The N½ of the N½ of the NE¼ of Section 19, T14N, R3W, EXCEPT the North 40 rods of the East 20 rods thereof, Chippewa Township, AND

The E½ of the NE¼ of Section 18, T14N, R3W, EXCEPT the North 20 rods, AND EXCEPT the South 20 rods of the W½ thereof, Chippewa Township, AND

The SE¼ of Section 18, T14N, R3W, EXCEPT the North 16 rods of the West 12 rods, 2 feet thereof, Chippewa Township, AND

The North 10 acres of the SW¼ of the NW¼ of Section 17, T14N, R3W, Chippewa Township, AND

The S½ of the NW¼ of the NW¼ of Section 17, T14N, R3W, EXCEPT the plat of Greencrest Park, according to the plat recorded in Liber 6 of Plats, Page 351, Isabella County Records; AND EXCEPT a parcel commencing 65 feet East of the SW corner of Lot 49 of Greencrest Park, according to the plat recorded in Liber 6 of Plats, Page 351, thence East along the South line of said Plat 311 feet, thence South 25 feet, thence West 311 feet, thence North 25 feet to the point of beginning, Chippewa Township, AND

Commencing at the SE corner of Lot 50 of Greencrest Park, according to the plat recorded in Liber 6 of Plats, Page 351, thence S 00°14′15″ E 25 feet, thence S 89°45′03″ E 66 feet, thence N 00°14′15″ W 25 feet to the SW corner of Lot 51 of said Plat, thence N 89°45′03″ W 66 feet to the point of beginning, AND

A parcel of land being part of the W½ of the NE¼ of Section 18, T14N, R3W, described as beginning at a point on the E–W¼ line which is S 89°59′ E, 932.85 feet from the interior ¼ corner of said Section 18, thence N 0°08′08″ E, 2201.12 feet, thence S 89°43′52″ E, 400 feet, S 0°08′08″ W, 2199.36 feet along the East N–S ⅛ line of Section 18, thence N 89°59′ W, 400.0 feet along the E–W¼ line of Section 18 to the point of beginning, EXCEPT the East 8 rods of the South 20 rods thereof, Chippewa Township, AND

A parcel of land being part of the NW¼ of Section 18, T14N, R3W, described as beginning at a point on the E–W¼ line which is East 1881.0 feet from the W¼ corner of said Section; thence N 0°07′ E, 2384.19 feet; thence S 89°42′45″ E, 400.0 feet; thence S 0°07′ W, 2382.19 feet; thence West 400.0 feet along the E–W¼ line to the point of beginning, Chippewa Township.

Title to the land described above will be conveyed subject to any valid existing easements for public roads, highways, public utilities, pipelines, and any other valid easements or rights-of-way now on record.

Dated: April 14, 1997.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 97–10590 Filed 4–23–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 74

[Order No. 2077–97]

Redress Provisions for Persons of Japanese Ancestry: Guidelines Under Ishida v. United States

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice (''Department'') hereby adopts 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, which authorizes the Attorney General to identify, locate, and make payments of $20,000 to eligible persons of Japanese ancestry. This change will amend the Act's standards to make eligible those persons who were born outside the prohibited military zones on the West Coast after their parents ''voluntarily'' evacuated as a result of military proclamations issued pursuant to Executive Order 9066. This change will also make eligible for redress those persons who were born outside the prohibited military zones in the United States after their parents were released from internment camps and whose parents had resided in areas that became part of the prohibited military zones on the West Coast immediately prior to their internment. In practice, this amendment will make potentially eligible those persons who were born after their parents were evacuated, relocated, or interned by the United States Government, and who were legally excluded from their parents' original place of residence in the prohibited military zones on the West Coast.

EFFECTIVE DATE: May 27, 1997.

FOR FURTHER INFORMATION CONTACT: Tink D. Cooper or Emlei M. Kuboyama, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, P.O. Box 66260, Washington, D.C. 20035–6260; (888) 219–6900 (voice) (toll-free) or (202) 219–4710 (TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The Civil Liberties Act of 1988, Pub. L. No. 100–383, 102 Stat. 903 (codified at 50 U.S.C. app. 1989b–4) (''the Act''), enacted into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians established by Congress in 1980. *See* Commission on Wartime Relocation and Internment of Civilians Act, Pub. L. No. 96–317, 94 Stat. 964 (1980). This bipartisan commission was established: (1) to review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942 (E.O. 9066''), 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 June 1983 a unanimous report, *Personal Justice Denied Part 2: Recommendations*, which extensively reviewed the history and circumstances of the decisions to exclude, to 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. 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.

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.

Section 105 of the Act makes the Attorney General responsible for identifying, locating, and authorizing payment of redress to eligible individuals. 50 U.S.C. app. 1989b–4. The Attorney General delegated these responsibilities and duties assigned to her to the Assistant Attorney General for Civil Rights, who, in keeping with precedent, has designated the Office of Redress Administration (''ORA'') in the Civil Rights Division to carry out the responsibilities and duties mandated by the Act.

