25 percent of the grader's total salary costs. A minimum charge of $250 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: September 25, 1998.

Thomas O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–26222 Filed 9–29–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AA85

Peanut Crop Insurance Regulations; and Common Crop Insurance Regulations, Peanut Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The document contains a correction to the final regulation which was published Tuesday, June 9, 1998 (63 FR 31331–31337). The regulation pertains to the insurance of peanuts.

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and include the peanut crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need For Correction

As published, the final regulation contained errors which may prove to be misleading and need to be clarified. Segregation I peanuts should not have been included in the definition of ''average price per pound'' in section 1 of the peanut crop insurance provisions. Removal of Segregation I peanuts from this definition will keep quality adjustment for peanuts under section 14(f) consistent with previous crop years. In section 5 of the crop provisions, the spelling of ''Mullen'' County is being corrected to ''McMullen''.

Correction of Publication

Accordingly, the publication on June 9, 1998, of the final regulation at 63 FR 31331–31337 is corrected as follows:

PART 457—[CORRECTED]

§ 457.134 [Corrected]

On page 31335, in the third column, in § 457.134, section 1, definition of ''average price per pound'', paragraph (2) is corrected to read: ''(2) The highest non-quota price election contained in the Special Provisions for all Segregation II and III peanuts not eligible to be valued as quota peanuts.''

On page 31336, in the last column, in § 457.134, section 5, the county name of ''Mullen'' in the table is corrected to read: ''McMullen.''

Signed in Washington, D.C., on September 24, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–26095 Filed 9–29–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 240

[EOIR No. 124I; AG Order No. 2182–98]

RIN 1125–AA25

Suspension of Deportation and Cancellation of Removal

AGENCY: Executive Office for Immigration Review, and Immigration and Naturalization Service, Department of Justice.

ACTION: Interim rule.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (Service) by eliminating the conditional grant process at 8 CFR 240.21, and establishing a permanent procedure for processing suspension of deportation and cancellation of removal cases. This rule is necessary to implement the numerical limitation on suspension of deportation and cancellation of removal and adjustment of status imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

DATES: *Effective Date:* This interim rule is effective September 30, 1998.

Comment Date: Written comments must be submitted on or before November 30, 1998.

ADDRESSES: Please submit written comments, in triplicate, to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470. For matters relating to the Immigration and Naturalization Service—Marguerite N. Przybylski, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Washington, D.C. 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: This interim rule amends 8 CFR part 240 by eliminating the interim rule in section 240.21 and creating a new section 240.21.

Background

On September 30, 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208 (IIRIRA). Under section 304(a)(3) of IIRIRA, the Attorney General may not cancel the removal and adjust the status under section 240A(b) of the Immigration and Nationality Act (INA), nor suspend the deportation and adjust the status under section 244(a) of the INA (as in effect before April 1, 1997) of a total of more than 4,000 aliens in any fiscal year. Section 309(c)(7) of IIRIRA provides that this numerical limitation applies regardless of when an alien has applied for the relief, even if before the date of IIRIRA's enactment on September 30, 1996.

By mid-February 1997, EOIR had determined it had essentially reached the fiscal year 1997 numerical limitation on suspension of deportation grants. On February 13, 1997, the Board of Immigration Appeals (Board) issued a directive to defer the adjudication of grants of suspension of deportation until further notice. The Immigration Courts received a directive to reserve decision in suspension of deportation cases that they intended to grant. The instructions were intended to be a temporary measure to give the Department time to consider how best to implement the statutory cap.

On October 3, 1997, the Department issued an interim rule that was published in the **Federal Register** at 62 FR 51760–51762. This rule added 8 CFR 240.21 to the regulations. The rule required immigration judges and the Board to grant only on a conditional basis those applications for suspension of deportation or cancellation of removal that meet the statutory requirements and warrant a favorable exercise of discretion. *See* 8 CFR 240.21(a) (in effect prior to publication of this rule). On October 15, 1997, EOIR instructed immigration judges to begin issuing conditional grants of suspension of deportation or cancellation of removal on decisions reserved in accordance with the February 13, 1997 directive from the Chief Immigration Judge.

