To be assured of consideration, comments must be in writing and must be received on or before June 20, 1996.

* * * * *

Dated: June 4, 1996.

Deval Patrick,

Assistant Attorney General.

[FR Doc. 96–14638 Filed 6–11–96; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 74

[AG Order No. 2033–96]

RIN 1190–AA42

Redress Provisions for Persons of Japanese Ancestry: Guidelines for Individuals Who Relocated to Japan as Minors During World War II

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (''Department'') hereby proposes a change to the regulations governing redress provisions for persons of Japanese ancestry. This change will amend the standards of the Civil Liberties Act of 1988 to make eligible for payments of $20,000 those persons who are otherwise eligible for redress under these regulations, but who involuntarily relocated during World War II to a country with which the United States was at war. In practice, this amendment will make potentially eligible those persons who were evacuated, relocated, or interned by the United States Government; who, as minors, relocated to Japan during World War II, and otherwise were unemancipated and lacked the legal capacity to leave the custody and control of their parents (or legal guardians) who chose to relocate to Japan during the war; and who did not enter active military service on behalf of the Japanese Government or another enemy government during the statutorily-defined war period.

DATES: Comments must be submitted on or before July 12, 1996.

ADDRESSES: Comments may be mailed to the Office of Redress Administration, PO Box 66260, Washington, DC 20035–6260.

FOR FURTHER INFORMATION CONTACT:

Tink D. Cooper or Emlei Kuboyama, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, PO Box 66260, Washington, DC 20035–6260; (202) 219–6900 (voice) or (202) 219–4710 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988, Pub. L. No. 100–383 (codified at 50 U.S.C. app. 1989 *et seq.*, as amended) (''the Act''), enacted into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians (''Commission'') established by Congress in 1980. *See* Commission on Wartime Relocation and Internment of Civilians Act, Pub. L. No. 96–317 (1980). This bipartisan commission was established: (1) To review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of that Executive Order on American citizens and permanent resident aliens of Japanese ancestry; (2) to review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of these American citizens and permanent resident aliens; and (3) to recommend appropriate remedies. The Commission submitted to Congress in February 1983 a unanimous report, *Personal Justice Denied*, which extensively reviewed the history and circumstances of the decisions to exclude, remove, and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of Aleuts during World War II. Redress Provisions for Persons of Japanese Ancestry, 54 FR 34,157 (1989). The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations*, concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by Congress and the President. *Id.*

On August 10, 1988, President Ronald Reagan signed the Act into law. The purposes of the Act were to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future. 50 U.S.C. app. 1989–1989a.

Section 105 of the Act makes the Attorney General responsible for identifying, locating, an authorizing payment of redress to eligible individuals. *Id.* 1989b–4. The Attorney General delegated the responsibilities and duties assigned to her to the Assistant Attorney General for Civil Rights, who, in keeping with precedent, has designated ORA in the Civil Rights Division to carry out the execution of the responsibilities and duties under the Act. The regulations governing the eligibility and restitution were drafted by ORA and published under the authority of the Justice Department in 1989. 54 FR 34,157 (1989) (final rule) (codified at 28 CFR part 74).

ORA is charged with the responsibility of identifying and locating persons eligible for redress under the Act. To date, restitution has been paid to a total of 79,911 Japanese Americans and permanent resident aliens of Japanese ancestry.

Section 108 of the Act articulates the standards for redress eligibility. 50 U.S.C. app. 1989b–7(2). Among those excluded from eligibility under that section are those ''who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country * * *.'' *Id.* As part of a citizen exchange program during World War II, the United States returned formerly interned persons of Japanese ancestry to Japan on two occasions. On June 18, 1942, approximately 1,083 persons of Japanese ancestry returned to Japan aboard the M.S. *Gripsholm*, and on September 2, 1943, the *Gripsholm* returned another 1,340 persons of Japanese ancestry to Japan. A number of these persons asserted claims for redress based on their evacuation and internment by the United States Government prior to their return to Japan. However, based on section 108 of the Act and 28 CFR 74.4, ORA found them ineligible for redress. 54 FR 34,162 (1989). In all, 175 persons who returned to Japan aboard the *Gripsholm* claimed compensation under the Act; approximately 124 of these claimants were persons who were under the age of 21 upon their departure from the United States. ORA's denial of redress to these claimants was upheld during the administrative appeal process set forth in 28 CFR 74.17. 54 FR 34,164–65 (1989).