ORA is charged with identifying and locating persons who are eligible for redress under the Act. To date,

restitution has been paid to a total of 80,120 Japanese-Americans and permanent resident aliens of Japanese ancestry.

In the preamble of the final regulation implementing the Act, published in 1989, the Department stated that ''[w]hile children born in assembly centers, relocations [sic] camps and internment camps are included as eligible for compensation, the regulations do not include as eligible children born after their parents had voluntarily relocated from prohibited military zones or from assembly centers, relocation camps, or internment camps.'' 54 FR 34,160 (1989). A number of these persons asserted claims for redress based on their parents' evacuation or internment by the United States Government prior to their birth and their subsequent inability to legally return to their parents' original place of residence in the prohibited military zones on the West Coast. However, based on section 108 of the Act and 28 CFR 74.4, ORA found these persons ineligible for redress. Approximately 1,200 persons who were born after their parents ''voluntarily'' evacuated from the prohibited military zones or after their parents were released from internment camps claimed compensation under the Act. Most of these claimants were born prior to midnight on January 20, 1945, the effective date of Proclamation No. 21, which rescinded the exclusion orders for the remaining six prohibited zones on the West Coast, and which lifted the general civilian exclusion restrictions on persons of Japanese ancestry. ORA's denial of redress to these claimants was upheld during the administrative appeal process set forth in 28 CFR 74.17 and in some decisions of the U.S. Court of Federal Claims. *See Tanihara* v. *United States,* 32 Fed. Cl. 805 (1995); *Ishida* v. *United States,* 31 Fed. Cl. 280 (1994). However, the United States Court of Appeals for the Federal Circuit later determined that ORA's policy of denying such claims was inconsistent with the terms of the Act. *Ishida* v. *United States,* 59 F.3d 1224 (Fed. Cir. 1995); *Consolo* v. *United States,* No. 94–5150 (Fed. Cir., July 10, 1995) (unpubl.).

II. Summary of the Regulation and Revised Interpretation

In order to conform to the court decisions, the Department has revised its interpretation regarding the eligibility for redress of persons who either were born after their parents ''voluntarily'' evacuated the prohibited military zones on the West Coast or who were born after a parent had been forcibly evacuated from the prohibited military zones on the West Coast and interned. Specifically, the regulation reverses the Department's past policy of denying redress to such persons who were born outside of the prohibited zones and excluded by law from returning to a parent's original place of residence in the prohibited military zones on the West Coast, and who are otherwise eligible under these regulations.

The appellant in *Ishida* was born on November 23, 1942, in Ohio, after his parents had voluntarily evacuated California in March 1942. His claim for redress was based on his inability to return to California during World War II. The Department's determination of ineligibility was affirmed by the U.S. Court of Federal Claims. As mentioned above, however, on July 6, 1995, the U.S. Court of Appeals for the Federal Circuit reversed, holding that persons such as Ishida, who were excluded by law ''from the parents' original place of residence or the family home'' in a prohibited military zone, were deprived of liberty as a result of the laws and orders specified in the Act and were eligible to receive compensation under the Act. In the companion case, *Consolo,* the court affirmed the trial court, holding that for the reasons set forth in *Ishida,* the appellee, who was born in Utah on April 11, 1943, after her parents had voluntarily moved from California in March 1942, was also eligible to receive redress under the Act.

The Department will be guided by certain principles in reviewing this new category of eligible individuals. First, the Department will apply the standard announced by the court not only to persons similarly situated to the plaintiffs in *Ishida* and *Consolo,* who were born after their parents ''voluntarily'' evacuated the prohibited military zones on the West Coast pursuant to military proclamations, but also to persons who were born after their parents had been forcibly evacuated from the prohibited military zones on the West Coast and interned. These latter persons, who were born outside of the prohibited military zones after their parents were released from internment camps, also could not return to their parents' original places of residence in the prohibited military zones on the West Coast. Because, consistent with the Federal Circuit's reasoning, persons in this category can also be deemed to have been deprived of liberty, based solely on their Japanese ancestry, as a result of certain United States Government actions, the Department will also make redress available to them. Accordingly, redress will be made available to persons born outside of the prohibited military zones after their parents were interned, where at least one parent's original place of residence immediately prior to his or her internment was in the prohibited military zones of the West Coast. However, this change will not affect those persons born outside of the prohibited military zones after their parents were released from internment camps during the defined war period where such parents had resided outside of the prohibited military zones on the West Coast immediately prior to their internment.

Second, the Department will limit eligibility under this new interpretation to claimants born prior to January 21, 1945, the date upon which, pursuant to Proclamation No. 21, the final six Civilian Restrictive Orders were rescinded. In addition to lifting the general restrictions that had excluded persons of Japanese ancestry from their original places of residence in the prohibited military zones on the West Coast, Proclamation No. 21 lifted the restrictions for the remaining six prohibited zones at midnight on January 20, 1945. Accordingly, persons born on or after January 21, 1945 were not excluded from and could legally return to their parents' original residence on the West Coast.

