date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this section, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the carrier.

4. Section 890.107 is revised to read as follows:

§ 890.107 Court Review.

(a) A suit to compel enrollment under § 890.102 of this part must be brought against the employing office that made the enrollment decision.

(b) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(c) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of State statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM. The recovery in such a suit will be limited to the amount of benefits in dispute.

(d) An action under paragraph (c) of this section to recover on a claim for health benefits:

(1) May not be brought prior to exhaustion of the administrative remedies provided in § 890.105;

(2) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(3) Will be limited to the record that was before OPM when it rendered its decision affirming the carrier's denial of benefits.

[FR Doc. 95–7793 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 286, and 299

[INS No. 1312–93]

RIN 1115–AB78

Establishment of Pilot Programs To Charge a Commuter User Fee at Selected Ports of Entry

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to implement pilot programs to charge fees for inspection service provided to selected land border Ports-of-Entry (POEs). Limited resources and increasing commuter traffic over the land borders has resulted in costly delays to transborder travelers. Pilot projects, such as the Dedicated Commuter Lanes (DCLs), in which eligible groups may expeditiously enter the United States through designated lanes, will enabled the Service to increase staffing, enhance inspection services, and reduce delays in crossing the border.

EFFECTIVE DATE: March 29, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Mocny, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone (202) 514–3275.

SUPPLEMENTARY INFORMATION: Commuter traffic over our land borders has increased significantly each year over the past decade, and in fiscal year 1992 accounted for approximately 90 percent of all inspections completed. At certain locations, traffic backups sometimes last several hours. Such delays are both irritating and costly to the traveling public. Through automation and an increase in the inspection force, the Service could significantly reduce these delays. However, the appropriated funds have not kept up with the rapid growth in land border traffic. Although revenue from the Immigration User Fee Account, authorized by Congress in 1986 and covering commercial air and sea arrivals of POEs, has enabled the Service to more than triple the number of available air and seaport inspectors, these funds may not, by statute, be used to staff land border POEs.

Provisions of Public Laws 101–515 and 103–121

In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. 101–515, dated November 5, 1990, Congress included language which allows for pilot programs on the inspection fee concept on the land borders. This law, added as section 286(q) of the Immigration and Naturalization Act (Act), and amended by section 309(a)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232, dated December 12, 1991, authorizes the Attorney General to establish pilot projects which include the charging of a fee and provides that the fee collected may be used only to enhance inspection services. Pursuant to this law, such pilot projects are to be developed by the Attorney General after consultation with the Secretary of the Treasury and with Congress. All such pilot projects were scheduled to terminate on September 30, 1993, but were extended by Congress until September 30, 1996, by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994 Pub. L. 103–121, dated October 27, 1993. This law also limited these projects only to the northern border of the United States. However, in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, dated August 28, 1994, Congress authorized the expansion of the commuter lane pilot project to land border crossings in California.

Discussion of Comments

The Service Published an interim Regulation on May 13, 1991, at 56 FR 21917–21920, amending 8 CFR Parts 103, 286, and 299. In this rule, the Service sought to use DCLs to enhance services to those border crossers who most frequently enter the United States over the land borders. The interim rule also contained a provision for the establishment of a per vehicle user fee at selected POEs. The interim rule included a request for comments by August 12, 1991. The Service received three responses, each discussing several issues.

Use of Funds

One commenter expressed concern that the revenues generated from the projects will be channeled to the General Fund and not used for the specific purpose of aiding border congestion and delays. The revenues generated by the DCL implementation are controlled by section 286(q) of the Act, which states that such funds will be used to provide land border inspection services. A separate land

Border Inspection Fee Account has been created, and the funds collected must be used in direct support and enhancement of the land border inspections operations, as directed by Congress.

Concerns About Dedicated Commuter Lanes

Two commenters expressed concern that many locations on the southern border have severe traffic congestion and that, as many people enroll in the program, the special commuter lanes will become as congested as the regular lanes. If the response to the program were too great for one lane, a second lane could be opened at some locations, since much of the traffic would be removed from the regular lanes. Only by pilot testing this program can the Service determine the efficacy of this approach to expedite traffic and alleviate border congestion. The purpose of the DCL Program is to pre-screen those commuters deemed to be low-risk, so that only a brief examination of the vehicle or personal identifier need be conducted, thereby shortening the time needed for each individual inspection, and expediting the flow of traffic. By removing these commuters from the regular lanes, all traffic moves more quickly. In the test conducted in Blaine, Washington, the commuter lane still expedites traffic, in spite of a large number of enrollees.

