

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal Airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

1. § 71.123 is amended as follows:

V-77 [Amended]

By removing the words "via Abilene, TX; Wichita Falls, TX;" and substituting the words "Abilene, TX; INT Abilene 047' and Wichita Falls, TX, 204' radicals; Wichita Falls;"

V-568 [Amended]

By removing the words "to Acton" and substituting the words "Acton; Millsap, TX; to Wichita Falls, TX"

Issued in Washington, DC, on November 23, 1988.

Harold W. Becker,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-27522 Filed 11-29-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1312

Importation and Exportation of Controlled Substances; Nomenclature Changes

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This action changes certain office designations which are currently listed in Part 1312, Importation and exportation of controlled substances, of Title 21 of the Code of Federal Regulations in order to accurately reflect the internal organization of the Drug Enforcement Administration.

It contains no substantive changes in any regulations. Therefore, no comments have been solicited and the action is being issued as a final rule.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, State and Industry Section, Office of Diversion Control, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, telephone: (202) 633-1216.

SUPPLEMENTARY INFORMATION: It has been determined that this is an internal management matter not requiring consultation with the Office of Management and Budget (OMB) and that no Federalism considerations are involved. The Deputy Assistant Administrator of DEA hereby certifies that these matters will have no significant negative impact upon small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871 (b) and delegated to the Administrator of the Drug Enforcement Administration, and redelegated to the Deputy Assistant Administrator of the Office of Diversion Control by 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that 21 CFR Part 1312 of Title 21 of the Code of Federal Regulations be amended as follows:

List of Subjects in 21 CFR Part 1312

Administrative practice and procedure, Drug Enforcement Administration, Drug traffic control, Exports, Imports, Narcotics, Reporting requirements.

PART 1312—[AMENDED]

1. The authority citation for Part 1312 continues to read as follows:

Authority: 21 U.S.C. 952, 953, 954, 957, 958.

§§ 1312.14, 1312.16, 1312.19, 1312.24, 1312.25, 1312.28, 1312.31 and 1312.32 [Amended]

2. 21 CFR 1312.14(a), 1312.16(b), 1312.19 (a) and (b), 1312.24(a), 1312.25, 1312.28(c), 1312.31(b) and 1312.32(a) are amended by removing the words "Diversion Operations Section" and

replacing them with the words "Drug Control Section".

Date: November 10, 1988.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 88-27484 Filed 11-29-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-278; Ref: Notices No. 639, 650]

Wild Horse Valley Viticultural Area; California

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in the mountains between Napa and Solano Counties, California, to be known as Wild Horse Valley. The viticultural area is located just five miles east of the City of Napa. It contains vineyards in both Napa and Solano Counties. The petition was submitted by John Newmeyer of Napa and four other interested persons. This final rule is based on a notice of proposed rulemaking (Notice No. 639) published in the *Federal Register* on September 16, 1987, at 52 FR 179, and a notice of proposed rulemaking (Notice No. 650) reopening the comment period, published in the *Federal Register* on December 21, 1987, at 52 FR 48279. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they may purchase. The use of this viticultural area as an appellation of origin will also help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: December 30, 1988.

FOR FURTHER INFORMATION CONTACT: Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, (202-566-7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF-53 (43 FR 37672, 54624) revising regulations in 27 CFR

Part 4. These regulations allow the establishment of definite viticultural

On October 2, 1979, ATF published Treasury Decision ATF-60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin. Section 4.25(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguished by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing a viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. maps with the boundaries prominently marked.