Historical evidence indicates that persons of Japanese ancestry were, in fact, allowed to return to the West Coast without any restrictions as early as December 17, 1944, the date Proclamation No. 21 was issued and the War Department publicly announced the lifting of the general exclusion orders. In addition, on December 18, 1944, the Secretary of the Interior issued a press release stating that the blanket exclusion orders for persons of Japanese ancestry on the Pacific Coast were revoked. Moreover, War Relocation Authority (''WRA'') records indicate that 26 people of Japanese ancestry left WRA internment camps and returned to California between December 17, 1944, and January 3, 1945. However, because Proclamation No. 21 might not have been fully implemented or fully publicized at the time of its issuance, ORA initially proposed that it would use as an eligibility cut-off date the date of January 3, 1945, since the effective date of Proclamation No. 21 was midnight on January 2, 1945.

Proclamation No. 21, however, also indicated that six Civilian Exclusion Orders (Nos. 18, 19, 20, 23, 24, and 30) would remain in effect until midnight, January 20, 1945. It stated further that the effect of the rescission was to restore to all persons of Japanese ancestry who were excluded under the military

proclamations pertaining to the West Coast, and who were not subject to the individual exclusion orders, their ''full rights to enter and remain in the military areas of the Western Defense Command.'' *Id*. at 2, ¶10. Accordingly, in an effort to ensure that persons covered by the six Civilian Exclusion Orders are also covered, the Department will consider as potentially eligible claimants born prior to January 21, 1945.

Third, the West Coast will be defined as those geographic areas in California, the western portions of Washington and Oregon, and the southern portion of Arizona where persons of Japanese ancestry were excluded from residing pursuant to several military proclamations. Proclamation No. 4 prohibited persons of Japanese ancestry from leaving parts of the West Coast while the United States Government was preparing to forcibly evacuate them. Subsequent proclamations were issued to exclude those of Japanese ancestry from these defined West Coast areas. For example, persons of Japanese ancestry were excluded from Military Area No. 1 pursuant to Proclamation No. 7 of June 8, 1942, and excluded from the California portion of Military Area No. 2 pursuant to Proclamation No. 11 of August 18, 1942.

As discussed in more detail below, the Department's general position regarding the Hawaiian and Alaskan exclusion zones is that if such persons were born prior to the specific rescission dates of the military prohibited zones from which their parents were dislocated, then they will be potentially eligible for redress under the *Ishida* standard. ORA will determine specific threshold dates for eligibility on an individual basis by reference to the military proclamations issued in Alaska and other historical information for different military areas determined to be the equivalent of prohibited military zones in Hawaii during World War II. These cases will be reviewed on a case-by-case basis because each evacuation was different (*i.e.*, the initial evacuation date and the lifting of the exclusion varied according to the circumstances in that location). It would be difficult to describe each of the many possible scenarios here. The Department concurs with the view that some claimants whose parent's or parents' original home was in Hawaii or Alaska may qualify for redress under the *Ishida* standard. Further, under section 74.3(c) of the Act's regulations, the Administrator has discretion to review unique cases. Therefore, the legal principle established in this rule will be applied by the Department for the unique circumstances of Hawaii and Alaska.

Fourth, the Department notes that for purposes of interpreting the Act and its provisions, the date upon which the prohibited military zones on the West Coast were eliminated is applicable. For instance, the Act provides eligibility for a person ''enrolled'' on the government records as ''being in a prohibited military zone'' during a specified period. 50 U.S.C. app. 1989b–7(2)(B)(ii). However, since the West Coast prohibited zones were generally eliminated as of January 3, 1945 (except for the six areas that were canceled as of January 20, 1945), a person born on or after January 3, 1945 would not be eligible under this provision—he or she could not meet the Act's eligibility requirements because the military prohibited zone was abolished before he or she was born. The effect of Proclamation No. 21 was to restore to all persons of Japanese ancestry their full rights to enter and remain in the former prohibited zones on the West Coast. We note, however, that a person could be enrolled on a government record in a prohibited zone if that person was born in one of the six remaining prohibited zones on or before January 20, 1945.

III. Responses to Comments

As a result of *Ishida*, the Department published a Notice of Proposed Rulemaking inviting the public to submit comments on this proposed category of eligible persons. 61 FR 17,667 (1996). The comment period expired on June 20, 1996.

By the close of the comment period, the Department had received 246 timely comments: 241 from individuals and 5 from organizations representing the interests of Japanese-Americans. Of these comments, 127 were based on form letters supporting eligibility for the group but proposing a statutory deadline of June 30, 1946, instead of January 2, 1945. In addition, a few comments were not timely filed, as indicated by the postmark, and were therefore not considered.

The Department analyzed each timely filed comment and considered the merits of the points of view expressed in them. In response to these comments, the Department has made some substantive changes to the regulation and has also incorporated suggestions where appropriate. Such changes were not made on the basis of the number of comments addressing any one point, but only after a thorough consideration of the merits of the points of view expressed in the comments and further historical research. Other non-substantive changes were made in order to provide further clarification.

