall be regarded as a warrant of arrest.

## PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: NATURALIZATION BASED UPON ACTIVE DUTY SERVICE IN THE UNITED STATES ARMED FORCES DURING SPECIFIED PERIODS OF HOSTILITIES

156. The authority citation for part 329 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1440, 1443; 8 CFR part 2.

159 Section 329.2 is amended by revising paragraph (e)(3) to read as follows:

**§ 329.2 Eligibility.**

* * * * *

(e) * * *

(3) The applicant may be naturalized even if an outstanding notice to appear pursuant to 8 CFR part 239 (including a charging document issued to commence proceedings under sections 236 or 242 of the Act prior to April 1, 1997) exists.

Dated: February 26, 1997.

Janet Reno,

*Attorney General.*

[FR Doc. 97–5250 Filed 2–28–97; 3:29 pm]

BILLING CODE 4410–10–P

Federal Register

Thursday
March 6, 1997

## Part III

# Department of Education

**34 CFR Part 75, et al.**
**Direct Grant Programs; Final Rule**

## DEPARTMENT OF EDUCATION

### 34 CFR Parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 396, 610, 612, and 630

**RIN 1880–AA74**

### Direct Grant Programs

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the Education Department General Administrative Regulations (EDGAR) that govern discretionary grant programs administered directly by the Department. These amendments reduce the need for specific regulations governing individual programs while ensuring that proposed projects meet the highest standards of professional excellence. These amendments establish new selection criteria and make additional changes to allow these new selection criteria to be used in a variety of circumstances. Also, these amendments would remove a number of regulations made unnecessary by the amendments.

**EFFECTIVE DATE:** These regulations take effect April 7, 1997, except the removal of 34 CFR Part 630 which takes effect on October 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Margo Anderson, U.S. Department of Education, 555 New Jersey Avenue, NW., Washington, D.C. 20208-5530. Telephone: (202) 219–2005. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** On July 16, 1996, the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the Federal Register (61 FR 37184).

The NPRM explained why the Department developed a new approach to EDGAR selection criteria and how the Department would use the new criteria. Also, the NPRM discussed other changes the Secretary believes are necessary to permit full use of the flexibility available through the new approach to EDGAR selection criteria. For a more detailed discussion of the major issues concerning these amendments, see pages 37184–37186 of the NPRM.

These final regulations contain one significant change from the NPRM and this change is fully explained in the Analysis of Comments and Changes elsewhere in this preamble. The other changes are minor editorial and technical revisions. Some of these revisions required that certain sections be renumbered or relettered, and, unless otherwise noted, references to these sections elsewhere in this preamble use the new numbers and letters, as appropriate.

Potential applicants are reminded that selection criteria, including any specific factors under those criteria, for a particular program will be announced in the application package or in a notice published in the Federal Register.

Analysis of Comments and Changes

In response to the Secretary's invitation to comment in the NPRM, fewer than 10 parties submitted comments on the proposed regulations. An analysis follows of the comments and of the changes in the regulations since publication of the NPRM.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Technical and other minor changes—and suggested changes that the Secretary is not legally authorized to make under the applicable statutory authority or are outside the scope of the NPRM—generally are not addressed.

New Approach to Selection Criteria (§ 75.200 and § 75.210)

*Comment:* The majority of commenters favored the changes to EDGAR and the Department's efforts to improve the general selection criteria. Some commenters praised specific additions and others lauded generally the new approach to tailoring selection criteria for each particular competition. These commenters agreed that the new approach would result in improvements in the grant application and evaluation process.

There were two commenters, however, who disagreed with the proposed menu approach to selection criteria. These commenters criticized the approach because the public would not be afforded the opportunity to comment formally on the Department's choice of selection criteria for a particular competition. These commenters believed that the public's opportunity to comment under the Paperwork Reduction Act of 1995 would be inadequate. Also, they were concerned that the new menu approach could lead to arbitrary decision-making by the Department's program managers or that the Secretary would use the new flexibility to supersede statutory provisions or program-specific regulations.

