

2. In § 246.4, paragraph (a)(19) is revised to read as follows:

§ 246.4 State plan.

(a) * * *

(19) The State agency's plan to establish, to the extent practicable, that homeless facilities, and institutions if it chooses to make the Program available to them, meet the conditions established in § 246.7(m)(1)(i) of this part, if residents of such accommodations are to be eligible to receive WIC Program benefits.

3. In § 246.7:

- a. The first sentence of paragraph (i)(6) is revised;
- b. The introductory text of paragraph (m)(1)(i) is revised;
- c. Paragraph (m)(1)(i)(C) is removed;
- d. Paragraph (m)(1)(i)(D) is redesignated as paragraph (m)(1)(i)(C);
- e. Paragraph (m)(1)(iii) is revised;
- f. Paragraph (m)(2) is revised;
- g. Paragraph (m)(3) is removed;
- h. Paragraph (m)(4) is redesignated as paragraph (m)(3) and revised; and
- i. Paragraphs (m)(4)-(m)(6) are added.
- The revisions and additions read as follows:

§ 246.7 Certification of participants.

(i) * * *

(6) A person who is about to be disqualified from Program participation at any time during the certification period shall be advised in writing not less than 15 days before the disqualification. * * *

(m) * * *

(1) * * *

(i) Establish, to the extent practicable, that the homeless facility meets the following conditions with respect to resident WIC participants:

(iii) Request the homeless facility to notify the State or local agency if it ceases to meet any of these conditions.

(2) The State agency may authorize or require local agencies to make the Program available to applicants who meet the requirements of paragraph (b) of this section, but who reside in institutions which meet the conditions of paragraphs (m)(1)(i)(A)-(C) of this section with respect to resident WIC participants.

(3) The State or local agency shall attempt to establish to the best of its ability, whether a homeless facility or institution complies with the conditions of paragraph (m)(1)(i) (A)-(C) of this section with respect to WIC participants. If caseload slots are

available, full certification periods shall be provided to the following:

(i) Participants who are residents of a homeless facility or institution which has been found to be in compliance with the conditions of paragraph (m)(1)(i)(A)-(C) of this section;

(ii) Participants who are residents of a homeless facility or institution whose compliance with the conditions of paragraph (m)(1)(i)(A)-(C) of this section has not yet been established; and

(iii) Participants for whom no other shelter alternative is available in the local agency's service delivery area.

(4) If a homeless facility or institution has been determined to be noncompliant during the course of a participant's initial certification period, participants applying for continued benefits may be certified again, but the State agency shall discontinue issuance of WIC foods, except infant formula, to the participant in such accommodation until the accommodation's compliance is achieved or alternative shelter arrangements are made. If certified, such participants shall continue to be eligible to receive all other WIC benefits, such as nutrition education and health care referral services.

(5) The State agency shall continue to the end of their certification periods the participation of residents of a homeless facility or institution which ceases to comply with the conditions of paragraph (m)(1)(i)(A)-(C) of this section.

(6) As soon as the State or local agency determines that a homeless facility/institution does not meet the conditions of paragraph (m)(1)(i) (A)-(C) of this section, it shall refer all participants using such accommodation to any other accommodations in the area which meet these conditions.

4. In § 246.10, paragraph (e)(1) is amended by revising the first sentence to read as follows:

§ 246.10 Supplemental foods.

(e) *Plans for substitutions or eliminations.* (1) The State agency may submit to FNS a plan for substitution of food(s) acceptable for use in the Program to allow for different cultural eating patterns and substitution or elimination of a category of foods to accommodate the special needs of homeless persons, and/or residents of institutions if the State agency chooses to serve such persons under § 246.7(m)(2) of this part. * * *

Dated: July 24, 1992.

Betty Jo Nelsen,
Administrator.

[FR Doc. 92-18518 Filed 8-4-92; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 240

[INS No. 1443-92; AG Order No. 1609-92]

RIN 1115-AC96

Waiver of Fees; Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule redesignates § 240.48 of 8 CFR part 240 as § 240.20, and revises certain provisions of the interim rule concerning the procedures to request waivers of fees for applications for Temporary Protected Status (TPS) filed with district directors and service center directors. This rule is necessary to set forth the test to be used to establish inability to pay and to standardize the documentation which may be requested by adjudicating officers in making a determination on fee waiver requests for TPS. This rule also amends § 103.7 of 8 CFR part 103 to reflect that waivers of fees for applications for Temporary Protected Status may be granted pursuant to 8 CFR 240.20.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Janet M. Thomas, TPS Coordinator, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20538, telephone number (202) 514-5014.