Petition

ATF received a petition proposing a viticultural area encompassing a valley near Napa, California, approximately five and one-third miles long and one and two-thirds miles across at its widest point. The total area of the viticultural area is 3,300 acres of 5.16 square miles. Currently, there are 73 acres of wine grapes in the Wild Horse Valley viticultural area. According to the petitioner, recent studies of other sites in the area indicate the feasibility of more than tripling the number of acres planted to wine grapes, and additional plantings are being considered. There are currently no bonded wineries in the viticultural area, but two small wineries are planned. Because of its proximity to San Francisco Bay and its elevation, the viticultural conditions in Wild Horse Valley are different from grape-growing conditions in other valleys in the eastern coast ranges of Napa County, such as Wooden, Gordon, Pope, Foss, and Chiles Valleys, which tend to be more

continental in climate. The Wild Horse Valley's predominant soils, climate, and elevations are also different from those predominating in the portion of the overlapping Green Valley in Solano County (known as the Solano County Green Valley viticultural area) and the adjacent Coombsville area of Napa Valley. The long growing season of the Wild Horse Valley, its rocky soil, and windy conditions produce grapes that are well-suited to winemaking, according to the petitioner.

Location in Relation to Established American Viticultural Areas

The Wild Horse Valley viticultural area is within the North Coast viticultural area. Wild Horse Valley partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The Suisin Valley viticultural area is approximately 2.5 miles east of the Wild Horse Valley. It is separated from the Wild Horse Valley only by the Solano County Green Valley viticultural area.

Evidence of Name

The name Wild Horse Valley is well documented. The petitioner provided references to books identifying the area as Wild Horse Valley as early as 1866. According to early accounts, wild horses roamed the area during that period, thus the name Wild Horse Valley was coined.

Today, the name Wild Horse Valley is found on U.S.G.S. maps and on Napa County road maps. One of the two roads leading to the valley is named "Wild Horse Valley Road," and a creek flowing from the southeast portion of the valley into Solano County Green Valley, is named "Wild Horse Creek." The large, locally known horse ranch and equestrian center, Wild Horse Valley Ranch, located at the north portion of the valley, has given the name ample publicity in recent years. The first vineyard used for wine production in Wild Horse Valley was that of Joseph Vorbe who in 1881 had 50 acres. The wine historian, William F. Heintz, published a report entitled, "Wild Horse Valley's Viticultural History." Part of the report describes the historical use of the name Wild Horse Valley, as well as its viticultural significance.

Evidence of Boundaries

The boundaries of the Wild Horse Valley are defined by the natural terrain of the area. This hilly upland valley is rimmed by higher peaks on all sides. In its center are two large constructed lakes which supply water to the City of Vallejo. To the west, south, and southeast, mountainous terrain soon

gives way to alluvial plains. To the north and northeast the terrain is ruggedly mountainous.

For ease of definition, the petitioner drew the boundary of the viticultural area with straight lines for the most part, connecting prominent peaks surrounding the valley. This boundary delineates the area which has been historically known as Wild Horse Valley.

Geographical Evidence

Climate and Elevation

The valleys in the Coast Ranges east of the City of Napa generally tend to have a drier, more continental climate than the Napa Valley floor and vineyard sites in the mountains to the west. Many factors, including distance from sources of marine air, sunny exposure, and heat-absorbing rocky outcroppings, contribute to warmer summertime temperatures. Because of its location, Wild Horse Valley is an exception to this generalization. The area of southern Napa Valley and Wild Horse Valley have lower annual temperatures and smaller annual temperature ranges as compared with the northern Napa Valley and most of the eastern coast ranges of Napa County, which have higher annual temperatures and larger annual temperature ranges. Wild Horse Valley's southerly location near San Pablo and Suisin Bays exposes it to cool westerly winds blowing in from the ocean and the bay, especially in spring and summer. Its proximity to the Carquinez Straits and its unprotected position rising out of bay shore flatlands on two sides make Wild Horse Valley an unusually windy location. This air movement combines with the marine breezes to make Wild Horse Valley windier than the lower elevation of the Coombsville area of Napa Valley to the west, and the more inland coast range mountains and valleys to the north, and the more sheltered Solano County Green Valley viticultural area. The Wild Horse Valley viticultural area also enjoys longer hours of sunlight than Coombsville area and Green Valley. Summer fogs that blanket the lower elevations often stop below the altitude of Wild Horse Valley. In spite of the longer period of daylight, Wild Horse Valley's customary cool winds keep afternoon temperatures low. A thermograph study done in 1965 at the ranch of James Birkmyer in the north end of the valley indicated that this site has a Region I climate (less than 2,500 degree days) as classified by the University of California at Davis system of heat summation.

