§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be $57.68 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of $66.64 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by $0.00037, except that the minimum charge per billing period shall be $260 and the maximum charge shall be $2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–18922 Filed 7–25–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 2198–02; AG Order No. 2603–2002]

RIN 1115–AG61

Address Notification To Be Filed With Designated Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) by requiring every alien who is applying for immigration benefits to acknowledge having received notice that he or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change; that the Service will use the most recent address provided by the alien for all purposes, including the service of a Notice to Appear if the Service initiates removal proceedings; and, if the alien has changed address and failed to provide the new address to the Service, that the alien will be held responsible for any communications sent to the most recent address provided by the alien. This rule will satisfy the requirements for advance notice to the alien of the obligation to provide a current address to the Service, and of the consequences that may result for failure to do so, including the entry of an *in absentia* removal order against the alien if the alien fails to appear at a removal hearing.

DATES: Written comments must be submitted on or before August 26, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference INS No. 2198–02 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov.* When submitting comments electronically, please include INS No. 2198–02 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Barry O'Melinn, Chief Appellate Counsel, 5113 Leesburg Pike, Room 200, Falls Church, Virginia 22041, (703) 756–6257.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 8 CFR 103.2 by adding a new paragraph that requires aliens to acknowledge having received notice of the existing statutory obligation to keep the Service informed of their current address, and that, if they change address and fail to provide notice of the change of address to the Service, they will be held responsible for all communications sent to the most recent address provided by the alien.

The proposed rule will assist aliens who apply for benefits to ensure that the Service will be able to contact them with respect to any issues relating to their applications for benefits, which may include requests by the Service for additional information or for the aliens to appear for an interview in connection with the applications. An alien who fails to respond to such communications from the Service may lose substantial rights, because the Service will deem the alien to have abandoned the application and deny it. *See* 8 CFR 103.2(b)(13).

The changes made by the proposed rule will also make clear to the alien that, should it ever become necessary for the Service to place the alien in removal proceedings, the Service will be able to effectuate service of the Notice to Appear, Form I–862, by mailing it to the most recent address provided by the alien for purposes of removal proceedings, as provided in section 239(c) of the Act, and that, if the alien fails to appear at a scheduled hearing, after notice of the hearing was sent to the most recent address provided by the alien, the alien is subject to being ordered removed *in absentia.* This rule is intended to avoid the kind of factual circumstances that gave rise to the decision by the Board of Immigration Appeals (Board) in *Matter of G–Y–R–,* 23 I&N Dec. 181 (BIA 2001), which concluded that an *in absentia* order cannot be entered against an alien who failed to appear at removal proceedings where the alien had not provided a new address in the last five years and the Service knew that the alien did not receive the Notice to Appear because it was returned by the Postal Service as undeliverable.

Why Is It Necessary To Add Mandatory Acknowledgments to Service Forms?

The Board's decision in *Matter of G–Y–R–* focused on the issue of constructive notice of the initiation of removal proceedings, in a case where the Service knew that the subject alien did not actually receive the Notice to Appear because it was returned by the Postal Service as undeliverable. In that circumstance, the Board held that an *in absentia* order of removal is inappropriate, because the record reflected that the alien did not actually receive, and could not be charged with receiving, the Notice to Appear informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Under the present law and regulations, as construed by the Board, an alien cannot be charged with

having been advised of the obligation to provide a current address for purposes of removal proceedings, and of the associated penalties for failing to do so, until he or she is served with the Notice to Appear, which (under the current practice) is the first document that sets forth those specific notifications. The Board therefore concluded that it could not sustain an *in absentia* order of removal, unless the alien could properly be charged with having received the Notice of Appear and thus having received these warnings.

The Board based its reasoning on a reading of section 239(a) and (c) of the Act, 8 U.S.C. 1229(a) and (c), in conjunction with section 240(b)(5) of the Act, 8 U.S.C. 1229a(b)(5). The Board determined that these provisions were interrelated, and collectively precluded the entry of an *in absentia* order of removal when the alien had not received the Notice to Appear and thus did not know of the particular address obligations associated with removal proceedings. Specifically, the Board noted that section 239(a)(1)(F) of the Act mandates that the Notice to Appear apprise the alien of the particular address obligation respecting removal proceedings and also warn the alien of the potential for an *in absentia* order if the alien fails to provide address information as instructed by the Notice to Appear.