The comments raised four main issues: (1) that persons were unable to return immediately to the West Coast because of the lack of notice that the exclusion zones were lifted on January 3, 1945; (2) that the *Ishida* standard should also be applied to those whose parents' original domicile was in Hawaii or Alaska; (3) that the date of birth for the statutory threshold requirement for eligibility should be extended; and (4) that children of persons under individual exclusion orders should be considered eligible where their birth occurred during the period of their parents' individual exclusion order.

First, a number of comments mentioned that there was a lack of notice regarding the December 17, 1994 announcement of the lifting of the exclusion restrictions on the West Coast by Proclamation No. 21 and asserted that, as a result, many families were unaware that they could return to the exclusion zones. (We note that the phrases ''exclusion zones,'' the ''prohibited zone,'' and the ''prohibited military zones'' are used interchangeably.) Several comments suggested that dates other than the date proposed by the Department should serve as the standard for notice of the lifting of the exclusion zones on the West Coast, including (1) the spring of 1945; (2) the summer of 1945; (3) the end of World War II; (4) the end of 1945; (5) early 1946; (6) June 30, 1946; and (7) December 1946.

After conducting additional research, the Department concludes that widespread public notice of the lifting of the exclusion restrictions was disseminated in December 1944 and January 1945. Substantial evidence exists of contemporaneous public notice beginning on December 17, 1944. News of the release of Public Proclamation No. 21, announcing the lifting of the West Coast exclusion zones, was distributed nationally by the Associated Press wire on December 17, 1944. In addition, historical research indicates that between December 17, 1944, and December 19, 1944, the lifting of the exclusion zones was prominently reported in all the major newspapers examined: the Arkansas Gazette, Arizona Republic, Chicago Tribune, Cleveland Plain Dealer, Columbus Dispatch, Denver Post, New York Times, Pacific Citizen, Salt Lake City Tribune, San Francisco Chronicle, and Spokesman's Review. These particular newspapers were reviewed because of their nationwide distribution or because of their publication in specific cities or geographic areas where there was a large

population of persons of Japanese ancestry.

One comment noted that the lifting of the general exclusion order was not reported in the Cleveland Plain Dealer in January 1945 and confirmed this fact with the paper. We, however, located a lengthy article in the Cleveland Plain Dealer, dated December 18, 1944, which stated:

> The War Department today revoked its order excluding all persons of Japanese ancestry from the west coast * * *. Those persons of Japanese ancestry whose records have stood the test of army scrutiny during the past two years will be permitted the same freedom of movement throughout the United States as other loyal citizens and law abiding aliens.

''Army Drops West Coast Ban on Japs,'' Cleveland Plain Dealer, Dec. 18, 1944, at A1.

There is other historical evidence of public notification of the lifting of the public proclamations on the West Coast before the war ended. The United States Government allowed three Japanese-American newspapers to continue to publish throughout the war. These newspapers reported news in both English and Japanese and ''had wide circulation in the relocation centers.'' U.S. Dept. of the Interior, People in Motion: ''The Postwar Adjustment of the Evacuated Japanese Americans,'' 203 (1947). One of these papers was the Pacific Citizen, published by the Japanese American Citizens League, which was located in Salt Lake City, Utah. *Id.* This newspaper, along with two others that were published in Denver, provided a further, widely circulated source of timely notice. For example, the Pacific Citizen reported rescission of the prohibited zones as the lead story in its December 23, 1944 issue:

> The War Department on December 17 revoked the military orders excluding persons of Japanese ancestry from the Pacific coast military area. The sweeping revocation of the exclusion orders against citizens and law abiding aliens of Japanese ancestry was carried out through the issuance of Public Proclamation No. 21 * * *.

''Proclamation Restores Right of Evacuee Group to Return to Homes After January 2,'' Pacific Citizen, Dec. 23, 1944, at 1. In fact, one comment noted that the family subscribed to the Pacific Citizen and stated that they knew they could return to the West Coast after January 2, 1945. Letter from National Coalition for Redress/Reparations, Janice Yen, to ORA (June 17, 1996, enclosing 13 individual letters) (on file with ORA).

Other evidence of the adequacy of public notice is shown by the sheer numbers of Japanese-Americans who return to the West Coast in 1945. Some 47,235 Japanese-Americans returned to the former prohibited zones in California, Washington, and Oregon, between January 1 and December 31, 1945. This does not include persons who returned to the former prohibited zone in southern Arizona. U.S. Dept. of Interior, *WRA Semi-Annual Report*, July 1 to Dec. 31, 1945, Statistical App. Table I. Another WRA report indicated that by June 1946, over 57,000 persons of Japanese ancestry returned to the West Coast. U.S. Dept. of Interior, *WRA Semi-Annual Report*, January 1 to June 30, 1946, at 11.

