

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum dated June 10, 1994, from the Chemistry Review Branch (HFS-247), to the Indirect Additives Branch (HFS-216), concerning FAP 3B4389—Reichhold Chemicals, Inc.—exposure to the food additive and its components (polychlorinated dibenzo-*p*-dioxins and dibenzofurans).

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger and J. K. Marquis, S. Karger, New York, pp. 24-33, 1985.

3. EPA 560/5-90-014, Background Document to the Integrate Risk Assessment for Dioxins and Furans from Chlorine Bleaching in Pulp and Papermills, pp. 3-13, July, 1990.

4. Pilot Study on International Information Exchange on Dioxins and Related Compounds, Report No. 178, December, 1988.

5. Kociba, R. J., et al., "Results of a Two Year Chronic Toxicity and Oncogenicity Study of 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin in Rats," *Toxicology and Applied Pharmacology*, 46:279-303, 1978.

6. Report of the Quantitative Risk Assessment Committee, "Carcinogenic Risk Assessment for Dioxins and Furans in Foods Contacting Bleached Paper Products," April 20, 1990.

7. "2,3,7,8-Tetrachlorodibenzo-*p*-dioxin in Sprague-Dawley Rats," Pathco, Inc., March 13, 1990.

8. Report of the Quantitative Risk Assessment Committee, "Upper-Bound

Lifetime Carcinogenic Risk From Exposure to Dioxin Congeners From Foods Contacting Paper Products With Dioxin Levels Not Exceeding 2 ppt," January 27, 1993.

9. Memorandum, Report of the Quantitative Risk Assessment Committee, "Estimation of Upper-Bound Lifetime Risk From Polychlorinated Dibenzo-*p*-dioxins and Dibenzofurans in 1,2-benzisothiazolin-3-one," April 2, 1994.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 30, 1996, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2600 is amended in paragraph (c)(4)(ix) by alphabetically adding a new entry for 1,2-benzisothiazolin-3-one to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(ix) * * *

1,2-Benzisothiazolin-3-one (CAS Reg. No. 2634-33-5) for use as a biocide in uncured liquid rubber latex not to exceed 0.02 percent by weight of the latex solids, where the total of all items listed in paragraph (c)(4)(ix) of this section does not exceed 5 percent of the rubber product.

* * * * *

Dated: November 15, 1996.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 96-30510 Filed 11-27-96; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR-4154-I-01]

RIN 2501-AC36

Revised Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule.

SUMMARY: Section 214 of the Housing and Community Development Act of 1980 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or certain categories of eligible noncitizens. This interim rule revises HUD's regulations governing assistance to noncitizens to incorporate the recent statutory amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 ("Immigration Reform Act"). This rule, however, does not amend the noncitizen requirements for Indian Housing Authorities (IHAs). Further, this rule does not implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Welfare Reform Act") which concern immigration. The changes to HUD regulations required by that Act will be the subject of future rulemaking.

DATES: *Effective date:* November 29, 1996.

Comments due date: November 29, 1996.

ADDRESSES: Interested persons are invited to submit comments regarding the interim rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and

Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

(1) For Public Housing, Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation (except Single Room Occupancy—"SRO") programs—Linda Campbell, Office of Public Housing, Room 4206, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-0744;

(2) For the Section 8 Moderate Rehabilitation SRO program—Dave Pollack, Office of Special Needs Assistance Programs, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1234;

(3) For the other Section 8 programs, the Section 236 programs, Housing Development Grants and Rent Supplement—Barbara Hunter, Office of Asset Management and Disposition, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-3944; and

(4) For the Section 235 homeownership program—Morris Carter, Office of Lender Activities and Program Compliance, Room 9156, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708-1515.

For persons with hearing or speech impairment, the TTY number is 1-800-877-8339 (Federal Information Relay Service TTY). With the exception of the "800" number, none of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. Background

A. HUD's Implementation of Section 214 of the Housing and Community Development Act of 1980

On March 20, 1995 (60 FR 14816), HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) and that rule became effective on June 19, 1995. Section 214 prohibits HUD from making certain financial assistance available to persons

other than United States citizens, nationals, or specified categories of eligible noncitizens.