The Service is bound by the provisions of Pub. L. 103–121 and cannot consider DCLs on the southern border, except in California, until legislation authorizes us to do so. However, the Service will explore any operational alternatives to further promote facilitation of entry and expeditious primary processing to decrease congestion at affected POEs along the southern border.

One commenter stated that anyone is a potential smuggler and that all who enter the United States along the southern border should face the risk of being searched. The application procedures for enrollment in the DCL Program provides a more thorough screening of DCL users than would normally be conducted were the person crossing through normal traffic lanes. In addition, the regulations provide for random compliance checks of participants and their vehicles at any time during use of the commuter lane.

One commenter expressed concern that there is an element of elitism in the application process for participation in the DCL Program, in that persons with higher incomes will receive special treatment, can better afford the benefit, and will be able to more easily provide adequate background information.

The DCL Program is a strictly voluntary program. Those who feel they cannot afford the fee need not participate and can continue to cross through the regular traffic lanes at no cost. All persons crossing a bridge must pay a bridge toll or fee, regardless of income. The average per-crossing cost for the DCL Program, a program designed for frequent crossers, is significantly lower than that paid to cross most bridges. Based upon both random sampling and local community assessments, the current annual cost of $25.00 per application is not cost prohibitive to the majority of the travelling public.

Economic Impact of User Fees

One Commenter objected to the establishment of per vehicle fees as imposing an extra burden on transborder industry and border communities and a barrier to trade. The commenter suggested that with bridge-crossing fees already levied at many points along the southern border, the additional fees would render the crossing too expensive and eventually lead to reduced trade and a decline in the economies of the border communities.

Traffic congestion at the border also costs local communities enormous amounts of revenue in lost time and productivity, as well as severely impacting the environment. The purpose of imposing user fees of this type is to allow the Service to hire more staff and implement technology to aid inspection and expedite traffic.

The section allowing for the establishment of a per vehicle fee has been removed from the final rule. Such a broad-based fee is not consistent with the intent of the legislation of which this regulation is based, which is to establish pilot projects at selected locations.

Participation in the DCL Program

The interim rule restricted participation in the DCL Program to citizens of the United States and contiguous countries. One commenter recommended expanding the identified groups eligible to participate in the DCL Program. The suggestion coincided with recommendations made by local officials and current participants in the DCL Program. Accordingly, additional user groups have been added to participate in the DCL Program as follows: third-country aliens who have been lawfully admitted for permanent residence (LAPRs) in the United States and lawful permanent residents (Landed immigrants) in Canada who are citizens of the Commonwealth countries.

Expansion of eligibility to LAPRs of the United States, and landed immigrants of Canada who are citizens of the Commonwealth countries is in keeping with the Immigration and Naturalization Act entry requirements for those travelers who are not required visas to enter into the United States for business or pleasure. Since the restriction on operating a Dedicated Commuter Lane was only recently lifted, and the Service regulates permanent residents of Mexico differently than Canadian permanent residents, further study on whether or not to include permanent residents of Mexico in the DCL program is needed. Inclusion of permanent residents of Mexico may be proposed in future regulation by the Service.

Additional Changes

The interim rule contained the criteria that the location selected have an identifiable group of low-risk border crossers who cross a minimum of once weekly for a regular defined purpose. To allow for greater use of the DCL Program and more flexibility for its users, the final rule removes the requirement that the participant enter once weekly.

The interim rule provided that only the District Director could revoke an individual's participation in the DCL program. The final rule extends this authority to the Chief Patrol Agent if the participant violates any of the conditions of the DCL program and is encountered by the Border Patrol outside the POE. This addition to the Rule will enhance control of participation in the DCL program.