The Board read the *in absentia* provisions in section 240(b)(5)(A) of the Act, in conjunction with section 239(a)(1)(F) of the Act, to find that an alien does not provide a ''section 239(a)(1)(F)'' address (or ''have provided'' it and therefore not need to change it) unless the alien had been advised to do so. The Board noted that such a conclusion was reinforced by the language of section 239(c) of the Act, which permits service by mail when the address used is ''provided by the alien in accordance with subsection (a)(1)(F).'' The Board also observed that nothing in the existing regulations provides for a different result.

As noted by the dissent in *Matter of G–Y–R–,* however, this interpretation creates a quandary for the Service in those situations in which it must resort to service of a Notice to Appear by regular mail, which is expressly authorized by section 239(c) of the Act. Specifically, the Notice to Appear not only furnishes notice of the hearing, but also provides the required information pertaining to an alien's statutory address obligations and the consequences of failing to comply. Accordingly, an address to which the Service sends a Notice to Appear might be insufficient for purposes of *in absentia* hearings if the alien fails to appear for the scheduled hearing, unless the alien has actual knowledge of the advisories and is actually on notice of the consequences of a failure to provide a current address and a failure to appear at a removal hearing.

The Service acknowledges the importance of providing advance notice to aliens, as discussed in *Matter of G–Y–R–*. However, there is nothing in the existing law that would prevent the Service from providing such notice to aliens even *before* the service of a Notice to Appear. Indeed, section 239(a)(1)(F)—establishing the ''requirement that the alien must immediately provide (or have provided) the Attorney General with a written record of an address and telephone number (if any) at which the alien may be contacted respecting removal proceedings''—expressly contemplates that the alien might already ''have provided'' written notice of an address for purposes of removal proceedings even before receiving that notification in the Notice to Appear. Thus, more than one federal court of appeals has concluded without hesitation that ''[t]he statute clearly provides that notice to the alien at the most recent address provided by the alien is sufficient notice, and that there can be an *in absentia* removal after such notice.'' *Dominguez* v. *United States Attorney General,* 284 F.3d 1258, 1260 (11th Cir. 2002); *see also Al-Rawahneh* v. *INS,* No. 00–4447, 2002 WL 1021866 (6th Cir. May 17, 2002) (following *Dominguez*); *Sabaileh* v. INS, 3 Fed. Appx. 521, 523 (7th Cir. 2001) (concluding that mailed service to the alien's ''last known address'' was sufficient under the materially identical prior version of the statute, because the alien ''failed to promptly notify the INS of the change in his address, despite having been expressly warned of his responsibility to do so'').

Accordingly, in order to ameliorate the practical difficulties that the decision in *Matter of G–Y–R–* poses for both aliens and the Service, this proposed rule will change the substance of the regulations and the notifications provided to aliens. As revised, the relevant forms will provide advance notice of the obligation to provide a current address that may be used by the Service for purposes of removal proceedings, and also of the consequences of the failure to provide such an address, in light of the Board's discussion of the issues in *Matter of G–Y–R–*.

Under this proposed rule, the Service will have the means to ensure that aliens who apply for immigration benefits will have received actual, advance notice of their statutory obligation to provide a current address to the Attorney General, including notice that the most recent address provided by the alien can be used for purposes of removal proceedings (should such proceedings ever be initiated), and the consequences of failing to provide a current address, even before the issuance of a Notice to Appear. The address provided by an alien on an application for benefits under the Act will be used by the Service for all purposes, including requests for additional information in considering the application, providing a final decision on the application, and any other communication, such as forwarding a Notice to Appear, if removal proceedings are instituted.

Specifically, the Service will amend the various application forms for immigration benefits, as well as Form AR–11 (Alien's Change of Address Card), to require that an alien must provide the Service with his or her current address, and to contain an express acknowledgment by the applicant that he or she has read and is aware of the obligation to provide the Service with notice of change of address within 10 days of such a change, and is aware that the Service may send written communications to the most recent address provided by the alien for all purposes, including removal proceedings. Finally, the amended forms will advise that an alien who changes address and fails to provide a current address to the Service will be held accountable for all written communications sent to the most recent address provided by the alien, which may include a Notice to Appear and a notice of scheduled immigration hearings. Accordingly, such an alien can properly be charged with having received the necessary notice, and may properly be ordered removed *in absentia* in accordance with section 240(b)(5) of the Act and 8 CFR 3.26, if he or she fails to appear at a scheduled hearing.