The predominant climate of the Wild Horse Valley viticultural area and the predominant climate of the overlapping Solano County Green Valley are different. Available thermograph studies (1973-74) of Solano County Green Valley, places the climate of this viticultural area in mid-Region III. Solano County Green Valley is more sheltered and on the average, warmer than Wild Horse Valley. The 1,000 to 2,000 foot elevation of the Wild Horse Valley viticultural area is generally higher than the surrounding valleys. Many areas of Solano County Green Valley have much lower elevations than Wild Horse Valley, ranging from 400 to 800 feet above sea level. Because of the difference in elevation, fog is more prevalent in Solano County Green Valley than in Wild Horse Valley. The average annual rainfall in Solano County Green Valley is twenty to twenty-five inches per year. Over the last twenty years the rainfall in Wild Horse Valley has averaged thirty-two inches per year.

Soils

The soils in Wild Horse Valley also set it apart from neighboring areas. The soils in Wild Horse Valley are primarily shallow, well-drained, sloping stony loams of the Hambright-Toomes association found only in mountainous uplands. Specific Wild Horse Valley soil types include Hambright, Toomes, Gilroy, Coombs, Sobrante and Trimmer loams. The soil in the overlapping Solano County Green Valley is primarily Conejo clay loam, a nearly level, deep, fine-textured alluvial soil found only at low elevations. Soil in the nearby Coombsville area of Napa Valley immediately west of Wild Horse Valley consists of Coombs loam with areas of Kidd, Haire, Forward, and Sobrante soils. The soils found in other Napa County areas to the north and east are primarily Yolo loam, Pleasanton loam, Diablo clay and Millsholm loam in the Cappel Valley. In Foss Valley they consist of Maxwell clay, Bale clay loam and Aiken loam. In Gordon Valley they are mostly Bale clay loam, Cole silt loam, Yolo loam and Bressa-Dibble complex. In Wooden Valley they mostly are Bale clay loam, Sobrante loam, Cole silt loam, Hair clay loam, Diablo clay, Clear Lake clay and Bressa-Dibble complex. In Chiles Valley they are primarily Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehma silt loam, Maxwell clay and Bressa-Dibble complex. In Pope Valley the soils consist primarily of Pleasanton loam, Perkins gravelly loam, Henneke gravelly loam, Tehma silt loam,

Maxwell clay and Bressa-Dibble complex.

Notice of Proposed Rulemaking

On September 16, 1987, Notice No. 639 was published in the **Federal Register** with a 30-day comment period. In that Notice, ATF invited comments from all interested parties regarding the proposal to establish "Wild Horse Valley" as an American viticultural area. Three comments were received from the public during the 30-day comment period. Two of the three comments received during the comment period favored approval of the proposed viticultural area. The one opposing comment came from the Santa Lucia Winery, Inc. of Templeton, California. The Santa Lucia Winery is located in the Central Coast (Santa Maria Valley) region of California. Although the Santa Lucia Winery is not located within the boundaries of the viticultural area, it uses the name "Wild Horse," "Wild Horse Winery," "Wild Horse Cellars," and "Wild Horse Wines" on its labels and advertising of wines. They have been using the name "Wild Horse" on their wine labels since 1985 and they also hold the trademark rights to that name. On October 30, 1987 (2 days prior to the closing date of the comment period), the Santa Lucia Winery, Inc., requested a 30-day extension of the comment period to fully review the Wild Horse Valley proposal. The Santa Lucia Winery was concerned about the impact the Wild Horse Valley viticultural area name may have on use of their trademark "Wild Horse."