HUD's March 20, 1995 final rule promulgated virtually identical "noncitizen" regulations for the various HUD programs covered by Section 214. On March 27, 1996 (61 FR 13614), HUD, as part of its continuing regulatory reform efforts, published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5. HUD established part 5 to set forth those requirements which are applicable to one or more program regulations. The March 27, 1996 final rule, however, did not consolidate the noncitizen requirements for HUD's Indian Housing programs.

B. This Interim Rule

This interim rule revises HUD's regulations at 24 CFR part 5, subpart E by incorporating the recent amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 (Title V, Subtitle E of the Illegal Immigration Reform and Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009, approved September 30, 1996) (the Immigration Reform Act). The Native American Housing Assistance and Self-Determination Act of 1996 (Pub. L. 104-330; 110 Stat. 4016; approved October 26, 1996) completely revises HUD's Indian Housing programs, this interim rule does not amend the noncitizen requirements for Indian Housing Authorities (IHAs) in § 950.310. The transition notice and regulations promulgated under the Native American Housing Assistance and Self-Determination Act of 1996 will address the applicability of the Section 214 requirements as amended by the Immigration Reform Act.

The most significant changes made to Section 214 by the Immigration Reform Act, and consequently to HUD's existing Section 214 regulations by this interim rule are as follows:

1. The interim rule provides that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established. Related to this issue, the Immigration Reform Act also provides that pending such verification the Secretary may not delay, deny, reduce or terminate the eligibility of an individual for financial assistance on the basis of the immigration status of

that individual. Although at first glance these two provisions appear to conflict, HUD believes they are complementary.

HUD believes that the first provision places responsibility on the family to produce documentation of eligible immigration status. Accordingly, this interim rule provides that no family shall be provided assistance until the required documentation has been submitted. The second provision places responsibility on the INS and any other entity which must take certain action once the family has submitted the necessary documentation. Once the family has produced the necessary documents, it should not be penalized for delays on the part of those entities which must verify eligible immigration status.

2. The interim rule requires that continued financial assistance provided to an eligible mixed family after November 29, 1996 be prorated based on the percentage of family members that are eligible for assistance. An eligible mixed family is a family containing members with eligible immigration status, as well as members without such status, and that meets the criteria for eligibility for continued assistance as set forth in Section 214.

3. The interim rule requires that HUD suspend financial assistance to a family upon determining that the family has knowingly permitted an ineligible individual to reside on a permanent basis in the family's unit. The suspension shall be for a period of at least 24 months. This provision does not apply if the ineligible individual has already been considered in calculating any proration of assistance for the family.

4. This interim rule allows responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens or nationals to verify the declaration through appropriate documentation (e.g., United States passport, resident alien card, registration card, social security card, or other appropriate documentation). Before this amendment, only individuals who are not U.S. citizens or nationals are required to present documentation of their eligible immigration status.

5. The interim rule revises the maximum period for deferral of termination of assistance provided after November 29, 1996 from an aggregate of 3 years to an aggregate of 18 months. The 18-month maximum deferral period does not apply to refugees under section 207 of the Immigration and Nationality Act or to individuals seeking asylum

under section 208 of that Act. The maximum deferral period for deferrals granted prior to November 29, 1996 continues to be 3 years.

6. The interim rule provides that an individual has a maximum period of 30-days, starting from the date of receipt of the notice of denial or termination of assistance, to request a fair hearing. HUD believes that due process requires that assistance already being provided to a tenant may not be delayed, denied, reduced or terminated until completion of the fair hearing.

7. This interim rule, in accordance with Section 214 as amended, provides that a PHA may elect not to comply with the requirements of 24 CFR part 5, subpart E. In complying with 24 CFR part 5, subpart E, a PHA may initiate procedures to affirmatively establish or verify the eligibility of an individual or family at any time in which the PHA determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the PHA. The PHA may also affirmatively establish or verify the eligibility of a family member in accordance with the procedures set forth in section 274A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1324A(b)(1)), and shall have access to any relevant information contained in the INS SAVE system (or any successor thereto) that relates to any family member applying for financial assistance.

The change described in paragraph #7 is based on the language of new subsection 214(h)(2), which was added by Section 575 of the Immigration Reform Act. Subsection 214(h)(2) provides that "[a] Public Housing Agency * * * may elect not to comply with this section." The use of the word "section" (as opposed to "subsection") in this provision, in a strict statutory construction, refers to Section 214 in its entirety.