Background

The Immigration and Naturalization Service ("the Service" or "INS") published an interim rule with request for comments at 56 FR 32500 on July 17, 1991. In drafting the final rule, the INS considered more than 35 comments representing the views of alien advocacy organizations, attorneys, and individuals.

Many commenters requested that the Service use the Public Welfare, Poverty Guidelines (federal poverty guidelines) as an equitable and well-established standard in determining inability to pay. After reviewing the comments, the Service has elected to determine inability to pay when essential expenditures equal or exceed gross income, unless the applicant has assets from which to pay the fee without substantial hardship. This formula is a more sensitive, and therefore a more

accurate, indication of whether an applicant does in fact have the ability to pay the required fee. Unlike the federal poverty guidelines standard, such test may allow an applicant whose income is above the federal poverty guidelines to be eligible for a fee waiver if the applicant has essential extraordinary expenditures due, for example, to a medical condition. The Service believes that the income/assets minus essential expenditures test will benefit some applicants in situations that merit a waiver but would not be covered by the federal poverty guidelines. Moreover, the Service notes that fee-paying applicants subsidize the costs of fee-waived applications; therefore, it is fair to require that all applicants who are reasonably able to pay the fee should do so.

Other commenters expressed the need to expand the definition of "essential extraordinary expenditures." After a review of the comments, the Service has expanded the definition of "essential extraordinary expenditures." However, the list provided in the rule is not exhaustive, and the adjudicating officer may determine that other expenses also constitute "essential extraordinary expenditures."

Several commenters also stated that under the interim rule, the Service was unable to grant a fee waiver if an applicant had income barely in excess of essential expenses but insufficient to cover the TPS fees. The Service has modified the interim rule to provide for a fee waiver if the income in excess of essential expenditures is less than the TPS fees for registration and employment authorization. Some commenters were also concerned with the possibility that adjudicators would consider as a factor in denying fee waivers the cost to the INS of administering the TPS program. The final rule specifically prohibits consideration of the cost of administering the TPS program as a justification for the denial of a fee waiver to an otherwise qualified applicant.

Some commenters stated that the documents required to prove inability to pay are burdensome. The Service's position is that if the affidavit submitted in support of the fee waiver includes the necessary information, and if the adjudicating officer finds it credible and sufficient, no other documents will be required. Moreover, the rule takes into account the fact that the applicant may not have the requested documents and provides for the use of an affidavit when

the applicant declares under oath that such documents are unavailable.

Another issue raised by commenters was the possible identification of relatives in unlawful status who do not apply for TPS but who reside with a TPS fee waiver applicant. Unlike the Legalization Program, in which information obtained from the application could only be used to adjudicate the application and to prosecute for fraud, neither the TPS statute nor the regulation prohibits or restricts the use of the information in the TPS application to commence administrative deportation or exclusion proceedings against persons not entitled to temporary protected status.

The interim rule had designated a new § 240.48 of 8 CFR part 240 for fee waiver requests. This final rule redesignates § 240.48 as § 240.20 of 8 CFR part 240 so that it becomes part of the General Provisions of the TPS regulation. While no comments were received concerning the placement of the new section of the regulation, the Service is placing the new section within the General Provisions of the regulation to emphasize that the provision for fee waivers applies to citizens from all countries that are designated for TPS.

Summary of the Regulation

The amendment to 8 CFR part 240 specifies the standards to be applied and the necessary information to be contained in an applicant's affidavit to establish his or her inability to pay the required TPS fee. The applicant has the burden of proof in establishing his or her inability to pay. The adjudicating officer has discretion to decide whether that burden has been met. Even if the applicant declares that his or her gross income for the three months prior to the filing of the fee waiver request is less than his or her essential expenditures for such period, and that he or she does not have sufficient assets from which to pay the fee, the adjudicating officer may request additional information if he or she is not satisfied with the accuracy of the information or if the income or essential expenditures have not been adequately detailed. Fees for other applications, petitions, appeals, motions, or requests may be waived pursuant to the provisions of 8 CFR 103.7(c). Fee waiver requests addressed to immigration judges, or to the Board of Immigration Appeals, are considered under 8 CFR part 3.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not

considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 240

Administrative practice and procedure, Immigration.