On November 19, 1997, the President signed into law the Nicaraguan Adjustment and Central American Relief Act (NACARA), which modified the statutory provisions on the suspension of deportation and cancellation of removal cap. Section 204 of NACARA amended section 240A(e) of the INA. It reaffirmed the existence of the 4,000 annual cap, but made exemptions for certain aliens—those certain nationals of Guatemala, El Salvador, and former Soviet bloc countries as described in section 203(a)(1) of NACARA, and those in deportation proceedings prior to April 1, 1997, who apply for suspension of deportation pursuant to section 244(a)(3) of the INA (as in effect prior to April 1, 1997). It also created a one-time provision for fiscal year 1998 which added to the statutory amount of 4,000 another 4,000 grants, less the number of suspensions and cancellations that were granted in fiscal year 1997 after April 1, 1997. No cancellation of removal or suspension of deportation applications were granted in fiscal year 1997 after April 1, 1997. Therefore, all 4,000 grants can be added to the 4,000 allotment, for a total of 8,000 grants for fiscal year 1998.

The Department has determined that the implementation of the numerical cap on grants of suspension of deportation and cancellation of removal requires resolution of three issues. The first issue concerns how best to convert 8,000 conditional grants to grants before the end of fiscal year 1998, in a way that does not contravene section 240A(e) of the INA. The second issue is how to ensure that all those who received a conditional grant of suspension of deportation or cancellation of removal which could not be granted in fiscal year 1998, have an opportunity to receive a grant of relief. The third issue is how to establish a procedure for future implementation of the cap.

Conversion of 8,000 Conditional Grants for Fiscal Year 1998

Because of the statutory language, it is necessary to devise a procedure that will convert up to 8,000 conditional grants to grants before the end of fiscal year 1998. The statute states that ''[t]he Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 244(a) (as in effect before the enactment of [IIRIRA]), of a total of more than 4,000 aliens in any fiscal year.'' INA § 240A(e). The phrase ''in any fiscal year'' has been interpreted to mean that those eligible aliens must be granted relief of suspension of deportation or cancellation of removal during the fiscal year in which they are given a grant under the cap. To implement the 8,000 cap for fiscal year 1998, the Department has determined that the first 8,000 conditional grants (not including Nicaraguan and Cuban nationals with conditional grants) that were made since October 1997 shall be converted to grants of suspension of deportation or cancellation of removal in order of the date the conditional grant was issued by the Immigration Court or the Board, unless the immigration judge's decision is on appeal at the Board, or either party has reserved appeal of an immigration judge's decision and the time for appeal has not run out. Before the end of fiscal year 1998, EOIR will remove the condition and grant suspension of deportation or cancellation of removal and adjustment of status. Conversion from a conditional grant to a grant is not an appealable action. Pursuant to the interim regulation providing for conditional grants at 62 FR 51760 (Oct. 3, 1997), the right of appeal attaches at the time of entry of the conditional grant.

Because this conversion will take place in a short period of time and will not involve review of the merits of the cases, this rule permits the Service to file a motion to reopen within 90 days after an alien is issued a grant of suspension of deportation or cancellation of removal. This rule provides that such motions to reopen are only permitted if, while the applicant was a conditional grantee, he or she committed an act that would have rendered him or her statutorily ineligible for such relief. Motions to reopen based upon evidence that might affect a discretionary finding are not authorized by this rule.

Ability To Travel for Aliens With Conditional Grants

The Service has received several inquiries concerning the effect of travel on an alien's conditional grant. This interim rule, promulgated by the Attorney General, provides a definitive answer to this recurring question. As a result of delays associated with implementation of the statutory cap provision, a significant period of time may have elapsed before an alien's conditional grant is converted to a grant of suspension of deportation or cancellation of removal. Some aliens with conditional grants will have had or will have legitimate needs to travel. Because such aliens are determined at the time of the conditional grant to be statutorily eligible to receive suspension of deportation or cancellation of removal and to warrant a grant on the basis of discretion, it is likely that they will be able to remain permanently in the United States as lawful permanent residents once their conditional grants are converted to grants. Therefore, the Attorney General finds it reasonable to permit conditional grantees to return to the United States after a temporary absence abroad without losing their conditional grant by virtue of their departure.