What Are an Alien's Obligations To Provide an Address to the Service?

Section 262(a) of the Act requires that virtually every alien over the age of 14 who remains in the United States for more than 30 days must register with the Service. Section 265(a) of the Act requires that every alien who is required to register must provide the Attorney General with each change of address and new address within 10 days from the date of such change of address.

What Are the Consequences of Not Registering or Filing a Change of Address?

A willful failure to register with the Service is punishable by imprisonment for not more than 6 months and a fine of not more than $1,000, or both, under section 266(a) of the Act. Section 266(b) of the Act provides that an alien who fails to give written notice of a change of address may be fined not to exceed $200, or imprisoned for not more than 30 days, or both. This section also provides that the alien shall be taken into custody and removed from the United States through removal proceedings.

Failure to file a change of address may also put the alien at risk of being placed in removal proceedings and ordered removed *in absentia* under section 240(b)(5) of the Act if the alien fails to appear at a scheduled hearing.

What Forms Will Be Affected?

This rule will require amendments to a number of forms, and the Service will be implementing this rule by amending each form as soon as practicable. Once each form is revised and made available for public use, the Service will require that all aliens use the revised version.

Specifically, the Service intends to place the requisite notices and warnings on all relevant forms, including, but not limited to: Form AR–11 (Alien's Change of Address Card); Form I–131 (Application for Travel Document); Form I–191 (Application for Advance Permission to Return to Unrelinquished Domicile); Form I–192 (Application for Advance Permission to Enter as Nonimmigrant); Form I–193 (Application for Waiver of Passport and/or Visa); Form I–212 (Application for Permission to Reapply for Admission Into the United States After Deportation or Removal); Form I–290B (Notice of Appeal to the Administrative Appeals Unit (AAU)); Form I–360 (Petition for Amerasian, Widow(er), or Special Immigrant); Form I–485 (Application to Register Permanent Residence or Adjust Status) and supplements (except when used to apply for LIFE legalization); Form I–539 (Application to Extend/Change Nonimmigrant Status) and supplement A (Filing Instructions for V Nonimmigrant Status); Form I–589 (Application for Asylum and Withholding of Removal); Form I–601 (Application for Waiver of Grounds of Excludability); Form I–602 (Application by Refugee for Waiver on Grounds of Excludability); Form I–694 (Notice of Appeal of Decision under section 210 or 245A of the Immigration and Nationality Act); Form I–730 (Refugee/Asylee Relative Petition); Form I–751 (Petition to Remove Conditions on Residence); Form I–765 (Application for Employment Authorization); Form I–817 (Application for Family Unity Benefits); Form I–821 (Application for Temporary Protected Status); Form I–823 (Application—Alternative Inspection Services); Form I–824 (Application for Action on an Approved Application or Petition); Form I–829 (Petition by Entrepreneur to Remove Conditions); Form I–855 (ABC Change of Address Form); Form I–866 (Application'Checkpoint Pre-enrolled Access Lane); Form I–881 (Application for Suspension of Deportation or Special Rule Cancellation of Removal); Form I–914 (Application for T Nonimmigrant Status); Form N–300 (Application to File Declaration of Intention); Form N–400 (Application for Naturalization); Form N–410 (Motion for Amendment of Petition (application)); Form N–455 (Application for Transfer of Petition for Naturalization); Form N–470 (Application to Preserve Residence for Naturalization Purpose); Form N–600 (Application for Certification of Citizenship); and Form N–644 (Application for Posthumous Citizenship).

What Are the Consequences of Failure To Make the Acknowledgments With the Designated Application Forms?

Once each benefit form is revised, the mandatory address notification and acknowledgments will become a part of the application process itself and will be made when the alien signs the application form. If the alien does not sign the form, and thus does not make the required acknowledgments, the Service will reject the form as improperly filed pursuant to 8 CFR 103.2(a)(7)(i).

How Will This Assist Aliens in Acquiring Benefits and Avoiding Adverse Consequences?