Moreover, these two commenters believed that the new approach would result in lower quality applications and projects. They objected to the approach on the grounds that, without a set of permanently established criteria, applicants could not begin to prepare applications in advance of the announcement of a competition. They also believed the general menu of selection criteria would not provide enough program-specific information for an applicant to prepare a quality application. Finally, they believed that the new approach would favor large applicant organizations with a general mission able to engage in general activities.

*Discussion:* The Department believes that potential grant applicants will have an adequate opportunity to comment on its choice of selection criteria for a particular program under the procedures required by the Paperwork Reduction Act (PRA). Comments submitted under the PRA will be reviewed not only by the Department, but also by the Office of Management and Budget (OMB), and they will be given careful consideration. Moreover, the Department welcomes comments and suggestions on selection criteria, and the application process generally, apart from the specific requirements of the PRA and formal opportunity to comment. Potential applicants, grantees, program beneficiaries, and others are encouraged to advise the program about their experience with the selection criteria, and to provide recommendations for criteria for future competitions at any time, for the program office's use in designing selection criteria.

Fears that the new approach will allow the Secretary to supersede statutory provisions or program-specific regulations are misplaced. The Secretary is bound by statutory provisions. In evaluating applications, the Department must adhere to selection criteria or other provisions related to the evaluation of applications required by statute. In addition, the Department intends that programs will use the new approach in conjunction with the statute and program-specific regulations, not instead of them.

Rather than leading to arbitrary decision-making, the new approach should lead to better focused and higher quality decision-making. Because the current EDGAR selection criteria are so general, the Department sometimes has difficulty distinguishing those projects that will best address statutory purposes and Departmental priorities from those that merely will address them. On the other hand, program-specific criteria

have often proved too narrow and inflexible. By using the new approach, the Department will be able to tailor the selection criteria to favor projects that best address the purposes of the statute and any priorities the Department may establish.

The Secretary believes that the new approach will lead to the selection of higher quality projects and will not favor large applicant organizations. The selection criteria are more focused on important project attributes than the existing EDGAR general selection criteria. The Secretary believes that, if considered in the context of a specific program and in conjunction with any applicable statutory provisions and program regulations, the selection criteria will be clear and will give an applicant enough direction to prepare a quality application. Therefore, the Secretary believes that large applicant organizations that can carry out general activities will not have an advantage. Application reviewers using the focused selection criteria in conjunction with applicable statutory provisions and regulations will evaluate whether these large organizations can carry out the kind of high quality activities that best address the specific purposes and priorities of the statute and the Department.

The Secretary does not believe that the new approach will prevent potential applicants from beginning to prepare applications in advance of an application announcement. Applicants may begin work on the basis of statutory purposes and requirements. In addition, it is unlikely that the selection criteria used in evaluating applications will change from one year to the next for most programs.

Additionally, in reviewing the proposed regulations, the Secretary determined that it would be helpful to make some minor clarifications to § 75.200(b)(3) regarding what selection criteria the Secretary could use in evaluating applications for new grants. The Secretary further determined that § 75.200(b)(3)(iii) and § 75.210(a) (as numbered in the NPRM) were redundant.

*Changes:* The Secretary revises § 75.200(b)(3) to clarify the selection criteria the Secretary may use in evaluating applications for new grants and removes redundant language from § 75.210.

New Approach to Allocating Points or Weights (§ 75.201)

*Comment:* The commenters who did not support the new menu approach to selection criteria also did not support the approach of assigning points or weights to criteria on a competition by competition basis. These commenters did not give any reasons in addition to those already given for their opposition to the new menu approach to selection criteria.

The commenters in support of the entire approach also did not give any specific reasons for their support of the flexible allocation of points and weights.

One commenter, however, specifically recommended against limiting the number or percentage of points that could be assigned to any particular criterion or factor. This commenter thought that point weighting should be flexible to address the priorities of a particular grant program.