The Immigration Reform Act restricts the provision of assistance to a family until at least the eligibility of one family member has been verified. This interim rule, however, provides that HUD shall not be responsible for verifying compliance with the requirements of Section 214 if a PHA elects to "opt-out" of 24 CFR part 5, subpart E. HUD would only be able to verify the eligible immigration status of family members applying for assistance with the aid of the PHAs. Since PHA assistance would be required, the imposition of such verification responsibility upon HUD would in effect negate the right of a PHA to "opt-out" of Section 214.

C. Changes Made to Section 214 by the Welfare Reform Act

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104-193; 110 Stat. 2105; approved August 22, 1996) (Welfare Reform Act) expanded the scope of Section 214. Specifically, Section 441 of the Welfare Act makes assistance provided under the National Homeownership Trust (42 U.S.C. 12851-12859) subject to the noncitizen requirements of Section 214. Pursuant to 42 U.S.C. 12859, the National Homeownership Trust was terminated on September 30, 1994. Accordingly, this interim rule does not revise 24 CFR part 5, subpart E to incorporate the amendment made by the Welfare Reform Act.

Section 441 of the Welfare Reform Act also made the restrictions of Section 214 applicable to the following programs administered by the Secretary of Agriculture: direct loan program under section 502 of the Housing Act of 1949 or section 502(c)(5)(D), 504, 521(a)(2)(A), or 542 of the Housing Act of 1949, subtitle A of title III of the Cranston-Gonzalez National Affordable Housing Act. Since these programs are administered by the Secretary of Agriculture, HUD is not amending its regulations to reflect the expanded scope of the Section 214 restrictions.

In addition to the changes discussed above, the Welfare Reform Act made other amendments concerning immigration. This interim rule does not implement these provisions of the Welfare Reform Act. This interim rule only amends 24 CFR part 5, subpart E to incorporate the changes made by the Immigration Reform Act. HUD and other responsible agencies are developing regulations to implement the changes made by the Welfare Reform Act. Responsible entities should not implement the Welfare Reform Act provisions until the issuance of these implementing regulations.

D. Nondiscrimination in the Implementation of Section 214

HUD reiterates the statement made in the March 20, 1995 final rule that all regulatory procedures in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen).

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24

CFR part 10. Part 10 provides that prior public procedure may be omitted if "a statute expressly so authorizes" (24 CFR 10.1). Section 577 of the Immigration Reform Act requires that the Secretary of HUD, within 60 days of the Act's enactment, issue an interim rule implementing the amendments made to Section 214. Further, section 577 provides that the interim rule "shall take effect upon issuance." This interim rule implements the rulemaking requirement contained in Section 577 of the Immigration Reform Act. Although HUD is statutorily mandated to issue this interim rule for immediate effect, it welcomes public comment. All comments will be considered in the development of the final rule.

On October 30, 1996, the Department held a meeting at HUD Headquarters on the subject of the Immigration Reform Act. HUD invited to this meeting representatives of civil rights groups, public housing agencies, private housing providers, and legal services groups to present their views on the effect of the amendments to Section 214 made by the Immigration Reform Act. The comments and concerns about the Immigration Reform Act were taken into account during the development of this interim rule. Organizations that participated in this meeting included, among others, the Public Housing Authorities Directors Association; the National Housing Law Project; the National Puerto Rican Coalition; the National Association of Housing and Redevelopment Authorities; the National Council of La Raza; and the Council of Large Public Housing Authorities.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this interim rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this interim rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the interim rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410-0500.

Unfunded Mandates Reform Act

The Secretary has reviewed this interim rule before publication and by approving it certifies, in accordance

with the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532), that this interim rule does not impose a Federal mandate that will 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.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this interim rule, and in so doing certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. As explained in the preamble to the March 20, 1995 final rule, the implementation of HUD's noncitizen requirements have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The amendments made by this interim rule do not alter that determination. This interim rule does not require the creation of new procedures or impose significant additional costs on responsible entities. Rather, the requirements of the interim rule can be satisfied through the use of existing procedures. For example, the interim rule prohibits responsible entities from making assistance available to a noncitizen until the necessary documentation establishing eligible immigration status is verified. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, current methods may be used to prorate the assistance provided to an eligible mixed family receiving continued assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this interim rule have no federalism implications, and that the policies are not subject to review under the Order. This interim rule addresses

immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the status that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of discretion in promulgating a rule to implement the statute.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this interim rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The only families upon whom Section 214 and HUD's implementing regulations have an impact are those containing individuals with ineligible immigration status. Even for these families, however, Section 214 and HUD's regulations strive to maintain the unity of the family under the provisions concerning preservation assistance to mixed families which provide for continued assistance for certain categories of mixed families, and deferral of termination of assistance and prorated assistance for other mixed families.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart E—Restrictions on Assistance to Noncitizens

2. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535(d).