This interim rule provides that those aliens with conditional grants of suspension of deportation or cancellation of removal who, before publication of this interim rule, temporarily traveled abroad or who are abroad and have not returned, shall not lose their conditional grants as a result of their departure. The Attorney General recognizes the unique nature of the conditional grant and, since it is likely that many of these conditional grantees would not have understood the consequences of departing the United States without advance parole, finds it reasonable to grant this one-time waiver. However, upon publication of this rule in the **Federal Register**, an alien with a conditional grant must first obtain a grant of advance parole from the District Director before he or she leaves the United States. This requirement allows the Service to verify the alien's claims about the purpose of his or her travel and the duration of his or her absence, in order to aid in its determination of whether to grant or deny advance parole.

Eliminate the Conditional Grant Process

In the interim rule published on October 3, 1997, which established a procedure for processing suspension of deportation and cancellation of removal

applications, the Department made clear in the supplementary language that ''[t]his rule is a transitional measure in that conditional grants of suspension of deportation and cancellation of removal will be revisited after the Department determines how best to implement sections 304(a)(3) and 309(c)(7) of IIRIRA.'' 62 FR at 51761. The Department has determined that it will no longer implement the conditional grant process. After review of the statutory cap provision, the Department does not believe that the statute supports a permanent regime based on conditional grants. Instead, future grants of suspension and cancellation of removal will be issued on a ''first in time'' basis, outlined further below.

Conditional Grants From Fiscal Year 1998

Although the cap may not be reached in fiscal year 1998 (not including those Nicaraguans and Cubans eligible for relief under section 202 of NACARA as discussed below), any conditional grants which remain after the fiscal year 1998 grants are issued shall be converted to grants in fiscal year 1999 and will count against the numerical cap for fiscal year 1999. If there are conditional grants that could not be converted in fiscal year 1998 (*e.g.*, if the time for appeal had not run until after the end of fiscal year 1998) such conditional grant will be converted in fiscal year 1999. Accordingly, this procedure will allow for all persons whose cases were adjudicated under the October 3, 1997 interim regulation providing for conditional grants who remain in conditional grant status in fiscal year 1999 to receive a grant of suspension of deportation or cancellation of removal in fiscal year 1999.

Treatment of Certain Nicaraguan and Cuban Nationals With Conditional Grants

In fiscal year 1998, over 1,000 nationals of Nicaragua and Cuba were given conditional grants of suspension of deportation or cancellation of removal. On November 19, 1997, the enactment of NACARA made certain Nicaraguan and Cuban nationals eligible for adjustment of status in addition to other forms of relief. *See* NACARA section 202. In an effort to preserve as many grants as possible under the cap in fiscal year 1998 for aliens for whom suspension of deportation or cancellation of removal was truly the only avenue for relief, the Attorney General has determined that it is appropriate to offer those nationals of Nicaragua and Cuba who have already received a conditional grant of suspension or cancellation an opportunity to first pursue adjustment of status under section 202 of NACARA (NACARA adjustment). These Nicaraguan and Cuban nationals who are processed for adjustment will receive the benefit of an immediate adjudication of their adjustment of status requests before a Service officer on or before December 31, 1998. Further, Nicaraguan and Cuban national spouses and children, including certain unmarried sons and daughters, of NACARA-adjusted aliens, may be immediately eligible for NACARA adjustment themselves. No such derivative benefit accrues from a grant of suspension of deportation or cancellation of removal.

To be eligible for adjustment of status pursuant to NACARA section 202, an alien must be a person who: (1) Is a national of Nicaragua or Cuba; (2) has been physically present in the United States for a period commencing not later than December 1, 1995 and ending not earlier than the date of adjustment (excluding absences totaling not more than 180 days); (3) is not inadmissible under any provision of INA section 212 not specifically excepted by NACARA (*e.g.*, public charge, lack of labor certification, illegal entry, lack of immigrant visa/entry document, and unlawful presence); and (4) applies for such adjustment before April 1, 2000.

By virtue of having received a conditional grant of suspension of deportation or cancellation of removal, which entails successfully demonstrating a lengthy period of continuous physical presence in the United States as well as good moral character during this period, most Nicaraguans and Cubans in this position should easily be able to satisfy the similar eligibility requirements for NACARA adjustment. As a result, the Attorney General has determined that this alternative avenue of relief to suspension/cancellation must be explored by all Cuban and Nicaraguan conditional grantees identified by EOIR. To that end, the Attorney General, in this regulation, deems the application for suspension of deportation or cancellation of removal filed by a national of Nicaragua or Cuba who has received a conditional grant of suspension of deportation or cancellation of removal on or before September 30, 1998 to be a concurrent request for NACARA adjustment.