It is helpful to describe the circumstances of these individuals. The West Coast voluntary evacuation period began with the issuance of Proclamation No. 1, on March 2, 1942, and ended with the issuance of Proclamation No. 4, effective on March 29, 1942. After this date, persons of Japanese ancestry were prohibited from leaving the West Coast because the Government was preparing to forcibly relocate and intern them later. Over 120,000 Japanese Americans were eventually interned. Of these 120,000, approximately 124 were minor children whose parents decided to depart the United States for Japan during the war on one of the M.S.

Gripsholm sailings prior to September 2, 1945. The majority of the passengers on the first sailing were Japanese diplomats, while many of the passengers on the second sailing were American citizens or permanent resident aliens. Also aboard were some Japanese nationals who had left Japan to live and work in the United States and who, by law, were ineligible to apply for United States citizenship. Many of these individuals returned to Japan with their American-born children.

These American children persevered through an arduous period during which they were forcibly evacuated from their homes on the West Coast and interned with their parents. The minors were unable legally to return to their homes in the prohibited military zones on the West Coast and were required to travel to Japan with their parents on a long and difficult journey.

The loyalty of most of these American children, however, apparently never waned. According to ORA research, the vast majority of them did not enter into the active military service on behalf of an enemy government during World War II. Furthermore, almost all returned to the United States after the war. Out of the approximately 124 minors who have filed for redress, and who relocated to Japan with their parents during World War II, 108 subsequently returned to the United States, while only 16 remained in Japan.

II. Revised Interpretation

Following publication of the draft regulations in 1989, the Department received 61 comments concerning the eligibility of persons who, as minors, returned to Japan aboard the *Gripsholm*. Based on the comments received at that time, however, it found no reason to differentiate between adults who returned to Japan during World War II and minors. As a result, in the preamble of the final regulation, the Department stated that ''the exclusionary language of the Act would preclude from eligibility the minors, as well as adults, who were relocated to Japan during [the relevant] time period.'' 54 FR 34,160 (1989).

The Department, based on an argument not previously presented, now proposes to revise its interpretation regarding the eligibility of persons who relocated to Japan during World War II. Specifically, it proposes to revise its determination of eligibility with regard to persons who were under the age of 21 and not emancipated as of their dates of departures from the United States, who did not participate in the active military service on behalf of an enemy government during World War II, and who are otherwise eligible for redress under these regulations.

In proposing this revision, the Department is operating within the established framework of *Chevron* v. *N.R.D.C.*, 467 U.S. 837, 842–43. Under *Chevron*, an agency must give effect to the unambiguously expressed intent of Congress when interpreting a statute. However, where an act is silent or ambiguous with respect to a specific issue, Congress has assigned to the agency the responsibility to elucidate a specific provision of the statute by regulation. *Id.* at 843–44. For the reasons set forth below, the Department believes that the proscription of section 108 is ambiguous with respect to its coverage of the class of individuals described above, and that the proposed revision is a reasonable interpretation of the statute.

As enacted, section 108 expressly excludes from eligibility ''any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, *relocated* to (another) country while the United States was at war with that country.'' 50 U.S.C. app. 1989b–7 (emphasis added). This language does not specifically resolve whether the exclusion applies to individuals who relocated involuntarily.

This issue is suggested on the face of the statute when it is read as a whole because, while the statute uses the active voice in section 108's exclusion clause, the eligibility clauses of the statute use the passive voice. For example, section 108 begins by defining an ''eligible individual'' as a person of Japanese ancestry ''who, during the evacuation, relocation and internment period—* * * *was* confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of * * * (various Executive Orders and Acts).'' 50 U.S.C. app. 1989b–7(2) (emphasis added). Title II of the Act, which provides reparations to Aleuts evacuated from their home islands during World War II, similarly defines an eligible Aleut as a person ''who, as a civilian, *was* relocated by authority of the United States from his or her home village * * * to an internment camp * * *.'' 50 U.S.C. app. 1989c–1(5) (emphasis added). The contrasting use of the active voice in the exclusion clause suggests the possibility that section 108 might be read to exclude only those individuals who voluntarily relocated to an enemy country during the war.