Reopening of Comment Period

In light of the request from the Santa Lucia Winery, the comment period for the Wild Horse Valley proposal was reopened. On December 21, 1987, Notice No. 650 was published in the **Federal Register** with a 30-day reopening of the comment period. During the reopening of the comment period 5 comments were received. One comment favored the proposal and 4 comments were opposed to it. The one comment favoring approval of the Wild Horse Valley viticultural area was signed by 3 petitioner-grape growers that own vineyards within the boundaries of the viticultural area. They said that they welcome the continued use of the name "Wild Horse" by the Santa Lucia Winery.

The Santa Lucia Winery submitted a comment opposing the approval of the Wild Horse Valley viticultural area because of the trademark issue. The Napa Valley Vintners Association (a professional association of Napa Valley vintners) also was opposed to the Wild Horse Valley proposal. The association

raised two issues. They thought that a 3,300 acre viticultural area with only 73 acres of grapes raises serious policy issues. They were particularly troubled by the overlapping boundaries of the Wild Horse Valley, Solano County Green Valley and Napa Valley viticultural areas.

Another winery raised the same two issues. Another winery was opposed to the Wild Horse Valley proposal on the basis that approval would serve to confuse consumers and muddy all appellations in the nearby areas by the fact that it cuts across existing viticultural and political boundaries. ATF would like to respond to the two comments that addressed the amount of grape acreage planted in the viticultural area. ATF has not set any specific guidelines for density or quantity of grape acreage for viticultural areas. Viticultural areas must conform to the regulatory requirements of 27 CFR 4.25a(e)(1) and (e)(2)). When all of the criteria are met, a delimited grape-growing region may be established as a viticultural area.

Trademark Issue

The Santa Lucia Winery registered the trademark "Wild Horse" under the Lanham Act, 15 U.S.C. Chapter 22, in 1985. Santa Lucia contends that use of the viticultural designation "Wild Horse Valley" by other parties will infringe upon their Federally registered trademark.

It is not the policy of ATF to become involved in purely private disputes involving proprietary rights, such as trademark infringement suits. However, in the event a direct conflict arises between some or all of the rights granted by a registered trademark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. ATF believes that the evidence submitted by the petitioner establishes that designation of the Wild Horse Valley viticultural area is in conformance with the law and regulations. Accordingly, ATF finds that Federal registration of the term "Wild Horse" does not limit the Bureau's authority to establish a viticultural area known as Wild Horse Valley.

Finally, the Santa Lucia Winery will not be precluded from using the designation "Wild Horse" and a brand name on wine labels following issuance of this regulation. Pursuant to 27 CFR 4.39(i), a brand name of geographical significance may be used if it previously appeared on labels approved prior to

July 7, 1988, and if the wine is also labeled with an appellation of origin (or some other statement which the Director finds to be sufficient to dispel the brand name's geographic connotation). Since Santa Lucia has been using their trademark "Wild Horse" since 1985, they may continue to use this brand name as long as the requirements of § 4.39(i) are satisfied.

Overlapping Viticultural Areas

As was previously stated, the approved Wild Horse Valley viticultural area partially overlaps the Napa Valley and Solano County Green Valley viticultural areas. The entire boundary of the Wild Horse Valley completely overlaps both of those two viticultural areas. Consequently, overlapping boundaries are unavoidable if the Wild Horse Valley is to be established as a viticultural area, given the existing boundaries of those previously established viticultural areas.

ATF finds that the Wild Horse Valley viticultural area satisfies the criteria established in 27 CFR 4.25(e) for approval of viticultural areas. Moreover, approval of this viticultural area does not preclude approval of additional viticultural areas, when the individual viticultural areas satisfy the criteria of name, historic or current evidence concerning boundaries, and evidence relating to geographical features and climate.

Miscellaneous

ATF does not wish to give the impression by approving "Wild Horse Valley" as a viticultural area that it is approving or endorsing the quality of the wine derived from this area. ATF is approving this area as being distinct and not better than other areas. By approving this viticultural area, wine producers are allowed to claim a distinction on labels and advertisements as to the origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of wines from "Wild Horse Valley."