Accordingly, parts 103 and 240 of title 8 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 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.

§ 103.7 [Amended].

2. In § 103.7, paragraph (c)(4) is amended by revising the reference to "8 CFR 240.48" to read: "8 CFR 240.20".

PART 240—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

3. The authority citation for part 240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254a, 1254a note.

§ 240.48 [Redesignated as § 240.20]

4. Section 240.48 is redesignated as § 240.20 and revised to read as follows:

§ 240.20 Waiver of Fees.

(a) Any of the fees prescribed in 8 CFR 103.7(b) which relate to applications to the district director or service center director for Temporary Protected Status may be waived if the applicant establishes that he or she is unable to pay the prescribed fee. The applicant will have established his or her inability to pay when the adjudicating officer concludes, on the basis of the requisite affidavit and of any other information submitted, that it is more probable than not that:

(1) The applicant's gross income from all sources for the three-month period

prior to the filing of the fee waiver request, including income received or earned by any dependent in the United States, was equaled or exceeded by essential expenditures for such three-month period; and

(2) The applicant does not own, possess, or control assets sufficient to pay the fee without substantial hardship.

(b) For purposes of this section, essential expenditures are limited to reasonable expenditures for rent, utilities, food, transportation to and from employment, and any essential extraordinary expenditures, such as essential medical expenses, or expenses for clothing, laundry, and child care, to the extent that the applicant can show that those expenditures made during the three-month period prior to the filing of the fee waiver request were reasonable and essential to his or her physical well-being or to earning a livelihood.

(c) For purposes of this section, the TPS registration fee (including the fee for employment authorization, if applicable) shall be considered an essential expenditure. A fee waiver will be granted if the sum of the fees for TPS registration and employment authorization equals or exceeds income and assets that remain after deducting other essential expenditures.

(d) If an adjudicating officer is satisfied that an applicant has established inability to pay, he or she shall not deny a fee waiver due to the cost of administering the TPS program.

(e) For purposes of this section, the following documentation shall be required:

(1) The applicant seeking a fee waiver must submit an affidavit, under penalty of perjury, setting forth information to establish that he or she satisfies the requirements of this section. The affidavit shall individually list:

(i) The applicant's monthly gross income from each source for each of the three months prior to the filing of the fee waiver request;

(ii) All assets owned, possessed, or controlled by the applicant or by his or her dependents;

(iii) The applicant's essential monthly expenditures, itemized for each of the three months prior to the filing of the fee waiver request, including essential extraordinary expenditures; and

(iv) The applicant's dependents in the United States, his or her relationship to those dependents, the dependents' ages, any income earned or received by those dependents, and the street address of each dependent's place of residence.

(2) The applicant may also submit other documentation tending to substantiate his or her inability to pay.

(f) If the adjudicating officer concludes based upon the totality of their circumstances that the information presented in the affidavit and in any other additional documentation is inaccurate or insufficient, the adjudicating officer may require that the applicant submit the following additional documents prior to the adjudication of a fee waiver:

(1) The applicant's employment records, pay stubs, W-2 forms, letter(s) from employer(s), and proof of filing of a local, state, or federal income tax return. The same documents may also be required from the applicant's dependents in the United States.

(2) The applicant's rent receipts, bills for essential utilities (for example, gas, electricity, telephone, water), food, medical expenses, and receipts for other essential expenditures.

(3) Documentation to show all assets owned, possessed, or controlled by the applicant or by dependents of the applicant.

(4) Evidence of the applicant's living arrangements in the United States (living with relative, living in his or her own house or apartment, etc.), and evidence of whether his or her spouse, children, or other dependents are residing in his or her household in the United States.

(5) Evidence of the applicant's essential extraordinary expenditures or those of his or her dependents residing in the United States.

(g) The adjudicating officer must consider the totality of the information submitted in each case before requiring additional information or rendering a final decision.

(h) All documents submitted by the applicant or required by the adjudicating officer in support of a fee waiver request are subject to verification by the Service.