*Discussion:* These amendments add only the flexibility of distributing weights among criteria and factors. The Secretary previously amended the EDGAR regulations to allow for the flexible allocation of points and for establishing a total maximum score on a competition by competition basis (see 60 FR 63872, December 12, 1995, Direct Grant Programs). In promulgating that rule, the Secretary did not receive any negative comments regarding points. Some programs used the authority for flexible point allocation and total maximum score and did not receive negative comments. The Secretary believes this flexibility should continue.

*Changes:* None.

Similar or Overlapping Criteria and Factors (§ 75.210)

*Comments:* A few commenters stated that particular criteria were redundant, overlap, or may only have subtle differences. Some of those commenters thought the criteria and factors should be organized differently. Commenters made suggestions for rewording various factors.

Commenters also pointed out factors that were unclear or could be improved. Commenters stated that § 75.210(b)(2)(xv) (as renumbered) was overly restrictive and that the meaning of § 388.20(a)(2)(iii) was unclear.

*Discussion:* The Secretary has reworded and reorganized the criteria to focus on an evaluation of the project to be implemented and of key attributes of the project, rather than on an evaluation of how well the application is written.

Although the entire menu of criteria and factors may seem to overlap or contain factors with only subtle differences, the Department will not use all of the criteria and factors at one time. For example, one commenter thought factors (xiv), (xv), and (xvi) of § 75.210(b)(2)(as renumbered) were redundant and that factor (xvi) should suffice. Although factor (xvi) does encompass factors (xiv) and (xv), the Department would expect only one of these factors to be used in a set of selection criteria for a particular competition. The Secretary believes (xiv) and (xv) are needed to emphasize certain priorities in different program areas. Also, the need criterion (§ 75.210(a), as renumbered) and significance criterion (§ 75.210(b), as renumbered) are similar, but the need criterion is better suited to programs that provide services, and the significance criterion to programs that carry out demonstration projects. In a small number of cases, both criteria may apply.

The Secretary agrees that §§ 75.210(b)(2)(ii)(xv) (as renumbered) and 388.20(a)(2)(iii) should be revised.

*Changes:* The Secretary changes and clarifies §§ 75.210(b)(2)(ii)(xv) and 388.20(a)(2)(iii).

34 CFR Parts 637, 658, 660, 661, and 669

*Comments:* None.

*Discussion:* In the NPRM, the Secretary proposed to remove the selection criteria from 34 CFR parts 637 (Minority Science Improvement Program), 658 (Undergraduate International Studies and Foreign Language Program), 660 (The International Research and Studies Program), 661 (Business and International Education Program), and 669 (Language Resource Centers Program). The Secretary proposed instead that these programs would use the new EDGAR menu of selection criteria to evaluate applications. Also, the Secretary proposed to make corresponding changes in other sections of these parts to reflect the use of the EDGAR selection criteria.

The Secretary published a notice of proposed rulemaking (NPRM) in the Federal Register proposing that parts 637, 661, and 669 should be removed completely and that additional sections in parts 658 and 660 should be eliminated. (61 FR 52399, October 7, 1996). The Secretary currently is reviewing the public comments on that NPRM. Therefore, the Secretary has not included changes to parts 637, 658, 660, 661 and 669 in these final regulations.

*Changes:* The Secretary is removing all references to changes to 34 CFR parts 637, 658, 660, 661, and 669.

Clarifications Regarding Using the Selection Criteria (§ 75.201 and § 75.210)

*Comments:* None.

*Discussion:* In reviewing the proposed regulations, the Secretary determined

that it would be helpful to make some minor clarifications regarding the use of the selection criteria. The Secretary believes it is necessary to note in the regulations that the Secretary informs applicants of the selection criteria chosen and the factors selected for considering the selection criteria, if any, in the application package or a notice published in the Federal Register. This information was included in the preamble to the NPRM, but not in the regulations.

The Secretary also believes it would be helpful to clarify in the regulations that certain factors are mandatory (§ 75.210 (d)(2) and (e)(2), as renumbered) if the applicable selection criterion is chosen.