In order to provide relief in the form of NACARA adjustment to as many conditional suspension/cancellation grantees as possible, the Attorney General has directed the Service to give individual notice to all Cuban and Nicaraguan conditional grantees identified by EOIR. The notice shall inform them of the date, time, and place at which they must appear before a Service officer to perfect their request for NACARA adjustment. Since the file of an applicant for suspension of deportation or cancellation of removal will not invariably contain all of the information necessary to determine an alien's eligibility for NACARA adjustment, the alien will be required to complete a form in which the alien must attest to certain facts regarding his or her eligibility for NACARA adjustment. If the alien is inadmissible to the United States, he or she may apply for any applicable waivers of inadmissibility. Given that this application process has been mandated by the Attorney General, no fees will be charged for perfecting a NACARA adjustment request or for any applications for a waiver of inadmissibility submitted in conjunction with these NACARA adjustment requests. To the extent that a Cuban or Nicaraguan national who received a conditional grant of suspension or cancellation on or before September 30, 1998, applied for NACARA adjustment through the preexisting channels prior to the effective date of this regulation, no refund of the application fees shall be issued.

If the Service officer grants NACARA adjustment, he or she shall create a record of lawful permanent residence, the order granting suspension of deportation or cancellation of removal on a conditional basis shall be vacated, and the alien's deportation or removal proceedings shall be terminated automatically. If, at the time of the alien's appearance before a Service officer, the alien expresses a desire not to be processed for NACARA adjustment, is unable to complete the attestation, or if the Service officer determines that the alien is ineligible for such adjustment, the alien's conditional grant of suspension or cancellation shall be automatically converted to a final grant and the Service will create a record of lawful permanent residence on the basis of that grant. The Service will then notify EOIR that a suspension/cancellation grant has been allotted. For that reason, there is no appeal from a Service officer's determination that an alien is not eligible for NACARA adjustment. If an alien fails to appear before a Service officer when scheduled, his or her conditional grant of suspension of deportation or cancellation of removal shall be automatically converted to a final grant

effective December 31, 1998. After December 31, 1998, an application for suspension of deportation or cancellation of removal filed by a national of Nicaragua or Cuba who received a conditional grant of suspension or cancellation on or before September 30, 1998, shall cease to be considered a request for NACARA adjustment.

The Attorney General has directed that all NACARA eligibility determinations, as outlined above, be completed on or before December 31, 1998, to ensure that covered conditional grantees obtain lawful permanent residence status as soon as possible, be it pursuant to section 202 of NACARA or through a grant of suspension/cancellation. In order to minimize the processing time for these applicants, the Attorney General has deemed the documentary requirements applicable to other NACARA adjustment applicants to be satisfied by the completion of the attestation form noted above. As a result, these applicants will not be required to submit medical examination records or a new set of fingerprints. In addition, the Attorney General has directed that, absent contrary evidence developed in an interview or otherwise, the Service will accept the attestation form as sufficient evidence of an alien's admissibility, including health-related grounds and/or continuous physical presence. The Attorney General has determined that these extraordinary measures are justified in this limited instance because these aliens have already been found eligible to obtain lawful permanent resident status, and in fact will obtain such status on the basis of suspension of deportation or cancellation of removal even if they do not seek or are found ineligible for NACARA adjustment. As a result, there will be little incentive for an alien to misrepresent his or her circumstances to the Service officer. However, any alien found to have misrepresented his or her eligibility for NACARA adjustment will be subject to prosecution and removal from the United States.

Future Implementation of the Cap

Under the first in time process established in this interim rule, the Immigration Court and the Board will issue grants of suspension of deportation or cancellation of removal in chronological order until grants are no longer available in a fiscal year. A grant will be counted against the cap for the fiscal year in which a grant of suspension of deportation or cancellation of removal is final as set forth in 8 CFR 3.1(d)(2) and 3.39. To ensure that the cap is not exceeded in any fiscal year, the Immigration Court and the Board, except as described below, will reserve all decisions on suspension of deportation or cancellation of removal when grants are no longer available in any fiscal year. Those reserved decisions will be completed in the next fiscal year if there are grants available under the cap. If grants are not available in the next fiscal year, decisions will be completed in a fiscal year when grants are available. Persons with reserved decisions will be considered to still be ''in proceedings'' while their decision is reserved. They normally cannot be removed from the country while they are still in proceedings. Neither can they receive any form of relief until the Immigration Court or the Board takes further action.