Participation in the DCL Program requires the payment of an annual fee for adjudication of the application and issuance of a vehicle and/or personal identifier. The initial DCL in Blaine used a windshield decal to identify a participating vehicle. Diverse types of technology may be introduced and used for rapid vehicle or driver identification, ranging from a simple method involving windshield stickers or similar items, to radio frequency identification tags or various forms of biometrics. Language in the final rule has been modified to allow for the use of other forms of identification technology.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. The rule applies to individuals, not small

entities, and provides a clear benefit to participants by allowing expeditious passage through a POE. Although there is a fee charged for this service, participation is voluntary.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations proposed herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that is will have no effect on family well-being.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy Act, Reporting and recordkeeping requirements.

8 CFR Part 286

Fees, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 299

Administrative practice and procedure, Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule which was published on May 13, 1991, at 56 FR 21917–21920 amending 8 CFR parts 103, 286, and 299 is adopted as a final rule with the following changes:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.8 is amended by:

a. Revising paragraph (b)(1)(i);

b. Removing the word ''and'' at the end of the sentence of paragraph (b)(1)(ii);

c. Removing the ''.'' at the end of paragraph (b)(1)(iii), and replacing it with a ''; and'';

d. Adding paragraph (b)(1)(iv);

e. Revising paragraph (b)(2)(i) through (v);

f. Adding paragraph (b)(2)(vi);

g. Revising paragraph (b)(4)(iii);

h. Revising paragraph (b)(6);

i. Revising paragraph (b)(7); and by

j. Removing paragraph (c), to read as follows:

§ 286.8 Establishment of pilot programs for the charging of a land border user fee for inspection services.

* * * * *

(b) * * *

(1) * * *

(i) The location has an identifiable group of low-risk frequent border crossers;

* * * * *

(iv) The port of entry is located on the northern or the California border of the United States.

(2) * * *

(i) The applicant is a citizen of the United States or a citizen of the country contiguous to the specific port of entry sponsoring the commuter lane program in which the applicant seeks to participate; or, the applicant is a national or citizen of a third-country who has been lawfully admitted for permanent residence (LAPR) in the United States; or, the applicant is a lawful permanent resident (landed immigrant) of Canada who is a citizen of the Commonwealth countries;

(ii) The applicant who is not a United States citizen must be otherwise admissible to the United States and must be in possession of any documents required under § 212.1 of this chapter for entry to the United States whenever using the dedicated commuter lane;

(iii) The applicant agrees to furnish all information requested on the application, Form I–823, Application—Dedicated Commuter Lane Program;

(iv) The applicant pays the required fee, upon approval of the application;

(v) The applicant agrees to a physical inspection of the registered vehicle prior to initial use of the dedicated commuter lane; and

(vi) When entering through a dedicated commuter lane, each applicant must be in possession of any authorization document or documents issued for use of the dedicated commuter lane.

* * * * *

(4) * * *

(iii) Applications for participation in the dedicated commuter lane program must be submitted annually at a port of entry having a dedicated commuter lane program. The application may be submitted either in person or by mail; however, each applicant must be personally inspected prior to approval of the application. Authorization documents, such as decals or authorization letters, shall be valid for one year from date of approval.

* * * * *

(6) *Violation of conditions of the program.* A participant who violates any condition for the use of the dedicated commuter lane may be removed from the program at the discretion of the District Director, and shall be subject to the imposition of applicable fines, penalties, and/or sanctions as provided by law. The Chief Patrol Agent may, in an exercise of discretion, remove from the program a participant who violates any condition of use and who is encountered by the Border Patrol outside of the port of entry.

(7) *Responsibility of participant.*

(i) It shall be the responsibility of the participant to notify the Service if an approved vehicle is sold, stolen, or disposed of otherwise. If the vehicle is sold or damaged beyond repair, it is the responsibility of the participant to remove or obliterate any identifier or other authorization for participation in the program from the vehicle at the time of such sale or disposal. A participant must submit a new properly executed Form I–823 with fee in order to receive a new authorization document or device, valid for one year from date of approval.

(ii) If a damaged vehicle is being repaired and the identifier must be affixed to the vehicle, the Service may issue a replacement identifying document or device. The identifying authorization shall be valid to the date of the original authorization. The program participant must submit a properly executed Form I–823, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the repair of the vehicle.

(iii) If a windshield becomes broken and must be replaced, and an identifying decal authorizing that

vehicle to use a dedicated commuter lane is affixed to the broken windshield, the Service may issue a replacement decal. The program participant must submit a properly executed Form I–823, Application—Dedicated Commuter Lane Program, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the purchase of a new windshield.

