Federal Register
Vol. 59, No. 194
Friday, October 7, 1994

Presidential Documents

Title 3—

The President

Proclamation 6731 of October 4, 1994

German-American Day, 1994

By the President of the United States of America

A Proclamation

In a joyous celebration at Germany's Brandenburg Gate just 3 months ago, the United States and Germany proudly welcomed and affirmed the new era of trans-Atlantic cooperation between our nations. Together, our countries are working to support democratic and market reforms that promise greater prosperity and security for Europeans, as well as for their American friends and allies. And our citizens look forward to the future of this partnership with unprecedented optimism and confidence.

For this important covenant, history has meaningful precedent. In the first days after the signing of America's Declaration of Independence in 1776, a prominent firm in Philadelphia translated and published the Declaration's text in German. That decision reflected the significant number of German-American colonists whose involvement in our struggle for freedom helped to fashion our democratic system. The Declaration's publication in German was intended to spread the word of independence to the courageous German colonists, who shared an abiding love of liberty—if not yet a language—with their English-speaking compatriots. The leaders of the revolution recognized the integral importance of the German population, and Germans were proud to play a central role in the birth of American democracy.

Germans who already had settled in the colonies and others who came to fight in the War for Independence, such as Baron von Steuben, aided significantly in ensuring the American triumph. The translated version of the Declaration of Independence is a lasting symbol both of the depth of the American-German friendship and of Germans' extraordinary intellectual and material contributions to the birth of representative government in the United States. In the nearly 220 years since that great victory, generations of German Americans have remained active and invaluable participants in the American experiment. Today, more citizens of the United States can claim German ancestry than that of any other ethnic group. Inspired by two centuries of shared freedom, German Americans throughout the land are helping to lead our Nation toward a future as bright as our past—a future of growing understanding and certain peace.

To honor today's stewards of the rich German-American heritage, the Congress, by Public Law 103–100, has designated October 6, 1994, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim October 6, 1994, as German-American Day, in appreciation of the countless contributions that people of German descent have made to our Nation's liberty, democracy, and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94–25104
Filed 10–5–94; 4:11 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 59, No. 194
Friday, October 7, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapters I, IX, X, and XI

[Docket No. L&RRS-94-001]

Use of Direct Final Rulemaking

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Policy statement.

SUMMARY: The Agricultural Marketing Service is implementing a new rulemaking procedure to expedite making noncontroversial changes to its regulations. Rules that the agency judges to be non-controversial and unlikely to result in adverse comments will be published as "direct final" rules. ("Adverse comments" are comments that suggest that a rule should not be adopted or suggest that a change should be made to the rule.) Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**. This new policy should expedite the promulgation of routine or otherwise noncontroversial rules by reducing the time that would be required to develop, review, clear, and publish separate proposed and final rules.

DATES: Policy Statement effective October 7, 1994; comments should be received by December 6, 1994.

ADDRESSES: Comments should be sent to Director, Legislative and Regulatory Review Staff, AMS, USDA, P.O. Box 96456, Room 3510–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant at 202–720–3203.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Service is committed to improving the efficiency of its regulatory process. In pursuit of this goal, we plan to employ the rulemaking procedure known as "direct final rulemaking" to promulgate some Agricultural Marketing Service rules.

The Direct Final Rule Process

Rules that the Agricultural Marketing Service judges to be noncontroversial and unlikely to result in adverse comments will be published as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated, and that unless written adverse comments or written notice of intent to submit adverse comments are received within 30 days, the revision made by the direct final rule will be effective 60 days from the date the direct final rule is published in the **Federal Register**.

"Adverse comments" are comments that suggest that the rule should not be adopted, or that suggest that a change should be made to the rule. A comment expressing support for the rule as published will not be considered adverse. Further, a comment suggesting that requirements in the rule should, or should not, be employed by the Agricultural Marketing Service in other programs or situations outside the scope of the direct final rule will not be considered adverse.

In accordance with the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure gives the public general notice of the Agricultural Marketing Service's intent to adopt a rule, and gives interested persons an opportunity to participate in the rulemaking through submission of comments. The major feature of direct final rulemaking is that if the Agricultural Marketing Service receives no written adverse comments and no written notice of intent to submit adverse comments within 30 days of the publication of the direct final rule, the rule will become effective without the need to publish a separate final rule. However, the Agricultural Marketing Service will publish a notice in the **Federal Register** stating that no adverse comments were received regarding the direct final rule, and confirming that the direct final rule is effective on the date stated in the direct final rule.

If the Agricultural Marketing Service receives written adverse comments or written notice of intent to submit adverse comments within 30 days of the publication of a direct final rule, a notice of withdrawal of the direct final rule will be published in the **Federal Register**. If the Agricultural Marketing Service intends to proceed with the rulemaking, the direct final rule will be republished as a proposed rule and we will proceed with the normal notice-and-comment rulemaking procedures.

Determining When to Use Direct Final Rulemaking

Not all Agricultural Marketing Service rules are good candidates for direct final rulemaking. The Agricultural Marketing Service intends to use the direct final rulemaking procedure only for rules that we consider to be noncontroversial and unlikely to generate adverse comments. The decision to use direct final rulemaking for a rule will be based on the Agricultural Marketing Service experience with similar rules.

Dated: October 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94-24777 Filed 10-6-94; 8:45 am]

BILLING CODE 3410-02-P

Food and Nutrition Service

7 CFR Part 210

Alternate Foods for Meals: Enriched Macaroni Products With Fortified Protein; National School Lunch Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires the use of the Protein Digestibility-Corrected Amino Acid Score (PDCAAS) instead of the Protein Efficiency Ratio (PER) for evaluating the biological quality of proteins in enriched macaroni products with fortified protein. This action is necessary for consistency with the Food and Drug Administration's (FDA) Nutrition Labeling Education Act regulations. The PDCAAS is a more accurate, efficient and less costly method for measuring protein quality of this food product used in the National School Lunch Program (NSLP). This rule also makes clear that enriched

macaroni products may not be used for infants under one year of age. In addition, this rule deletes reference in the NSLP regulations to the FDA Standard of Identity (21 CFR 139.117) for enriched macaroni products with fortified protein which has been stayed by FDA and clarifies that protein quality is to be determined on the dry basis not on the cooked food. This rule also makes a typographical correction and in accordance with the Metric Conversion Act of 1975 adds the metric equivalent for all weights and measurements. This final rule further clarifies that manufacturers of enriched macaroni with fortified protein must notify the Food and Nutrition Service (FNS) if there is a change in the protein content of their product after the original testing. FNS will assume the protein content of the product remains the same as that submitted for the original testing unless otherwise notified.

DATES: This final rule is effective on October 7, 1994. The incorporation by reference of the "Official Methods of Analysis of the AOAC International" (formerly the Association of Analytical Chemists) 15th Ed. (1990) and the "Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," as published by the Food and Agriculture Organization of the United Nations/World Health Organization, listed in this regulation is approved by the Director of the Federal Register as of October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Marion Hinners, Section Head, Food Science and Nutrition Section, Nutrition and Technical Services Division, USDA, (703) 305–2556.

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

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of FNS has certified that this rule will not have a significant economic impact on a substantial number of small entities. There are currently fewer than ten companies participating in the Child Nutrition Programs (CNPs) under this regulation. In addition, the changes contained in this regulation are expected to reduce costs for the manufacturer.

The Administrator of FNS has determined pursuant to 5 U.S.C. 553 (b) and (d) that notice and comment on this rule prior to implementation is unnecessary and contrary to public interest. The public interest would be better served by allowing a more accurate and efficient method for measuring the protein quality of foods used in the NSLP. This change will allow food companies to minimize costs, thereby allowing them to provide quality products at the lowest cost possible. Moreover, receiving prior comment would be unnecessary and impracticable in this case for the following reasons. First, requiring prior notice and comment would waste valuable government resources. The Food Safety and Inspection Service of the Department of Agriculture (USDA) and FDA already have received and reviewed comments on this issue in response to proposed rules governing nutrition labeling of all regulated products, including products covered by this FNS regulation, and have published final regulations which accept the PDCAAS method. Second, FNS, with FDA concurrence, has already recognized the merits of the PDCAAS method in permitting its use for vegetable protein products (VPPs). Third, this rule provides affected parties an implementation period of 30 days during which either protein quality test may be used for enriched macaroni products.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Date" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP, the administrative procedures are set forth under the following regulations: (1) school food authority appeals of State agency findings as a result of a Coordinated Review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of a Coordinated Review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); AND (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V and final rule-related notice at 48 FR 29114, June 24, 1983).

No new data collection or recordkeeping requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3502) are included in this rule.

Background: On March 27, 1974, the Department published final regulations (39 FR 11248) which defined enriched macaroni products with fortified protein as a food item meeting the NSLP meal pattern requirements specified in 7 CFR 210.10 under specified terms and conditions. At that time, the PER was the only recognized test for determining the biological quality of protein in foods. At present, there is another recognized method for determining the biological quality of protein in foods, the PDCAAS method. Several international bodies, including a Joint Expert Consultation on Protein Evaluation of the Food and Agriculture Organization (FAO) of the United Nations and the World Health Organization (WHO) (1989), have concluded that PDCAAS, in which a score of 1.0 equals 100 percent of the 1985 WHO essential amino acid requirement patterns for 2 to 5 year olds, is an appropriate method for evaluating food protein quality. The 2 to 5 year old requirement is the most inclusive of those recommended and thus may be used for all age groups, except infants.