The requirement to reserve decision once grants are no longer available in a fiscal year will not apply in the following circumstances. Immigration judges and the Board may deny without reserving decision or may pretermit suspension of deportation or cancellation of removal applications because the applicant has failed to establish statutory eligibility for relief. The following is a partial list of examples in which the Immigration Court and the Board may deny without reserving decision or may pretermit suspension of deportation or cancellation of removal applications, because the applicant is ineligible for relief based on statutory bars: (1) The alien is an aggravated felon pursuant to section 101(a)(43) of the INA; (2) the mandatory bar to establishing good moral character pursuant to section 101(f) of the INA applies to the alien; (3) the alien failed to voluntarily depart, was found deportable or removable *in absentia*, or failed to appear for deportation or removal at the time and place ordered as set forth in section 242B(e) of the INA (as in effect prior to April 1, 1997), and sections 240B(d) and 240(b)(7) of the INA; (4) the alien does not have the requisite continuous physical presence for suspension of deportation or cancellation of removal relief pursuant to section 244(a) of the INA (as in effect prior to April 1, 1997) or section 240A(b) of the INA; or (5) (for cancellation cases only) the alien cannot demonstrate that he or she has a qualifying relative as to whom exceptional or extremely unusual hardship must be shown.

However, such denial or pretermission of a suspension or cancellation application shall not be based on any of the following: an unfavorable exercise of discretion, a finding of no good moral character on a ground not specifically noted in section 101(f) of the INA, a failure to establish exceptional or extremely unusual hardship to a qualifying relative in cancellation cases, or a failure to establish extreme hardship to the applicant and/or qualifying relative in suspension cases.

Those Eligible for Other Forms of Relief

Whether or not the cap has been reached, the Immigration Court or the Board shall adjudicate concurrently all other forms of relief for which the alien has applied. If the Immigration Court or the Board grants asylum or adjustment of status, the application for suspension or cancellation shall be denied in the exercise of discretion. If the Immigration Court denies as a matter of discretion an application for suspension of deportation or cancellation of removal on such basis, such decision will be reconsidered if an appeal of the decision granting asylum or adjustment is sustained by the Board.

Interim Rule

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the exception for rules of agency organization, procedure, or practice in 5 U.S.C. 553(b)(3)(A) and upon the ''good cause'' exception found at 5 U.S.C. 553(b)(3)(B) and 553(d)(3). Immediate implementation is necessary before the end of the fiscal year, because the 8,000 grants under the cap for fiscal year 1998 must be distributed before October 1, 1998 (the beginning of the next fiscal year), or the grants will be lost. The Department has provided for a public comment period on this interim rule of 60 days.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects individual aliens, not small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

The Attorney General has determined that this rule is a significant regulatory action under Executive Order 12866, and accordingly this rule has been reviewed by the Office of Management and Budget.

Executive Order 12612

The regulation 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 12988 Civil Justice Reform

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

Paperwork Reduction Act of 1995

Section 240.21(b)(2) of this rule requires certain nationals of Nicaragua and Cuba who were granted suspension of deportation or cancellation of removal on a conditional basis on or before September 30, 1998 to complete a new Service Form I–895, Attestation of Alien and Memorandum of Creation of Record of Lawful Permanent Residence. This form is considered an information collection. A delay in issuing this interim rule could have a negative effect on the ability of certain aliens to obtain lawful permanent resident status in a timely manner. Accordingly, the Department of Justice, Immigration and Naturalization Service has submitted an information collection request (ICR) utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Emergency review and approval of this collection has been requested from OMB by October 15, 1998. If granted, the emergency approval is only valid for 180 days. Comments and questions concerning the ICR should be directed to: Office of Information and Regulatory Affairs (OMB), OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 1,000 respondents will be completing this form. The Service also estimates that it will take approximately two hours to complete the form. This amounts to 2,000 total burden hours.

