in effect on the date of the original optional origin contract. Although exporters who ship foreign cotton on an optional origin contract do not receive payments on that cotton, their obligation to ship under the user marketing certificate program is thereby fulfilled, and a replacement contract is not required.

This policy allows exporters to lock in a payment rate on an optional origin contract and, if a higher payment rate occurs later, to ship foreign cotton on the lower rate and U.S. cotton on the higher rate. Since only exporters who trade in both foreign and U.S. cotton make optional origin contracts, the current rules give them an advantage over exporters who ship only U.S. cotton. The revised rule would establish the payment rate for optional origin contracts at the lower of: (1) the payment rate in effect when the original optional origin contract was made; or (2) the payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped is of U.S. origin.

Revisions to penalty provisions for non-shipment of cotton will improve exporter accountability without compromising the objectives of the user marketing certificate program. Changing the way in which payment rates are determined for U.S. cotton shipped on an optional origin contract will eliminate any advantage to exporters who trade in both foreign and U.S. cotton vis-a-vis exporters who ship only U.S. cotton. These changes should result in a more accurate indication of the potential level of U.S. cotton exports and the competitiveness of U.S. upland cotton in world markets.

Section 1427.109(e) is amended to require that documentation be submitted to CCC as evidence that an export contract cancellation, amendment or failure to export is beyond the control of the exporter. Requests for relief from making a replacement contract will be examined by CCC on a case-by-case basis. Further clarification of documentation required to support relief requests will improve the efficiency of CCC operations.

Interested persons are invited to submit written comments on the interim rule changes. Comments must be received by September 13, 1993, in order to be assured of consideration.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs/agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements, Surety bonds, Warehouses.

Accordingly, 7 CFR part 1427 is amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. Section 1427.107 is amended by:
A. Revising paragraph (d)(3),
B. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g) respectively, and
C. Adding a new paragraph (e) to read as follows:

§ 1427.107 Payment rate.

* * * * *

(d) * * *

(3) If shipment is not completed by December 31 of such year, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the original contract payment rate or, if a replacement contract has been made, the replacement contract payment rate, or

(ii) 50 percent of the original contract payment rate.

(e) For U.S. cotton sold by the exporter under an optional origin contract, the payment rate shall not be established until the exporter notifies CCC in writing that the cotton shipped or to be shipped was or will be of United States origin. Upon receipt of such notification, CCC will establish the payment rate for cotton shipped under such contract at the lower of:

(1) The payment rate in effect when the optional origin contract was made, or

(2) The payment rate in effect on the date of the written notification which is submitted to CCC stating that the cotton shipped, or to be shipped, under such contract was, or shall be, of United States origin.

* * * * *

3. Section 1427.109 is amended by:
A. Revising paragraph (c)(3), and
B. Revising paragraph (e) to read as follows:

§ 1427.109 Contract cancellations.

* * * * *

(c) * * *

(3) Not completed, or a replacement contract is not designated by the exporter by December 31, the exporter shall pay liquidated damages to CCC in an amount determined by multiplying the quantity of cotton not shipped by the higher of:

(i) The difference between the highest payment rate paid to, or earned by, the exporter between the date the original contract was entered into and December 31 of the year in which the original contract shipment period ends, regardless of whether the highest payment rate paid to, or earned by, the exporter was a current or forward-crop payment rate, and the payment rate determined in accordance with paragraph (b) of this section, or

(ii) 50 percent of the original contract payment rate.

* * * * *

(e) The provisions of paragraphs (a) through (d) of this section will not apply if CCC determines, based upon written evidence provided by the exporter, that a contract cancellation, amendment, or failure to export is due to reasons beyond the control of the exporter. If, as determined by CCC, the cancellation is beyond the control of the exporter, replacement contracts are not required, and the assessment of liquidated damages by CCC is waived. Documentation to support that contract cancellations are beyond the control of the exporter must be submitted to CCC. Requests for relief from naming a replacement contract will be examined by CCC on a case-by-case basis to determine if relief is warranted.

Signed at Washington, DC, on July 1, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–19428 Filed 8–11–93; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 101, 103, 204, 205, and 245

[INS No. 1424–92]

RIN 1115–AC48

Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements section 153 of the Immigration Act of 1990 (IMMACT 90) by providing a procedure for classification of certain aliens as special immigrants who have been declared dependent on a juvenile court in the United States. This rule also implements section 302(d)(2) of the Miscellaneous and Technical Immigration and Nationality Amendments of 1991 (Technical Amendments) by providing for the adjustment of status to that of lawful permanent resident for aliens classified as special immigrants who have been declared dependent on a juvenile court in the United States. In addition, the rule implements section 702 of IMMACT 90, which became effective November 29, 1990, by finalizing procedures for appeals of denials of adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e)(3) of the Immigration and Nationality Act (the Act), as amended. This rule alleviates hardships experienced by some dependents of United States juvenile courts by providing qualified aliens with the opportunity to apply for special immigrant classification and lawful permanent resident status, with possibility of becoming citizens of the United States in the future. It also ensures that persons whose applications for adjustment of status were denied because of failure to establish eligibility for the bona fide marriage exemption are able to exercise the appeal rights provided by law.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Rita A. Boie, Senior Immigration Examiner, Adjudications Branch, Immigration and Naturalization Service, 425 I Street, NW., room 7223, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Although many dependent alien juveniles were eligible for the legalization provisions of the Immigration Reform and Control Act of 1986 (IRCA), those benefits were only available for a limited period of time to certain aliens who had been in the United States since before 1982. No method existed for most court-dependent juvenile aliens to regularize their immigration status and become lawful permanent residents of this country, even though a United States juvenile court had found them dependent upon the court and eligible for long-term foster care, and it had been determined that it was not in the children's best interests to be returned to their home countries or the home countries of their parents. Section 153 of IMMACT 90 provides that certain aliens who have been declared dependent on juvenile courts located in the United States may be eligible for special immigrant classification. Aliens who are classifiable as special immigrants may apply for immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident within the United States. After adjustment of status or admission with an immigrant visa, they may live and work in the United States indefinitely and may apply to become United States citizens in the future.

Section 153 of IMMACT 90, as originally enacted, did not relieve special immigrant juvenile court dependents from compliance with any of the statutory requirements for immigrant visa issuance abroad or adjustment of status within the United States, even though it exempted them from deportation under several provisions of section 241 of the Act. A significant number of aliens eligible for classification as special immigrant juvenile court dependents were ineligible to become lawful permanent residents because they could not meet the statutory requirements for immigrant visa issuance or for adjustment of status.

Persons seeking immigrant visa issuance abroad are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States or who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient United States workers in the alien's field at the intended job location. Many juvenile court dependents could not meet these requirements and were, therefore, unable to obtain an immigrant visa even though they were eligible for classification as special immigrant juveniles.

Persons applying for adjustment of status within the United States must also show that they are not excludable under section 212(a) of the Act. In addition, they must meet the adjustment of status requirements of section 245 of the Act. Section 245(a) of the Act requires that adjustment of status applicants show that they entered the United States only after having been inspected and admitted or paroled by an immigration officer. Many juvenile court dependents were unable to satisfy this requirement. Those who had been inspected and admitted or paroled were frequently ineligible for adjustment because they fell within the provisions of section 245(c) of the Act. This section prohibits the adjustment of status of preference immigrants who have been employed without authorization, are not in lawful nonimmigrant status at the time the application for adjustment is filed, or have failed to continuously maintain lawful nonimmigrant status in the past.

Although a person who cannot meet the special adjustment of status requirements of section 245 of the Act may still be eligible for immigrant visa issuance abroad, travel outside the United States presents unique problems for a large number of juvenile court dependents. Financial and documentary difficulties, and certain legal complications which may result from travel outside the area of the court's jurisdiction or outside the United States, combine to form and almost insurmountable barrier to travel abroad for many of these juveniles.

The Technical Amendments, enacted December 12, 1991, reduced or eliminated the obstacles facing most special immigrant juvenile court dependents wishing to become lawful permanent residents. Section 302(d)(2) of that law provides that special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act are not subject to exclusion provisions restricting the admission of aliens who are likely to become public charges, aliens without labor certifications, and aliens who entered the United States without proper documents. It also allows waivers of most other exclusion provisions to be approved on an individual basis for humanitarian purposes, family unity, or when the approval of a waiver is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents will not be a factor in a discretionary waiver determination. The exclusion provision concerning simple possession of 30 grams or less of marijuana may be waived. However, other controlled substance violations, criminal exclusion grounds under sections 212(a)(2) (A), (B), and (C) of the Act, and certain exclusion provisions involving security and related issues under 212(a)(3) (A), (B), (C), and (E) of the Act may not be waived.

Section 302(d)(2) of the Technical Amendments also modifies section 245 of the Act by adding a new subsection 245(h). This new subsection permits most special immigrant juveniles to become lawful permanent residents regardless of the method of original entry into the United States, unauthorized employment, or failure to maintain lawful nonimmigrant status. It provides that all special immigrant juveniles classifiable under section 101(a)(27)(J) of the Act shall be deemed, for the purposes of section 245(a) of the Act, to have been paroled into the United States and exempts them from compliance with any of the requirements of section 245(c) of the Act.