PER is based on the assumption that proteins which are equivalent to casein meet the amino acid and protein requirements for the various age groups consuming a particular food. The specification of this methodology, which is based upon rodent nutrition requirements, was assumed to correlate to human requirements when PER was adopted as the sole regulatory method for determining protein quality. Extensive studies have since been conducted on human amino acid requirements which demonstrate that the essential amino acid requirements of humans are significantly different from those of rodents. This was recognized as early as 1980 by a conference of protein scientists and nutritionists held to assess protein quality in humans. A report of this working conference indicated a dissatisfaction with the PER method. The report further recognized that an amino acid scoring system, corrected for digestibility, is an

appropriate alternative for measuring protein value.

In 1985, WHO published its revised Energy and Protein Requirement Report prepared by a Joint Expert Consultation of the FAO/WHO and United Nations University (UNU). This consultation revised amino acid pattern requirements for humans into age groups of 2 to 5 years, 6 to 12 years, and adult, and extensively reviewed the requirements based on amino acid scoring and digestibility. Of the three amino acid patterns established, the 2 to 5 year old child pattern has the highest individual and total requirements. The report stated that protein and diets containing essential amino acids that met the greater needs of young children were also adequate for older children and adults, whereas the reverse may not be true. On this basis, the Joint FAO/WHO Expert Consultation on Protein Evaluation (1989) concluded that no adequate basis existed for using different scoring patterns for different age groups, with the exception of infants, who have a much greater need for essential amino acids. They recommended that the FAO/WHO/UNU amino acid scoring pattern for preschool children should be used to evaluate protein quality for all age groups, except infants. PDCAAS was recommended for calculating dietary protein intakes. Thus, precise human amino acid requirement patterns are available for all age groups.

Both FNS and the FDA have recognized the applicability and usefulness of the PDCAAS method of measuring protein quality. The regulation governing the use of VPP in the Child Nutrition Programs, 7 CFR Parts 210, 225 and 226, Appendix A - Alternate Foods for Meals; Vegetable Protein Products, published January 7, 1983, allowed FNS to approve an alternate test for measuring the biological quality of protein for VPP. This provision was included in the regulation in anticipation of recognition by the scientific community and FDA of the PDCAAS. FNS has since accepted the PDCAAS method in addition to the PER method for determining protein quality of VPP. This acceptance was based on the Joint FAO/WHO Expert Consultation on Protein Evaluation (1989) and with FDA's concurrence.

On July 19, 1990 (55 FR 29487 at 29499), FDA stated that their regulatory requirements to use PER "inhibit(ed) flexibility in determining protein quality by alternative methodologies." At that time, FDA proposed to continue the use of the PER, while also allowing use of alternative acceptable validated procedures as they become available.

Subsequently, in response to a petition from Protein Technologies International, Inc., FDA stated in the preamble to the nutrition labeling proposal published on November 27, 1991 (56 FR 60366 at 60369), that permitting PDCAAS to be used as an alternative to PER had merit. In commenting on that petition FDA quoted its earlier comments on the need for a flexible approach to determining protein quality:

> As new methodologies and new information on amino acid requirements of various age groups become available, the agency believes it must become more flexible in regard to permitted protein quality methodologies. Therefore, while the PER method described in the Official Methods of Analysis of the Association of Official Analytical Chemists may continue to be used as one of the methods for assessing the protein quality of foods, alternative acceptable validated procedures may be used as they become available. (55 FR 29487 at 29499).

However, FDA later proposed to require the PDCAAS, stating in the preamble (56 FR 60366 at 60370) that:

> The agency has reviewed the FAO/WHO report and tentatively accepts its conclusion that the protein digestibility-corrected amino acid score method is more appropriate for assessing protein quality of foods than animal assays and is preferable for regulatory purposes.

In October, 1989, the Subcommittee on the 10th Edition of the Recommended Dietary Allowances published the revised Recommended Dietary Allowances. These new allowances confirm and accept the amino acid requirement pattern as published by the WHO, 1985, and recognize PDCAAS as an appropriate method of assessing protein quality of human diets. The amino acid requirements for the 2 to 5 year old suggested by both of these scientific bodies are identical. The Codex Alimentarius Vegetable Protein Committee as well as the Codex Committee on Special Dietary Foods have also recommended amino acid scoring for evaluation of vegetable proteins and special dietary foods.

The PDCAAS was considered and accepted by the Joint FAO/WHO Codex Alimentarius Commission which convened in Geneva, Switzerland during July 1989. An Expert Consultation convened at the request of the Codex Alimentarius Commission reviewed the amino acid scoring methodologies and recommended the implementation of the PDCAAS for measuring protein quality. After extensive deliberation, resulting in a comprehensive report, it was reported that, ". . . the Consultation agreed that the Protein Digestibility-Corrected Amino Acid Score method was the most suitable approach for routine evaluation of protein quality for humans, and recommended the adoption of this method as an official method at the international level." (Joint FAO/WHO Expert Consultation on Protein Evaluation, Codex Alimentarius, Washington, D.C., 1989). The Expert Consultation's report and recommendations were transmitted to the FAO Secretariat in Rome for final review and dissemination to the Codex Alimentarius Commission membership. The report of the Expert Consultation contains many findings and conclusions, most supportive of the PDCAAS. No conclusions adverse to this method were reported.

On January 6, 1993, FDA published final rules (58 FR 2079) requiring use of the PDCAAS method as the method for determining protein quality for food intended for children over 1 year of age and adults. While this method is recommended for all children above 1 year of age, it is not recommended for infants, and therefore FDA's final rule (58 FR 2079 at 2102) retained the PER method for assessing protein quality and retained casein as the standard in expressing the percentage of the Reference Daily Intake (RDI) for protein in foods represented and purported to be for use by infants. This rule became effective on May 8, 1994. In recognition of these scientific advances and the adoption by FDA of PDCAAS as the only method for determining protein quality for children above one year of age, this rule amends the NSLP regulations at appendix A of Part 210 to require PDCAAS as the only method for determining protein quality for enriched macaroni. However, in order to provide affected parties an implementation period, the amended paragraph 2 further provides that for 30 days after publication of the rule either the PER or the PDCAAS may be used.

Finally, a new paragraph 1(c) is added to Appendix A to make clear that enriched macaroni may not be used for infants under 1 year of age in the NSLP. Accordingly, FNS will no longer approve enriched macaroni products purported for use by infants regardless of what method their protein quality has been tested. It was never the Department's intention that enriched macaroni products be served to infants and this amendment is meant to make clear that policy.

Manufacturers of enriched macaroni with fortified protein, currently approved by FNS, will not be affected by the change to an alternate method

unless the nutritional composition of their approved product changes. Should the nutritional composition of an approved product previously tested under PER method change after the 30 day implementation period, data obtained by the PDCAAS method will be required for re-approval.

The FDA Standard of Identity (21 CFR 139.117), referenced and quoted in Appendix A and upon which the FNS final regulation was based, was stayed on March 21, 1978, pending a determination of whether a public hearing was necessary to resolve issues raised by objections (43 FR 11695). At that time, FDA stated that "during the period of the stay, the (enriched macaroni products with fortified protein) may be introduced into interstate commerce with appropriate labeling as a nonstandardized food." (43 FR 11695). Therefore, this rule deletes all references to that Standard in Appendix A. However, the requirements for processing and labeling of enriched macaroni products with fortified protein prescribed by FDA in the stayed Standard of Identity were previously incorporated in the FNS final rule and will remain the same, with some technical changes.

In addition, this final rule amends the current regulation to correct a statement which has caused confusion and which was recently brought to our attention by analytical laboratories. The current regulation states that the protein quality is to be determined on the cooked food. However, determining protein quality on the cooked food is not feasible in practice, because when utilizing the PER method the moisture content prevents laboratory rodents from eating test foods in sufficient quantities to accurately determine protein quality. Likewise, the moisture content in the cooked food may affect the test results under the PDCAAS method. Therefore, FAO/WHO suggests a moisture content in the cooked food of less than ten percent for viable testing. Determinations made on a dry basis has been the procedure commonly employed by commercial laboratories in the past. Thus, this rule requires determination of protein quality on a dry basis.

This final rule makes a typographical correction and, in accordance with the Metric Conversion Act of 1975, adds, side by side, the metric equivalent for all weights and measurements contained in the rule.

This final rule also includes a clarification that all manufacturers, including those with currently accepted macaroni products, must notify FNS if there is a change in the protein portion of their product since the original data submission and product approval. FNS will assume the protein content remains the same unless otherwise notified.

List of Subjects in 7 CFR Part 210

Children, Commodity school program, Food assistance programs, Grants programs—Social programs, Incorporation by reference, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 210 is amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In Appendix A—Alternate Foods for Meals; Enriched Macaroni Products with Fortified Protein:

(a) The heading of Appendix A is revised.

(b) A new subheading is added under the heading of Appendix A.

(c) Paragraphs 1(a) and 1(b) are amended by adding "(28.35 grams)" after the words "ounce" or "ounces" wherever they appear.

(d) A new paragraph 1(c) is added.

(e) Paragraphs 2 and 3 are revised.

Appendix A to Part 210—Alternate Foods for Meals Enriched Macaroni Products With Fortified Protein

1. * * *

(c) Enriched macaroni product may not be used for infants under 1 year of age.

