paragraphs (d)(1) and (d)(2) of this section:

(1) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for nonfat dry milk, 8.07, to determine the quantity (in hundredweights) of milk used in the production of butter-nonfat dry milk; and

(2) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Department, for the most recent preceding period, and divide by the annual yield factor for Cheddar cheese, 9.87, to determine the quantity (in hundredweights) of milk used in the production of American cheese.

(e) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (c) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (d) of this section.

5. Section 1099.51a is removed.

6. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price and the Class II price for the following month, and the Class III and Class III–A prices for the preceding month.

7. Section 1099.74 is revised to read as follows:

§ 1099.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.138 times the current month's butter price less 0.0028 times the preceding month's average pay price per hundredweight, at test, for manufacturing grade milk in Minnesota and Wisconsin, using the ''base month'' series, adjusted pursuant to § 1099.51 (a) through (e), as reported by the Department. The butter price means the simple average for the month of the Chicago Mercantile Exchange, Grade A butter price as reported by the Department.

Dated: May 31, 1995.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–13688 Filed 6–2–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 3

[EOIR No. 101F; AG Order No. 1970–95]

RIN 1125–AA05

Citizenship Requirement for Employment

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule requires that employees hired by the Executive Office for Immigration Review (EOIR or Agency) be citizens of the United States of America. This rule exempts EOIR from the Immigration Reform and Control Act of 1986's general prohibition of discrimination based on citizenship status and supplements E.O. 11935, which requires United States citizenship for almost all Federal employees in the competitive service.

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, Telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice published a proposed rule on October 27, 1994 (59 FR 53946) in order to exempt the Executive Office for Immigration Review (EOIR) from the general rule of the Immigration Reform and Control Act of 1986, 8 U.S.C. 1324b(a)(1) (IRCA), by invoking IRCA's provision for regulatory exception to the general rule, 8 U.S.C. 1324b(a)(2)(C). The proposed rule is corollary to E.O. 11935, 41 FR 37301 (1976), which requires United States citizenship for almost all Federal employees in the competitive service. The Agency did not receive any timely comments. One comment was received well after the closing date.

The rule authorizes EOIR to require its employees and volunteers to be citizens of the United States of America. This rule will affect EOIR employees such as Immigration Judges, Board Members of the Board of Immigration Appeals and their legal staffs. The primary mission of these employees is to adjudicate or to facilitate the adjudication of immigration-related cases. Such Agency employees and volunteers often have access to sensitive information and handle complex and sensitive immigration issues. Furthermore, the citizenship requirement is designed to bolster public confidence in the proper administration of the country's immigration laws. It is imperative that individuals who work at EOIR, either as employees or volunteers, demonstrate their allegiance to the United States by being able to document that they are United States citizens.

Pursuant to E.O. 11935, 41 FR 37301 (1976), the Executive Branch requires United States citizenship for employees hired in the competitive service. This rule extends the citizenship requirement to all EOIR employees and volunteers. The rule exempts EOIR from the prohibition of discrimination based on citizenship status, pursuant to the procedures established by IRCA. This Attorney General rule is consistent with E.O. 11935. The rule is an exercise of the Attorney General's authority to regulate the employment of sensitive, non-competitive service Department of Justice employees.

Additionally, this rule allows the Agency to exercise its discretion to hire non-citizens when necessary to accomplish the Agency's mission. For example, this rule would permit the Director of the Agency to authorize hiring an interpreter skilled in the English language and an unusual foreign language when a United States citizen interpreter is not available.

This rule draws on well-established Supreme Court jurisprudence upholding the reservation of certain rights, such as the right to govern, to citizens. *Foley* v. *Connelie,* 435 U.S. 291 (1978) (affirming a requirement that police officers be citizens based on the precept that ''[t]he act of becoming a citizen is more than a ritual * * * [The citizen] is entitled to participate in the process of democratic decisionmaking. *Id.* at 295)''). *See also Ambach* v. *Norwick,* 441 U.S. 68 (1979) (affirming a citizenship requirement for public school teachers). The Supreme Court recognized that a citizenship employment requirement is sometimes necessary in *Bernal* v. *Fainter,* 467 U.S. 216 (1984), holding that, ''[s]ome public positions are so closely bound up with the formulation and implementation of self-government that the State is permitted to exclude from those positions persons outside the political community, hence persons who have not become part of the process of democratic self-determination.'' *Id.*, at 221. The *Bernal* court relied on an

earlier Supreme Court case which held *inter alia,* ''Aliens are by definition those outside this [political] community.'' *Cabell* v. *Chavez-Salido,* 454 U.S. 432, 440 (1982).