Section 302(d)(2) of the Technical Amendments also seeks to minimize abuse of these generous benefits by restricting the admission of aliens arriving in the United States for the purpose of taking advantage of this means of gaining lawful permanent resident status. It provides that neither section 101(a)(27)(J) of the Act nor section 245(h) of the Act shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status under section 101(a)(27)(J) of the Act.

The Immigration Marriage Fraud Amendments of 1986 (IMFA), enacted November 10, 1986, made several changes to the Act which were designed to reduce the incentive for an alien to enter into a marriage with a United States citizen or lawful permanent resident for the sole purpose of obtaining immigration benefits. Section 5(a)(2) of IMFA provided that an adjustment of status application could not be approved when the adjustment was based upon a marriage that had been entered into on or after November 10, 1986, and while the alien was in deportation or exclusion proceedings, unless the alien had resided outside the United States for two or more years following the marriage. Section 702 of IMMACT 90 amends this requirement to provide that an applicant who can show, by clear and convincing evidence, that the marriage was bona fide may be exempted from compliance with this requirement. It also provides a single level of administrative appellate review for denials of requests for the exemption.

On May 21, 1991, at 56 FR 23207–23209, the Immigration and Naturalization Service (the Service) published an interim rule with request for comments in the **Federal Register**. The rule established a procedure for classification of certain juvenile court dependents as special immigrants under section 101(a)(27)(J) of the Act. The interim rule also described appeal rights in adjustment of status cases where the denial was based upon failure to qualify for the bona fide marriage exemption contained in section 245(e) of the Act. The interim rule became effective on May 21, 1991. Interested persons were invited to submit written comments on or before June 20, 1991. The Service received 38 comments relating to the rule.

Interim Rule

The interim rule implemented section 153 of IMMACT 90 by establishing a procedure for classification of certain aliens who have been declared dependent on a juvenile court in the United States as special immigrants. The rule also implemented section 702 of IMMACT 90 by providing a method through which the applicant could appeal the denial of an application for adjustment of status where the denial was based solely on failure to establish eligibility for the bona fide marriage exemption contained in section 245(e) of the Act.

Comments

The discussion that follows summarizes the issues which have been raised relating to the interim rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule. The discussion also summarizes technical changes mandated by section 302(d)(2) of the Technical Amendments, which statutorily exempt qualified special immigrant juveniles from meeting certain admissibility and adjustment of status requirements.

Redesignation of 8 CFR 101.6 as 8 CFR 204.11.

Section 162 of IMMACT 90 mandates the filing of petitions for all principal special immigrants. Regulations governing the filing of petitions for immediate relative, family sponsored, and employment-based immigrant classifications are found in 8 CFR part 204. The Service has determined that both the general public and Service employees will find the regulations easier to access if regulations concerning all types of petitions for immigrant classification are included in 8 CFR part 204. The Service has therefore determined that the regulations implementing the provisions of section 153 of IMMACT 90 should be removed from 8 CFR 101.6 and added to 8 CFR 204.11. This redesignation also mandates a technical modification to 8 CFR 103.1(f)(2)(xxxv), which provides for appellate review of denials of petitions for special immigrant juveniles. The technical change is necessary because petitions for special immigrant juveniles will now be approved under 8 CFR part 204 rather than 8 CFR part 101. The petitioner's right to appeal a denial of a petition for a special immigrant juvenile to the Associate Commissioner, Examinations has not been changed.

Appeals of Denials of Adjustment of Status Applications Based Upon Marriage Entered Into During Deportation or Exclusion Proceedings

Two commenters stated that they felt the appeal provision was unnecessary. These commenters further stated that they felt that the issue of whether a marriage was bona fide should not be reviewed during adjustment of status proceedings.

Adjustment of status applications based upon marriages subject to the two-year foreign residence requirement of section 245(e) of the Act require the filing of a visa petition. Before action is taken upon the visa petition, the Service officer adjudicating the case is required to determine whether clear and convincing evidence of a bona fide marriage has been provided. Therefore, this issue will normally be resolved in visa petition proceedings. However, the Service is not precluded from reviewing the issue of whether the marriage is bona fide during adjustment of status proceedings, despite the existence of an approved visa petition. Section 702 of IMMACT 90 provides that there shall be only one level of administrative appellate review for denials of adjustment of status applications pursuant to section 245(e) of the Act. Since no administrative review of denials of applications for adjustment of status previously existed (such denials were not appealable, although the applicant had the option of renewing the request in deportation proceedings before an immigration judge), the rule established this statutorily directed administrative review process. Accordingly, the rule has not been changed.

Definition of Long-term Foster Care

Twenty-five commenters urged the Service to amend the definition of long-term foster care to encompass situations in which adoption or guardianship is deemed to be in the juvenile's best interest. Twenty commenters recommended that the Service adopt the definition of long-term foster care contained in the Social Security Act. Some commenters also suggested that the Service modify the rule to recognize administrative determinations regarding eligibility for long-term foster care.

The final rule removes the regulatory definition of "long-term foster care" and substitutes a definition of "eligible for long-term foster care." The new definition adopts commenters' recommendations that eligibility for long-term foster care be established when a juvenile court determines that reunification with the natural parent(s) or the prior adoptive parent(s) is no longer a viable option for the child. The new definition also allows juveniles to qualify for special immigrant status when guardianship or adoption is deemed to be in the juvenile's best interest after the alien is found to be dependent upon the juvenile court. Section 153 of IMMACT 90 states that the decision regarding eligibility for long-term foster care must have been made in judicial proceedings. Therefore, this rule continues to recognize only judicial decisions concerning eligibility for long-term foster care.

Form I–360

Several commenters stated that they were pleased that the rule allows any person to file the petition on behalf of the juvenile.

Many also applauded the Service's decision to clearly state that the petitioner need not be a citizen or a lawful permanent resident of the United States. No commenters opposed these provisions. One commenter stated that he found the I–360 form somewhat confusing to use for a dependent juvenile, but that he understood the form was being revised. No commenters objected to the use of this form.

The Service has developed a revised Form I–360, Petition for Amerasian, Widow(er) or Special Immigrant. The revised form is now available for use by the public and contains specific instructions for persons seeking to establish eligibility for special immigrant juvenile status. The revised form will be amended as soon as possible to reflect changes made by this rule. Questions concerning completion of the form may be directed to local immigration offices.

Fee Waivers

One commenter asked that fees be waived for certain applicants.

8 CFR 103.7(c) contains a fee waiver provision applicable to fees for applications, petitions, appeals, motions, or requests. Requests for fee waivers must be made and considered on a case-by-case basis.

Eligibility—Alien Required To Be Juvenile Under State Law

Twenty-six commenters recommended that the requirement that the beneficiary be a juvenile under state law be modified or eliminated. Several commenters pointed out that definitions of the terms "juvenile," "minor," and "child" vary from state to state. They also noted that different definitions may be used in various proceedings within one state and that some states have no legal definition of some or all of these terms, making compliance with the interim rule's eligibility requirements problematic. Some felt that the differences between the laws of various states would cause confusion. Some expressed concerns about the possibility that an alien in one state would be eligible for the benefit, while an alien in substantially identical circumstances living in another state would not be eligible. Others felt that the requirement was unnecessary, since the juvenile court would be required to determine eligibility for juvenile status prior to finding an individual dependent upon the court. Some also observed that section 153 of IMMACT 90 does not explicitly restrict special immigrant status to juveniles. Many also cited state laws allowing a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but require continued court protection. These commenters suggested the regulation be amended to include these dependent young adults.

Despite commenters' concerns about confusion caused by differences between the laws of the various states, the Service believes that certain inequities caused by variations in state law are unavoidable in determining eligibility for the benefits of section 153 of IMMACT 90. Juvenile court issues are under the jurisdiction of the states and therefore dependent upon state statutes. However, in order to minimize confusion caused by dissimilar state laws, the Service has removed the requirement that the beneficiary be a juvenile under state law and replaced it with a requirement that the beneficiary be under twenty-one years of age. The new requirement establishes a consistent countrywide definition of the age at which an alien will no longer be eligible for special immigrant juvenile status. Although the language of the statute does not expressly restrict benefits to juveniles, the Service notes it does not specifically include aliens of any age who at some point in the past, regardless of how distant, had been declared dependent upon a juvenile court in the United States and found eligible for long-term foster care. The revised standard allows students and other young persons who continue to be dependent upon the juvenile court after reaching the age of eighteen to qualify for special immigrant juvenile status. This requirement also conforms with the definition of "child" contained in section 101(b)(1) of the Act. This rule does, however, allow exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Eligibility—Alien Required To Be Unmarried

Twenty-three commenters encouraged the Service to delete the requirement that the alien be unmarried. Most stated they felt this requirement should be eliminated because the beneficiary's marital status is not addressed by section 153 of IMMACT 90. Some commenters objected to this requirement because prospective beneficiaries had not received prior notice that marriage could make them ineligible for special immigrant juvenile status. Some also indicated that they felt the decision as to whether a married individual could be dependent upon the juvenile court should be made only by the juvenile court. One commenter pointed out that this requirement would disproportionately affect female juveniles, because they are more frequently coerced into marriages by unscrupulous adults or social pressures.