2. Only enriched macaroni products with fortified protein that have been accepted by FNS for use in the USDA Child Nutrition Programs may be labeled as provided in paragraph 1(b) of this appendix. Manufacturers seeking acceptance of their product shall furnish FNS a chemical analysis, the Protein Digestibility-Corrected Amino Acid Score (PDCAAS), and such other pertinent data as may be requested by FNS, except that prior to November 7, 1994, manufacturers may submit protein efficiency ratio analysis in lieu of the PDCAAS. This information is to be forwarded to: Director, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 607, Alexandria, VA 22302. All laboratory analyses are to be performed by independent or other laboratories acceptable to FNS. (FNS prefers an independent laboratory.) All laboratories shall retain the "raw" laboratory data for a period of 1 year. Such information shall be made available to FNS upon request. Manufacturers must notify FNS if there is a change in the protein portion of their product after the original testing. Manufacturers who report such a change in protein in a previously approved product must submit protein data in accordance with the method specified in this paragraph.

3. The product should not be designed in such a manner that would require it to be classified as a Dietary Supplement as described by the Food and Drug Administration (FDA) in 21 CFR part 105. To be accepted by FNS, enriched macaroni products with fortified protein must conform to the following requirements:

(a)(1) Each of these foods is produced by drying formed units of dough made with one or more of the milled wheat ingredients designated in 21 CFR 139.110(a) and 139.138(a), and other ingredients to enable the finished food to meet the protein requirements set out in paragraph 3.(a)(2)(i) under Enriched Macaroni Products with Fortified Protein in this Appendix. Edible protein sources, including food grade flours or meals made from nonwheat cereals or from oilseeds, may be used. Vitamin and mineral enrichment nutrients are added to bring the food into conformity with the requirements of paragraph (b) under Enriched Macaroni Products with Fortified Protein in this Appendix. Safe and suitable ingredients, as provided for in paragraph (c) under Enriched Macaroni Products with Fortified Protein in this Appendix, may be added. The proportion of the milled wheat ingredient is larger than the proportion of any other ingredient used.

(2) Each such finished food, when tested by the methods described in the pertinent sections of "Official Methods of Analysis of the AOAC International," (formerly the Association of Official Analytical Chemists), 15th Ed. (1990) meets the following specifications. This publication is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the AOAC International, 2200 Wilson Blvd., suite 400, Arlington, VA 22201–3301. This publication may be examined at the Food and Nutrition Service, Nutrition and Technical Services Division, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302 or the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

(i) The protein content (N x 6.25) is not less than 20 percent by weight (on a 13 percent moisture basis) as determined by the appropriate method of analysis in the AOAC manual cited in (a)(2) under Enriched Macaroni Products with Fortified Protein in this Appendix. The protein quality is not less than 95 percent that of casein as determined on a dry basis by the PDCAAS method as described below:

(A) The PDCAAS shall be determined by the methods given in sections 5.4.1, 7.2.1. and 8.0 as described in "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation," Rome, 1990, as published by the Food and Agriculture Organization (FAO) of the United Nations/World Health Organization (WHO). This report is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this report may be obtained from the Nutrition and Technical Services Division, Food and Nutrition Service, 3101 Park Center Drive, room 607, Alexandria, Virginia 22302.

This report may also be inspected at the Office of the Federal Register 800 North Capitol St., NW., suite 700, Washington, DC.

(B) The standard used for assessing protein quality in the PDCAAS method is the amino acid scoring pattern established by FAO/WHO and United Nations University (UNU) in 1985 for preschool children 2 to 5 years of age which has been adopted by the National Academy of Sciences, Recommended Dietary Allowances (RDA), 1989.

(C) To calculate the PDCAAS for an individual food, the test food must be analyzed for proximate analysis and amino acid composition according to AOAC methods.

(D) The PDCAAS may be calculated using FDA's limited data base of published true digestibility values (determined using humans and rats). The true digestibility values contained in the WHO/FAO report referenced in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this Appendix may also be used. If the digestibility of the protein is not available from these sources it must be determined by a laboratory according to methods in the FAO/WHO report (sections 7.2.1 and 8.0).

(E) The most limiting essential amino acid (that is, the amino acid that is present at the lowest level in the test food compared to the standard) is identified in the test food by comparing the levels of individual amino acids in the test food with the 1985 FAO/WHO/UNU pattern of essential amino acids established as a standard for children 2 to 5 years of age.

(F) The value of the most limiting amino acid (the ratio of the amino acid in the test food over the amino acid value from the pattern) is multiplied by the percent of digestibility of the protein. The resulting number is the PDCAAS.

(G) The PDCAAS of food mixtures must be calculated from data for the amino acid composition and digestibility of the individual components by means of a weighted average procedure. An example for calculating a PDCAAS for a food mixture of varying protein sources is shown in section 8.0 of the FAO/WHO report cited in paragraph 3.(a)(2)(i)(A) under Enriched Macaroni Products with Fortified Protein in this Appendix.

(H) For the purpose of this regulation, each 100 grams of the product (on a 13 percent moisture basis) must contain protein in amounts which is equivalent to that provided by 20 grams of protein with a quality of not less than 95 percent casein. The equivalent grams of protein required per 100 grams of product (on a 13 percent moisture basis) would be determined by the following equation:

E:\GRAPHICS\ER07OC94.022

X=grams of protein required per 100 grams of product

a=20 grams (amount of protein if casein)

b=.95 [95% × 1 (PDCAAS of casein)]

c=PDCAAS for protein used in formulation

(ii) The total solids content is not less than 87 percent by weight as determined by the methods described in the "Official Methods of Analysis of the AOAC International" cited in paragraph (a)(2) under Enriched Macaroni Products with Fortified Protein in this Appendix.

(b)(1) Each pound of food covered by this section shall contain 5 milligrams of thiamine, 2.2 milligrams of riboflavin, 34 milligrams of niacin or niacinamide, and 16.5 milligrams of iron.

(2) Each pound of such food may also contain 625 milligrams of calcium.

(3) Only harmless and assimilable forms of iron and calcium may be added. The enrichment nutrients may be added in a harmless carrier used only in a quantity necessary to effect a uniform distribution of the nutrients in the finished food. Reasonable overages, within the limits of good manufacturing practice, may be used to assure that the prescribed levels of the vitamins and mineral(s) in paragraphs (b)(1) and (2) under Enriched Macaroni Products with Fortified Protein in this Appendix are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) Ingredients that serve a useful purpose such as to fortify the protein or facilitate production of the food are the safe and suitable ingredients referred to in paragraph (a) under Enriched Macaroni Products with Fortified Protein in this Appendix. This does not include color additives, artificial flavorings, artificial sweeteners, chemical preservatives, or starches. Ingredients deemed suitable for use by this paragraph are added in amounts that are not in excess of those reasonably required to achieve their intended purposes. Ingredients are deemed to be safe if they are not food additives within the meaning of section 201(s) of the Federal Food, Drug and Cosmetic Act, or in case they are food additives if they are used in conformity with regulations established pursuant to section 409 of the act.

(d)(1) The name of any food covered by this section is "Enriched Wheat _____ Macaroni Product with Fortified Protein", the blank being filled in with appropriate word(s) such as "Soy" to show the source of any flours or meals used that were made from non-wheat cereals or from oilseeds. In lieu of the words "Macaroni Product" the words "Macaroni", "Spaghetti", or "Vermicelli" as appropriate, may be used if the units conform in shape and size to the requirements of 21 CFR 139.110 (b), (c), or (d).

(2) When any ingredient not designated in the part of the name prescribed in paragraph (d)(1) under Enriched Macaroni Products with Fortified Protein in this Appendix, is added in such proportion as to contribute 10 percent or more of the quantity of protein contained in the finished food, the name shall include the statement "Made with _____", the blank being filled in with the name of each such ingredient, e.g. "Made with nonfat milk".

(3) When, in conformity with paragraph (d)(1) or (d)(2) under Enriched Macaroni Products with Fortified Protein in this Appendix, two or more ingredients are listed in the name, their designations shall be arranged in descending order of predominance by weight.

(4) If a food is made to comply with a section of 21 CFR 139, but also meets the compositional requirements of the Enriched Macaroni with Fortified Protein Appendix, it may alternatively bear the name set out in the other section.

(e) Each ingredient used shall declare its common name as required by the applicable section of 21 CFR 101. In addition, the ingredients statement shall appear in letters not less than one half the size of that required by 21 CFR 101.105 for the declaration of net quantity of contents, and in no case less than one-sixteenth of an inch in height.

* * * * *

Dated: September 22, 1994.

Ellen Haas,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 94-24902 Filed 10-6-94; 8:45 am]

Billing Code 3410-30-U

Agricultural Marketing Service

7 CFR Part 966

[Docket No. FV94-966-1IFR]

Tomatoes Grown in Florida; Amendment of Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim rule clarifies registered handler application and approval procedures and the Florida Tomato Committee's (committee) authority to cancel a handler's certificate of registration for good cause. The rule also clarifies that only registered handlers of Florida tomatoes may ship such tomatoes in interstate commerce. This rule also adds special purpose shipment outlets, redefines one of those outlets, and brings the order's special purpose shipment provisions into conformity with each other. Finally, this rule provides that handlers must report packout information on a daily basis to the committee or an authorized agent of the committee. This rule is expected to enhance compliance with the order and regulations and bring the regulations into conformity with current industry practices. The amendments were unanimously recommended by the committee. In addition, the Department of Agriculture (Department) makes conforming changes.