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5

U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291, ATF has determined that this final rule is not a "major rule" since it will not result in:

- (a) An annual effect on the economy of \$100 million or more;
- (b) A major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or
- (c) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Edward A. Reisman, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

Authority and Issuance

27 CFR Part 9—American Viticultural Areas is amended as follows:

PART 9—[AMENDED]

Paragraph 1. The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. The table of contents in 27 CFR Part 9, Subpart C, is amended to add the title of 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

Sec.

9.124 Wild Horse Valley.

Par. 3. Subpart C is amended by adding § 9.124 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.124 Wild Horse Valley.

(a) *Name.* The name of the viticultural area described in this section is "Wild Horse Valley."

(b) *Approved Map.* The appropriate map for determining the boundaries of the "Wild Horse Valley" viticultural area is one U.S.G.S. Quadrangle (7.5 Minute Series) map. It is titled Mt. George, California (1951), photorevised 1968.

(c) *Boundaries.* The boundaries of the Wild Horse Valley viticultural area (in Napa and Solano Counties) are as follows:

(1) The beginning point is on the section line boundary between Section 33, Range 3 West, Township 6 North and Section 4, Range 3 West, Township 5 North, Mount Diablo Range and Meridian, marked with an elevation of 1,731 feet, which is a northwest corner of the boundary between Napa and Solano Counties.

(2) From the beginning point, the boundary runs in a north-northeasterly direction approximately .9 mile to the summit of an unnamed hill having a marked elevation of 1,804 feet;

(3) Then northeasterly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 1,824 feet;

(4) Then south-southeasterly approximately .6 mile to the summit of an unnamed hill having a marked elevation of 1,866 feet;

(5) Then south-southeasterly approximately .5 mile to the summit of an unnamed hill having a marked elevation of 2,062 feet;

(6) Then southerly approximately .7 mile to the summit of an unnamed hill having a marked elevation of 2,137 feet;

(7) Then south-southeasterly approximately .4 mile to the summit of an unnamed hill having a marked elevation of 1,894 feet;

(8) Then southerly approximately 2.3 miles to the midpoint of the section line boundary between Sections 15 and 22, Township 5 North, Range 3 West, Mount Diablo Range and Meridian;

(9) Then southwesterly approximately 1.3 miles to the summit of an unnamed hill having a marked elevation of 1,593 feet;

(10) Then west-northwesterly approximately 1.2 miles to the summit of an unnamed hill, on the Napa/Solano County boundary, having a marked elevation of 1,686 feet;

(11) Then north-northeasterly approximately 1.5 miles to the summit of an unnamed hill having a marked elevation of 1,351 feet;

(12) Then north-northeasterly approximately 1.2 miles to the summit of an unnamed hill having a marked elevation of 1,480 feet; and

(13) Then north-northwesterly approximately 1.0 miles to the point of beginning.

Signed: October 14, 1988.

W.T. Drake,
Acting Director.

Approved: November 4, 1988.

John P. Simpson,
Deputy Assistant Secretary (Regulatory,
Trade and Tariff Enforcement.

[FR Doc. 88-27427 Filed 11-29-88; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1305-88]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Interim final rule adopted as final with changes.

SUMMARY: This rule amends 28 CFR 44.101(c), which defines who is a citizen or intending citizen protected from citizenship status discrimination under section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b), by amending subsection (c)(2)(ii) to provide that aliens, whose applications for temporary residence status pursuant to 8 U.S.C. 1255a are approved, are deemed to have been temporary residents from the date shown on the receipt received when they paid their application fee.

In addition, it codifies the existing policy and procedure of the Special Counsel which provides that aliens may file a declaration of intention to become a citizen at any time prior to the filing of a charge of citizenship status discrimination under section 102.

EFFECTIVE DATE: November 30, 1988.