As indicated in the supplementary information to the interim rule, the Service believes that marriage alters the dependent relationship with the juvenile court. No commenters indicated that they believed that the marriage of a dependent juvenile would not affect the juvenile's dependency upon the court. Section 153 of IMMACT 90, in contrast to most other immigrant and special immigrant provisions, extends no benefits to spouses, indicating that Congress did not envision married persons as dependent juveniles. This requirement also conforms with the definition of child contained in section 101(b)(1) of the Act, which requires that children be unmarried. The term "unmarried" is defined in section 101(a)(39) of the Act. That section defines an unmarried person as a person who is not currently married, whether or not previously married. Therefore, a person who had been coerced or who had improvidently entered into a marriage would not be permanently ineligible for special immigrant juvenile status. After legal termination of a marriage by annulment, divorce, or through the death of the spouse, an individual is regarded by the

Service as "unmarried" and could be eligible to seek special immigrant juvenile status, provided he or she meets the other statutory and regulatory requirements for the classification. The rule has, however, been modified to allow an alien who can establish that he or she met the eligibility criteria on November 29, 1990, to apply for this benefit, provided that a petition for classification as a special immigrant juvenile is filed no later than June 1, 1994.

Best Interest of the Child

The Service received two written comments and several telephonic inquiries indicating that some confusion existed regarding the type of administrative proceeding in which this determination may be made. Two commenters expressed concern about the Service's ability to make this determination in deportation proceedings or other administrative immigration hearings. Another commenter urged the Service to reduce possible abuse of this benefit by narrowly defining the elements which could be considered in determining the best interest of the alien child. This commenter recommended that the Service rewrite the eligibility criteria to exclude children who were brought or sent to the United States to take advantage of the special immigrant juvenile provision. This commenter also recommended that juvenile courts be required to request and obtain a report from the Service prior to declaring an alien child dependent upon the court.

The final rule states that the decision concerning the best interest of the child may only be made by the juvenile court or in administrative proceedings authorized or recognized by the juvenile court. Such administrative proceedings would most commonly be conducted by state or local social service agency officials. The Service does not intend to make determinations in the course of deportation proceedings regarding the "best interest" of a child for the purpose of establishing eligibility for special immigrant juvenile classification. The rule does not contain any restrictions on factors which may be considered in determining the best interest of the child. The Service believes that it would be both impractical and inappropriate for the Service to routinely readjudicate judicial or social service agency administrative determinations as to the juvenile's best interest. Abuse of this provision is of concern both to Congress, as shown by the statutory restriction on the grant of future immigration benefits for the juvenile's parent(s) based upon the relationship, and to the Service. However, the Service believes that a child in need of the care and protection of the juvenile court should not be precluded from obtaining special immigrant status because of the actions of an irresponsible parent or other adult. The Service also believes it would be impractical and inappropriate to impose consultation requirements upon the juvenile courts or the social service system, especially requirements which could possibly delay action urgently needed to ensure proper care for dependent children.

Eligibility—"Grandfather" Provision

Twenty-nine commenters urged the Service to establish a regulatory provision which would allow aliens who were eligible for special immigrant juvenile classification on November 29, 1990, the date of enactment of IMMACT 90, but who could not become lawful permanent residents at that time, to remain eligible for this classification until Congress took action to amend the adjustment of status provisions of the Act. One commenter cited the "grandfather" provision of section 702 of IMMACT 90 as an example the Service should follow in implementing section 153.

As originally enacted, IMMACT 90 did not exempt special immigrant juvenile aliens from the normal statutory requirements for adjustment of status. The Service did not, however, wish to unnecessarily preclude otherwise qualified special immigrant juvenile aliens from becoming lawful permanent residents. On November 29, 1990, the date of enactment of IMMACT 90, the Service directed its local offices to accept and hold in abeyance applications for adjustment of status filed by persons who appeared to meet the statutory requirements for the special immigrant juvenile classification of section 153 of IMMACT 90. Further guidance was issued on August 16, 1991, directing local offices to accept applications for adjustment of status filed by special immigrant juveniles despite statutory ineligibility for adjustment of status because of the provisions of sections 245 (a) or (c) of the Act. The local offices were again instructed not to take action to deny these adjustment of status applications solely because the special immigrant juvenile was statutorily ineligible for adjustment of status. On December 12, 1991, section 302(d)(2) of the Technical Amendments amended the adjustment of status provisions of the Act to exempt special immigrant juveniles from many of the statutory requirements for adjustment of status. In furtherance of Service policy of using administrative discretionary authority to ensure that special immigrant juveniles are not precluded from obtaining lawful permanent residence because of the passage of time while the Service was awaiting Congressional action to amend the adjustment of status provisions, this rule allows exemptions to both the eligibility requirements and the automatic revocation provisions for those aliens who can establish that they met the eligibility criteria on November 29, 1990, and whose petitions for classification as special immigrant juveniles are filed before June 1, 1994.

Documentary Requirements

Twenty-one commenters stated that they felt the documentary requirements were either confusing or excessive. Some stated that they felt it should not be necessary to submit a total of four documents to establish eligibility. Several stated that the juvenile court could declare an individual eligible for long-term foster care only after finding the person dependent upon the court and only after alternatives to a long-term placement were considered. These commenters stated that they felt that evidence of a declaration of eligibility for long-term foster care should satisfy not only that requirement, but also the evidentiary requirements relating to dependency and the determination regarding the "best interest" of the child.

The rule has been revised to clearly require documentary evidence of the beneficiary's age. The evidence may be in the form of a birth certificate, passport, or official foreign identity card such as a Cedula or Cartilla. This rule also provides that the director may, in his or her discretion, accept other documents which reasonably establish the beneficiary's age. The final rule has also been revised to state that, in addition to evidence of the beneficiary's age, one or more documents must be submitted showing dependency, eligibility for long-term foster care, and the "best interest" determination. The Service has left in place, however, the requirement that the document(s) must show that all three statutory criteria have been met. In view of diverse state laws governing juvenile court proceedings and the possibility that state laws could change in the future, the Service does not believe that any of the section 153 statutory requirements can be ignored. The Service also notes that consideration of alternatives to long-term foster care does not, in itself, show that a determination was made that it is in the juvenile's best interest not to be returned to his or her country of nationality or habitual residence of his or her parents. The court's finding that long-term foster care is the best alternative available to the child within the United States does not necessarily establish that long-term foster care in another country would not be available or would not be in the child's best interest.

Revocation of Approval

Twenty-four commenters asked the Service to revise or eliminate provisions of the interim rule which automatically revoke the approval of a petition for a special immigrant juvenile under certain circumstances. Most commenters cited state laws which allow a juvenile court to retain jurisdiction over certain individuals, such as students, who have reached the age of majority but continue to require court protection. They suggested amending the rule to eliminate the automatic revocation of petitions for these young people. Many commenters also expressed concern that the rule would allow the automatic revocation of a petition when the juvenile is placed in a guardianship situation or has been adopted. Some stated they felt that approval should not be revoked simply because a beneficiary's circumstances change while the Service is reviewing an application for adjustment of status. One commenter felt that the rule should indicate that any subsequent decision regarding the best interest of the child should be made only by the juvenile court which made the initial ruling.

This rule removes the provision automatically revoking approval of a petition for special immigrant juvenile status when the alien ceases to be a juvenile under state law, and substitutes a provision establishing automatic revocation of an earlier approval when the beneficiary reaches the age of twenty-one. The rule has also been revised to state that changes in circumstances resulting from adoption or placement in a guardianship situation will not result in revocation of approval. In response to comments that the Service should not revoke approval of the petition simply because the beneficiary's circumstances change during the application process, the Service notes that other applicants for permanent residency are required to continue to maintain eligibility for their visa classification until admission with an immigrant visa or adjustment of status. The Service does not believe that there is good reason to exempt special immigrant juveniles from this requirement. The final rule also clearly states that the decision regarding the beneficiary's best interest must be made by a juvenile court of competent jurisdiction or in administrative proceedings recognized by the juvenile court having jurisdiction over the beneficiary. As indicated earlier, the Service believes that the decision regarding the best interest of the beneficiary should be made by the juvenile court or the social service agency officials recognized by the juvenile court, not by the immigration judge or other immigration officials. The final rule does not, however, require the decision to be made by the court which made the initial determination, since the Service believes this would be an unnecessary infringement upon the juvenile court system's ability to make determinations regarding its own jurisdictional issues.