This proposed rule will provide a mechanism for ensuring that each alien applying for an immigration benefit has actual notice of the requirement to provide a change of address. Without a proper address on file at all times, an alien cannot respond to requests from the Service for additional information or to appear for an interview, or receive benefits in a timely fashion. Similarly, without a proper address on file at all times, if it becomes necessary to initiate proceedings before an immigration judge, the alien will not be able to receive a timely notice of the hearing. Although the Service will be able to send notice of the proceedings to the most recent address provided by the alien, an alien who has changed address and failed to provide a current address may fail to receive the notices and, accordingly, could be ordered removed *in absentia* without an opportunity to defend against the charges or to seek relief if the alien fails to appear at a scheduled hearing. Providing a mechanism that helps ensure that the Service has a current address for the alien also helps the alien by assuring that he or she will have the opportunity to see that his or her rights are adequately protected—including having the opportunity to present his or her views before an immigration judge and to seek any available relief during removal proceedings.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule adds a new requirement that an alien acknowledge, at the time certain forms are filed with the Service, that he or she has received notice of the obligation to keep the Service informed of his or her current address, including any changes of address, and of the consequences that may result for failure to do so. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

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), Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

This rule requires the revision of several Service forms to ensure that the Service has an accurate address for the alien. The forms being revised are public use forms covered under the Paperwork Reduction Act. Accordingly, these forms will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Aliens, Immigration, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Accordingly, the Department of Justice proposes to amend 8 CFR chapter I as follows:

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

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

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1229, 1229a, 1252 note, 1252b, 1304, 1305, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166, 8 CFR part 2.

2. Add new paragraph (a)(8) to § 103.2 to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) * * *

(8) *Acknowledgment of consequences of failure to provide current address information.* (i) Forms published by the Service for use by aliens who are applying for an immigration benefit or work authorization from the Service, as well as Form AR–11 (Alien's Change of Address Card), will contain a mandatory address notification, on the face of the form above the alien's signature, by which the alien acknowledges having received notice that:

(A) He or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change;

(B) The Service will use the most recent address provided by the alien for all purposes, including for purposes of removal proceedings under sections 239 and 240 of the Act should it ever be necessary for the Service to initiate removal proceedings;

(C) If the alien has changed address and failed to provide the new address to the Service, the alien will be held responsible for any communications sent to the most recent address provided by the alien; and

(D) If the alien fails to appear at any scheduled immigration hearing after notice of the hearing was mailed to the most recent address provided by the alien, or as otherwise provided by law, the alien is subject to being ordered removed in absentia.

(ii) An alien who submits an application, petition, appeal, motion, or other document that includes the mandatory address notification in paragraph (a)(8)(i) of this seciton acknowledges that the alien is providing an address to the Service for all purposes, including the service of a Notice to Appear, if such service becomes necessary, under sections 239(a)(1)(F), 239(c), and 240(b)(5) of the Act, and 8 CFR 3.26.

* * * * *

Dated: July 19, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–18896 Filed 7–25–02; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 657

[FHWA Docket No. FHWA–97–2219; 93–28]

RIN 2125–AC60

State Certification of Size and Weight Enforcement

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a rulemaking proceeding to amend the Federal Highway Administration (FHWA) regulation covering State certification of size and weight enforcement of commercial motor vehicles. The agency initiated this action to consider revising the criteria for determining State compliance with existing Federal requirement for an annual certification of State size and weight enforcement. Recently, however, the National Research Council of the Transportation Research Board (TRB) issued a congressionally mandated report that, among other things, recommended revised Federal weight standards and further recommended additional study be undertaken of ways to improve enforcement of truck weight laws. The recommendations of the TRB report provide a basis for a broader review of the Federal and State truck size and weight programs. In light of this situation, we are terminating this rulemaking action and closing the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Davis, Office of Freight Management and Operations (202) 366–2997, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–0791, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Background

Since 1975, States have been required under 23 U.S.C. 141, to certify annually that they are enforcing their laws respecting maximum vehicle size and weight in order to receive their full entitlement of Federal-aid highway funds. Regulatory implementation of section 141 is found at 23 CFR Part 657, Certification of Size and Weight Enforcement. Except for technical corrections necessitated by statutory changes, the current content of part 657 has remained unchanged since