This possibility is consistent with judicial decisions. The United States Courts of Appeals for the District of Columbia and the Ninth Circuits have deemed the use of the active as opposed to the passive voice relevant for purposes of statutory interpretation. *Dickson* v. *Office of Personnel Mgmt.*, 828 F.2d 32, 37 (D.C. Cir. 1987) (isolated use of passive voice in phrase defining liability is significant and allows suit against Office of Personnel Management whenever an adverse determination ''is made,'' even if by another agency); *United States* v. *Arrellano*, 812 F.2d 1209, 1212 (9th Cir. 1987) (clause of statute defining criminal intent phrased in active voice applies to conduct of the accused, while second clause phrased in passive voice applies only to the conduct of others). Thus, the statutory language creates an ambiguity as to whether eligibility decisions should distinguish between voluntary relocatees and involuntary relocatees. For the reasons that follow, we believe the better interpretation is to exclude only individuals who relocated voluntarily.

The Act's legislative history provides very little significant insight into congressional intent regarding the eligibility of involuntary relocatees. As originally introduced, neither the House nor the Senate bill included a relocation exclusion provision in the section defining eligible individuals. Entering conference, the House version of the Act contained the exclusion, while the Senate version contained no such provision. The conferees agreed to adopt the House provision, which excluded ''those individuals who, during the period from December 7, 1941, through September 2, 1945, relocated to a country at war with the United States.'' H.R. Conf. Rep. No. 785, 100th Cong., 2d Sess. 22 (1988). There is no additional discussion of the relocation exclusion in the conference report.

A discussion of whether individuals who returned to Japan should be included in the definition of ''eligible individuals'' is contained in a witness statement submitted to the House and Senate subcommittees considering the legislation. In testimony opposing the enactment of the bill, the Assistant Attorney General for the Civil Division, Richard K. Willard, noted that as then written (without the relocation exclusion), the breadth of the definition would cover any individual who had been subject to exclusion, relocation, or internment, including persons living outside the United States. In the Department's view, this overlooked the fact that at least several hundred of the detainees were ''fanatical pro-Japanese, * * * and (had) voluntarily sought repatriation to Japan after the end of the war.'' The Department believed that allowing these disloyal individuals to receive the benefit of the legislation

would be unfair to the United States and to loyal persons of Japanese descent. To Accept the Findings and to Implement the Recommendations of the Commission on Wartime Relocation and Internment of Civilians: Hearing on S. 1009 Before the Subcomm. on Federal Services, Post Office, and Civil Service of the Senate Comm. on Governmental Affairs, 100th. Cong., 1st Sess. 281, 296 (1987) (Hearings). This statement, however, does not reveal or suggest an opinion that the bill ought to exclude from redress persons who *involuntarily* relocated to an enemy country.

In sum, the Department believes that section 108's exclusion of persons who relocated to an enemy country during World War II is susceptible to the interpretation that it does not apply to persons who relocated involuntarily, that so interpreting the statute gives effect to the principles Congress meant to embody in the exclusionary provision, and that this interpretation is otherwise a reasonable construction of the statute.

The Department further notes that the determination of whether a person relocated voluntarily to an enemy country during World War II is extraordinarily difficult to determine at this late date, over half a century since the period during which the actions that are relevant to a determination about the state of mind of individual relocatees took place. Under these circumstances, the Department has discretion to structure the process for determining redress eligibility in a manner that avoids the inherent inaccuracy of any attempt to engage in a case-by-case inquiry into the subjective factor of state of mind, as well as the potential administrative burdens associated with case-by-case inquiry, by articulating some reasonable objective criteria to guide the process.

To that end, the Department proposes two bright line rules to administer section 108's exclusion provision. First, any person who was 21 years of age or older, or otherwise emancipated by petition of the court or by marriage, as of the date of his or her departure from the United States, shall be irrebuttably presumed to have relocated voluntarily, and will be ineligible for redress under the Act. Second, any person who served in the Japanese military, or the military of another enemy country, during the statutorily-defined war period shall be irrebuttably presumed to have relocated voluntarily and, therefore, will be ineligible for redress. All otherwise eligible persons falling outside these categories, that is, persons who were minors and not otherwise emancipated as of the dates of their departures from the United States and who did not serve in the Japanese military or the military of another enemy government during the statutorily-defined war period, shall be considered involuntary relocatees and therefore eligible for redress under the Act.