DATES: Effective on October 7, 1994. Comments received by November 7, 1994, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk,

Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. Comments should reference the docket number, the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P. O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770 or FAX (813) 299–5169, or Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523–S., P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–3610, or FAX (202) 720–5698;

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 966 [7 CFR part 966], both as amended, regulating the handling of tomatoes grown in Florida. The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act".

The Department is issuing this rule in accordance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform and is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms, including tomato handlers, are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the tomato handlers and producers may be classified as small entities.

On May 31, 1994, the committee met to discuss the difficulty it has experienced in collecting assessments from a few handlers and in receiving complete, up-to-date packout information from some handlers. The committee recommended several modifications to the order's existing rules and regulations to improve these situations.

Handler Certification

Currently, pursuant to § 966.323 Handling regulation, fresh market shipments of tomatoes by handlers to points outside the regulated area must meet grade, size, inspection, and container requirements. Fresh market shipments within the regulated area are not subject to such requirements. Fresh market shipments within and outside the regulated area are subject to assessments. The regulated area is defined as the portion of the State of Florida which is bounded by the Suwannee River, the Georgia Border, the Atlantic Ocean, and the Gulf of Mexico. Basically, it is the entire State of Florida, except the Panhandle. The production area is part of the regulated area.

Under § 966.113 Registered handler, and for the purpose of this order, registered handlers are persons who have adequate facilities for grading tomatoes for market and who assume initial responsibility for compliance with inspection, assessment, reporting, and other regulatory requirements concerning tomatoes grown in the production area. Any person who wishes to become a registered handler is required to make an application for registration with the committee on forms prescribed by, and available at the principle office of, the committee. If the applicant has facilities which are determined by the committee as adequate for grading tomatoes, the applicant may be approved as a registered handler. "Adequate facilities" are currently defined as those being in a permanent location with nonportable equipment for the proper grading, sizing and packing of tomatoes. The committee recommended two minor additions to the definition: (1) The term "washing" should be added to the definition, as that activity is an integral part of the handling process; and (2) the phrase "grown in the production area" be added at the end of the definition to further identify the tomatoes being handled.

Most tomatoes produced in Florida are shipped fresh to markets outside the regulated area. The committee's goal is to avoid marketing problems associated with poor quality tomato shipments. The industry has spent substantial sums of money to promote Florida tomatoes to the trade and consumers. Such expenditures are predicated on the shipment by handlers of good quality tomatoes, which buyers have come to expect from Florida.

The committee reported that it has been difficult to collect assessments from some handlers in the past. One handler indicates no intention of paying assessments this year. Because of these compliance difficulties, and to foster shipments of good quality tomatoes, the committee recommended changes in the rules and regulations to strengthen the registered handler procedures, clarify handler responsibilities under the order, and enhance the committee's compliance capabilities.

The committee recommended amending § 966.113 and adopting new provisions which would: (1) Establish that registered handlers must be certified by the committee; (2) provide the committee with the authority, criteria, and procedures for approving registered handler certifications and for cancelling such certifications for failure to pay assessments or provide reports to the committee; and (3) allow only registered handlers to lawfully ship tomatoes outside of the regulated area. After considering the committee's recommendations, the Department has determined that the changes in this interim rule are necessary to effectuate the declared policy of the Act.

New § 966.113 contains an introductory statement explaining the criteria that a handler must meet to be registered under the order. These provisions include having adequate facilities and being certified by the committee as a registered handler, handling tomatoes in compliance with order requirements, obtaining inspection, submitting required reports, and paying applicable assessments. Four of these provisions are currently specified in § 966.113. The provisions for certification as a registered handler and submission of reports are added in this rule to help the committee with its compliance responsibilities and improve marketing assistance provided to handlers under the order.

New paragraph (a) establishes qualifications for registered handler certification. The committee or its duly authorized agent inspects handling facilities to determine if those facilities meet the requirements for certification. The facilities must be located in the regulated area and be permanent, non-portable buildings. The equipment in the facilities must also be nonportable and capable of properly washing, grading, sizing, and packing of tomatoes grown in the production area. These requirements are the same as those in the current definition for *Adequate facilities* in paragraph (e) of § 966.323, with the addition of washing as an activity and the reference to where the tomatoes are produced. The definition is removed from paragraph (e) of § 966.323 and, as modified, added to new paragraph (a) of § 966.113 to define, in the appropriate place in the rules and regulations, the kind of facilities and equipment needed for certification as a registered handler.

New paragraph (b) of § 966.113 specifies the information requested by the committee in the application for registered handler certification. The information requested is common business identification information.

New paragraph (c) of § 966.113 provides that the committee or an agent of the committee make the determination that an applicant's facilities meet requirements. Such certification will be made in writing by the committee. Denial of certification, and the basis thereof, will also be made in writing to the applicant by the committee.

New paragraph (d) of § 966.113 establishes criteria for cancellation of a registered handler's certification, with the approval of the Secretary, based on failure to pay assessments on a timely basis and failure to provide required reports. A registered handler's certification will also be subject to cancellation, with the approval of the Secretary, if the handler no longer has adequate facilities, as that term is defined in § 966.113(a). A cancelled certification will be reinstated once a handler demonstrates compliance with assessment, reporting and facility requirements. New paragraph (d) also includes the exemption, currently in § 966.113, concerning persons who make deliveries of ungraded tomatoes to handling facilities.

New paragraph (e) of § 966.113 provides that any inspection certificate of tomatoes offered for inspection by a non-registered handler contains a statement to that effect. The inspection certificate for all such tomato lots will read "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler." Such failing certificate will be issued, regardless of the grade, size or containerization of the tomatoes inspected. The committee will keep the Federal State Inspection Service (inspection service) abreast of all handlers' status. Any handler who is denied a registered handler certificate or who has a registered handler certificate cancelled, may appeal to the committee for reconsideration. Such appeal must be made in writing.

The Florida Road Guard Bureau of the Florida Department of Agriculture and Consumer Services releases tomato shipments for interstate commerce only if the inspection certificates indicate that such shipments meet marketing order requirements. Thus, persons or handlers not certified as a registered handler by the committee will not be able to ship tomatoes outside the regulated area.

The committee recommended that this provision be included under a separate title and paragraph. Because inspection certification is dependent on handler certification, the Department includes this recommendation as part of the new provision on certified registered handlers in § 966.113. For emphasis and to provide consistency in regulations, the Department also adds this requirement to paragraph (a)(4) *Inspection* in § 966.323.

Section 966.113 provides that handlers must pay assessments on a timely basis to maintain their registered handler certification. For emphasis and to provide consistency in regulations, the Department also adds this requirement as new paragraph (e) *Assessments* under § 966.323.

Certificates of Privilege

The committee recommended changing an incorrect citation in the first sentence of § 966.120 Application for Certificate of Privilege which incorrectly refers to § 966.53 of the order. The committee states that the intent of the section is to require Certificates of Privilege for special purpose shipments authorized in § 966.54 Shipments for special purposes. Thus, § 966.54 is referenced in the first sentence of the paragraph. This adjustment does not change current practices as the committee's use of Certificates of Privilege is consistent with § 966.54 of the order.

This rule also changes § 966.120 to be consistent with the outlets specified in § 966.323 Handling regulations. One outlet currently specified in § 966.120 is changed and three new outlets are added. The term "processing" replaces the term "canning" to make the regulations consistent with current industry practice. Pickling, experimental purposes and export, which are currently specified in § 966.323(b), are added to § 966.120. The committee also proposed that it have the authority, with the Secretary's approval, to add other outlets to meet changing food technologies and services which could benefit from receiving tomatoes shipped under Certificate of Privilege. This authority is added to § 966.120.

The Department makes conforming changes to paragraph (b) of § 966.323 to make that paragraph consistent with the changes to § 966.120. The term "canning" is changed to "processing" and committee authority to add special purpose outlets, with the Secretary's approval, is added as conforming changes.

The Department also adds a definition for "processing" to paragraph (e) § 966.323 Definitions. "Processing" is defined as the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. Also, paragraph (e) of § 966.323, as provided herein, is redesignated as paragraph (g).

Packout Reports

The committee also recommended that all handlers be required to present daily packout reports to the inspection service. The inspection service currently collects these reports from most handlers for inspection billing purposes and sends a daily packout report to the committee.

Currently, all handlers maintain records of their daily packout activity based on the grade, size, and containers of tomatoes handled. The inspection service collects this data at the end of each work day for inspection billing

purposes. As a service to the committee and tomato handlers, the inspection service compiles this information (received from its various inspectors) and reports it to the committee at the end of the day or the following morning. The committee compiles this data into a daily, industry-wide, packout report. The report is considered an indispensable tool for handlers to assess daily tomato market conditions and is disseminated, upon request, to registered handlers.

However, some handlers fail to provide their packout data to the inspection service on a timely basis to allow inclusion of the handler's data in each daily, industry-wide report. To be a useful tool, the industry-wide report must be accurate and include, to the extent possible, the total industry packout. Because the report is such a valuable marketing tool for handlers, the committee voted unanimously to propose that each registered handler be required to report the handler's daily packout data to the inspection service in a timely manner.