The second issue raised referred to the eligibility of persons excluded from their parent or parents' original place of residence in Hawaii or Alaska. Two comments stated that Hawaii was excluded from the definition of the West Coast, but that there were claims from persons who were evacuated and whose families had been excluded from their original homes as a result of United States Government action within Hawaii under military orders other than those that applied to the West Coast. The Department acknowledges the existence of such orders and that their dates of exclusion differed from those applicable to the West Coast. The Department's research has also revealed that a similar situation applied to Japanese-Americans located in certain areas of Alaska that were designated prohibited military zones based on military proclamations.

As a result, the Department will apply *Ishida*'s legal standard in Hawaii and Alaska in areas determined to be prohibited military zones; however, because the period of each evacuation was different, the eligibility cut-off date also must be different depending on the circumstances prevalent in the various locations. Although it would be difficult to describe each of the many different scenarios here, the Department concurs with the views expressed in the comments that some claimants whose parent's or parents' original home was in Hawaii or Alaska may fall under the *Ishida* standard and will apply the legal standard established in this rule to such claimants. Further, under section 74.3(c) of the regulations, the Department has discretion to review unique cases. 28 CFR 74.3(c). Thus, the Department finds that it is not necessary to describe precisely each possible category of claims and agrees that it has the discretion to resolve claims of this sort on a case-by-case basis.

The Department's general position regarding the Hawaiian and Alaskan exclusion zones is that if persons claiming redress on account of their exclusion from such zones were born prior to the specific rescission dates of the zone from which their parents were dislocated, and otherwise satisfy all other threshold requirements under the Act, then they will be potentially eligible for redress under the *Ishida* standard. ORA will determine specific threshold dates for eligibility on an individual basis by reference to the historical records in Alaska and for different areas determined to be the equivalent of prohibited military zones in Hawaii (those exclusion zones were lifted not by Proclamation No. 21, but by equivalent military orders).

A third issue raised by a majority of the comments was the request for an extension of the threshold date for eligibility, proposed as January 3, 1945, to a later date. There were several suggestions for different dates of eligibility to serve as the standard for notice of the lifting of the prohibited military zones on the West Coast. In determining the date that will serve as the standard, however, we must apply the legal standard set forth by the court in *Ishida*. The *Ishida* court established the standard for redress eligibility for persons who were never interned or evacuated based on the deprivation of liberty inflicted on children who were at birth ''excluded by law'' from ''their parents' original place of residence.'' *Ishida*, 59 F.3d at 1226. The court stated:

> [W]e hold the Act entitles to compensation all children who were deprived of liberty because they were excluded from their family homes as a result of Executive Order 9066 and who could not return to their homes without committing a crime under the criminal statute.

Id. at 1230. The court also stated that ''Congress intended to cover those excluded from their 'home' or 'original place of residence' in a prohibited military zone * * * directly as a result of the government's actions''. *Id.* at 1233. The court's focus was on E.O. 9066 and the related military orders issued pursuant to its authority. Thus, once the United States Government action was canceled (*i.e.*, the military proclamations were rescinded) there was no legal bar to the return of such persons to the West Coast. Proclamation No. 21, issued on December 17, 1944, and effective January 2, 1945, rescinded the general legal exclusion enforced under E.O. 9066 excluding individuals of Japanese ancestry from the West Coast. Under Proclamation No. 21, this legal bar was canceled, except for the six small zones maintained by the Army until January 20, 1945.

The Department recognizes that there were hardships involved in returning to

the West Coast. However, it must determine which date is legally sufficient under *Ishida.* The Department initially proposed an eligibility threshold date of January 3, 1945, the date upon which rescission of the general West Coast exclusion zones became effective. Several different threshold dates, ranging from spring 1945 to December 1946, were proposed by the comments, while a few comments suggested approval of the rule without suggesting a threshold date. The summer of 1945 was mentioned as an appropriate date due to the fact that anti-Japanese public sentiment waned in the exclusion zones as the war began winding down. The end of the war, on September 2, 1945, was also suggested as an appropriate date due to the difficulties of travel, as well as the anti-Japanese public sentiment that existed during wartime. The majority of comments, however, suggested a threshold eligibility date of June 30, 1946, the date upon which the WRA, the agency created to supervise the internment camps, was abolished by Executive Order. The date of June 30, 1946 was also used as the end date of the internment period as defined by the Act. A comment from one organization suggested an alternative date of March 20, 1946, which was the date of the closure of the last WRA camp at Tule Lake Relocation Center. Letter from H. Robert Sakaniwa, Washington Representative, Japanese American Citizens League, to ORA (June 14, 1996) (on file with ORA). These proposed dates will be discussed below.

A few comments noted that the eligibility date should be extended on the grounds that some families were unable to return to the West Coast in early 1945 due to the mother's state of advanced pregnancy. One comment asserted that March 3, 1945, should be used to allow an extra three months after legal rescission in deference to a woman's last trimester of pregnancy, when it would have been more difficult for the family to travel.