3. A new § 5.501 is added to read as follows:

§ 5.501 PHA election whether to comply with this subpart.

(a) *PHA opt-out.* A PHA that is a responsible entity under this subpart may elect not to comply with ("opt-out" of) the requirements of this subpart.

(b) *PHA compliance.* If the PHA elects to comply with this subpart, the PHA:

(1) May initiate procedures to affirmatively establish or verify the eligibility of a family under this section at any time at which the PHA determines that such eligibility is in question, without regard to position of the family member's family on the waiting list of the PHA;

(2) May affirmatively establish or verify the eligibility of a family member in accordance with the procedures set forth in section 274A(b)(1) of the Immigration and Nationality Act; and

(3) Shall have access to any relevant information contained in the INS SAVE system (or any successor thereto) that relates to any family member applying for financial assistance.

(c) *HUD not responsible due to PHA opt-out.* HUD shall not bear any responsibility in connection with compliance with the requirements of Section 214 if a PHA elects not to comply with this subpart under paragraph (a) of this section.

4. Section 5.508 is amended by revising paragraphs (b)(1), (b)(2), (h)(2) and (h)(3) introductory text to read as follows:

§ 5.508 Submission of evidence of citizenship or eligible immigration status.

* * * * *

(b) * * *

(1) For citizens, the evidence consists of a signed declaration of U.S. citizenship. The responsible entity may request verification of the declaration by requiring presentation of a United States passport, resident alien card, registration card, social security card, or other appropriate documentation.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

* * * * *

(h) * * *

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to

allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

* * * * *

5. Section 5.510 is amended by revising paragraph (b) to read as follows:

§ 5.510 Documents of eligible immigration status.

* * * * *

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

6. Section 5.512 is amended by revising paragraph (a) to read as follows:

§ 5.512 Verification of eligible immigration status.

(a) *General.* Except as described in §§ 5.501 and 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

* * * * *

7. Section 5.514 is amended by:

- a. Revising paragraph (b);
- b. Revising paragraph (c)(1);
- c. Revising paragraph (e)(1);
- d. Removing paragraph (f)(2);
- e. Redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(2) and (f)(3) respectively; and
- f. Revising paragraph (f)(1), to read as follows:

§ 5.514 Delay, denial, reduction or termination of assistance.

* * * * *

(b) *Restrictions on delay, denial, reduction or termination of assistance.* (1) *Restrictions on reduction, denial or termination of assistance for applicants*

and tenants. Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with § 5.520; or

(vi) Assistance for a mixed family is continued in accordance with §§ 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

(2) *Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants.* In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) *Events causing denial or termination of assistance.* (1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 5.508(g) or by the expiration of any extension granted in accordance with § 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a

permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

* * * * *

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

* * * * *

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

* * * * *

8. Section 5.516 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c) (1) and (2) of this section.

* * * * *

9. Section 5.518 is amended by revising paragraphs (a), (b)(3) and (b)(5) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* (1) *General.* A mixed family may receive continued

housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in § 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) *Proration of continued assistance.* A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in § 5.520.

(b) * * *

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

* * * * *

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i) (A) or (B) of this section. Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; or

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

* * * * *

10. Section 5.526 is revised to read as follows:

§ 5.526 Protection from liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

Date: November 22, 1996.

Henry G. Cisneros,
Secretary.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8687]

RIN 1545-AT92

Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations governing the source of income from sales of natural resources or other inventory produced in the United States and sold outside the United States or produced outside the United States and sold in the United States. This document affects persons who produce natural resources or other inventory in the United States and sell outside the United States, or produce natural resources or other inventory outside the United States and sell in the United States.

DATES: *Effective date:* December 30, 1996.

Applicability: Taxpayers may apply these regulations for taxable years beginning after July 11, 1995, and on or before December 30, 1996.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne, (202) 622-3880 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1476. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent is approximately 2.6 hours.