The packout data that handlers provide to the inspection service, to the committee directly, or to another agent of the committee is data that is routinely compiled by each handler as part of the handler's normal, daily operating records. The reporting deadline of the end of the working day, as designated by the committee, will not present an undue burden on handlers because the data requested is routinely recorded by handlers at the end of each working day. Individual handler data collated and disseminated in an industry-wide report will not disclose confidential information or the business position of individual handlers.

The committee recommended that this change be added to the rules and regulations as a separate, new number, title and paragraph. However, because the new provision establishes a reporting requirement on handlers, the Department inserts the provision as a separate, new paragraph under current § 966.323. Thus, a new paragraph (e) is added to the handling regulation and current paragraph (e) *Definitions* is redesignated as paragraph (g).

Assessments

Finally, the committee recommended that a clarification be added to the rules and regulations to clearly state that handlers must pay assessments to maintain their certification as registered handlers. Failure of some handlers to pay their assessments places an unfair burden upon those handlers who comply with order requirements. The Department adds that this clarification to § 966.323 handling regulation because payment of assessments is a requirement of handlers under the order. A new paragraph (f) *Assessments* is added to § 966.323. This paragraph stated that failure of a registered handler to pay assessments in a timely manner will result in cancellation of the registered handler's status, thus, making that handler ineligible to ship tomatoes outside of the regulated area. Current committee collection procedures are: (1) Weekly assessment billings during the harvest season; (2) payment within 30 days; (3) followed by a demand letter specifying the end of a 15 day extended notice period; and (4) referral to the Department for legal action. Under this rule, a handler who has not paid assessments after expiration of the extended notice period provided in the demand letter will be considered out of compliance and will be reported to the inspection service as a non-registered handler.

Based on the above, the Administrator of the AMS has determined that this interim rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paper Work Reduction Act of 1980, [44 U.S.C. Chapter 35], the information collection requirement contained in this rule has been submitted to the Office of Management and Budget (OMB) for approval and has been assigned OMB No. 0581–0073. Because handlers currently complete a form to be certified as a registered handler, no additional OMB approval is needed for such registration. However, this rule provides that each registered handler, at the end of each day in which tomatoes are handled by the registered handler, furnish the committee or it's designated agent an accurate accounting of the number of tomato containers packed that day. This report provides the grade, size, and containers of tomatoes packed by the handler each packing day. Because the information is readily available from each day's packout, the report takes five minutes to complete. The committee needs this information to compile a daily packout report which is used by handlers in their marketing efforts. This provision is consistent with current industry practice. It is estimated that 50 handlers currently submit daily reports and receive marketing assistance during the marketing period October 10, through June 15 each year.

Pursuant to 5 U.S.C. 553, it is found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule: (1) clarifies order regulations and makes those regulations consistent with current conditions in the industry; (2) is expected to improve compliance with order requirements; (3) needs to be in effect as soon as possible because the marketing season begins on October 10, 1994; (4) was unanimously recommended by the committee at a public meeting; and (5) provides a 30-day comment period and all comments timely received will be considered prior to the finalization of this rule.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.113 is revised to read as follows:

§ 966.113 Registered handler certification.

Each handler who handles tomatoes grown in the production area must be certified as a registered handler by the committee in order to ship such tomatoes outside of the regulated area. A handler who is certified as a registered handler is a handler who has adequate facilities to meet the requirements for preparing tomatoes for market, obtains inspection on tomatoes handled, agrees to handle tomatoes in compliance with the order's grade, size and container requirements, pays applicable assessments on a timely basis, submits reports required by the committee, and agrees to comply with other regulatory requirements on the handling of tomatoes grown in the production area.

(a) Based on the criteria specified in this section, the committee shall determine eligibility for certification as a registered handler. The committee or its authorized agent shall inspect a handler's facilities to determine if the facilities are adequate for preparing tomatoes for market. In order to be adequate for such purposes, the facilities must be permanent, nonportable buildings located in the production area with equipment that is nonportable for the proper washing, grading, sizing and packing of tomatoes grown in the production area.

(b) Application for certification shall be executed by the handler and filed with the committee on a form, prescribed by and available at the principal office of the committee, containing the following information:

(1) Business name,

(2) Address of handling facilities (including telephone and facsimile number),

(3) Mailing address (if different from handling facility),

(4) Number of years in tomato business in Florida,

(5) Type of business, and

(6) Names of senior officers, partners, or principal owners with financial interest in the business.

(c) If the committee determines from available information that an applicant meets the criteria specified in this section, such applicant shall be certified as a registered handler and shall be so informed by written notice from the committee. If certification is denied, such denial shall be made by the committee in writing, stating the reasons for denial.

(d) A registered handler's certification shall be cancelled by the committee, with the approval of the Secretary, if the handler fails to pay assessments within 45 days of the end of the assessment billing period, fails to provide reports, or no longer has adequate facilities as described in this section. Cancellation of a handler's registration shall be made in writing to the handler and shall specify the reason(s) for and effective date of such cancellation. The committee shall recertify the handler's registration at such time as the handler corrects the deficiencies which resulted in the cancellation. Certification is permanent until the committee determines, based on criteria herein, that cancellation is warranted. Persons who make deliveries of ungraded tomatoes to such certified registered handlers are hereby determined to be exempt from otherwise applicable regulations pursuant to this part.

(e) During any period in which the handling of tomatoes is regulated pursuant to this part, no handler shall obtain an inspection certifying that said handler's tomatoes meet the requirements of the marketing order unless said handler has been certified as a registered handler. Any person who is not certified as a registered handler may receive inspection on tomatoes from the Federal-State Inspection Service. Such inspection certificate shall state "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler."

3. In § 966.120, paragraph (a) is revised to read as follows:

§ 966.120 Application for Certificate of Privilege.

(a) Whenever handling is regulated pursuant to § 966.54, each handler desiring to make shipments of tomatoes for any of the following purposes shall, prior thereto, apply to the committee for and obtain a Certificate of Privilege permitting such shipment:

(1) For pickling, or

(2) For processing, or

(3) For experimental purposes, or

(4) For relief or charity, or

(5) For export, or

(6) For other purposes which may be specified by the committee, with the approval of the Secretary.

* * * * *

4. Section 966.323 is amended by revising paragraphs (a)(4) and (b), redesignating paragraph (e) as paragraph (g), revising redesignated paragraph (g), and adding new paragraphs (e) and (f) to read as follows:

§ 966.323 Handling regulation.

* * * * *

(a) * * *

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Persons not certified by the committee as a registered handler shall be issued inspection certificates on shipments handled by such persons stating "Fails to meet the requirements of Marketing Order No. 966 because the handler is not a registered handler." Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for pickling, processing, experimental purposes, relief, charity, export, or other outlets recommended by the committee and approved by the Secretary, if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for processing are also exempt from the assessment requirements of this part.

* * * * *

(e) *Report of packouts.* Each registered handler shall, at the end of each day during which handling activities have been conducted, or the following morning as the committee may prescribe, provide to the committee or its designated agent a complete and accurate accounting of the number of containers of tomatoes packed that day. The report shall include an accounting of the grade, size, maturity, and net weight of the containers packed in each such category. The total packout report shall be provided to the committee or its authorized agent in a timely fashion that allows the committee to compile a daily, industry-wide packout report.

(f) *Assessments.* Handlers shall pay assessments as provided in § 966.42. Assessment will be based on inspection certificates supplied to the committee by the Federal-State Inspection Service.

(g) *Definitions. Hydroponic tomatoes* means tomatoes grown in solution without soil; *greenhouse tomatoes* means tomatoes grown indoors. A *Certified Tomato Repacker* is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting, and repacking tomatoes into consumer sized packages and has been certified as such by the committee. *Processing* as used in §§ 966.120 and 966.323 means the manufacture of any tomato product which has been converted into juice, or preserved by any commercial process, including canning, dehydrating, drying, and the addition of chemical substances. *U.S. tomato standards* means the revised United States Standards for Fresh Tomatoes (7 CFR 51.1855 through 51.1877), effective October 1, 1991, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

Dated: October 4, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–24901 Filed 10–6–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 212, 217, and 245

[INS No. 1676–94]

RIN 1115–AD83

Adjustment of Status to That of Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule will amend the Immigration and Naturalization Service (Service) regulations to allow certain persons in the United States to adjust status to that of a lawful permanent resident before October 1,

1997. These persons, although immediately eligible for immigrant visa issuance abroad, had been barred from adjustment of status in the United States because they had committed certain administrative violations of United States immigration law. This rule allows prospective lawful permanent residents to avoid the difficulties and expense of travel to a United States consulate or embassy abroad. It continues, however, to penalize these violators of the immigration laws by requiring most applicants to pay an additional sum in excess of the standard adjustment of status filing fee. After adjusting status, these persons can lawfully live and work in the United States and may later become eligible to seek United States citizenship through naturalization.

DATES: This interim rule is effective October 1, 1994. Written comments must be received on or before December 6, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, Please reference the INS number 1676–94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Rita A. Arthur, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

The Immigration and Nationality Act (the Act) allows a person who is neither a citizen nor a national of the United States to live and work in this country for an unlimited period of time if he or she has been granted lawful permanent resident status. It also provides for a grant of lawful permanent resident status on a conditional basis for an initial two-year period, if the residency is based on a recent marriage or on alien entrepreneur status, and allows for the removal of the conditions upon fulfillment of certain requirements.