The untimely comment received by the Agency objects to the rule on three grounds. The comment states that: (1) The rule is unconstitutional because Article III of the United States Constitution does not require Article III judges to be citizens; (2) the rule contravenes case law; and (3) the rule lacks a rational basis.

After careful consideration of the comment, the Agency has decided not to follow the comment's suggestion that the rule be withdrawn or modified. The final rule retains the language of the proposed rule for the following reasons:

(1) The absence of a citizenship requirement for Article III judges cannot be understood as a constitutional prohibition against a citizenship requirement for Executive Branch immigration judges.

(2) These cases do not persuade the Agency that the rule needs modification. Three of the four cited cases pre-date IRCA but, even considered on the merits, these cases do not persuade the Agency that it needs to modify this rule. The three pre-IRCA cases cited are: *Bernal* v. *Fainter,* 467 U.S. 216 (1984) (strict scrutiny standards applies to state law distinction based on alienage except when laws exclude aliens from positions closely related to processes of democratic government); *Hampton* v. *Mow Sun Wong,* 426 U.S. 88 (1976) (rule imposing wholesale ban on aliens throughout the federal civil service was not justified by reasons within the authority of the Civil Service Commission to advance); and *In Re Griffiths,* 413 U.S. 717, 724 (1973) (Connecticut's prohibition on aliens sitting for the bar violates equal protection because the authority of attorneys does not ''involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens,'' nor does practice of law offer ''meaningful opportunities adversely to affect the interest of the United States'').

The comment's reliance on *Bernal* versus *Fainter* is misplaced. As discussed above, the *Bernal* decision expressly states that it is appropriate to exclude non-citizens from some government employment. 467 U.S. at 221.

The comment's analysis of *Hampton* versus *Mow Sun Wong* is not persuasive either. At issue in *Hampton* was a Civil Service Commission regulation requiring civil servants to be United States citizens. *Hampton* held that a federal executive agency could discriminate on the basis of citizenship where there is a legitimate national interest for such discrimination. The *Hampton* court found that the rule at issue did not meet the legitimate national interest standard and therefore held the rule unconstitutional. In contrast to the Civil Service Commission's rule, the EOIR rule meets the *Hampton* standard. The national interest is served by ensuring that individuals who are involved in the adjudication of immigration-related cases are citizens. It is also noteworthy that subsequent to judicial invalidation of the Civil Service Commission rule requiring citizenship in *Hampton,* the identical requirement was put into place by Executive Order. E.O. 11935, 41 FR 37301 (1976). The restriction barring noncitizens from employment in the federal competitive civil service, as authorized by the Executive Order, is still in effect.

In Re Griffiths is inapposite to this rulemaking. *Griffiths* examined whether a state had the authority to ban non-citizens from the practice of law. In finding that such a ban violated the Equal Protection Clause of the Fourteenth Amendment, the Court found that the state had not meet its burden of showing that the classification was necessary to promote or safeguard the state's interest in the qualifications of those admitted to the practice of law. 413 U.S. at 724–727. The practice of law, the Court found, does not involve matters of state policy or acts of such unique responsibility as to entrust them only to citizens. Furthermore, as stated in the decision, the practice of law does not offer meaningful opportunities adversely to affect the interest of the United States. *Id.* at 724. In contrast, EOIR employment frequently involves federal immigration matters which can impact national policy and affect the interest of the United States. Therefore, EOIR employment should be held exclusively by United States citizens.

The fourth case cited by the comment, *City of Orlando* v. *Florida,* 751 F. Supp. 974 (M.D. Fla. 1990), is also factually inapposite to this rulemaking. *Orlando* struck down that part of the state's loyalty oath requiring an affirmation of citizenship. Nonetheless, the *Orlando* court expressly held that, ''this ruling does not mean that the State cannot require citizenship of Florida and/or the United States in certain classes of employment; rather, it means only that citizenship cannot be a prerequisite to taking the loyalty oath given to all employees and officers of the State of Florida. * * *'' *City of Orlando* v. *Florida,* 751 F. Supp. at 976. Since this rule does not require a loyalty oath, the narrow holding of *City of Orlando* does not inform this rulemaking.