Regulations governing the revocation of approval of petitions for immigrant classification are found in 8 CFR part 205. The Service has determined that both the public and Service employees will find the regulations easier to access if regulations concerning the revocation of all types of petitions for immigrant classification are included in 8 CFR part 205. The Service has, therefore, removed procedures relating to the automatic revocation of approval of petitions for classification as a special immigrant juvenile from 8 CFR 101.6(f) and placed them in 8 CFR 205.1.

This rule also changes several references to sections of the Act in 8 CFR part 205. The reference changes are necessary because IMMACT 90 redesignated many sections of the Act.

This rule also removes 8 CFR 205.1(a)(10). That paragraph provided that the approval of a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under deportation or exclusion proceedings would be automatically revoked unless the beneficiary had resided outside the United States for at least two years in accordance with former section 204(h) (currently 204(g)) of the Act. Section 702 of IMMACT provides an exemption from the two-year foreign residence requirement if the petitioner can establish, by clear and convincing evidence, that the marriage is bona fide. Therefore, the automatic revocation provision is no longer appropriate and is removed. The Service's authority to revoke the approval of any petition under section 204 of the Act after notice to the petitioner, which is contained in 8 CFR 205.2, has not been changed and continues to be applicable to spousal immigrant visa petitions.

This rule also removes 8 CFR 205.1(c)(4), which provided for automatic revocation of a sixth preference petition when the petitioner filed a written notice of withdrawal. The preceding paragraph, which formerly referred only to third preference petitions, has been revised to encompass all instances in which the petitioner in an employment-based case files a written notice of withdrawal with any officer of the Service who is authorized to grant or deny petitions. There is, therefore, no need to repeat the provision in the following paragraph.

In 8 CFR 205.2(a) the reference to "§ 204.1" is changed to "§ 205.1" to correct a typographical error.

Adjustment of Status

Twenty-eight commenters expressed concern about the method through which a special immigrant juvenile could become a lawful permanent resident. One commenter asked whether a special immigrant juvenile would automatically be granted permanent resident status or would be required to comply for adjustment of status. Several commenters indicated that, since Congressional intent was to allow special immigrant juveniles to become permanent residents, the Service should revise the rule to allow adjustment regardless of whether the applicants were ineligible for adjustment under existing statutes.

The Act generally requires a person intending to live permanently in the United States to enter the country with an immigrant visa, which may be issued only by a United States embassy or consulate abroad. Section 245 of the Act allows certain aliens in the United States to adjust status to that of a lawful permanent resident, without departing the United States or obtaining an immigrant visa from a consultate or embassy. Neither IMMACT 90 nor the Technical Amendments contain any indication that Congress envisioned a unique application process for special immigrant juveniles wishing to become lawful permanent residents of the United States. Therefore, special immigrant juveniles will continue to be required to apply for either immigrant visa issuance abroad or adjustment of status in the United States.

Although the Service is responsible for interpreting the Act and implementing provisions of the Act through regulation, the Service cannot implement rules which are contradictory to statutory requirements imposed by Congress. As indicated in the supplementary information to the interim rule, the original language of IMMACT 90 did not waive any of the adjustment of status eligibility requirements for special immigrant juveniles. The Service, therefore, initially lacked authority to accede to commenters' requests to waive certain adjustment of status requirements. However, on December 12, 1991, the Technical Amendments became effective. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with several of the usual statutory requirements for adjustment of status.

Section 245(a) of the Act generally requires that applicants for adjustment of status establish that they have been inspected and admitted or paroled into the United States. Section 302(d)(2) of the Technical Amendments provides that, for the purpose of applying for adjustment of status as a special immigrant juvenille under section 101(a)(27)(J) of the Act only, these juveniles will be treated as if they had been paroled into the United States.

Section 245(c) of the Act generally prohibits the Service from adjusting the status of an alien who is not in lawful nonimmigrant status, who has failed to maintain lawful nonimmigrant status in the past, or who has been employed without authorization in the United States. Section 302(d)(2) of the Technical Amendments exempts special immigrant juveniles from compliance with these provisions of section 245(c) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status. These revisions ensure that the regulations reflect the statutory exemptions provided for special immigrant juveniles by section 302(d)(2) of the Technical Amendments.

Exclusion Grounds

Two commenters took exception to the statement contained in the supplementary information to the interim rule concerning the possibility that special immigrant juveniles who seek an immigrant visa or adjustment of status could have difficulty establishing that they are not likely to become public charges.

All applicants for immigrant visa issuance or adjustment of status under section 245 of the Act must establish that they are not excludable from the United States, unless the grounds of excludability have been waived. Persons seeking immigrant visa issuance abroad or adjustment of status in the United States are normally required to show that they are not excludable from the United States under the exclusion grounds enumerated in section 212(a) of the Act. These grounds include prohibitions against the admission of aliens who are likely to become public charges in the United States, who seek to enter the United States for the purpose of performing labor without a certification issued by the Department of Labor showing that there are not sufficient workers in the alien's field at the intended job location, or who entered the United States without proper documentation. Therefore, the Service initially lacked the authority to grant lawful permanent resident status to special immigrant juveniles who were likely to become public charges or were otherwise excludable from the United States.

Section 302(d)(2) of the Technical Amendments provides that the exclusion provisions under sections 212(a)(4), (5)(A), and (7)(A) of the Act will not apply to a qualified special immigrant under section 101(a)(27)(J) of the Act, thus automatically waiving excludability because of likelihood of becoming a public charge, failure to obtain a labor certification, and entry without proper documents. No application or fee is required for an automatic waiver.

Section 302(d)(2) also allows most other exclusion provisions to be waived for individual special immigrant juveniles for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination. A waiver application must be filed and the appropriate fee paid for an individual waiver. The only exclusion provisions which may not be waived are those involving certain criminal and related grounds, and certain security and related grounds. The grounds which may not be waived are set forth in sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E) of the Act.

The final rule includes technical revisions to the regulations governing adjustment of status to ensure that these regulations reflect the statutory exemptions provided by section 302(d)(2) of the Technical Amendments, including the automatic exemptions.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not 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.

The information collection requirement contained in this regulation has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 101

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation (Government agencies), Fees, Forms.

8 CFR Part 204

Administrative practice and procedures, Aliens, Employment, Immigration, Petitions.

8 CFR Part 205

Administrative practice and procedures, Aliens, Immigration, Petitions.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 101 and 103, which was published in the **Federal Register** at 56 FR 23207–23209 on May 21, 1991, is adopted as a final rule with the following changes:

PART 101—PRESUMPTION OF UNLAWFUL ADMISSION

1. The authority citation for part 101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

§ 101.6 [Redesignated as § 204.11.]

2. Section 101.6 is redesignated as § 204.11.

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

3. 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.

4. In § 103.1, paragraph (f)(2)(xxxv) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f) * * *

(2) * * *

(xxxv) Petitions for special immigrant juveniles under part 204 of this chapter;

* * * * *

PART 204—IMMIGRANT PETITIONS

5. 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.

6. Newly redesignated § 204.11 is revised to read as follows:

§ 204.11 Special immigrant status for certain aliens declared dependent on a juvenile court (special immigrant juvenile).

(a) *Definitions.*

Eligible for long-term foster care means that a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.

Juvenile court means a court located in the United States having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.

(b) *Petition for special immigrant juvenile.* An alien may not be classified as a special immigrant juvenile unless the alien is the beneficiary of an approved petition to classify an alien as a special immigrant under section 101(a)(27) of the Act. The petition must be filed on Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

(1) *Who may file.* The alien, or any person acting on the alien's behalf, may file the petition for special immigrant juvenile status. The person filing the petition is not required to be a citizen or lawful permanent resident of the United States.

(2) *Where to file.* The petition must be filed at the district office of the Immigration and Naturalization Service having jurisdiction over the alien's place of residence in the United States.

(c) *Eligibility.* An alien is eligible for classification as a special immigrant under section 101(a)(27)(J) of the Act if the alien:

(1) Is under twenty-one years of age;

(2) Is unmarried;

(3) Has been declared dependent upon a juvenile court located in the United States in accordance with state law governing such declarations of dependency, while the alien was in the United States and under the jurisdiction of the court;

(4) Has been deemed eligible by the juvenile court for long-term foster care;

(5) Continues to be dependent upon the juvenile court and eligible for long-term foster care, such declaration, dependency or eligibility not having been vacated, terminated, or otherwise ended; and

(6) Has been the subject of judicial proceedings or administrative proceedings authorized or recognized by the juvenile court in which it has been determined that it would not be in the alien's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or his or her parent or parents; or

(7) On November 29, 1990, met all the eligibility requirements for special immigrant juvenile status in paragraphs (c)(1) through (c)(6) of this section, and for whom a petition for classification as a special immigrant juvenile is filed on Form I-360 before June 1, 1994.