List of Subjects in 8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

Accordingly, part 240 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 240—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sec. 202, Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

2. Section 240.21 is revised in its entirety to read as follows:

§ 240.21 Suspension of Deportation and Adjustment of Status Under Section 244(a) of the Act (as in effect before April 1, 1997) and Cancellation of Removal and Adjustment of Status Under Section 240A(b) of the Act for Certain Nonpermanent Residents.

(a) *Applicability of annual cap on suspension of deportation or cancellation of removal.* (1) As used in this section, the term *cap* means the numerical limitation of 4,000 grants of suspension of deportation or cancellation of removal in any fiscal year (except fiscal year 1998, which has a limitation of 8,000 grants) pursuant to section 240A(e) of the Act.

(2) The provisions of this section apply to grants of suspension of deportation pursuant to section 244(a) of the Act (as in effect before April 1, 1997) or cancellation of removal pursuant to section 240A(b) of the Act that are subject to a numerical limitation in section 240A(e) of the Act for any fiscal year. This section does not apply to grants of suspension of deportation or cancellation of removal to aliens described in section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), as amended by section 203(a)(1) of the Nicaraguan Adjustment and Central American Relief Act (NACARA), or aliens in deportation proceedings prior to April 1, 1997, who apply for suspension of deportation pursuant to section 244(a)(3) of the Act (as in effect prior to April 1, 1997). The Immigration Court and the Board shall no longer issue conditional grants of suspension of deportation or cancellation of removal as provided in 8 CFR 240.21 (as in effect prior to September 30, 1998).

(b) *Conditional grants of suspension of deportation or cancellation of removal in fiscal year 1998 cases.* (1) *Conversion to grants.* Except with respect to cases described in paragraphs (b)(2) and (b)(3) of this section, EOIR shall grant suspension of deportation or cancellation of removal without condition prior to October 1, 1998, to the first 8,000 aliens given conditional grants of suspension of deportation or cancellation of removal (as determined by the date of the immigration judge's order or, if the order was appealed to the Board, the date such order was entered by the Board.)

(2) *Treatment of certain nationals of Nicaragua and Cuba who received conditional grants of suspension of deportation or cancellation of removal on or before September 30, 1998.* (i) *NACARA adjustment request.* An application for suspension of deportation or cancellation of removal filed by a national of Nicaragua or Cuba

that was granted on a conditional basis on or before September 30, 1998, shall be deemed to be a request for adjustment of status pursuant to section 202 of NACARA (''NACARA adjustment'') for the period starting September 30, 1998 and ending December 31, 1998. The Service shall provide the applicant with notice of the date, time, and place at which the applicant must appear before a Service officer to perfect the request for NACARA adjustment. Such notice shall include an attestation form, Attestation of Alien and Memorandum of Creation of Record of Lawful Permanent Residence, Form I–895, regarding the applicant's eligibility for NACARA adjustment.

(ii) *Submission of documentation.* To perfect the request for NACARA adjustment, the applicant must appear before a Service officer on the date scheduled with the following documentation:

(A) The order granting suspension of deportation or cancellation of removal on a conditional basis issued on or before September 30, 1998;

(B) A completed, but unsigned Form I–895, which the applicant shall be required to sign and to attest to the veracity of the information contained therein in the presence of a Service officer;

(C) Any applicable applications for waiver of inadmissibility; and

(D) Two ''ADIT-style'' photographs; meeting the specifications in the instructions attached to Form I–895.

(iii) *Waiver of documentation and fees.* The provisions of § 245.13(e) and (f) of this chapter relating to documentary requirements for NACARA adjustment are waived with respect to an alien seeking to perfect a request for adjustment of status pursuant to paragraph (b)(2) of this section. In addition, the fees for the NACARA adjustment and for any applications for waivers of inadmissibility submitted in conjunction with perfecting a request for NACARA adjustment shall be waived.