*Changes:* The Secretary amends the language in § 75.201 to add a new paragraph specifying that the Secretary informs applicants of the selection criteria chosen and the factors selected for considering the selection criteria, if any, in the application package or a notice published in the Federal Register. Also, the Secretary amends the language in § 75.210 to clarify that factors § 75.210 (d)(2) and (e)(2) (as renumbered) are mandatory factors that are always considered if selection criteria § 75.210 (d) and (e) are chosen.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulations.

Intergovernmental Review

Many programs affected by these regulations are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

*34 CFR Part 75*

Administrative practice and procedure, Continuation funding, Education, Grant programs—education, Grants administration, Incorporation by reference, Performance reports, Reporting and recordkeeping requirements, Unobligated funds.

*34 CFR Part 206*

Administrative practice and procedure, Colleges and universities, Educational study programs, Grants program—education, Migrant labor, Students, Vocational education.

*34 CFR Part 231*

Drug abuse, Elementary and secondary education, Grants program—education.

*34 CFR Part 235*

Drug abuse, Elementary and secondary education, Grants program—education.

*34 CFR Part 369*

American Indians, Disabled, Grants program—education, Vocational rehabilitation.

*34 CFR Part 371*

American Indians, Disabled, Employment, Grants program—education, Vocational rehabilitation.

*34 CFR Part 373*

Blind, Deaf, Disabled, Grants program—education, Vocational rehabilitation.

*34 CFR Part 375*

Disabled, Grants program—education, Migrant labor, Vocational rehabilitation.

*34 CFR Part 376*

Disabled, Grants program—education, Vocational rehabilitation, Youth.

*34 CFR Part 378*

Arts and crafts, Disabled, Grants program—education, Hobbies, Recreation and recreation areas, Vocational rehabilitation.

*34 CFR Part 380*

Disabled, Grants program—education, Vocational rehabilitation.

*34 CFR Part 381*

Advocacy, Disabled, Grants program—education.

*34 CFR Part 385*

Disabled, Grants program—education, Occupational training, Training programs, Vocational rehabilitation.

*34 CFR Part 386*

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

*34 CFR Part 387*

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

*34 CFR Part 388*

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

*34 CFR Part 390*

Disabled, Grants program—education, Occupational training, Training programs, Vocational education, Vocational rehabilitation.

*34 CFR Part 396*

Blind, Deaf, Disabled, Grants program—education, Occupational training, Training programs, Vocational education.

*34 CFR Part 610*

Colleges and universities, Elementary and secondary education, Education of disadvantaged, Education of students with disabilities, Grant programs—education.

*34 CFR Part 612*

Colleges and universities, Drug abuse, Grant programs—education.

*34 CFR Part 630*

Colleges and universities, Grant programs—education.

Dated: February 26, 1997.

(Catalog of Federal Domestic Assistance Number does not apply.)

Richard W. Riley,

*Secretary of Education.*

In accordance with general rulemaking authority under 20 U.S.C. 3474 adn 1221e–3, The Secretary amends Parts 75, 206, 231, 235, 369, 371, 373, 375, 376, 378, 380, 381, 385, 386, 387, 388, 389, 390, 396, 610, 612, and 630 of Title 34 of the Code of Federal Regulations as follows:

## PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for Part 75 continues to read as follows:

Authority: 20 U.S.C. 1221–3 and 3474, unless otherwise noted.

2. Section 75.200(b)(3) is revised to read as follows:

**§ 75.200 How applications for new grants and cooperative agreements are selected for funding; standards for use of cooperative agreements.**

* * * * *

(b) * * *

(3) To evaluate the applications for new grants under the program the Secretary may use:

(i) Selection criteria established under § 75.209.

(ii) Selection criteria in program-specific regulations.

(iii) Selection criteria established under § 75.210.

(iv) Any combination of criteria from paragraphs (b)(3)(i), (b)(3)(ii), and (b)(3)(iii) of this section.