The Act generally requires a qualified intending immigrant to obtain an immigrant visa abroad before seeking admission to the United States for lawful permanent residence. It also allows certain persons who have not obtained an immigrant visa abroad to adjust status to that of a lawful permanent resident after arrival in the United States. As set forth in the Act, most persons seeking adjustment of status must show that they could qualify for immigrant visa issuance abroad and must meet certain additional requirements.

An immigrant visa may be issued only at a United States consulate or embassy abroad. Each prospective immigrant is required to show that he or she is eligible for immigrant classification and has an immediately available immigrant visa number through a qualifying family or employment relationship, or other means. The applicant must also establish that he or she is not included in any of the classes of persons who cannot, by law, be admitted to the United States, or that any basis for inadmissibility has been waived. After the immigrant visa has been issued, the person may lawfully travel to the United States. A qualified immigrant visa holder becomes a lawful permanent resident upon admission to the United States.

An adjustment of status applicant must be physically present in the United States at the time of application. A person applying under section 245 of the Act, the most frequently used adjustment of status provision, must meet the basic requirements for immigrant visa issuance. Like immigrant visa applicants, the adjustment applicant must prove that he or she is eligible for immigrant classification and has an immediately available immigrant visa number through a qualifying family or employment relationship, or other means. The adjustment applicant must also show that he or she is not included in any of the classes of persons who, by law, cannot be admitted to the United States, or that any basis for inadmissibility has been waived. Section 245(a) of the Act further restricts eligibility for adjustment of status by prohibiting adjustment unless the applicant entered the United States after having been inspected and admitted or paroled by an immigrant officer. Section 245(c) of the Act also bars the adjustment of most applicants who have been employed in the United States without authorization; who have not complied with the terms of temporary nonimmigrant status; or who entered in transit without visa status, under a visa waiver program, or as crewmen. A qualified adjustment applicant becomes a lawful permanent resident upon approval of the adjustment of status application.

The requirements of sections 245(a) and 245(c) of the Act were established to discourage intending immigrants from moving to the United States before becoming fully eligible for permanent residence and bypassing the orderly immigrant visa issuance process abroad. These requirements have caused many persons who are in the United States to be unable to adjust status in this country.

Intending immigrants who could not meet the adjustment requirements have been obliged to leave the country and apply for an immigrant visa at a United States consulate or embassy abroad. They then were immediately eligible for admission as lawful permanent residents upon returning to the United States. By virtue of the requirements of sections 245(a) and 245(c) of the Act, these persons were putatively required to leave the United States and United States consuls abroad have been burdened with immigrant visa issuance that would not otherwise have been necessary.

Public Law 103–317

Section 506(b) of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, was enacted August 26, 1994. It temporarily lifts many of the restrictions on adjustment of status under section 245 of the Act on applications filed on or after October 1, 1994, although it does not affect persons adjusting under other sections of law. This law adds a new section 245(i) to the Act, which allows a person who is physically present in the United States and would otherwise have been eligible for immigrant visa issuance abroad, to adjust status to that of a lawful permanent resident under section 245 of the Act. Applicants may be subject to a financial penalty, since the law requires most persons seeking adjustment of status under the new law to pay an additional sum in excess of the standard adjustment of status filing fee. The provisions of the new section 245(i) of the Act cease to have effect on October 1, 1997.

Persons Who Remain Ineligible To Adjust Status

Section 245(i) of the Act does not waive all requirements for adjustment of status under section 245 of the Act. An applicant must be eligible for immigrant classification and have an immediately available immigrant visa number through a qualifying family or employment relationship, or other means. The person must also show that he or she is not included in any of the classes of persons listed in section 212 of the Act who cannot be admitted to

the United States, or must show that any basis for excludability has been waived.

Section 245(i) of the Act also does not waive several other grounds of ineligibility for adjustment of status under section 245 of the Act. An applicant seeking adjustment as an immediate relative of a United States citizen or as a preference alien, but who is not the beneficiary of a valid unexpired visa petition, remains ineligible for adjustment. A person who is currently a lawful permanent resident also continues to be ineligible for adjustment. An applicant who was admitted to the United States as a K–1 fiance(e) but did not marry the United States citizen who filed the petition, or who was admitted as the K–2 child of a fiance(e) parent who did not marry the United States citizen who filed the petition, is also barred from adjusting status under section 245 of the Act. A person who is seeking adjustment based on a marriage entered into while the applicant was under deportation, exclusion, or related judicial proceedings may not adjust status, unless the person provides clear and convincing evidence of a bona fide marriage or has resided outside the United States for two or more years after the marriage.

Payment of Additional Sum

This temporary adjustment provision continues to encourage intending immigrants who are abroad to comply with the immigrant visa issuance requirements, by making adjustment of status under the new provision much more expensive than immigrant visa issuance abroad. Most applicants for the new benefit will be required to pay the standard adjustment of status filing fee, plus an additional sum of five times the standard filing fee. Thus, persons currently applying for adjustment of status under the provisions of the new section 245(i) of the Act must pay the standard filing fee of $130.00, plus an additional sum of $650.00, for a total of $780.00. Any future modifications of the standard adjustment of status filing fee will change the amount of the additional sum, as well as the total cost.

Persons who can meet all the requirements for adjustment of status under sections 245(a) and 245(c) of the Act will continue to pay only the standard filing fee (currently $130.00 or $100.00 if less than 14 years of age). Section 245(i) of the Act also exempts certain persons applying under the new provision from payment of the additional sum. An unmarried child who is less than 17 years of age when he or she applies for adjustment of status will be required to pay only the standard filing fee (currently $130.00, or $100.00 if less than 14 years of age). The spouse of a legalized alien or the unmarried child under 21 years of age of a legalized alien will also be required to pay only the standard filing fee (currently $130.00, or $100.00 if less than 14 years of age), if the spouse or child qualifies for and has applied for voluntary departure under the family unity program established by section 301(a) of the Immigration Act of 1990.

This additional sum is a penalty dictated by section 245(i) of the Act; therefore, payment of the additional sum will not be waived, except as directed in section 245(i) of the Act. Also, fee waivers may be granted under 8 CFR 103.7(c) only if the applicant substantiates his or her inability to pay the prescribed fee. Since a person applying for adjustment of status under section 245 of the Act is required to show financial resources or income establishing that he or she is not likely to become a public charge in the United States, a person who can establish a basis for waiving payment of the additional sum would be unlikely to be eligible for adjustment of status under section 245 of the Act. The few adjustment provisions that waive the public charge exclusion ground for a person seeking adjustment of status under section 245 of the Act also provide other waivers that eliminate any need for the applicant to seek the benefits of section 245(i) of the Act.

Application

Each person applying for adjustment of status under section 245 of the Act, including a child, must complete Form I–485. Each applicant must also compile the initial evidence required by that form's instructions. Supplement A to Form I–485 (Supplement A) may then be completed to determine whether the applicant must file under section 245(i) of the Act and whether the additional sum must be paid. This supplementary form asks several questions and provides instructions that allow the applicant to decide whether he or she must submit Supplement A and whether an additional sum must be paid.

Each person, including a child, whose eligibility for adjustment of status is based on the provisions of section 245(i) of the Act must file Supplement A. The Form I–485 with fee and the Supplement A with any required additional sum must be filed with the office having jurisdiction over the applicant's place of residence.

Beginning of Application Period

Section 506(c) of Pub. L. 103–317 states that "(t)he provisions of these amendments to the Immigration and Nationality Act shall take effect on October 1, 1994." These amendments to the Act are not retroactive and cannot be applied to applications for adjustment of status filed before that date. They also cannot be applied to a motion to reopen or reconsider an adjustment of status application if the underlying adjustment application was filed before October 1, 1994. An intending immigrant is not, however, precluded from obtaining the benefits of the new law merely because he or she previously sought to adjust status. If the person meets the requirements for adjustment of status under the provisions of the new section 245(i) of the Act, he or she may file a new application for adjustment of status with fee, accompanied by Supplement A and any required additional sum. The applicant must show that he or she has an immigrant visa number immediately available and meets all other applicable requirements of section 245 of the Act on the date the new application is filed.

End of Application Period

Section 506(c) of Pub. L. 103–317 states that "(t)he provisions of these amendments to the immigration and Nationality Act shall * * * cease to have effect on October 1, 1997." Applications for adjustment of status under section 245(i) of the Act cannot be granted on or after that date. Prospective adjustment of status applicants who are seeking the benefits of section 245(i) of the Act must file their applications sufficiently in advance of October 1, 1997, to ensure that they can be completed before that date. Application processing times vary by location, and persons who will be seeking adjustment of status under the provisions of section 245(i) of the Act during 1997 are encouraged to file as early in the year as possible. Persons who must file after June 1997 should contact the office having jurisdiction over their place of residence for further instructions.

Immediate Availability of Immigrant Visa Number

All applicants for adjustment of status under section 245 of the Act must have an immediately available immigrant visa number. "Immediately available" for the purpose of accepting and processing the Form I–485 application filed by a preference alien is defined in 8 CFR 245.1(f) as being not later than the date shown in the current Department of State Bureau of Consular

Affairs Visa Bulletin. The Department of State, however, defines "immediately available" as being earlier than the date shown in the current Visa Bulletin. This rule amends 8 CFR 245.1(f) to bring the adjustment of status provision into accordance with the Department of State's definition. It also changes the name of the Visa Bulletin to reflect its current title.