(iv) *NACARA adjustment determination.* In determining an applicant's eligibility for NACARA adjustment under the provisions of paragraph (b)(2) of this section, unless the Service officer before whom the applicant appears is not satisfied that the applicant is admissible to the United States in accordance with section 202(a)(1)(B) of NACARA, and has continuously resided in the United States from December 1, 1995, through the date of appearance before the Service officer (not counting an absence or absences from the United States totaling 180 days or less or any absences that occurred pursuant to advance authorization for parole (Form I–512 issued by the Service)), the Service officer shall accept an alien's attestation of admissibility and/or continuous physical presence as sufficient evidence that the applicant has met the admissibility and/or continuous physical presence requirement for NACARA adjustment. If the Service officer grants NACARA adjustment, then the Service officer shall create a record of lawful permanent residence and the prior order granting suspension of deportation or cancellation of removal on a conditional basis shall be automatically vacated and the deportation or removal proceedings shall be automatically terminated. The Service officer (whose decision in this regard is not subject to appeal) shall not adjust the applicant to lawful permanent resident status pursuant to section 202 of NACARA if:

(A) The Service officer is not satisfied that the applicant is eligible for NACARA adjustment and so indicates on the attestation form; or

(B) The applicant indicates on the attestation form that he or she does not wish to receive NACARA adjustment.

(v) *Automatic conversion.* If the Service officer does not adjust the applicant to lawful permanent resident status pursuant to section 202 of NACARA, the applicant's conditional grant of suspension of deportation or cancellation of removal shall be automatically converted to a grant of suspension of deportation or cancellation of removal. Upon such a conversion, the Service shall create a record of lawful permanent residence based upon the grant of suspension of deportation or cancellation of removal.

(vi) *Failure to appear.* An alien who fails to appear to perfect his or her request for NACARA adjustment shall have his or her conditional grant of suspension of deportation or cancellation of removal automatically converted by the Immigration Court or the Board to a grant of suspension of deportation or cancellation of removal effective December 31, 1998.

(3) *Conditional grants not converted in fiscal year 1998.* The provisions of paragraphs (b)(1) and (b)(2) of this section for granting relief shall not apply with respect to:

(i) Any case in which a conditional grant of suspension of deportation or cancellation of removal is pending on appeal before the Board as of September 30, 1998 or, if the right to appeal to the Board has not been waived, the time for an appeal has not expired. After the Board issues its decision or the time for appeal has expired, the conditional grant shall be converted to a grant when a grant is available.

(ii) Any other conditional grant not described in paragraphs (b)(1), (b)(2) or (b)(3)(i) of this section, which was not converted to a grant in fiscal year 1998. Such a conditional grant shall be converted to a grant when a grant is available.

(4) *Motion to reopen.* The Service may file a motion to reopen within 90 days after the alien is issued a grant of suspension of deportation or cancellation of removal pursuant to paragraphs (b)(1), (b)(2), or (b)(3) of this section, if after the issuance of a conditional grant by the Immigration Court or the Board the applicant committed an act that would have rendered him or her ineligible for suspension of deportation or cancellation or removal at the time of the conversion.

(5) *Travel for aliens conditionally granted suspension of deportation or cancellation of removal.* If the Immigration Court or the Board granted suspension of deportation or cancellation of removal on a conditional basis or, if the conditional grant by the Immigration Court was appealed to the Board and the Board issued such a conditional grant, the alien shall retain the conditional grant of suspension of deportation or cancellation of removal upon return to the United States following a temporary absence abroad and be permitted to resume completion of his or her case, provided that:

(i) The alien departed on or before September 30, 1998 with or without a grant of advance parole from the District Director; or

(ii) The alien, prior to his or her departure from the United States after September 30, 1998, obtained a grant of advance parole from the District Director in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter and complied with the terms and conditions of the advance parole.

(c) *Grants of suspension of deportation or cancellation of removal in fiscal years subsequent to fiscal year 1998.* On and after October 1, 1998, the Immigration Court and the Board may grant applications for suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect prior to April 1, 1997) or cancellation of removal and adjustment of status under section 240A(b) of the Act that meet the statutory requirements for such relief and warrant a favorable exercise of discretion until the annual numerical limitation has been reached in that fiscal year. The awarding of such relief shall be determined according to

the date the order granting such relief becomes final as defined in §§ 3.1(d)(2) and 3.39 of this chapter.