* * * * *

3. Section 75.201 is revised to read as follows:

**§ 75.201 How the selection criteria will be used.**

(a) In the application package or a notice published in the Federal Register, the Secretary informs applicants of—

(1) The selection criteria chosen; and

(2) The factors selected for considering the selection criteria, if any.

(b) If points or weights are assigned to the selection criteria, the Secretary informs applicants in the application package or a notice published in the Federal Register of—

(1) The total possible score for all of the criteria for a program; and

(2) The assigned weight or the maximum possible score for each criterion or factor under that criterion.

(c) If no points or weights are assigned to the selection criteria and selected factors, the Secretary evaluates each criterion equally and, within each criterion, each factor equally.

(Authority: 20 U.S.C. 1221e–3 and 3474)

**§ 75.209 [Amended]**

4. Section 75.209(a) is amended by removing ''If a discretionary grant program does not have implementing regulations or has implementing regulations that do not include selection criteria, the'' and by adding, instead, ''The''.

5. Section 75.210 is revised to read as follows:

**§ 75.210 General selection criteria.**

In determining the selection criteria to be used in each grant competition, the Secretary may select one or more of the following criteria and may select from among the list of optional factors under each criterion. However, paragraphs (d)(2) and (e)(2) of this section are mandatory factors under their respective criteria:

(a) *Need for project.* (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers one or more of the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(iii) The extent to which the proposed project will provide services or otherwise address the needs of students at risk of educational failure.

(iv) The extent to which the proposed project will focus on serving or otherwise addressing the needs of disadvantaged individuals.

(v) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(vi) The extent to which the proposed project will prepare personnel for fields in which shortages have been demonstrated.

(b) *Significance.* (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers one or more of the following factors:

(i) The national significance of the proposed project.

(ii) The significance of the problem or issue to be addressed by the proposed project.

(iii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(iv) The potential contribution of the proposed project to increased knowledge or understanding of rehabilitation problems, issues, or effective strategies.

(v) The likelihood that the proposed project will result in system change or improvement.

(vi) The potential contribution of the proposed project to the development and advancement of theory, knowledge, and practices in the field of study.

(vii) The potential for generalizing from the findings or results of the proposed project.

(viii) The extent to which the proposed project is likely to yield findings that may be utilized by other appropriate agencies and organizations.

(ix) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population.

(x) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(xi) The likely utility of the products (such as information, materials, processes, or techniques) that will result from the proposed project, including the potential for their being used effectively in a variety of other settings.

(xii) The extent to which the results of the proposed project are to be disseminated in ways that will enable others to use the information or strategies.

(xiii) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(xiv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(xv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in employment, independent living services, or both, as appropriate.

(xvi) The importance or magnitude of the results or outcomes likely to be attained by the proposed project.

(c) *Quality of the project design.* (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which there is a conceptual framework underlying the

proposed research or demonstration activities and the quality of that framework.

(iv) The extent to which the proposed activities constitute a coherent, sustained program of research and development in the field, including, as appropriate, a substantial addition to an ongoing line of inquiry.

(v) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(vi) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(vii) The extent to which the proposed research design includes a thorough, high-quality review of the relevant literature, a high-quality plan for research activities, and the use of appropriate theoretical and methodological tools, including those of a variety of disciplines, if appropriate.

(viii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(ix) The quality of the proposed demonstration design and procedures for documenting project activities and results.

(x) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(xi) The extent to which the proposed development efforts include adequate quality controls and, as appropriate, repeated testing of products.

(xii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(xiii) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(xiv) The extent to which the proposed project represents an exceptional approach for meeting statutory purposes and requirements.

(xv) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition.

(xvi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(xvii) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing services to the target population.

(xviii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(xix) The extent to which the proposed project encourages parental involvement.

(xx) The extent to which the proposed project encourages consumer involvement.

(xxi) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(xxii) The quality of the methodology to be employed in the proposed project.

(xxiii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(d) *Quality of project services.* (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(ii) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(iii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice.

(iv) The likely impact of the services to be provided by the proposed project on the intended recipients of those services.