New Restriction on Immigrant Visa Issuance Abroad

Public Law 103–317 also places a new restriction on the issuance of immigrant visas abroad before October 1, 1997, which has no effect on persons seeking adjustment of status in the United States. Section 506(a) of Pub. L. 103–317 adds a new section 212(o) to the Act, which forbids immigrant visa issuance to certain prospective immigrants, including children, who have been physically present in the United States. Prospective immigrants, except certain spouses and children of legalized aliens, who were not maintaining lawful nonimmigrant status at the time of departure from the United States, will not be eligible for immigrant visa issuance within 90 days of departure from the United States. This new restriction does not apply to the spouse of a legalized alien or the unmarried child under 21 years of age of a legalized alien, if the spouse or child qualifies for and has applied for voluntary departure under the family unity program established by section 301(a) of the Immigration Act of 1990. The new section 212(o) of the Act takes effect on October 1, 1994, and ceases to have effect on October 1, 1997. The Department of State, which has jurisdiction over immigrant visa issuance at United States consulates and embassies abroad, will promulgate regulations implementing this provision of Pub. L. 103–317.

Violent Crime Control and Law Enforcement Act of 1994

The Violent Crime Control and Law Enforcement Act of 1994 (Crime bill), Pub. L. 103–322, was enacted on September 13, 1994. Section 130003 of the Crime Bill, entitled "Alien Witness Cooperation and Counterterrorism Information" adds a new section 245(i) to the Act. This provision restricts the adjustment of status of certain persons admitted to the United States under a newly established "S" nonimmigrant classification. Congress clearly did not intend to repeal or supersede the provisions of the Department of Commerce, Justice, State, the Judiciary and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, by adding another section 245(i) to the Act. The Service regards the establishment of the second section 245(i) of the Act as a numbering error and will recommend that Congress enact a technical amendment to redesignate the Crime Bill's provision as section 245(j) of the Act.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exceptions found at 5 U.S.C. 553 (b)(3)(B), (d)(3); see *Animal Legal Defense Fund* v. *Quigg*, 932 F.2d 920 (Fed. Cir. 1991). The reasons and necessity for immediate implementation of this interim rule are as follows:

Early implementation will allow persons in the United States to apply for adjustment of status to that of a lawful permanent resident as of the beginning of the statutorily established application period on October 1, 1994. These persons had been ineligible to adjust status and had been obliged to incur the expense and inconvenience of applying for an immigrant visa at a United States embassy or consulate abroad.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. By temporarily removing certain restrictions on eligibility for adjustment of status, the rule will eliminate inconvenience to a number of individuals currently in the United States who otherwise would have incurred significant monetary expenses by traveling abroad to apply for an immigrant visa at a United States consulate or embassy abroad. It will have no effect on small entities.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service to be a "significant regulatory action" under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation would enhance family well-being by allowing certain family members, who were formerly precluded from adjusting status, to become lawful permanent residents of the United States without first having obtained immigrant visas abroad.

Paperwork Reduction Act

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

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

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visa, Reporting and recordkeeping requirements.

8 CFR Part 217

Administrative practice and procedures, Aliens, Nonimmigrants, Passports and visas.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the code of Federal Regulations is amended as follows:

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

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

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

2. In § 103.7, paragraph (b)(1) is amended by revising the entry for Form I–485 to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–485. For filing application for permanent resident status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years.

Supplment A to Form I–485. Supplement to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act—$650.00, except that payment of this additional sum is not required when the applicant is an unmarried child who is less than 17 years of age, or when the applicant is the spouse or the unmarried child less than 21 years of age of a legalized alien and is qualified for and has applied for voluntary departure under the family unity program.

* * * * *

3. In § 103.7, paragraph (c)(1) is amended by adding a sentence at the end of the paragraph to read as follows:

§ 103.7 Fees.

* * * * *

(c) * * *

(1) * * * The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived except as directed in section 245(i) of the Act.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

4. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; and 8 CFR part 2.

5. In § 212.1, paragraph (e)(4)(i) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(e) * * *

(4) * * *

(i) Adjustment of status to that of a temporary resident or, except under the provisions of section 245(i) of the Act, to that of a lawful permanent resident;

* * * * *

PART 217—VISA WAIVER PILOT PROGRAM

6. The authority for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

§ 217.3 [Amended]

7. In § 217.3, paragraph (a) is amended in the third sentence by adding the phrase "or under the provisions of section 245(i) of the Act" immediately after the phrase "other than as an immediate relative as defined in section 201(b) of the Act".

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

8. 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.

9. In § 245.1, the first sentence of paragraph (a) is revised to read as follows:

§ 245.1 Eligibility.

(a) *General.* Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application.* * *

* * * * *

10. In § 245.1, paragraph (b) is amended by revising the heading and introductory text, to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) *Restricted aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act, unless the alien establishes eligibility under the provisions of section 245(i) of the Act and § 245.10, is not included in the categories of aliens prohibited from applying for adjustment of status listed in § 245.1(c), is eligible to receive an immigrant visa, and has an immigrant visa immediately available at the time of filing the application for adjustment of status: * * *

* * * * *

11. In § 245.1, paragraphs (c) through (g) are redesignated as paragraphs (d) through (h), respectively, and a new paragraph (c) introductory text is added to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act:

* * * * *

12. In § 245.1, paragraphs (b)(7) through (b)(10) are redesignated as paragraphs (c)(1) through (c)(4) respectively; and paragraphs (b)(12) through (b)(14) are redesignated as paragraphs (c)(5) through (c)(7) respectively.

13. In § 245.1, paragraph (b)(11) is redesignated as paragraph (b)(7) and paragraph (b)(15) is redesignated as paragraph (b)(8).

14. In § 245.1, the second sentence of the newly redesignated paragraph (g) is amended by revising the phrase "Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers" to read: "Department of State Bureau of Consular Affairs Visa Bulletin".

15. In § 245.1, the third sentence of the newly redesignated paragraph (g) is amended by revising the phrase "not later than" to read: "earlier than".

16. In § 245.2, paragraph (a)(3)(iii) is redesignated as paragraph (a)(3)(iv), and a new paragraph (a)(3)(iii) is added to read as follows::

§ 245.2 Application.

* * * * *

(a) * * *

(3) * * *

(iii) *Under section 245(i).* An alien who seeks adjustment of status under the provisions of section 245(i) of the Act must file Form I–485, with the required fee. The alien must also file Supplement A to Form I–485, with any required additional sum.

* * * * *

17. In § 245.2 paragraph (a)(5)(ii) is amended in the last sentence by revising the reference to "§ 245.1(f)" to read: "§ 245.1(g)".

18. A new § 245.10 is added to read as follows:

§ 245.10 Adjustment of status upon payment of additional sum under Public Law 103–317.

(a) *Eligibility.* Any alien who is included in the categories of restricted aliens under § 245.1(b) may apply for adjustment of status under section 245 of the Act if the alien:

(1) Is physically present in the United States;

(2) Is eligible for immigrant classification and has an immigrant visa number immediately available at the time of filing for adjustment of status;

(3) Is not excludable from the United States under any provision of section 212 of the Act, or all grounds for excludability have been waived;

(4) Properly files Form I–485, Application to Register Permanent Residence or Adjust Status on or after October 1, 1994, with the fee required for that application;

(5) Properly files Supplement A to Form I–485 on or after October 1, 1994;

(6) Pay an additional sum of five times the fee required for filing Form I–485, unless payment of the additional sum is waived under section 245(i) of the Act; and

(7) Will adjust status under section 245 of the Act to that of a lawful permanent resident of the United States on or after October 1, 1994, and before October 1, 1997.

(b) *Payment of additional sum.* An applicant filing under the provisions of section 245(i) of the Act must pay the standard adjustment of status filing fee, as shown on Form I–485 and contained in § 103.7(b)(1) of this chapter. The applicant must also pay an additional sum of five times the standard filing fee, unless at the time the application for adjustment of status is filed, the alien is:

(1) Unmarried and less than 17 years of age;

(2) The spouse of a legalized alien, qualifies for and has properly filed Form I–817, Application for Voluntary Departure under the Family Unity Program, and submits a copy of his or her receipt or approval notice for filing Form I–817.

(c) *Application period.* An application for the adjustment of status benefits of section 245(i) of the Act may not be filed before October 1, 1994. An application for the adjustment of status benefits of section 245(i) of the Act cannot be granted on or after October 1, 1997. A prospective applicant who is seeking the benefits of section 245(i) of the Act must file the application sufficiently in advance of October 1, 1997, to ensure that it may be completed before that date.

(d) *Adjustment application filed on or after October 1, 1994, without Supplement A to Form I–485.* An adjustment of status applicant will be allowed the opportunity to amend an adjustment of status application filed on or after October 1, 1994, to request consideration under the provisions of section 245(i) of the Act, if it appears that the alien is not otherwise ineligible for adjustment of status. The applicant will be notified in writing of the intent to deny the adjustment of status application unless Supplement A to Form I–485 and any required additional sum is filed within thirty days of the date of the notice.