(i) In requiring additional information, the adjudicating officer should consider that some applicants may have little or no documentation to substantiate their claims. An adjudicating officer may accept other evidence, such as an affidavit from a member of the community of good moral character, but only if the applicant provides an affidavit stating that more direct documentary evidence is unavailable.

Dated: July 27, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92-18490 Filed 8-4-92; 8:45 am]

BILLING CODE 4410-10-M#

FEDERAL ELECTION COMMISSION

11 CFR Part 200

[Notice 1992-12]

Administrative Regulations

AGENCY: Federal Election Commission.

ACTION: Final Rule.

SUMMARY: The Commission is creating a new subchapter B in chapter I of 11 CFR titled "Administrative Regulations." This subchapter will contain Commission regulations concerning administrative practice and procedure. The Commission is also publishing final rules on petitions for Rulemaking, the first part in subchapter B, to be found in 11 CFR part 200. These regulations provide the public with easy access to the procedures for filing rulemaking petitions with the Commission. In addition, the regulations delineate the process and agency considerations used for the disposition of petitions filed with the Commission. Finally, the regulations define what constitutes the agency record for the petition process. Further information is provided in the supplementary information which follows.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 553(e) of the Administrative Procedure Act ("APA") provides: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. 553(e). Although the APA does not prescribe procedures for petitions made pursuant to section 553(e), the Attorney General's Manual on the APA states that every agency with rulemaking powers "should establish . . . procedural rules governing the receipt, consideration, and disposition of petitions filed." U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 38 (1947).

The Commission endorsed a procedure for consideration of rulemaking petitions in April 1980 upon receipt of its first petition. In response to that petition, the Commission adopted internal guidelines to govern the petition process. See, Democratic National Committee and Democratic Senatorial Campaign Committee Petition for Rulemaking (Commission Memorandum No. 845 (4/9/80)).

Since the adoption of its procedures for the receipt and consideration of petitions, the Commission has received periodic requests for a description of those procedures. In an effort to make information on the petition process more readily available to the regulated public, the Commission on May 13, 1992, published a Notice of Proposed Rulemaking ("NPRM"), seeking comments on a proposal that these procedures be codified as part of title 11 of the Code of Federal Regulations, 57 FR 20430. No comments were received in response to this Notice.

The Commission's main purpose in adopting these rules is to aid the public by advising prospective petitioners what is necessary to activate Commission consideration of a petition for rulemaking and what the process will be upon receipt. By prescribing uniform format guidelines for the submission of petitions, the new rules will also help ensure that the Commission obtains from the outset the type of information needed for an informed decision on a rulemaking petition.

Statement of Basis and Purpose

Section 200.1. Purpose and Scope

This section summarizes the contents of this new part.

Section 200.2. Procedural Requirements

This section contains format and content requirements for the submission of petitions to the Commission pursuant to any of the Commission's governing statutes. It also allows the Commission to consider suggestions for rulemaking contained in an advisory opinion request or complaint without following the procedures of this part. The section offers petitioners the opportunity to submit proposals in draft regulatory form, but does not require this.

Section 200.3. Processing of Petitions

This section sets forth the procedures for consideration of rulemaking petitions.

Upon receipt of a petition, the Commission, upon recommendation of the Office of General Counsel, will publish a Notice of Availability in the *Federal Register*. The Notice of Availability will state that a petition has been filed with the Commission, that it is available for public inspection, and that comments are being solicited. The Notice of Availability will not take any position on the merits of the petition—the merits will not be considered until at least the expiration of the comment period on the Notice of Availability.

Depending upon the nature of the petition, the Commission has in the past

determined that additional procedures may contribute to its decision on whether to commence a rulemaking proceeding. These regulations retain the practice of initiating a Notice of Inquiry, an Advance Notice of Proposed Rulemaking, a public hearing or other procedures should the Commission deem this appropriate in connection with a particular rulemaking. The flexibility of these additional procedures permits the Commission to receive comments and additional information on other issues related to or raised by the petition.