(1) *Applicability of the annual cap.* When grants are no longer available in a fiscal year, further decisions to grant or deny such relief shall be reserved until such time as a grant becomes available under the annual limitation in a subsequent fiscal year. Immigration judges and the Board may deny without reserving decision or may pretermit those suspension of deportation or cancellation of removal applications in which the applicant has failed to establish statutory eligibility for relief. The basis of such denial or pretermission may not be based on an unfavorable exercise of discretion, a finding of no good moral character on a ground not specifically noted in section 101(f) of the Act, a failure to establish exceptional or extremely unusual hardship to a qualifying relative in cancellation cases, or a failure to establish extreme hardship to the applicant and/or qualifying relative in suspension cases.

(2) *Aliens applying for additional forms of relief.* Whether or not the cap has been reached, the Immigration Court or the Board shall adjudicate concurrently all other forms of relief for which the alien has applied. Applications for suspension of deportation or cancellation of removal shall be denied in the exercise of discretion if the alien is granted asylum or adjustment of status, including pursuant to section 202 of NACARA, while the suspension of deportation or cancellation of removal application is pending. Where an appeal of a decision granting asylum or adjustment is sustained by the Board, a decision to deny as a matter of discretion an application for suspension of deportation or cancellation of removal on this basis shall be reconsidered.

Dated: September 25, 1998.

Janet Reno,

Attorney General.

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FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0999]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation C, which implements the Home Mortgage Disclosure Act. The amendments: modify the Loan Application Register to prepare for Year 2000 data systems conversion; delete the requirement to enter the reporting institution's parent company on the Transmittal Sheet; and make certain other technical changes to the regulation and reporting forms.

EFFECTIVE DATE: September 24, 1998. The amendments apply to data collected for calendar year 1998, to be reported by March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Pamela Morris Blumenthal, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act (HMDA) (12 U.S.C. 2801–2810). The regulation requires most mortgage lenders located in metropolitan statistical areas (MSAs) to report annually to federal supervisory agencies, and disclose to the public, information about their home mortgage and home improvement lending activity. The supervisory agencies include the Board, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Department of Housing and Urban Development.

In February 1998, the Board proposed to amend Regulation C to modify the HMDA Loan Application Register (HMDA–LAR) to prepare for Year 2000 data systems conversion, delete parent company information on the Transmittal Sheet (TS), and make certain other technical changes (63 FR 9453, February 25, 1998). The Board received 16 comments on the proposal. The majority of the commenters favored adoption of the proposal; several commenters suggested changes or clarifications on certain points, as discussed below.

II. Discussion of Final Rule

A. Year 2000 Changes

Among items reported on the HMDA–LAR, institutions are required to enter the date of application and the date action was taken. Currently, these dates are to be entered using two digits for the year, in the form MM/DD/YY. As part of the interagency program related to the Year 2000—Century Date Change, the agencies responsible for HMDA compliance have modified software—to avoid the confusion of a date in the 21st century with a date in the 20th century—by adding two digits to represent the century. For example, January 15, 2000, will be reflected as 01/15/2000 rather than 01/15/00. To carry out this program with regard to HMDA reporting, the HMDA–LAR form and the instructions (Appendix A to Regulation C) have been revised to require the date of application and date of action taken to be entered using four digits for the year.

A few commenters noted that the 1998 data collection has been under way since the beginning of the year using the two-digit format. They stated that making the change to a four-digit year could be burdensome. One institution said that it was in the process of acquiring several other institutions which were collecting data using a two-digit year; these institutions all used different software and different data processing vendors. The commenter believed that it would be difficult for them to convert the HMDA data to a four-digit year for 1998 data.

The Board believes that, for the vast majority of HMDA reporting institutions, use of a four-digit year in reporting 1998 data will not present a problem. The personal computer data entry software available from the supervisory agencies for 1998 data collection already reflects the four-digit year (as well as the deletion of parent company information on the TS, discussed below). The Board believes that private sector software vendors (and institutions that have developed their own software) have modified their HMDA data entry software in a similar manner, or are in the process of doing so.

The Board therefore is adopting the amendments making the Year 2000 program change to the HMDA–LAR form and instructions. The Board recognizes that there could be isolated instances in which an institution may experience difficulty in converting its data base to reflect the four-digit identification for the calendar year 1998. In such cases, the institution should consult with its supervisory agency for further guidance as soon as possible but no later than December 31, 1998. Earlier consultation will enable the agency to work with the institution to resolve the technical difficulties, and