Dated: January 18, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–7629 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Parts 235 and 242

[INS No. 1616–93]

RIN 1115–AD50

List of Countries for Which Privilege of Communication is Allowed

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the list of countries with which the United States has existing treaties requiring immediate communication with appropriate consular or diplomatic officers whenever nationals of those countries are detained in exclusion or expulsion proceedings. This rule is necessary to ensure that foreign nationals who are arrested by immigration officers in the United States will be aware of their privilege of communication with the consular or diplomatic officers of the country of his or her nationality. It is also necessary that immigration officers be kept abreast of changes of United States treaty obligations that require mandatory notification to certain countries when nationals of those countries are arrested. When aliens are detained by the Immigration and Naturalization Service (INS) officers at ports of entry, consular or diplomatic officers must be notified as presently required in 8 CFR 242 for deportation proceedings. Therefore, a addition will be made at 8 CFR 235 to make clear that the notification requirement applies equally in exclusion proceedings. This revision will have an impact on ensuring that the treaty rights of foreign nationals are protected.

DATES: This interim rule is effective March 29, 1995. Written comments must be submitted on or before May 30, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536 Attention: Public Comment Clerk. To ensure proper handling please reference INS number 1616–93 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3038 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Room 1000, Washington, DC 20536, telephone (202) 514–0747.

SUPPLEMENTARY INFORMATION: A number of changes are necessary to revise 8 CFR 242.2(g), the regulation that ensures immediate communication with appropriate consular or diplomatic officers whenever nationals of particular countries with which we have existing treaties are detained in exclusion or expulsion proceedings. A cross reference is being made to part 235 by adding a subsection, 235.3(g), to make clear that the mandatory notification requirement applies equally to exclusion and deportation proceedings.

Three countries, Malawi, Kenya, and Uganda are being removed from the list of countries for which consular notification is mandatory. The United States-United Kingdom consular convention which made notification mandatory is no longer in effect for these three countries, although it was in effect for a time after they became independent.

Other countries removed from the mandatory notification list include Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroon, Canada, Chile, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Gabon, Federal Republic of Germany, Guatemala, Holy See, Honduras, Iraq, Ireland, Italy, Laos, Lesotho, Liechtenstein, Luxembourg, Madagascar, Mali, Mexico, Nepal, New Zealand, Niger, Oman, Pakistan, Panama, Paraguay, Portugal, Republic of China, Rwanda, Senegal, Somalia, Spain, Sweden, Switzerland, Tunisia, Uruguay, Upper Volta, Venezuela, Republic of Viet-Nam, and Yugoslavia. These countries have been removed because the Service has been informed by the Department of State that there has never been an obligation required by treaty to provide mandatory notification. Henceforth, the listing will only reflect those countries that do have treaties with the United States.

The disintegration of the Union of Soviet Socialist Republics (USSR) causes us to list the twelve Soviet successor states separately. The twelve states are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

We are also, however, listing ''Union of Soviet Socialist Republics (USSR),'' with a footnote listing the twelve successor states and noting that they continue to be covered by the mandatory notice provision of the United States-USSR consular convention. Including ''USSR'' with a footnote as a safeguard is advisable for the time being, since some nationals of the successor states may still be travelling on USSR passports.

Due to the break up of Czechoslovakia, the Czech and Slovak Republics will be listed separately as mandatory notification countries. The consular convention with Czechoslovakia, which contained a mandatory notification provision, remains in force with respect to both new countries.

Other countries being added to the mandatory notification list as a result of treaties with the United States include Albania, Antigua, Bahamas, Barbados, Belize, Brunei, Bulgaria, Dominica, Grenada, Kiribati, Mongolia, St. Kitts/Nevis, St. Lucia, St. Vincent/Grenadines, Seychelles, South Korea, and Tuvalu.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and the necessity for immediate implementation of this interim rule are as follows: The treaties to which the United States is a signatory require immediate communication with appropriate consular or diplomatic officers whenever nationals of particular countries are detained in exclusion or expulsion proceedings. Accordingly, implementation of this requirement cannot be delayed without the United States being in violation of its treaty obligations.

Regulatory Flexibility Act

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