Section 200.4. Disposition of Petitions

This section describes the Commission's actions after a decision whether to initiate a rulemaking has been made. If the Commission decides to initiate a rulemaking based on the petition, it will publish a Notice of Inquiry, an Advance Notice of Proposed Rulemaking ("ANPRM") or a Notice of Proposed Rulemaking, as appropriate, in the *Federal Register*. If the Commission decides not to initiate a rulemaking, it will publish a Notice of Disposition, include in that Notice a brief statement of the basis for the decision not to proceed, and notify the petitioner of this action.

The proposed rule would have provided for publication of a Notice of Disposition regardless of whether the Commission decided to initiate a rulemaking based on the petition. The NPRM requested comments on whether this should be necessary when the Commission has decided to proceed with a rulemaking. The Commission has decided that a Notice of Disposition need not be published unless it declines to act on a petition.

If the Commission denies a rulemaking petition, the Notice of Disposition provides the only opportunity to publicly state the reasons for the denial. If the Commission decides to open a rulemaking, its reasoning will be explained in other rulemaking documents. Publishing a separate Notice of Disposition is unnecessary under these circumstances.

This section also authorizes the Commission to reconsider a petition for rulemaking it has previously denied, if the petitioner submits a written request for reconsideration within 30 calendar days after the date of the denial and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by the affirmative vote of four members. This procedure is similar to that currently used for reconsideration of advisory opinions, See, 11 CFR 112.6.

Section 200.5. Agency Considerations

This section lists several factors that the Commission will consider in making its decision whether to initiate a rulemaking proceeding. These factors include the Commission's statutory authority; policy considerations; the desirability of proceeding on a case-by-case basis; and available agency resources. The list is not exhaustive, but suggests factors that can be taken into account in particular cases.

Section 200.6. Administrative Record

This section defines the exclusive agency record upon which the Commission bases its decision on the petition. Its purpose is to explain to the public what constitutes the official agency file on a rulemaking petition, as well as to help to identify the documents upon which the Commission relied in reaching its decision on the petition, for purposes of judicial review.

The NPRM requested comments on a proposal to include in the administrative record only comments received within the prescribed comment period. Under this proposal, anyone wishing to submit comments after the comment period had ended would have had to request an extension for good cause from the Commission. If granted, the comment period would have been formally extended for all prospective commenters, and a notice to that effect published in the *Federal Register*. However, the Commission has decided to follow its usual practice in dealing with comments received after the due date: While it is not obligated to consider them, it will do so at its discretion.

Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the regulations concern only internal agency procedures.

List of Subjects in 11 CFR Part 200

Administrative practice and procedure.

For the reasons set out in the preamble, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

1. By adding the heading "Administrative Regulations" to reserved subchapter B.
2. By adding new part 200 to subchapter B as follows:

SUBCHAPTER B—ADMINISTRATIVE REGULATIONS

PART 200—PETITIONS FOR RULEMAKING

Sec.

- 200.1 Purpose of scope.
- 200.2 Procedural requirements.
- 200.3 Processing of petitions.
- 200.4 Disposition of petitions.
- 200.5 Agency considerations.
- 200.6 Administrative record.

Authority: 2 U.S.C. 437d(a)(8), 2 U.S.C. 438(a)(8), 5 U.S.C. 553(e).

§ 200.1 Purpose and scope.

This part prescribes the procedures for the submission, consideration, and disposition of petitions filed with the Federal Election Commission. It establishes the conditions under which the Commission may identify and respond to petitions for rulemaking, and informs the public of the procedures the agency follows in response to such petitions.

§ 200.2 Procedural requirements.

(a) Any interested person may file with the Commission a written petition for the issuance, amendment, or repeal of a rule implementing any of the following statutes:

- (1) The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.*;
- (2) The Presidential Election Campaign Fund Act, as amended, 26 U.S.C. 9001 *et seq.*;
- (3) The Presidential Primary Matching Payment Account Act, as amended, 26 U.S.C. 9031 *et seq.*;
- (4) The Freedom of Information Act, 5 U.S.C. 552; or
- (5) Any other law that the Commission is required to implement and administer.