(v) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(vi) The extent to which the training or professional development services to be provided by the proposed project are likely to alleviate the personnel shortages that have been identified or are the focus of the proposed project.

(vii) The likelihood that the services to be provided by the proposed project will lead to improvements in the achievement of students as measured against rigorous academic standards.

(viii) The likelihood that the services to be provided by the proposed project will lead to improvements in the skills necessary to gain employment or build capacity for independent living.

(ix) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

(x) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(xi) The extent to which the services to be provided by the proposed project are focused on those with greatest needs.

(xii) The quality of plans for providing an opportunity for participation in the proposed project of students enrolled in private schools.

(e) *Quality of project personnel.* (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers one or more of the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources.* (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the

Secretary considers one or more of the following factors:

(i) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(ii) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(iii) The extent to which the budget is adequate to support the proposed project.

(iv) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(v) The extent to which the costs are reasonable in relation to the number of persons to be served and to the anticipated results and benefits.

(vi) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

(vii) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan.* (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers one or more of the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

(iv) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(v) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(h) *Quality of the project evaluation.* (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers one or more of the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

(iii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iv) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(v) The extent to which the methods of evaluation will provide timely guidance for quality assurance.

(vi) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(vii) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(Approved by the Office of Management and Budget under control number 1875–0102)

(Authority: 20 U.S.C. 1221e-3 and 3474)

6. A new § 75.211 is added to read as follows:

**§ 75.211 Selection criteria for unsolicited applications.**

(a) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(ii), the Secretary uses the selection criteria and factors, if any, used for the competition under which the application could have been funded.

(b) If the Secretary considers an unsolicited application under 34 CFR 75.222(a)(2)(iii), the Secretary selects from among the criteria in 75.210(b), and may select from among the specific factors listed under each criterion, the criteria that are most appropriate to evaluate the activities proposed in the application.

(Authority: 20 U.S.C. 1221e-3 and 3474)

## PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCY PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

7. The authority citation for Part 206 continues to read as follows:

Authority: 20 U.S.C. 1070d-2, unless otherwise noted.

8. Section 206.30 is revised to read as follows:

**§ 206.30 How does the Secretary evaluate an application?**

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 20 U.S.C. 1070d-2(a) and (e))

**§ 206.31 [Removed]**

9. Section 206.31 is removed.

## PART 231—[REMOVED]

10. Part 231 is removed.

## PART 235—[REMOVED]

11. Part 235 is removed.

## PART 369—VOCATIONAL REHABILITATION SERVICE PROJECTS

12. The authority citation for Part 369 is revised to read as follows:

Authority: 29 U.S.C. 711(c), 732, 750, 777(a)(1), 777b, 777f and 795g, unless otherwise noted.

**§ 369.1 [Amended]**

13. Section 369.1 is amended by removing paragraphs (b)(2) and (b)(4), by removing in paragraph (b)(3) ''(34 CFR part 373)'', in paragraph (b)(5) ''(34 CFR part 375)'', and in paragraph (b)(7) ''(34 CFR part 378)'', and by redesignating paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) as paragraphs (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) respectively.

**§ 369.2 [Amended]**

14. Section 369.2 is amended by removing paragraphs (b) and (d) and by redesignating paragraphs (c), (e), (f), (g), and (h) as paragraphs (b), (c), (d), (e), and (f) respectively.

**§ 369.21 [Amended]**

15. Section 369.21 is amended by removing ''under 34 CFR parts 372, 373, 374, 375, 376, 378, or 379'', and adding, in its place, ''covered by this part''.

16. Section 369.30 is revised to read as follows:

**§ 369.30 How does the Secretary evaluate an application?**

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 711(c))

**§ 369.31 [Removed]**

17. Section 369.31 is removed.

**§ 369.32 [Amended]**

18. Section 369.32 is amended by removing ''listed in § 369.31 and 34 CFR parts 371, 372, 373, 374, 375, 376, 378, and 379'', in the introductory text and adding, in its place, ''used in accordance with the procedures in 34 CFR part 75''.