(d) *Initial documents which must be submitted in support of the petition.* (1) Documentary evidence of the alien's age, in the form of a birth certificate, passport, official foreign identity document issued by a foreign government, such as a Cartilla or a Cedula, or other document which in the discretion of the director establishes the beneficiary's age; and

(2) One or more documents which include:

(i) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary to be dependent upon that court;

(ii) A juvenile court order, issued by a court of competent jurisdiction located in the United States, showing that the court has found the beneficiary eligible for long-term foster care; and

(iii) Evidence of a determination made in judicial or administrative proceedings by a court or agency recognized by the juvenile court and authorized by law to make such decisions, that it would not be in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

(e) *Decision.* The petitioner will be notified of the director's decision, and, if the petition is denied, of the reasons for the denial. If the petition is denied, the petitioner will also be notified of the petitioner's right to appeal the decision to the Associate Commissioner, Examinations, in accordance with part 103 of this chapter.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

7. The authority citation for part 205 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

§ 205.1 [Amended]

8. In § 205.1, the introductory text is amended by adding the term "before October 1, 1991, or section 203(g) of the Act on or after October 1, 1991," immediately after the term "section 203(e) of the Act".

§ 205.1 [Amended]

9. In § 205.1, paragraphs (a)(5), (a)(6), (a)(7), (b)(5), and (b)(6) are amended by revising the reference to "section 203(a)(4)" to "section 203(a)(3)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

10. In § 205.1, paragraph (a)(10) is removed.

§ 205.1 [Amended]

11. In § 205.1, paragraphs (b)(5) and (b)(6) are amended by revising the reference the "section 204(g)" to "section 204(f)" whenever it appears in these paragraphs.

§ 205.1 [Amended]

12. Section 205.1 is amended by:

a. Revising the reference in the heading in paragraph (c) to "*section 203(a)(3) or (6).*" to read "*section 203(b).*";

b. Revising the reference in paragraph (c)(3) to "third preference" to read "employment-based preference";

c. Removing paragraph (c)(4) and redesignating paragraph (c)(5) as paragraph (c)(4); and

d. Revising the reference in the newly redesignated paragraph (c)(4) to "a sixth preference case." to read "an employment-based preference case under section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3) of the Act.".

13. In § 205.1, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 205.1 Automatic revocation.

* * * * *

(d) *Special immigrant juvenile petitions.* Unless the beneficiary met all of the eligibility requirements as of November 29, 1990, and the petition requirements as of November 29, 1990, and the petition for classification as a special immigrant juvenile was filed before June 1, 1994, or unless the change in circumstances resulted from the beneficiary's adoption or placement in a guardianship situation:

(1) Upon the beneficiary reaching the age of twenty-one;

(2) Upon the marriage of the beneficiary;

(3) Upon the termination of the beneficiary's dependency upon the juvenile court;

(4) Upon the termination of the beneficiary's eligibility for long-term foster care; or

(5) Upon the determination in administrative or judicial proceedings that it is in the beneficiary's best interest to be returned to the country of nationality or last habitual residence of the beneficiary or of his or her parent or parents.

* * * * *

§205.2 [Amended]

14. In § 205.2, paragraph (a) is amended by revising the reference to "§ 204.1" to "§ 205.1".

§205.2 [Amended]

15. In § 205.2, paragraph (b) is amended in the fourth sentence by revising the reference to "section 204(g)" to "section 204(f)". Paragraph (b) is further amended in the fourth sentence by revising the reference to "section 203(a)(1), (2), (4), or (5)" to "section 203(a)(1), (2), (3), or (4)".

§205.2 [Amended]

16. In § 205.2, paragraph (b) is amended in the fifth sentence by revising the reference to "section 203(a)(3) or (6)" to "section 203(b)".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

17. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

§245.1 [Amended]

18. In § 245.1, paragraph (a) is amended by adding at the end a new sentence to read as follows: "A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States."

§245.1 [Amended]

19. Section 245.1 is amended by:

a. Revising the reference in paragraph (b)(4)(ii) to "section 101(a)(27)(H)" to "section 101(a)(27)(H) or (J)";

b. Revising the reference in paragraph (b)(5) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

c. Revising the reference in paragraph (b)(6) to "section 101(a)(27)(H) or (I)" to "section 101(a)(27)(H), (I), or (J)";

§245.1 [Amended]

20. In § 245.1, a new paragraph (d)(3) is added to read as follows:

§245.1 Eligibility.

* * * * *

(d) * * *

(3) *Special immigrant juveniles.* Any alien qualified for special immigrant classification under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of section 245(a) of the Act, to have been paroled into the United States, regardless of the alien's actual method of entry into the United States. Neither the provisions of section 245(c)(2) nor the exclusion provisions of sections 212(a)(4), (5)(A), or (7)(A) of the Act shall apply to a qualified special immigrant under section 101(a)(27)(J) of the Act. The exclusion provisions of sections 212(a)(2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), or (3)(E) of the Act may not be waived. Any other exclusion provision may be waived on an individual basis for humanitarian purposes, family unity, or when it is otherwise in the public interest; however, the relationship between the alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in a discretionary waiver determination.

* * * * *

Dated: June 22, 1993.

Chris Sale,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–19350 Filed 8–11–93; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR PART 140

RIN 3150–AE75

Adjustment of the Maximum Standard Deferred Premium

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to increase the maximum standard deferred premium, presently established at $63 million per reactor per accident (but not to exceed $10 million in any one year), to $75.5 million per reactor per accident (but not to exceed $10 million in any one year), in accordance with the aggregate percentage change of 19.9 percent in the Consumer Price Index (CPI) from August 1988 through March 1993.

EFFECTIVE DATE: August 20, 1993.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, telephone (301) 504–1289.

SUPPLEMENTARY INFORMATION: Section 15 of Public Law 100–408, the Price-Anderson Amendments Act of 1988 ("the Act") enacted on August 20, 1988, requires the Commission to adjust the maximum standard deferred premium (presently $63 million) for inflation. Section 15 added a new Section 170t. to the Atomic Energy Act of 1954, as amended ("AEAct"). Section 170t. provides as follows:

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum standard deferred premium under subsection b.(1) [Section 170b.(1) of the AEAct] not less than once during each 5-year period following the date of the enactment of the Price-Anderson Amendments Act of 1988 in accordance with the aggregate percentage change in the Consumer Price Index since—

(A) such date of enactment, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection. (2) For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for all urban consumers published by the Secretary of Labor.

The inflation adjustment required by Section 170t.(1)(A) of the AEAct must be in accordance with the aggregate percentage change (since August 1988) in the Consumer Price Index (CPI) for all urban consumers published by the Secretary of Labor. The aggregate percentage increase in the CPI from August 1988 through March 1993 is 19.9 percent. This number is derived by dividing the September 1988 CPI index by the March 1993 CPI index. The new maximum standard deferred premium, computed by multiplying $63 million by 0.199 and adding the product to $63 million, will be $75.5 million. Therefore, as of August 20, 1993, 10 CFR 140.11(a)(4) will require that large nuclear power plant licensees maintain, in addition to $200 million in primary financial protection, a new maximum standard deferred premium of $75.5 million per reactor per accident (but not to exceed $10 million in any one year).

The next inflation adjustment in the amount of the standard deferred premium will be made not later than August 20, 1998, and will be based on the incremental change in the CPI since March 1993.

Because this inflation adjustment by the Commission is essentially ministerial in nature (e.g., multiplying $63 million by the percentage increase in the CPI published by the Secretary of Labor and adding this amount to $63 million), the Commission finds that there is good cause for omitting notice and public procedure (in the form of a proposed rule) on this action as unnecessary. In view of the impending statutory deadline for implementing this change to its regulations, the Commission finds that there exists good cause for making the rule effective on August 20, 1993 (less than 30 days after publication of the final rule in the **Federal Register**).

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0039.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant impact upon a substantial number of small entities. The rule will potentially affect licensees of approximately 116 nuclear power reactors. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632), the Small Business Size Standards of the Small Business Administration (13 CFR part 121), or the Commission's Size Standards (50 FR 50241; December 9, 1985).

Backfit Analysis

The NRC has determined that this final rule does not impose a backfit as defined in 10 CFR 50.109(a)(1) because it is statutorily required. Therefore, a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 140

Criminal penalty, Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954 (as amended), the Energy Reorganization Act of 1974 (as amended), and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 140:

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

2. Section 140.11(a)(4) is revised to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) * * *

(4) In an amount equal to the sum of $200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by § 170o.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, that under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than $75,500,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170o.(1)(E) of the Act) and no more than $10,000,000 per incident within one calendar year shall be charged.

* * * * *

Dated at Rockville, Maryland this 2nd day of August, 1993.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 93–19222 Filed 8–11–93; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

Animal Drugs, Feeds, and Related Products; Praziquantel Tablets and Injectable Solution

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 two supplemental new animal drug applications (NADA's) filed by Miles, Inc., Agriculture Division, Animal Health Products. The supplements provide for the use of 34 milligram (mg) DRONCIT® (Praziquantel) Canine Cestocide Tablet and 5.68 percent Injectable Cestocide for dogs and cats for removal and control of *Echinococcus multilocularis* in dogs.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8614.