(b) The petition shall—

- (1) Include the name and address of the petitioner or agent. An authorized agent of the petitioner may submit the petition, but the agent shall disclose the identity of his or her principal;
 - (2) Identify itself as a petition for the issuance, amendment, or repeal of a rule;
 - (3) Identify the specific section(s) of the regulations to be affected;
 - (4) Set forth the factual and legal grounds on which the petitioner relies, in support of the proposed action; and
 - (5) Be addressed and submitted to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.
- (c) The petition may include draft regulatory language that would effectuate the petitioner's proposal.
- (d) The Commission may, in its discretion, treat a document that fails to

conform to the format requirements of paragraph (b) of this section as a basis for a *sua sponte* rulemaking. For example, the Commission may consider whether to initiate a rulemaking project addressing issues raised in an advisory opinion request submitted under 11 CFR 112.1 or in a complaint filed under 11 CFR 111.4. However, the Commission need not follow the procedures of 11 CFR 200.3 in these instances.

§ 200.3 Processing of petitions.

(a) If a document qualifies as a petition under 11 CFR 200.2, the Commission, upon the recommendation of the Office of General Counsel, will—

- (1) Publish a Notice of Availability in the *Federal Register*, stating that the petition is available for public inspection in the Commission's Public Records Office and that statements in support of or in opposition to the petition may be filed within a stated period after publication of the notice;
- (2) Send a letter to the Commissioner of Internal Revenue, pursuant to 2 U.S.C. 438(f), seeking the IRS's comments on the petition; and
- (3) Send a letter to the petitioner, acknowledging receipt of the petition and informing the petitioner of the above actions.

(b) If the petition does not comply with the requirements of 11 CFR 200.2(b), the Office of General Counsel may notify the petitioner of the nature of any discrepancies.

(c) If the Commission decides that a Notice of Inquiry, Advance Notice of Proposed Rulemaking, or a public hearing on the petition would contribute to its determination whether to commence a rulemaking proceeding, it will publish an appropriate notice in the *Federal Register*, to advise interested persons and to invite their participation.

(d) The Commission will not consider the merits of the petition before the expiration of the comment period on the Notice of Availability.

(e) The Commission will consider all comments filed within the comment period prescribed in the relevant *Federal Register* notice. The Commission may, at its discretion, consider comments received after the close of the comment period.

§ 200.4 Disposition of petitions.

(a) After considering the comments that have been filed within the comment period(s) and any other information relevant to the subject matter of the petition, the Commission will decide whether to initiate a rulemaking based on the filed petition.

(b) If the Commission decides not to initiate a rulemaking, it will give notice

of this action by publishing a Notice of Disposition in the *Federal Register* and sending a letter to the petitioner. The Notice of Disposition will include a brief statement of the grounds for the Commission's decision, except in an action affirming a prior denial.

(c) The Commission may reconsider a petition for rulemaking previously denied if the petitioner submits a written request for reconsideration within 30 calendar days after the date of the denial and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by the affirmative vote of four members.

§ 200.5 Agency considerations.

The Commission's decision on the petition for rulemaking may include, but will not be limited to, the following considerations—

- (a) The Commission's statutory authority;
- (b) Policy considerations;
- (c) The desirability of proceeding on a case-by-case basis;
- (d) The necessity or desirability of statutory revision;
- (e) Available agency resources.

§ 200.6 Administrative record.

(a) The agency record for the petition process consists of the following:

- (1) The petition, including all attachments on which it relies, filed by the petitioner.
- (2) Written comments on the petition which have been circulated to and considered by the Commission, including attachments submitted as a part of the comments.
- (3) Agenda documents, in the form they are circulated to and considered by the Commission in the course of the petition process.
- (4) All notices published in the *Federal Register*, including the Notice of Availability and Notice of Disposition. If a Notice of Inquiry or Advance Notice of Proposed Rulemaking was published it will also be included.

(5) The transcripts or audio tapes of any public hearing(s) on the petition.

(6) All correspondence between the Commission and the petitioner, other commentators and state or federal agencies pertaining to Commission consideration of the petition.

(7) The Commission's decision on the petition, including all documents identified or filed by the Commission as part of the record relied on in reaching its final decision.

(b) The administrative record specified in paragraph (a) of this section

is the exclusive record for the Commission's decision.

Dated: July 30, 1992.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 92-18473 Filed 8-4-92; 8:45 am]

BILLING CODE 6715-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

Investigative and Enforcement Procedures; Notification of Lapsed Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of lapsed program.