Although the Department is sympathetic to persons who were in this situation, it must be recognized that after January 20, 1945, the law ceased to act to deprive affected individuals of their liberty to travel and reside as they saw fit. Without a doubt, there were a number of families who, for various reasons, were unable to return for some time to the former exclusion zones. However, the fact remains that after January 20, 1945, individuals were generally free under the law to decide for themselves whether and when they should return to the West Coast. This is the basis for eligibility under *Ishida,* and the Department is bound by the court's strictures.

Many comments suggested an extended eligibility date on the grounds that harassment towards persons of Japanese ancestry, the lack of housing, and depressed economic conditions prevented persons from returning to the former West Coast exclusion zones. With regard to the issue of harassment, historical records show that persons returning to the West Coast were generally given full protection under the law, although there were some isolated incidents in early 1945. Coinciding with the Army's announcement of rescission of the West Coast exclusion zones, on December 17, 1944, California's Governor Warren made a public announcement, stating:

> I am sure that all Americans will join in protecting constitutional rights of the individuals involved, and will maintain an attitude that will discourage friction and prevent civil disorder. It is the most important function of citizenship, as well as government, to protect constitutional rights and to maintain order.

''Warren Urges Compliance With Exclusion Order,'' S.F. Chronicle, Dec. 18, 1944, at A6. Governor Warren also instructed chiefs of police, sheriffs and public officials throughout California to develop uniform plans to prevent intemperate actions and civil disorder. *Id.* Governor Sidney P. Osborn of Arizona similarly called upon citizens to ''go along on the principles of justice and freedom our boys are fighting for and treat these people with decency and fairness. Many of their sons too are serving in the armed forces of the United States and * * * many already have given their lives or been wounded.'' ''Governor of Arizona Asks For Fairness,'' S.F. Chronicle, Dec. 18, 1944 at A6.

In addition, California's Attorney General Kenny announced in a speech to sheriffs in March 1945:

> This situation is peculiarly one in which many groups need to cooperate wholeheartedly to assure results. The Sheriffs and Police Chiefs have a direct and immediate part to play; [the Department of Justice, Armed Services, War Relocation Authority and District Attorneys also have responsibilities] and all of us, as adults and responsible members of our communities, to do whatever we can to see that the attitudes, too, of people are such as to allow the Japanese-Americans to live in safety and peace in the areas in which they resettle.

Katherine Luomala, ''California Takes Back Its Japanese Evacuees,'' 5 No. 3 Applied Anthropology, 25, 35 (1946).

As additional evidence of harassment, one comment referred to a New York Times article, dated June 2, 1945, which reported a light sentence given by a California state judge to a man arrested in an attack on a returning Japanese-American. Another comment also referred to the 1945–46 Annual Report published by the American Civil Liberties Union, which was sharply critical of the state of California's efforts to protect Japanese-Americans. However, the report also stated that by mid-July 1945, the ''terrorism virtually subsided.'' ACLU of Northern California, 1945–46 *Annual Report* at 7 (1946). Again, efforts were made by state and local authorities to stop such incidents. In fact, the Attorney General forwarded a letter to Governor Warren of California, dated February 2, 1945, requesting that he ''take every possible step to see that the returning Japanese are assured protection.'' Letter from Francis Biddle, Attorney General, to Earl Warren, Governor of California (Feb. 2, 1945) (on file with ORA). Unfortunately, some incidents of harassment occurred; but hostile acts taken by private individuals were not the result of any federal government action under E.O. 9066 or related government action respecting the evacuation, relocation, and internment program.

Further, with regard to the depressed economic conditions in the former exclusion zones, it is the Department's position that this was a matter beyond governmental control and is not the type of action the court in *Ishida* intended to cover. However, we would point to evidence that the United States Government did extend resettlement assistance to returning Japanese-Americans. WRA reported that the Social Security Board's program of ''Aid to Enemy Aliens and Others Affected by Restrictive Action of Government'' extended:

> Aid to families while they reestablished themselves or while residence was being confirmed for them. The greatest need was in California since families requiring assistance had been *encouraged to return to their place of previous residence.* All counties in California continued to cooperate with the WRA in granting counseling, welfare assistance, and medical attention to the needy * * * Under the ''Aid to Enemy Alien'' funds special counsellors [interviewed] persons not on relief who were in hostels and temporary installations in order to determine what their plans were and to counsel them in finding jobs and housing. U.S. Dept. of Interior, *WRA Semi-Annual Report,* Jan. 1 to June 30, 1946 at 12–13 (emphasis added).

The Pacific Citizen noted on its front page that federal and state assistance was promised for Japanese-Americans returning to the West Coast. ''Federal, State Aid Promised Japanese-Americans

Evacuees Who Return to Coast Farms,'' Pacific Citizen, January 20, 1945, at 1. The article also noted that the California War Board, AAA Committee and Department of Agriculture pledged assistance, along with the Federal Land Bank and the Farm Security Administration, which offered to make rural rehabilitation loans to farmers. *Id.* Another article in the same issue reported that Dillon Myer, WRA Director, stated that federal agencies and the civilian and military authorities were prepared to uphold the rights of returning evacuees of Japanese ancestry. ''Army, Government Prepared to Uphold Rights of Nisei Returning to Coast, Says Myer,'' *Id.* at 8. Local and state organizations also assisted with the evacuees' return.