The Supreme Court has affirmed the ability of agencies to employ generally applicable rules as an alternative to case-by-case adjudication. *See e.g., American Hospital Ass'n* v. *NLRB,* 499 U.S. 606, 611 (1991) (''[Prior decisions of this Court] confirm that, even if a statutory scheme requires individualized determinations, the decision-maker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.''). In particular, the Court has noted that the Congress is free to use prophylactic rules despite their ''inherent imprecision'' when it wishes to avoid ''the expense and other difficulties of individual determinations.'' *Weinberger* v., *Salfi,* 422 U.S. 749, 777 (1975).

The Department believes that under *American Hospital Ass'n* and other authorities agencies enjoy a similar latitude to that enunciated in *Weinberger.* As in *Weinberger,* justifying the use of such bright-line rules does not require determining whether the rules ''precisely filter() out those, and only those, who are in the factual position which generated the congressional concern * * * (n) or * * * whether (they) filter( ) out a substantial part of the class which caused the * * * concern, or whether (they) filter() out more members of the class than nonmembers.'' *Id.* Rather, the question is whether the Department could ''rationally have concluded both that * * * particular (rules) would protect against (the abuse Congress sought to avoid), and that the expense and other difficulties of individualized determinations justified (their) inherent imprecision.'' *Id.* For the reasons that follow, the proposed rules satisfy this standard.

As stated above, the Department proposes to apply an irrebuttable presumption that persons who were 21 years of age or older, or otherwise emancipated by petition of the court or by marriage, as of the dates of their departures from the United States, were voluntary relocatees. The Department proposes to apply this irrebuttable presumption because adult relocatees were more likely than minor relocatees to have been able to assent freely to their return to Japan. The age of 21 as of the date of departure was chosen because, during the period covered by the Act's relocation exclusion, the legal age of majority in most states was 21.

Noting the dearth of legislative history pertaining to the Act's exclusion clause, the United States Court of Federal Claims stated in *Suzuki* v. *United States,* 29 Fed. Cl. 688 (1993), that Congress may have enacted the exclusion clause in an effort to deny benefits to individuals who had either been disloyal to the United States or ''who, despite possible continued loyalty to the United States, had aided an enemy country during war.'' *Id.* at 695. Nothing in the Department's revised interpretation of section 108 is inconsistent with this observation, since both of the possible purposes cited by the court assume volition on the part of the relocatee to leave the Untied States and relocate to Japan. If, by contrast, an individual relocatee was not free to assent to his or her relocation on account of his or her minority status, it is reasonable for the Department to conclude that such individual was not the type of person against whom Congress intended to apply section 108's exclusion provision. By itself, the relocation of minors during World War II does not raise doubts or inferences concerning disloyalty. In fact, most American-born minor relocatees returned to the United States following the war.

Examples of distinctions in the treatment of minors and adults abound in our law. *See Thompson* v. *Oklahoma,* 487 U.S. 815, 823 (1988) (plurality opinion). Accordingly, it is reasonable for the Department to apply such a distinction in determining whether individuals who related to Japan during the statutorily-defined war period did so voluntarily.

The Department also proposes to apply an irrebuttable presumption that individuals who served in the military of an enemy government during the statutorily-defined war period relocated voluntarily because the Department believes that evidence that an individual entered into the active military service on behalf of an enemy government following his or her departure from the United States is a strong indication that the individual relocated voluntarily. In view of that reasonable belief and the fact that it is difficult at this time to determine with complete certainty the motivations of individuals who joined the active military service against the United States during World War II, and in light of the increased administrative burdens associated with individualized efforts to ascertain the 50-year-old motivations of such individuals, the Department believes it is appropriate to interpret the

fact that an individual served in the military of an enemy government following his or her relocation as evidence that the individual relocated voluntarily.