SUPPLEMENTARY INFORMATION: Miles, Inc., Agriculture Division, Animal Health Products, P.O. Box 390, Shawnee Mission, KS 66201, filed two supplemental NADA's. NADA 111–607 provides for veterinary prescription use of Droncit® (Praziquantel) 5.68 percent Injectable Cestocide for dogs and cats. NADA 111–798 provides for veterinary prescription use of 34 mg Droncit® (Praziquantel) Canine Cestocide Tablet. The supplements provide for the removal and control of *Echinococcus multilocularis* in addition to use for removal of *Dipylidium caninum*, *Taenia pisiformis*, and *Echinococcus granulosus* in dogs. The supplemental NADA's are approved as of July 16, 1993. The regulations are amended in §§ 520.1870(c)(1)(i) and 522.1870(c)(1)(ii) to reflect the approvals. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support these approvals may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 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)), these approvals qualify for 3 years of marketing exclusivity for removal and control of *E. multilocularis* in dogs beginning July 16, 1993, because the supplements contain reports of new clinical or field investigations (other than bioequivalence studies) essential to the approvals and conducted or sponsored by the applicant.

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 (see above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

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 parts 520 and 522 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.1870 is amended by revising paragraph (c)(1)(i) to read as follows:

§ 520.1870 Praziquantel tablets.

* * * * *

(c) * * *

(1) * * *

(i) *Indications for use.* For removal of canine cestodes *Dipylidium caninum* and *Taenia pisiformis.* If labeled for use by or on the order of a licensed veterinarian, for removal of the canine cestode *Echinococcus granulosus*, and for removal and control of the canine cestode *Echinococcus multilocularis.*

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. 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).

4. Section 522.1870 is amended by revising paragraph (c)(1)(ii) to read as follows:

§ 522.1870 Praziquantel injectable solution.

* * * * *

(c) * * *

(1) * * *

(ii) *Indications for use.* For removal of canine cestodes *Dipylidium caninum, Taenia pisiformis*, and *Echinococcus granulosus*, and removal and control of canine cestode *Echinococcus multilocularis.*

* * * * *

Dated: August 4, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93-19300 Filed 8-11-93; 8:45 am]

BILLING CODE 4160-01-F

---

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Terramycin® (Oxytetracycline Hydrochloride) Soluble Powder

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 two supplemental new animal drug applications (NADA's) filed by Pfizer, Inc., that provide for the safe and effective use of oxytetracycline hydrochloride (OTC HCl) soluble powder in the drinking water of chickens, turkeys, swine, cattle, and sheep, and in food for honey bees for the control and treatment of specific diseases caused by bacteria susceptible to oxytetracycline. One supplement reflects compliance with the results of the National Academy of Sciences/ National Research Council (NAS/NRC) Drug Efficacy Study Group's evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation. The other supplement provides for the establishment of a tolerance for residues of OTC in edible sheep tissues.

EFFECTIVE DATE: August 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8623.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed a supplement to its approved NADA 8-622 which covers several Terramycin® Soluble Powder products to provide for use as follows: (1) 10 milligrams (mg) of OTC HCl per pound of body weight daily (up to 14 days) in swine, cattle, and sheep for the control and treatment of specific bacterial diseases; (2) various concentrations in the drinking water of chickens and turkeys depending on the particular bacterial disease; and (3) 200 mg per colony in food for honey bee for control and treatment of American and European foul brood caused by *Bacillus larvae* in accordance with 21 CFR 520.1660d as amended.

The application was originally approved September 17, 1952. The drug was the subject of an NAS/NRC Drug Efficacy Study Implementation (DESI) evaluation of effectiveness (DESI 8622V) and the findings were published in the **Federal Register** of May 5, 1970 (35 FR 7089). NAS/NRC evaluated the drug as effective for use in the treatment of hexamitiasis. It evaluated the drug as "probably effective" when used for the control and treatment of specific diseases of livestock and poultry and concluded that use may result in faster gains and improved feed efficiency under appropriate conditions.

NAS/NRC concluded that:

1. Labels and package inserts require extensive revision. There is inadequate documentation of claims, excessive claims are made, and bold conclusions are reached in the absence of sufficient controlled experimental evidence.

2. Claims for growth promotion or stimulation are not allowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions."

3. Each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)" and if the disease cannot be so qualified the claim must be dropped.

4. The label claims "for prevention of" or, "to prevent" should be replaced with "as an aid in the control of" or, "to aid in the control of."

5. The label claim pertaining to egg production and hatchability should be modified to read, "May aid in maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic organisms."

6. The labels should carry a warning that treated animals under the conditions that prevail must actually consume sufficient medicated water, or medicated feed, to constitute a therapeutic dose. As a precaution the labels should state what the desired oral dose is in terms of animal weight per day for each species to serve as a guide to effective use of the preparations in drinking water or feed.

7. The labels should declare the dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

FDA concurred with the NAS/NRC findings and in addition concluded:

1. The claims for hexamitiasis should be included under the susceptible host.

2. Appropriate claims regarding faster weight gains and improved feed efficiency should be stated as "For increased rate of weight gain and improved feed efficiency for (under appropriate conditions of use)."

3. The phrase "* * * cannot be so qualified * * *" in NAS/NRC's third conclusion is interpreted to mean "is not supported by adequate data."

FDA then proceeded to review all available data relating to the effectiveness of products subject to NADA 8–622 to determine which label claims were supported by the requisite proof of effectiveness. That review resulted in FDA issuing a letter dated February 19, 1982, to Pfizer in which the agency stated that it had concluded the data supported effectiveness for the control and treatment of one or more bacterial diseases susceptible to OTC HCl in poultry, cattle, swine, sheep, and honey bees.

Subsequently, Pfizer complied with the NAS/NRC/DESI evaluation and FDA's conclusions by submitting a supplemental application which revised its labeling as follows:

1. The appropriate oral dose of 10 mg per pound of body weight daily in each species (swine, cattle, and sheep) has been incorporated in the labeling.

2. Claims for growth promotion or feed efficiency are not included.

3. Each disease claim on the label has been properly qualified with the appropriate genus and species name susceptible to OTC HCl. Disease claims which were not so qualified have been deleted.

4. Claims made for prevention have been revised to read "Control of * * *" where appropriate.

5. Claims for egg production and hatchability are not included.

6. The manufacturer's label carries the warning statement that treated animals must have the medicated water adjusted to compensate for variation in age and the weight of the animal, the nature and severity of disease signs, and environmental temperature and humidity, each of which affects water consumption.

7. The labels carry the appropriate dosage for the treatment of individual animals in terms of the amount of drug which should be given per unit of animal weight.

The NAS/NRC evaluation of the drug was concerned only with effectiveness and safety of the drug for the treated animal and does not take into account the safety of food derived from drug-treated animals. FDA's approval of the supplemental application did not involve a reevaluation or reaffirmation of the human food safety data in the parent application.

Therefore, the regulations are amended in 21 CFR 520.1660d by adding new paragraphs (e)(1)(iii) through (e)(1)(v) and (e)(2) to reflect approval of the supplemental NADA. Section 520.1660d is also amended by revising paragraph (a) to state the concentration of OTC HCl in the drug product in terms of the weight of soluble powder that contains one gram of OTC HCl. Currently, two packets are listed so that the concentration of OTC HCl is stated based on the net contents, but Pfizer has packets with six net contents and their addition would make the list of products in paragraph (a) too long. The section is further amended by revising paragraph (b) to link the listed drug sponsors with their drug packets or pails containing various concentrations of OTC HCl. Finally, the regulations are amended in 21 CFR 556.500 to reflect approval of the supplemental NADA providing for establishment of a tolerance for residues of OTC in edible sheep tissues. The supplements are approved as of July 9, 1993.

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 (HFA–305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., 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)), these approvals do not qualify for an exclusivity period because reports of new clinical or field investigations (other than bioequivalence or residue studies) and, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) essential to approval of the supplements and conducted or sponsored by the applicant were not required.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

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 parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

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

2. Section 520.1660d is amended by revising paragraphs (a) and (b) and by adding new paragraphs (e)(1)(iii) through (e)(1)(v) and (e)(2) to read as follows:

§ 520.1660d Oxytetracycline hydrochloride soluble powder.

(a) *Specifications.* The drug is a soluble powder distributed in packets or pails having several concentrations of oxytetracycline hydrochloride (independent of the various net weights) as follows:

(1) Each 18.14 grams of powder contains 1 gram of oxytetracycline hydrochloride (OTC HCl) (packets: 4, 6.4, and 16 oz.);

(2) Each 4.43 grams of powder contains 1 gram of OTC HCl (packets: 4 and 16 oz.);

(3) Each 1.32 grams of powder contains 1 gram of OTC HCl (packets: 2.39, 4.78, and 9.55 oz.);

(4) Each 2.73 grams of powder contains 1 gram of OTC HCl (packets: 2.46 and 9.87 oz).

(b) *Sponsor.* See sponsor numbers in § 510.600(c) of this chapter as follows:

(1) No. 000069 for use of OTC HCl concentrations in paragraphs (a)(1), (a)(2), and (a)(3) of this section in

chickens, turkeys, swine, cattle, sheep, and honey bees.