(e) *Applications for Adjustment of Status filed before October 1, 1994.* The provisions of section 245(i) of the Act shall not apply to an application for adjustment of status that was filed before October 1, 1994. The provisions of section 245(i) of the Act shall also not apply to a motion to reopen or reconsider an application for adjustment of status if the application for adjustment of status was filed before October 1, 1994. If otherwise eligible for adjustment of status under the provisions of section 245(i) of the Act, the alien may file a new application for adjustment of status, accompanied by the required filing fee, Supplement A to Form I–485, and any additional sum required by section 245(i) of the Act.

Dated: September 30, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

Note: This Supplement will not appear in the Code of Federal Regulations

Supplement to the preamble—Supplement A to Form I–485.

BILLING CODE 4410–10–M

U.S. Department of Justice
Immigration and Naturalization Service

OMB # 1115-0053
Supplement A to Form I-485

Purpose of This Form. This form is for use by a person in the United States who is applying for adjustment of status to that of a lawful permanent resident of the United States and who benefits from the provisions of section 245(i) of the Immigration and Nationality Act (the Act). It allows the applicant to determine whether he or she must file under this provision and whether an additional sum will be required. It also collects statistical information needed by the Immigration and Naturalization Service (INS).

Section 245(i) of the Act temporarily lifts certain restrictions on eligibility for adjustment of status to that of a lawful permanent resident of the United States. It allows an otherwise eligible applicant to adjust status under section 245 of the Act without regard to manner of entry into the United States and without regard to most immigration status violations. The applicant may be required to pay an additional sum when applying under this provision.

Who May File. An eligible applicant must:

- be physically present in the United States;
- have an immediately available immigrant visa number;
- be admissible to the United States for permanent residence;
- properly file an application for adjustment of status on or after October 1, 1994, and must adjust status under section 245 of the Act before October 1, 1997;
- pay the required additional sum, or show that section 245(i) of the Act does not require the payment of an additional sum; and

NOT Be a Person Who:

- is or was a J-1 or J-2 exchange visitor, is subject to the two-year foreign residence requirement, and has not complied with or been granted a waiver of the requirement;
- has A, E or G nonimmigrant status, or has an occupation which would allow such status, UNLESS Form I-508 (Form I-508F for French nationals) is filed to waive diplomatic rights, privileges and immunities, and, if in A or G nonimmigrant status, a completed Form I-566 is submitted;
- is already a lawful permanent resident;
- is applying for adjustment of status as an immediate relative or preference alien and is not the beneficiary of a valid unexpired immigrant visa petition; or
- was admitted as a K-1 fiance(e) but did not marry the U.S. citizen who filed the petition, or was admitted as the K-2 child of a fiance(e) and the alien fiance(e) parent did not marry the U.S. citizen who filed the petition.

See the Form I-485, "Application to Register Permanent Residence or Adjust Status" instructions for additional information about the immediate availability of immigrant visa numbers, admissibility and proper filing of an application for adjustment of status.

General Filing Instructions.
Each applicant for the benefits of section 245(i) of the Act, including a child, must complete and file:

- Form I-485, and the required supporting forms, documents and fee shown in the Form I-485 instructions; and
- Supplement A to Form I-485, and any additional sum required by Public Law 103-317.

First, complete Form I-485 following the instructions. Then, complete Supplement A to Form I-485 to determine whether you need to file Supplement A to Form I-485, and to determine whether you must pay the additional sum.

Where to File. File Form I-485 and Supplement A to Form I-485 with the office having jurisdiction over your place of residence.

When to File. To benefit from Public Law 103-317, you must file this form on or after October 1, 1994, and must adjust status before October 1, 1997.

Additional Sum. In addition to the fee required by Form I-485, you must pay the additional sum (if any) shown in Part II, #13 of this form. The additional sum must be submitted in the exact amount. It cannot be refunded. **DO NOT MAIL CASH.** All checks and money orders must be drawn on a bank or other financial institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."

- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of an additional sum under Public Law 103-317 is not honored by the bank on which it is drawn.

Decision. You will be notified in writing of the decision on your application for adjustment of status.

Penalties. If you knowingly and willfully falsify or conceal a material fact or submit a false document with the request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice. We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 U.S.C. 1255 and 1259. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115-0053
Supplement A to Form I-485

START HERE - Please Type or Print

Part 1. Information about Applicant

Family Name	First Name	Middle Name

Address - C/O

Street Number and Name	Apt. Suite

City	State or Province	

Country	ZIP/Postal Code

INS A #	Date of Birth (month/day/year)	Country of Birth

Part 2. Basis for Eligibility *(check one)*

1. On Form I-485, Part 2, I checked application type *(check one)*:

a.	☐ An immigrant petition . . .	Go to #2.
b.	☐ My spouse or parent applied . . .	Go to #2.
c.	☐ I entered as a K-1 fiance . . .	Stop Here. Do Not File This Form.
d.	☐ I was granted asylum . . .	Stop Here. Do Not File This Form.
e.	☐ I am a native or citizen of Cuba . .	Stop Here. Do Not File This Form.
f.	☐ I am the spouse or child of a Cuban	Stop Here. Do Not File This Form.
g.	☐ I have continuously resided in the U.S. .	Stop Here. Do Not File This Form.
h.	☐ Other . . .	Go to #2.
i.	☐ I am already a permanent resident . . .	Stop Here. Do Not File This Form.
j.	☐ I am already a permanent resident and am the spouse or child of a Cuban	Stop Here. Do Not File This Form.

2. I have filed Form I-360; and I am applying for adjustment of status as a special immigrant juvenile court dependent *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #3.**

3. I have filed Form I-360; and I am applying for adjustment of status as a special immigrant who has served in the United States Armed Forces *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #4.**

4. I last entered the United States *(check one)*:

☐ Legally as a crewman (D-1/D-2 visa). **Go to #11.**
☐ Without inspection. **Go to #11.**
☐ Legally in transit without visa status. **Go to #11.**
☐ Legally without a visa **Go to #5.**
☐ Legally as a parolee. **Go to #5.**
☐ Legally with another type of visa (show type _____) **Go to #5.**

5. I last entered the United States legally without a visa as a visitor for tourism or business; and I am applying for adjustment of status as the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #6.**

6. I last entered the United States legally as a parolee, or with a visa (except as a crewman), or as a Canadian citizen without a visa; and I am applying for adjustment of status *(check one)*:

☐ As the spouse, unmarried child less than 21 years old, parent, widow or widower of a United States citizen.
Stop Here. Do Not File This Form.

☐ As a special immigrant retired international organization employee or family member of an international organization employee or as a special immigrant physician; and I have filed Form I-360. **Stop Here. Do Not File This Form.**

☐ Under some other category. **Go to #7.**

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed ☐ ☐	
File Reviewed ☐ ☐	**Class of Adjustment Code:** ____ ____ ____

To Be Completed by *Attorney or Representative*, if any

☐ Check if G-28 is attached showing you represent the petitioner

VOLAG#

ATTY State License #

Part 2. continue.

7. I am a national of the (former) Soviet Union, Vietnam, Laos or Cambodia who last entered the United States legally as a public interest parolee after having been denied refugee status; and I am applying for adjustment of status under Public Law 101-167 *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #8.**

8. I have been employed in the United States after 01/01/77 without INS authorization *(check one)*:

☐ Yes **Go to #9.** ☐ No **Go to #10.**

9. I am applying for adjustment of status under the Immigration Nursing Relief Act (INRA); I was employed without INS authorization only on or before 11/29/90; and I have always maintained a lawful immigration status while in the United States after 11/05/86 *(check one)*:

☐ Yes **Stop Here. Do Not File This Form.** ☐ No **Go to #10.**

10. I am now in lawful immigration status; and I have always maintained a lawful immigration status while in the United States after 11/05/86 *(check one)*:

☐ Yes **Stop Here. Do Not File This Form .**
☐ No, but I believe that INS will determine that my failure to be in or maintain a lawful immigration status was through no fault of my own or for technical reasons. **Stop Here. Do Not File This Form,** and attach an explanation to your Form I-485 application.
☐ No **Go to #11.**

11. I am unmarried and less than 17 years old *(check one)*:

☐ Yes **Stop Here. File This Form and Form I-485.** Pay only the fee required with Form I-485.
☐ No **Go to #12.**

12. I am the unmarried child of a legalized alien and am less than 21 years old, or I am the spouse of a legalized alien; and I have attached a copy of my receipt or approval notice showing that I have properly filed Form I-817, Application for Voluntary Departure under the Family Unity Program *(check one)*:

☐ Yes **Stop Here. File This Form and Form I-485.** Pay only the fee required with Form I-485.
☐ No **Go to #13.**

13. **File This Form and Form I-485. You must pay the additional sum:**

$130.00 - Fee required with Form I-485* and
$650.00 - Additional sum under section 245(i) of the Act

$780.00 - Total amount you must pay.

*If you filed Form I-485 separately, attach a copy of your filing receipt and pay only the additional sum of $650.00. In #11 and /or #12, show the answer you would have given on the date you filed Form I-485.

Part 3. Signature. Read the information on penalties in the instructions before completing this section. If someone helped you prepare this petition he or she must complete Part 4.

I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print Your Name	Date	Daytime Telephone No.

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

Part 4. Signature of person preparing form if other than above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date	Daytime Telephone No.

Firm Name
and Address

Form I-485 (09/30/94) Supplement A

[FR Doc. 94–25025 Filed 10–5–94; 11:42 am]
BILLING CODE 4410–10–C