(3) The rule has a rationale, namely that individuals adjudicating, or assisting in the adjudication of, immigration laws should be able to demonstrate allegiance to this country by virtue of their citizenship, as addressed in more detail in other portions of the supplementary information.

Insertion of this rule requires a slight reorganization of 8 CFR Part 3.

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

This rule has been drafted and reviewed in accordance with E.O. 12866, section 1(b), Principles of Regulation. The Attorney General has determined that this rule is not a ''significant regulatory action'' under E.O. 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

This rule 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 E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 of title 8 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.0 is amended by designating its existing text as paragraph (a), and adding a heading, and by adding paragraph (b) to read as follows:

§ 3.0 Executive Office for Immigration Review.

(a) *Organization.* * * *

(b) *Citizenship Requirement for Employment.* (1) An application to work

at the Executive Office for Immigration Review (EOIR or Agency), either as an employee or as a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. Upon the Agency's request, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an Agency position when necessary to accomplish the work of EOIR.

Dated: May 23, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–13586 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–01–M

8 CFR Part 3

[AG Order No. 1971–95]

Executive Office for Immigration Review; Board of Immigration Appeals; Expansion of the Board

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule expands the Board of Immigration Appeals to twelve permanent members, including eleven Board Members and a Chairman. The rule also retains the authority of the Director of the Executive Office for Immigration Review to designate Immigration Judges as temporary additional Board Members.

EFFECTIVE DATE: This final rule is effective June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Margaret Philbin, Associate Counsel to the Director, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone: (703) 305–0470.

SUPPLEMENTARY INFORMATION: The final rule provides for an expansion of the Board of Immigration Appeals to a twelve-member permanent Board. This is necessary because of the Board's greatly increased caseload, which has more than quadrupled over the past decade. To maintain an effective, efficient system of appellate adjudication, it has become necessary to increase the number of Board Members. This change will allow the Board to sit in four permanent member panels of three. This will further enhance effective, efficient adjudications while provide for en banc review in appropriate cases.

This final rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b). The Attorney General has determined that this rule is not a significant regulatory action under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

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

This final rule 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 section 6 of Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Aliens.

For the reasons set forth in the preamble, 8 CFR part 3 is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Subpart A—Board of Immigration Appeals

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1, paragraph (a)(1), is revised to read as follows:

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall consist of a Chairman and eleven other members. The Board Members shall exercise their independent judgment and discretion in the cases coming before the Board. A majority of the permanent Board Members shall constitute a quorum of the Board sitting en banc. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board. The Director may in his discretion designate Immigration Judges to act as temporary, additional Board Members for whatever time the Director deems necessary. The Chairman may divide the Board into three-member panels and designate a presiding member of each panel. The Chairman may from time to time make changes in the composition of such panels and of presiding members. Each panel shall be empowered to review cases by majority vote. A majority of the number of Board Members authorized to constitute a panel shall constitute a quorum for such panel. Each panel may exercise the appropriate authority of the Board as set out in part 3 that is necessary for the adjudication of cases before it. The permanent Board may, by majority vote on its own motion or by direction of the Chairman, consider any case en banc or reconsider en banc any case decided by a panel. By majority vote of the permanent Board, decisions of the Board shall be designated to serve as precedents pursuant to paragraph (g) of this section. There shall also be attached to the Board such number of attorneys and other employees as the Deputy Attorney General, upon recommendation of the Director, shall from time to time direct.

* * * * *

Dated: May 25, 1995.

Janet Reno,

Attorney General.

[FR Doc. 95–13582 Filed 6–2–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 440

[Docket No. EE-RM–94–401]

Weatherization Assistance Program for Low-Income Persons

AGENCY: Department of Energy.

ACTION: Interim final rule.

SUMMARY: The Department of Energy (DOE) is today publishing an interim final rule amending the regulations for the Weatherization Assistance Program for Low-Income Persons to change the formula used to distribute funds among the States under the Program. DOE issued the Notice of Proposed Rulemaking pursuant to the Conference Report on the Department of Interior and Related Agencies Appropriations Act of 1995 which accompanied Pub. L.