(2) No. 017144 for use of OTC HCl concentration in paragraph (a)(4) of this section in chickens and turkeys.

(3) No. 054273 for use of OTC HCl in turkeys.

* * * * *

(e) * * *

(1) * * *

(iii) *Swine*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *Escherichia coli* and *Salmonella choleraesuis* and bacterial pneumonia caused by *Pasteurella multocida* susceptible to oxytetracycline. For breeding swine: Control and treatment of leptospirosis (reducing the incidence of abortions and shedding of leptospira) caused by *Leptospira pomona* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more that 14 consecutive days. Use as a sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(iv) *Calves, beef cattle, and nonlactating dairy cattle*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Do not administer this product with milk or milk replacers. Administer 1 hour before or 2 hours after feeding milk or milk replacers. Withdraw 5 days prior to slaughter.

(v) *Sheep*—(A) *Amount.* 10 milligrams per pound of body weight daily.

(B) *Indications for use.* Control and treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia (shipping fever complex) caused by *P. multocida* susceptible to oxytetracycline.

(C) *Limitations.* Prepare a fresh solution daily. Administer up to 14 days. Do not use for more than 14 consecutive days. Use as sole source of oxytetracycline. Withdraw 5 days prior to slaughter.

(2) It is used in the food of honey bees as follows:

(i) *Amount.* 200 milligrams per colony, administered via either a 1:1 sugar syrup (equal parts of sugar and water weight to weight) or dusting with a powdered sugar mixture.

(ii) *Indications for use.* Control and treatment of American and European foul brood caused by *Bacillus larvae* susceptible to oxytetracycline.

(iii) *Limitations.* The drug is administered in 3 applications of sugar syrup or 3 dustings at 4- to 5-day intervals. The drug should be fed early in the spring or fall and consumed by the bees before main honey flow begins to avoid contamination of production honey. Remove at least 6 weeks prior to main honey flow.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: Secs. 402, 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342, 360b, 371).

4. Section 556.500 is amended by adding new paragraph (e) to read as follows:

§ 556.500 Oxytetracycline.

* * * * *

(e) 0.1 part per million in uncooked edible tissues of sheep.

Dated: August 2, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–19301 Filed 8–11–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 156

[DoD Directive 5200.2]

Department of Defense Personnel Security Program (DoDPSP)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This part revises 32 CFR part 156 to update policies regarding standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the Directive since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development.

EFFECTIVE DATE: May 6, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Nelson, telephone (703) 697–3969 or DSN 227–3969.

SUPPLEMENTARY INFORMATION: The Department of Defense published the proposed rule of this part on June 10, 1991 (56 FR 26634). It has been certified that the rule is not subject to Executive Order 12291, "Federal; Regulation", because the rule does not:

(1) Have an annual effect of the economy of $100 million or more.

(2) Cause a major increase in costs or prices for consumer, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

It has been certified that the rule is not subject to Public Law 96–354, "Regulatory Flexibility Act", because the rule promulgates standards for the conduct of personnel security investigations, adjudication criteria for access to classified information and minimum due process procedures when an unfavorable personnel security determination is proposed. These changes are the first to the part since 1979 and are an attempt to make the source document for the DoD personnel security program consistent with more recent policy development. It has been certified that the rule is not subject to Public Law 96–511, "Paperwork Reduction Act ", because the rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 156

Government employees, security measures.

Accordingly, 32 CFR Part 156 is revised to read as follows:

PART 156—DEPARTMENT OF DEFENSE PERSONNEL SECURITY PROGRAM (DoDPSP)

Authority: 50 U.S.C. 781.

§ 156.1 Purpose.

This part:

(a) Updates the policy and responsibilities for the DoDPSP under Pub. L. 81–832; E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p.200; and E.O. 12356, 47 FR 14874 and 15557, 3 CFR 1982 Comp., p. 166.

(b) Continues to authorize the publication of DoD 5200.2–R[1] in accordance with DoD 5025.1–M.[2]

§ 156.2 Applicability and scope.

This part applies to:

(a) The Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, and the Defense Agencies, except as provided for the National Security Agency (NSA) in paragraph (b) of this section (hereafter referred to collectively as "the DoD Components").

(b) The NSA is exempt from the provisions of this Directive. The personnel security program for the NSA is implemented pursuant to DoD Directive 5210.45,[3] and internal regulations of the NSA.

(c) DoD military and civilian personnel, consultants to the Department of Defense, contractors cleared under the Defense Industrial Security Program (DISP) Regulations DoD 5220.22[4] and others affiliated with the Department of Defense.

§ 156.3 Policy.

It is DoD policy that:

(a) No person shall be appointed as a civilian employee of the Department of Defense, accepted for entrance into the Armed Forces of the United States, authorized access to classified information, or assigned to duties that are subject to investigation under this part unless such appointment, acceptance, clearance, or assignment is clearly consistent with the interests of national security.

(b) A personnel security clearance shall be granted and assignment to sensitive duties shall be authorized only to U.S. citizens. As an exception, a non-U.S. citizen may, by an authorized official (as specified in 32 CFR part 154) be assigned to sensitive duties or granted a Limited Access Authorization for access to classified information if there is a need for access in support of a specific DoD program, project, or contract.

(c) The personnel security standard that shall be applied in determining a person's eligibility for a security clearance or assignment to sensitive duties is whether, based on all available information, the person's allegiance, trustworthiness, reliability, and judgment are such that the person can reasonably to expected to comply with Government policy and procedures for safeguarding classified information and performing sensitive duties.

(d) 32 CFR part 154 shall identify those positions and duties that require a personnel security investigation (PSI). A PSI is required for:

(1) Appointment to a sensitive civilian position.

(2) Entry into military service.

(3) The granting of a security clearance or approval for access to classified information.

(4) Assignment to other duties that require a personnel security or trustworthiness determination.

(5) Continuing eligibility for retention of a security clearance and approval for access to classified information or for assignment to other sensitive duties.

(e) 32 CFR part 154 shall contain personnel security criteria and adjudicative guidance to assist in determining whether an individual meets the clearance and sensitive position standards referred to in paragraphs (a) and (c) of this section.

(f) No unfavorable personnel security determination shall be made except in accordance with procedures set forth in 32 CFR part 154 or 32 CFR part 155 or as otherwise authorized by law.

§ 156.4 Responsibilities.

(a) The *Assistant Secretary of Defense for Command, Control, Communications, and Intelligence* shall:

(1) Be responsible for overall policy, guidance, and control of the DoDPSP.

(2) Develop and implement plans, policies, and procedures for the DoDPSP.

(3) Issue and maintain DoD 5200.2–R consistent with DoD 5025.1–M.

(4) Conduct an active oversight program to ensure compliance with DoDPSP requirements.

(5) Ensure that research is conducted to assess and improve the effectiveness of the DoDPSP (DoD Directive 5210.79[5]).

(6) Ensure that the Defense Investigative Service is operated pursuant to 32 CFR part 361.

(7) Ensure that the DoD Security Institute provides the education, training, and awareness support to the DoDPSP under DoD Directive 5200.32.[6]

(8) Be authorized to make exceptions to the requirements of this part on a case-by-case basis when it is determined that doing so furthers the mission of the Department of Defense and is consistent with the protection of classified information from unauthorized disclosure.

(b) The *General Counsel of the Department of Defense* shall:

(1) Be responsible for providing advice and guidance as to the legal sufficiency of procedures and standards implementing the DoDPSP and the DISP.

(2) Exercise oversight of PSP appeals procedures to verify that the rights of individuals are being protected consistent with the constitution, laws of the United States, Executive Orders, Directives, or Regulations that implement the DoDPSP and DISP, and with the interests of national security.

(c) The *Heads of the DoD Components* shall:

(1) Designate a senior official who shall be responsible for implementing the DoDPSP within their components.

(2) Ensure that the DoDPSP is properly administered under this Directive within their components.

(3) Ensure that information and recommendations are provided to the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence on any aspect of the program.

Dated: August 8, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–19304 Filed 8–11–93; 8:45 am]

BILLING CODE 5000–04–M

[1] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161.

[2] See footnote 1 to 156.1(b).

[3] See footnote 1 to 156.1(b).

[4] See footnote 1 to 156.1(b).

[5] See footnote 1 to 156.1(b).

[6] See footnote 1 to 156.1(b).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD09–93–031]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: The Coast Guard hereby provides notice that the City of Chicago has been granted permission to temporarily deviate from regulations governing the opening of certain drawbridges over the Chicago River, from August 1 through September 29, 1993, for the purpose of further evaluating the reasonableness of possible changes to the permanent regulations. This deviation reduces the periods during which the City must

open the draws for recreational vessels, requires the vessels to give advance notice, and allows vessels transiting to and from the boatyards for necessary repairs and service to pass through the draws of the bridges during designated days and times and to pass without regard to a maximum or minimum number of vessels for each trip. The City has requested this deviation to reduce the frequency with which it must open its drawbridges. This deviation is experimental in nature and is intended to provide the Coast Guard with evaluation periods from which to test the reasonableness of the current regulatory structure.