The Department will thus require individuals who apply for redress under the Act and who relocated to Japan during the statutorily-defined war period to provide information as to their ages and emancipation status upon their dates of departure from the United states to relocate to Japan, and to state whether or not they participated in the active military service on behalf of an enemy government, including the Japanese Government, during World War II. If such individuals state that they were 21 years of age or older, or emancipated minors, as of the dates of their departures, they will be deemed ineligible for redress under the Act. Similarly, if such individuals state that they participated in the active military service on behalf of an enemy government during World War II, they also will be deemed ineligible. In contrast, otherwise eligible relocatees who were under the age of 21 and not otherwise emancipated upon the dates of their departures from the United States, and who did not serve in the military on behalf of an enemy government during World War II, will be eligible for redress under the Act.

III. Regulatory Impact Analysis

The Office of Management and Budget has determined that this proposed rule is a significant regulatory action under Executive Order No. 12866 and, accordingly, this proposed rule has been reviewed and approved by the Office of Management and Budget. Information collection associated with this regulation has been approved by the Office of Management and Budget, OMB No. 1190–0010. Comments about this collection can be filed with the Clearance Officer, Office of Redress Administration, PO Box 66260, Washington, DC 20035–6260, and the Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office building, Washington, DC 20503.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the preamble and by the authority vested in me, including 28 U.S.C. 509 and 510, chapter I of title 28, part 74, of the Code of Federal Regulations is proposed to be amended as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

1. The authority citation for Part 74 continues to read as follows:

Authority: 50 U.S.C. app. 1989b.

2. In subpart B, § 74.4 is revised to read as follows:

Subpart B—Standards of Eligibility

§ 74.4 Individuals excluded from compensation pursuant to section 108(B) of the Act.

(a) The Term ''eligible individual'' does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country.

(b) Nothing in paragraph (a) of this section is meant to exclude from eligibility any person who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country, and who had not yet reached the age of 21 and was not emancipated as of the date of departure from the United States, provided that such person is otherwise eligible for redress under these regulations and the following standards:

(1) Persons who were 21 years of age or older, or emancipated minors, on the date they departed the United States for Japan are subject to an irrebuttable presumption that they relocated to Japan voluntarily and will be ineligible.

(2) Persons who served in the active military service on behalf of the Government of Japan or an enemy government during the period beginning on December 7, 1941 and ending on September 2, 1945, are subject to an irrebuttable presumption that they departed the United States voluntarily for Japan. If such individuals served in the active military service of an enemy country, they must inform the Office of such service and, as a result, will be ineligible.

Dated: June 5, 1996.

Janet Reno,

Attorney General.

[FR Doc. 96–14721 Filed 6–11–96; 8:45 am]

BILLING CODE 4410–10–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD–FRL–5519–4]

National Ambient Air Quality Standards for Ozone and Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: In accordance with sections 108 and 109 of the Clean Air Act, the Environmental Protection Agency (EPA) is nearing completion in its reviews of the air quality criteria and national ambient air quality standards (NAAQS) for ozone (O_3) and particulate matter (PM). This action announces the Agency's plans to propose decisions on whether to retain or revise the O_3 and PM NAAQS under the same schedule, by November 29, 1996, with final action scheduled for mid-1997. Further, this action announces the Agency's process for developing integrated strategies for the implementation of potential new O_3 and PM NAAQS, as well as a regional haze program. This action reflects the Agency's recognition of important scientific and technical factors with both these pollutants, associated standards, and implementation strategies to meet such standards. Through this action, the Agency is providing advance notice of key issues that are being considered in the reviews of these standards to allow more time for the public to develop input and comments beyond that which will be provided following the notices of proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Dr. David McKee on the O_3 NAAQS review, MD–15, Air Quality Standards and Strategies Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (919–541–5288); Dr. Jane Caldwell on the PM NAAQS review, same address (919–541–0328); and Ms. Denise Gerth on the integrated implementation strategy development process, same address (919–541–5550).

SUPPLEMENTARY INFORMATION:

Availability of Related Information

A. Documents Related to the O_3 and PM NAAQS Reviews

The Air Quality Criteria for Ozone and Other Photochemical Oxidants (EPA/600/P–93–004aF thru EPA/600/P–93–004cF); Review of the National