During that time period, there were problems with housing and transportation for the general civilian population in the United States, particularly in certain areas. Military servicemen, after being released from active service, were returning to the United States from the Pacific theater of war in significant numbers. To meet the shortage of housing, hostels and temporary installations were operated by WRA in cooperation with the Federal Public Housing Authority, and provided housing for returnees. U.S. Dept. of Interior, *WRA Semi-Annual Report,* Jan. 1 to June 30, 1946 at 13. Some hostels also provided job-seeking assistance. ''Hostel Opened in Los Angeles to Aid Evacuee Resettlement,'' Pacific Citizen, March 3, 1945, at 3. Eight hostels were serving those returning to Los Angeles by July 1945. ''Eight Hostels Serve Evacuees Returning to Los Angeles,'' Pacific Citizen, July 28, 1945, at 8. Another 1,300 evacuees received temporary housing in trailers and barracks in Los Angeles by November 1945. ''1,300 Evacuees Get Temporary Housing in Los Angeles Area,'' Pacific Citizen, Nov. 17, 1945, at 3.

As a result of the hardships noted above, the majority of comments suggested a threshold eligibility date of June 30, 1946, the termination of the internment period as defined by the Act. Again, even though on that date there continued to be hardships faced by returning evacuees, it is clear that there was no longer a legal impediment imposed by the United States Government in their relocation to the West Coast. The court's focus in *Ishida* was on E.O. 9066 and the related military orders issued pursuant to its authority, which excluded persons of Japanese ancestry. Once the United States Government action was canceled (*i.e.*, the military proclamations were rescinded) there existed no legal bar to their return to any portion of the West Coast.

Although persons suffered hardships, they returned to the West Coast in large numbers prior to June 30, 1946. These numbers further demonstrate the lifting of the legal bar that allowed persons of Japanese ancestry to return to the area. Over 47,000 persons returned in 1945 alone, while another 10,000 persons returned during the first six months of 1946. U.S. Dept. of the Interior, *WRA Semi-Annual Report,* July 1 to Dec. 31, 1945, at Statistical App. Table I; U.S. Dept. of Interior, *WRA Semi-Annual Report,* January 1 to June 30, 1946, at 11 (1946).

Some comments asserted that, unless the June 30, 1946 date is applied, the Department's policy will result in placing one group of children, those who resided in free areas through 1946, at a disadvantage vis-a-vis another group of children, those who were confined in internment camps through June 1946. However, persons born in internment camps and under WRA jurisdiction qualified for redress prior to the *Ishida* decision based on their own internment. Nothing in these regulations will affect their eligibility. They will continue to qualify. As for persons born at liberty but outside of their parents' original places of residence, the court in *Ishida* indicated a standard of eligibility based upon deprivation of liberty ''when they were excluded by law'' from their parents' original home in the prohibited zones. *Ishida,* 59 F.3d at 1226. The parents' home must have been in the prohibited military zones and the children must have been excluded based on United States Government action in order to fall within the *Ishida* holding. Thus, once the military proclamations were rescinded, the prohibited zones were no longer in existence on the West Coast.

Finally, we note that another suggested date was December 1946. This date falls outside of the statutorily defined ''internment period'', however, and cannot be changed by regulation. Only congressional action could amend the law to extend the defined period of the Act.

After thorough consideration regarding the issues concerning the threshold date and the suggested alternative dates, the Department has adopted the standard proposed in a few comments which referred to the fact that small portions of the exclusion zones were maintained by the Army in certain areas of the West Coast until January 20, 1945, while other United States Government action ceased on that date. Proclamation No. 21, although effective at midnight on January 2, 1945, still provided that six Civilian Exclusion Orders (Nos. 18, 19, 20, 23, 24, and 30) would remain in effect until midnight, January 20, 1945. This proclamation also stated that the effect of this rescission was to restore to all persons of Japanese ancestry who were excluded under the military proclamations of the West Coast, and who were not subject to the individual exclusion orders, their ''full rights to enter and remain in the military areas of the Western Defense Command.'' *Id.* at 2, ¶ 10. The Department agrees that, until midnight on January 20, 1945, there was a legal bar to persons returning to these six small areas on the West Coast maintained by the Army. Recognizing that it would be difficult to ascertain specific relocation addresses in these six zones, the Department finds that the threshold date should be January 21, 1945, the date when persons of Japanese ancestry were no longer legally excluded from *any* portion of the prohibited zones on the West Coast. The Department finds that this date complies with the court's decision in *Ishida.* Once the proclamations were canceled and the prohibited zones were revoked, there was no legal bar for Mr. Ishida's parents to return to their original home. Similarly, for those persons born on or after the date of January 21, 1945, there was no legal bar against their parents returning to their original homes in the former prohibited zones.