**§ 369.42 [Amended]**

19. Section 369.42 paragraph (b) is amended by removing ''34 CFR parts 371, 372, 373, 374, 375, 376, 378, or 379'', and adding, in its place, ''a program covered by this part''.

## PART 371—VOCATIONAL REHABILITATION SERVICE PROJECTS FOR AMERICAN INDIANS WITH DISABILITIES

20. The authority citation for Part 371 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 750, unless otherwise noted.

**§ 371.30 [Removed]**

21. Section 371.30 is removed.

## PART 373—[REMOVED]

22. Part 373 is removed.

## PART 375—[REMOVED]

23. Part 375 is removed.

## PART 376—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING TRANSITIONAL REHABILITATION SERVICES TO YOUTH WITH DISABILITIES

24. The authority citation for Part 376 continues to read as follows:

Authority: 29 U.S.C. 777a(b), unless otherwise noted.

**§ 376.31 [Removed]**

25. Section 376.31 is removed.

## PART 378—[REMOVED]

26. Part 378 is removed.

## PART 380—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING SUPPORTED EMPLOYMENT SERVICES TO INDIVIDUALS WITH THE MOST SEVERE DISABILITIES AND TECHNICAL ASSISTANCE PROJECTS

27. The authority citation for Part 380 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 777a(c), unless otherwise noted.

28. Section 380.10 is revised to read as follows:

**§ 380.10 How does the Secretary evaluate an application?**

The Secretary evaluates an application under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 777a(c))

**§§ 380.11, 380.12, and 380.13 [Removed]**

29. Sections 380.11, 380.12, and 380.13 are removed.

30. Section 380.14 is revised to read as follows:

**§ 380.14 What other factors does the Secretary consider in reviewing an application?**

In addition to the selection criteria used in accordance with the procedures in 34 CFR Part 75, the Secretary, in making awards under this part, considers the geographical distribution of projects in each program category throughout the country.

(Authority: 29 U.S.C. 777a(a)(1) and 777a(c))

## PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

31. The authority citation for Part 381 continues to read as follows:

Authority: 29 U.S.C. 794e, unless otherwise noted.

32. Section 381.20 is revised to read as follows:

**§ 381.20 How does the Secretary evaluate an application?**

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR Part 75.

(Authority: 29 U.S.C. 711(c) and 794e (b) and (f))

**§ 380.21 [Removed]**

33. Section 381.21 is removed.

## PART 385—REHABILITATION TRAINING

34. The authority citation for Part 385 continues to read as follows:

Authority: 29 U.S.C. 711(c), 772, and 774, unless otherwise noted.

35. Section 385.31 is revised to read as follows:

**§ 385.31 How does the Secretary evaluate an application?**

(a) The Secretary evaluates applications under the procedures in 34 CFR Part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, 388, 389 and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 711(c))

**§ 385.32 [Removed]**

36. Section 385.32 is removed.

**§ 385.33 [Amended]**

37. Section 385.33 is amended by removing the number ''385.32'' in the introductory text and adding in its place the number ''75.210''.

## PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

38. The authority citation for Part 386 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

39. Section 386.20 is revised to read as follows:

**§ 386.20 What additional selection criteria are used under this program?**

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program*. (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with physical or mental disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the

rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum*. (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, or independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: 29 U.S.C. 711(c) and 771a)

## PART 387—EXPERIMENTAL AND INNOVATIVE TRAINING

40. The authority citation for Part 387 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

41. Section 387.30 is revised to read as follows:

### § 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program*. (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation workers.

(b) *Nature and scope of curriculum*. (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with severe disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation or independent living rehabilitation processes, concepts, programs, and services.

(Authority: 29 U.S.C. 711(c) and 774)

## PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

42. The authority citation for Part 388 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

43. Section 388.20 is revised to read as follows:

### § 388.20 What additional selection criterion is used under this program?

In addition to the selection criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Evidence of need*. (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) How the proposed project relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) That the State unit in-service training plan responds to needs identified in their training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Rehabilitation Act for each designated State unit to develop a comprehensive system of personnel development;

(iii) The need for in-service training methods and materials that will improve the effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act and ensure employment outcomes; and

(iv) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(b) [Reserved.]