SUMMARY: This document notifies all persons that have received a Notice of Proposed Civil Penalty under the Civil Penalty Assessment Demonstration Program that the program will lapse as of August 1, 1992.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT:

Vicki S. Leemon, Manager, Adjudications Branch, Litigation Division, Office of the Chief Counsel [AGC-430], 701 Pennsylvania Avenue, NW., Washington, DC 20004; telephone (202) 376-6441.

SUPPLEMENTARY INFORMATION: The authority of the Administrator of the Federal Aviation Administration to assess civil penalties under the Civil Penalty Assessment Demonstration Program (49 U.S.C. app. 1475) for violations arising under the Federal Aviation Act of 1958 will lapse as of August 1, 1992. All persons that have received a Notice of Proposed Civil Penalty need not comply with time limits or other procedural requirements in 14 CFR part 13 until further notice. Attached is a notice from the Administrator advising all persons of the status of this program.

Issued in Washington, DC, on July 31, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Notice

To All Persons Who Have Received a Notice of Proposed Civil Penalty

The authority of the Administrator of the Federal Aviation Administration (FAA) to assess civil penalties for violations arising under the Federal Aviation Act of 1958, as amended, will lapse on August 1st, 1992. Congress is expected to act on a bill to renew that authority in the next few weeks. During the interim, no further action will be taken on your case. Effective August 1, 1992, and until further notice:

1. No informal conferences or adjudicatory hearings will be held;

2. No decisions on cases will be issued by the Administrator;

3. You are not required to comply with time limits or other procedural requirements in 14 CFR part 13.

This notice does not apply to cases arising under the Hazardous Materials Transportation Act.

If you have any questions about your case, you or your attorney may contact the FAA attorney handling your case. You will be notified if the processing of your case will be resumed. Please inform the FAA attorney handling your case if you change your address during this interim period.

Issued this 29th day of July, 1992.

Thomas C. Richards,

Administrator, Federal Aviation Administration.

[FR Doc. 92-18517 Filed 7-31-92; 11:38 am]

BILLING CODE 4910-13-M

14 CFR Parts 21 and 25

[Docket No. NM-68; Special Conditions No. 25-ANM-60]

Special Conditions: McDonnell Douglas Model MD-90 Series Airplanes; High Intensity Radiated Fields (HIRF) Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: This special condition is issued for the McDonnell Douglas Model MD-90 series airplanes. These airplanes are equipped with high technology digital avionic systems which will perform critical functions. Examples of these systems are the Full Authority Digital Engine Control (FADEC) system, and the Inertial Reference System (IRS). The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of High Intensity Radiated Fields (HIRF). This special condition contains an additional safety standard which the Administrator considers necessary to ensure that the critical functions that these systems perform are maintained when these airplanes are exposed to HIRF.

EFFECTIVE DATE: September 7, 1992.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On December 8, 1989, McDonnell Douglas applied for an amendment to Type Certificate No. A6WE to include the new Model MD-90. The Model MD-90 is a re-engine derivative of the currently certified Model MD-80. It will be powered by two high bypass turbofan International Aero Engines (IAE) V2500 series engines. The fuel, hydraulic, environmental, pneumatic, anti-ice and electrical systems will be modified as necessary for compatibility with the V2500 engines. This airplane incorporates a number of novel or unusual design features, such as digital avionics including, but not necessarily limited to, FADEC, and IRS, etc.

Proposed Type Certification Basis

Under the provisions of § 21.101, McDonnell Douglas must show that the Model MD-90 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certification No. A6WE are as follows:

1. Part 25 of the FAR as amended by Amendment 25-70, except for § 25.1309 as amended by Amendment 25-22 (or 25-41 for certain specified equipment and equipment installations), and certain other exceptions that are not relevant to this special condition.

2. Existing Special Condition No. 25-ANM-15, dated October 19, 1987, "Lightning Protection for New Electronic Systems," and other special conditions and an exemption that are not relevant to this special condition.

3. The emission and noise standards of Parts 34 and 36 of the FAR, respectively.

Special Conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certifications basis in accordance with § 21.101(b)(2).

Discussion

Airplane designs which utilize metal skins and mechanical means to command and control the airplane and engines have traditionally been shown to be immune to the effects of HIRF from ground based transmitters. With the trend toward increased HIRF levels from these sources, plus the advent of space and satellite communications,