Finally, it is important to recognize that once Proclamation No. 21 was rescinded in December 1944, large numbers of persons of Japanese ancestry began returning to the West Coast. Persons began returning after December 17, 1944, and over the next year, over 47,000 Japanese Americans returned to the West Coast. U.S. Dept. of the Interior, *WRA Semi-Annual Report,* July 1 to Dec. 31, 1945, at Statistical App. Table I.

The fourth issue raised by the comments concerns the eligibility of persons who were excluded from their parents' original places of residence after January 20, 1945, because their parents were the subjects of individual exclusion orders. First, it should be emphasized that this is a very small class of persons. Under Proclamation No. 21, the exclusion was lifted for all Japanese-Americans with the exception of those the Army had selected for individual exclusion orders. These orders were based on the following type of criterion: refusal to register for Selective Service or to serve in the armed forces; voluntary submittal of a written statement of loyalty to an Axis power; former employment by an Axis

power; and voluntary request of revocation of American citizenship. The Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied*, 234, 235 (1982). Of the 4,963 persons to whom individual exclusion orders applied in December 1944, 3,066 were in Tule Lake Segregation Center. Others were in a number of camps, while only 510 were residing outside of internment camps. *Id.* at 234. In addition to the exclusion list, there was a so-called ''white list'' that named over 115,000 persons who would not be excluded from the West Coast. *Id.* at 235. Thus, the vast majority of persons of Japanese ancestry were free to return immediately to the West Coast.

Moreover, it is significant that Proclamation No. 21 lifted the mass exclusion orders that were based exclusively on ancestry. In his announcement of this proclamation, General Pratt stated:

> [T]he logical and proper course is to terminate mass exclusion based solely on ancestry and to substitute for it a system which, while continuing to exclude and control those individuals who still remain loyal to Japan . . . will restore full liberty of action to all those who have been cleared by the Army.

''Army Lifts Blanket Ban On Japanese-Americans: No Mass Return Expected,'' S.F. Chronicle, Dec. 18, 1944, at 1. In the New York Times, General Pratt further stated that any person who was on the exclusion list ''would have the right of appeal with counsel to boards of three officers each . . . which would submit recommendations to the commanding general.'' Lawrence E. Davies, ''Ban on Japanese Lifted on Coast,'' N.Y. Times, Dec. 18, 1944, at 10.

Thus, the blanket exclusion previously based solely on ancestry became based on ''disloyalty'' or the ''dangerousness'' of each individual and, from that period forward, the persons affected had the right to individualized hearings and due process proceedings. Support for this distinction between the types of group versus individual exclusion was also set forth in the *Ishida* decision. In *Ishida*, the court contrasted the injustice of the blanket exclusion with the type of individualized review procedures associated with individual exclusion orders:

> The government of the United States * * * executed this policy to exclude * * * all Japanese Americans * * * solely because of their national ancestry, without the individualized review procedure employed in actions taken against suspected enemy aliens of other nations.

Ishida, 59 F. 3d at 1227. Again, over 115,000 persons of Japanese ancestry were not excluded from the West Coast. *Personal Justice Denied* at 235. Only 510 persons subject to individual exclusion orders were residing outside of the internment camps as of January 1945. Some of these exclusion orders were canceled during 1945, while all such orders were canceled in early September 1945. Although some comments indicated that the individual exclusion orders were in effect through 1946, historical evidence demonstrates that these individual exclusion orders were rescinded by Proclamation No. 24, which was issued and became effective at midnight on September 4, 1945. Thus, the last remaining bar for this small group of individuals was canceled and there was no exclusion for any person after that date or through June 30, 1946.

IV. Regulatory Matters

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 it will not have a significant economic impact upon a substantial number of small entities because this rule confers a benefit on a limited group of individuals.

The Office of Management and Budget has determined that this final rule is a significant regulatory action under Executive Order No. 12866 and, accordingly, this final 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 under the provisions of the Paperwork Reduction Act of 1995. The OMB control number for this collection is 1190–0010.

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 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.

Nor will this rule result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 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.

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 of the Code of Federal Regulations is 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, § 74.3 is amended by adding paragraph (b)(9) to read as follows:

§ 74.3 Eligibility determinations.

(a) * * *

(b) * * *

(9) Individuals born on or before January 20, 1945, to a parent or parents who had been evacuated, relocated, or interned from his or her original place of residence in the prohibited military zones on the West Coast, on or after March 2, 1942, pursuant to paragraph (a)(4) of this section, and who were excluded by Executive Order 9066 or military proclamations issued under its authority, from their parent's or parents' original place of residence in the prohibited military zones on the West Coast. This also includes those individuals who were born to a parent or parents who had ''voluntarily'' evacuated from his or her original place of residence in the prohibited military zones on the West Coast, on or after March 2, 1942, pursuant to paragraph (b)(3) of this section, and who were excluded by Executive Order 9066 or military proclamations issued under its authority, from their parent's or parents' original place of residence in the prohibited military zones on the West Coast.

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Dated: April 14, 1997.

Janet Reno,

Attorney General.

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