(Authority: 29 U.S.C. 711(c), 770, and 771a)

## PART 389—REHABILITATION CONTINUING EDUCATION PROGRAMS

44. The authority citation for Part 389 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

45. Section 389.30 is revised to read as follows:

### § 389.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program*.

(1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary reviews each application for information that shows that the proposed project includes an assessment of the potential of existing programs within the geographical area (including State vocational rehabilitation unit in-service training) to meet the needs for which support is sought.

(3) The Secretary looks for information that shows that the proposed project can be expected to improve the competence of professional and other personnel in the rehabilitation agencies serving individuals with severe disabilities.

(6) [Reserved.]

(Authority: 29 U.S.C. 711(c))

## PART 390—REHABILITATION SHORT-TERM TRAINING

46. The authority citation for Part 390 continues to read as follows:

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

47. Section 390.30 is revised to read as follows:

### § 390.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(b) [Reserved.]

(Authority: 29 U.S.C. 711(c) and 774)

## PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF AND INDIVIDUALS WHO ARE DEAF-BLIND

48. The authority citation for Part 396 continues to read as follows:

Authority: 29 U.S.C. 771a(f), unless otherwise noted.

49. Section 396.30 is revised to read as follows:

### § 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR Part 75.

(b) The Secretary evaluates each application using selection criteria in § 396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: 29 U.S.C. 771a(f))

50. Section 396.31 is revised to read as follows:

### § 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Demonstrated relationships with service providers and consumers.* The Secretary reviews each application to determine the extent to which—

(1) The proposed interpreter training project was developed in consultation with service providers;

(2) The training is appropriate to the needs of both individuals who are deaf and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or individuals who are deaf-blind in the geographical area to be served by the training project;

(3) There is a working relationship between the interpreter training project and service providers; and

(4) There are opportunities for individuals who are deaf and individuals who are deaf-blind to be involved in the training project.

(Authority: 29 U.S.C. 771a(f))

### § 396.32 [Amended]

51. Section 396.32 is amended by adding after the number ''396.31'' the cross-reference ''and 34 CFR 75.210''.

## PART 610—[REMOVED]

52. Part 610 is removed.

## PART 612—[REMOVED]

53. Part 612 is removed.

## PART 630—[REMOVED]

54. Part 630 is removed, effective October 1, 1997.

[FR Doc. 97–5242 Filed 3–5–97; 8:45 am]

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Federal Register

Thursday
March 6, 1997

## Part IV

# The President

**Notice of March 5, 1997—Continuation of Iran Emergency**

Federal Register
Vol. 62, No. 44
Thursday, March 6, 1997

# Presidential Documents

Title 3—

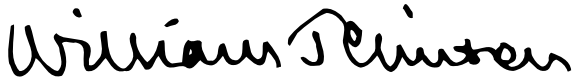
The President

Notice of March 5, 1997

## Continuation of Iran Emergency

On March 15, 1995, by Executive Order 12957, I declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the actions and policies of the Government of Iran, including its support for international terrorism, efforts to undermine the Middle East peace process, and acquisition of weapons of mass destruction and the means to deliver them. On May 6, 1995, I issued Executive Order 12959 imposing more comprehensive sanctions to further respond to this threat.

Because the actions and policies of the Government of Iran continue to threaten the national security, foreign policy, and economy of the United States, the national emergency declared on March 15, 1995, must continue in effect beyond March 15, 1997. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. Because the emergency declared by Executive Order 12957 constitutes an emergency separate from that declared on November 14, 1979, by Executive Order 12170, this renewal is distinct from the emergency renewal of October 1996. This notice shall be published in the Federal Register and transmitted to the Congress.



THE WHITE HOUSE,
*March 5, 1997.*

[FR Doc. 97–5817
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Billing code 3195–01–P

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