EFFECTIVE DATE: The period of deviation begins on Sunday, August 1, 1993, and continues through Wednesday, September 29, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, or may be delivered to Room 2083D at the same address between the hours of 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing bridges operated by the City of Chicago by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name and address, this docket number (CGD09–93–031), the basis for each comment, and the specific provisions of the deviation to which each comment applies. If acknowledgement of receipt of comments is desired, a stamped, self-addressed postcard or envelope should be enclosed. If it appears appropriate to propose a permanent change to the regulations, the Coast Guard will publish a Notice of Proposed Rulemaking which will again request comments. A public hearing might also be held.

Drafting Information

The principal persons involved in drafting this document are Mr. Robert W. Bloom, Project Manager, and Lieutenant Karen E. Lloyd, Project Counsel, Ninth Coast Guard District.

Background and Purpose

The bridges owned and operated by the City of Chicago are presently governed in accordance with 33 CFR 117.39, which states that most bridges will open on signal, with the exception of certain bridges that need not open unless advance notice is given of a vessel's time of intended passage. Additionally, the current regulation authorizes the City to not open the draws during peak vehicle traffic periods, i.e. morning and afternoon rush hours.

There are two vessel traffic periods, breakout and return, when there are as many as five to twenty-five boats on given days, leaving boatyards through the Chicago River system in the spring and then returning in the fall. During the summer period, the boat traffic in the Chicago area consists only of recreational vessels, and vessels in need of repair which are returning to the yards on a temporary basis.

Thus, including the winter period, there appear to be four distinct periods in the Chicago River area, during which the need for bridge openings changes substantially. Therefore, it might be appropriate for the bridge regulations to vary by these four seasons.

The City requested that multiple boat transits be restricted to only Saturday and Sunday mornings, unless there were a special event on these days, during which time a bridge would not be required to open at all for vessel traffic to pass. In addition, the City submits that it is unduly burdensome to open the bridges for the passage of single recreational vessels within the Chicago River System.

A series of deviations has been granted to the City in order to evaluate the reasonableness of possible changes to the permanent regulations. The Coast Guard previously granted two temporary deviations to the regulations for bridges owned and operated by the City of Chicago.

On Wednesday, May 12, 1993, the Coast Guard published a temporary deviation in the **Federal Register**, FR 27933 and 27934, granting the City of Chicago permission to open their bridges from 6 a.m. on Saturdays through 7 p.m. on Sundays for the passage of vessels consisting of no less than five and not more than twenty-five boats; on Tuesdays and Thursdays the draws were required to open for the passage of vessels consisting of no less than five and not more than twenty-five boats, from 6:30 p.m. until all organized trips had safely completed passage.

On Wednesday, June 16, 1993, the Coast Guard published a second temporary deviation in the **Federal Register**, FR 33191 and FR 33192, which changed the starting times for scheduled trips on Tuesdays and Thursdays to start one half-hour earlier, from 6:30 p.m. to 6 p.m., and added a Wednesday trip to the regulated periods when vessels would be allowed to pass through the draws of the bridges. Thus, bridge openings for scheduled trips started at 6 p.m. on Tuesdays, Wednesdays, and Thursdays.

This is the third temporary period of deviation being granted to the City of Chicago. The Tuesday and Thursday starting time of 6 p.m. for passage of inbound and outbound vessels requiring the bridges to open has not been changed.

Comments received as a result of the first two temporary deviations published in the **Federal Register**, Docket Number (CGD9–93–08) and (CGD9–93–20), indicated concern with vessels navigating on Lake Michigan at night and the danger of large numbers of vessels navigating the rivers at the same time. Therefore, the starting time for the passage of vessels on Wednesdays has been changed. The Wednesday openings will begin at 11 a.m. instead of 6 p.m. The new starting time of 11 a.m. on Wednesdays will provide recreational vessels with more daylight hours to navigate the river.

The previous deviation required the accumulation of not less than five and no more than twenty-five vessels in order to begin trips up or down the river and in order for the bridges to open. Traditionally, the Coast Guard has avoided enacting regulations which specify the type and number of vessels entitled to demand an opening. Moreover, there are only a small number of vessels transiting to and from the boatyards during the summer navigation season. Therefore, the previous deviation requirement that a particular number of vessels accumulate before bridges will open is eliminated. Nor is there a minimum number of vessels which must accumulate before a Saturday or Sunday opening. The times for the Saturday and Sunday transits have not been changed.

This deviation is intended to best accommodate the City of Chicago while still providing for the reasonable needs of recreational vessels transiting the Chicago River System. A fourth deviation is anticipated for the return season. The entire series of deviations will provide the Coast Guard with evaluation periods from which to test the reasonableness of the city's cited needs and the current regulatory structure.

Deviation: Notice is hereby given that:

(1) The Coast Guard has granted the City of Chicago, Department of Transportation, a temporary deviation from the operating requirements at 33 CFR 117.391 governing certain bridges owned by the City of Chicago over the Chicago River, as follows:

Main Branch
Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch
Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch
Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

(2) This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, section 117.43, for the purpose of evaluating possible changes to the permanent regulations. This temporary deviation applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago need not open for the passage of recreational vessels unless the City of Chicago receives a twenty-four hour advance notice for passage, and need not open for recreational vessels except during the following periods, subject to the conditions indicated:

(a) From 6 a.m. on Saturdays through 7 p.m. on Sundays, the draws shall open for the passage of incoming and outgoing vessels with no restrictions to the minimum and maximum number of vessels to be passed.

(b) On Tuesdays and Thursdays the draws shall open on signal for the passage of incoming and outgoing vessels from 6 p.m. until all vessels have safely completed passage. There shall be no restrictions as to the minimum or maximum number of vessels to be passed.

(c) On Wednesdays, the draws shall open on signal for the passage of incoming and outgoing vessels from 11 a.m. until all vessels have safely completed passage. There shall be no restrictions as to the minimum or maximum number of vessels to be passed.

(3) Notwithstanding this deviation, the City of Chicago, after receiving a minimum of twenty-four hours advance notice of the intended passage of vessels through the draws of the bridges, shall ensure that:

(a) The necessary bridgetenders are provided for the safe and prompt opening of the draws;

(b) The operating machinery of each draw is maintained in good condition; and

(c) The draws are operated at sufficient intervals to assure their satisfactory operation.

(4) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(5) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, Government vessels of the United States, State and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(6) This period of deviation is effective from Sunday, August 1, 1993, and continues through Wednesday, September 29, 1993.

Dated: July 28, 1993.

W. R. Wilkins,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 93–19427 Filed 8–11–93; 8:45 am]

BILLING CODE 4910–14–M

---

33 CFR Part 117

[CGD01–93–009]

Drawbridge Operation Regulations, Hutchinson River (Eastchester Creek), NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Westchester County Department of Public Works, the Coast Guard is changing the regulations governing the South Fulton Avenue Bridge over the Hutchinson River (Eastchester Creek), at mile 2.9, between the City of Mount Vernon and the Town of Pelham, Westchester County, New York. These regulations provide that the draw open on signal from three hours before to three hours after high tide. This change is being made because of the decrease in requests to open the draw before and after low tide. At all other times, at least four hour advance notice for an opening is required. This action will relieve the bridge owner of having a person constantly available to open the draw during periods of low tide while still providing for the needs of marine traffic.

EFFECTIVE DATE: This rule becomes effective on September 13, 1993.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, First Coast Guard District, (212) 668–7170.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Waverly W. Gregory, Jr., Project Manager, and Lieutenant Commander Jeffrey Stieb, Project Counsel, First Coast Guard District, Legal Office.

Regulatory History

On May 10, 1993, the Coast Guard published proposed rules (58 FR 27504) concerning this amendment. The Commander, First Coast Guard District, also published the proposal as Public Notice 1–804 dated May 7, 1993. Interested persons were given until June 24, 1993 to submit comments. The Coast Guard received one letter commenting on the proposal. The Coast Guard determined there was no need for a public hearing and none was held.

Background and Purpose

The final rule permits Westchester County to limit its drawtenders normal presence to six hours twice a day, coinciding with the high tide. For these purposes, predicted high tide is based on four hours after predicted high water for New York (Battery), as given in the tide tables published by the National Oceanic and Atmospheric Administration. At all other times, Westchester County will provide openings if at least four hours advance notice is given. The four hours notice would not apply if a request for an opening within six hours after predicted high water is given to the bridge tender on station before he or she is scheduled to depart. As noted in the Notice of Proposed Rulemaking, the change includes provisions for clearance gauges on all bridges on this waterway to minimize openings and permit vessel operators to comply with § 117.11. The regulations would also define the maximum time delays for openings of railroad bridges as required by § 117.9. The regulations also update appendix A to part 117 to reflect the most current information regarding radiotelephone equipped bridges on this waterway, their call signs and frequency. These