ADDRESS: Comments received concerning the interim final rule with request for comments will remain available for public inspection at the Office of Special Counsel for Immigration Related Unfair Employment Practices, Suite 800, 1100 Connecticut Avenue NW., Washington, DC 20036, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except for legal holidays, until January 2, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Siskind, Special Counsel, Office of Special Counsel for Immigration Related Unfair Employment

Practices, U.S. Department of Justice; (202) 653-8121 (Voice) or (202) 653-5710 (TDD number for the hearing impaired); or Andrew M. Strojny, Senior Attorney, Office of Special Counsel, (202) 653-8246 (Voice) or (202) 653-5710 (TDD number). These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1988, the Department of Justice published in 53 FR 10338 an Interim Final Rule With Request for Comments (Interim Final Rule). This Interim Final Rule provides that aliens, whose applications for temporary residence status pursuant to 8 U.S.C. 1255a are approved, are deemed to have been temporary residents from the date shown on the application fee receipt issued by the Immigration and Naturalization Service (INS) Legalization Office. Its purpose is to clarify 28 CFR 44.101(c). This subsection defines the classes of aliens who are intending citizens under section 102 of the Immigration Reform and Control Act of 1986 (IRCA) (8 U.S.C. 1324b) and protected from employment discrimination on the basis of citizenship status.

Section 44.101(c) also states that members of the classes of aliens who may be intending citizens must evidence an intention to become a citizen of the United States through completing a declaration of intention to become a citizen. On March 24, 1988, the Special Counsel for Immigration Related Unfair Employment Practices (Special Counsel) as the statutorily named official responsible for the investigation of charges and the issuance of complaints under section 102 of IRCA (8 U.S.C. 1324b(c)), and as the Attorney General's delegate responsible for the enforcement of section 102 and the administration of the Office of Special Counsel for Immigration Related Unfair Employment Practices (Office of Special Counsel) (28 CFR 0.129), published in 53 FR 9715 a Notice concerning when a declaration of intention to become a citizen could be filed. The Notice stated that the filing requirement contained in section 102 of IRCA (8 U.S.C. 1324b(a)(3)(B)) is satisfied as long as the declaration is completed and filed before a charge of citizenship status discrimination is filed with the Office of Special Counsel. The March 24, 1988 Notice, which fully sets out the reasons for this policy, states in pertinent part:

The filing of the Immigration and Naturalization Service (INS) Form I-772 Declaration of Intending Citizen has caused some concern among those who deal with the Office of Special Counsel for Immigration Related Unfair

Employment Practices. Questions have been raised about the timing of the filing of the I-772 and its availability. This notice is to address those concerns and to dispel any confusion that may have arisen.

Under section 102 of the Immigration Reform and Control Act of 1986 (IRCA), protection from citizenship status discrimination is afforded to citizens, nationals, and intending citizens. Among other definitional requirements, an intending citizen is an alien who "evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen." (8 U.S.C. 1324b(a)(3)(B).) When IRCA was passed, the only form in existence suited to that requirement was INS Form N-315. That Form, however, had fallen into disuse and could be executed only by permanent residents. IRCA permits temporary residents under the new legalization program, refugees, and asylees, as well as permanent residents, to qualify for intending citizen status. A new form was needed. The Immigration and Naturalization Service created the I-772 to meet that need.

Confusion has arisen over the timing of the filing of the I-772. Neither the statute nor the regulations specifically address the question of when the Declaration of Intention must be filed. The preamble to the regulations published on October 6, 1987 (52 FR 37402) states that the declaration must be completed prior to the occurrence of the alleged discrimination, *Id.* at 37407. The instructions to the I-772 itself, however, state that filing the I-772 is a prerequisite only "to assert a claim," not to qualify for protection.

To dispel any confusion on this question, this notice announces that the Justice Department views the declaration of intention filing requirement as satisfied as long as the declaration is completed and filed before the charge of discrimination is filed with the Office of Special Counsel for Immigration Related Unfair Employment Practices. It is not necessary to complete and file the declaration before the occurrence of the alleged discrimination.

This rule not only makes final the Interim Final Rule but also codifies the policy and procedure set forth in the March 24, 1988 Notice concerning when the declaration of intention to become a citizen may be filed.

Response to Comments to the Interim Final Rule

The Department received 4 comments on the Interim Final Rule, 1 from a