1998, is adopted as a final rule without change.

Dated: October 8, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–27531 Filed 10–13–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212 and 245

[INS–1879–97]

RIN 1115–AE73

Interim Procedures for Certain Health Care Workers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule, which has been drafted in consultation with the U.S. Department of Health and Human Services (HHS), amends regulations of the Immigration and Naturalization Service (Service or INS) in order to implement, on a temporary basis, certain portions of section 343 of the Illegal Immigration Reform and Immigrant Responsibility act of 1996 (IIRIRA) as they relate to prospective immigrants. Section 343, which was codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act or INA), provides that aliens coming to the United States to perform labor in covered health care occupations (other than as a physician) are inadmissible unless they present a certificate relating to their education, qualifications, and English language proficiency. This requirement is intended to ensure that aliens possess proficiency in the skills that affect the provision of health care services in the United States. This rule establishes a temporary mechanism to allow applicants for immigrant visas or adjustment of status in the fields of nursing and occupational therapy to satisfy the requirements of section 343 on a provisional basis. The Service expects to publish a proposed rule in the near future which will implement in full the provisions of section 343.

DATES: *Effective date:* This rule is effective December 14, 1998.

Comment date: Written comments must be submitted on or before February 11, 1999.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, pleaser reference the INS No. 1879–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: On September 30, 1996, President Clinton signed the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104–208. Section 343 of IIRIRA created a new ground of inadmissibility at section 212(a)(5)(C) of the Act for aliens coming to the United States to perform labor in certain health care occupations. Pursuant to section 343, any alien coming to the United States for the purpose of performing labor as a health care worker, other than as a physician, is inadmissible unless the alien presents to the consular officer, or, in the case or adjustment of status, the Attorney General, a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of HHS.

Under section 343, the certificate must verify that: (1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker; are authentic and, in the case of a license, the alien's license is unencumbered; (2) the alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education (DoE), to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicants ability to speak and write English; and, finally, (3) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the alien's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 343 raises a number of important and difficult issues as to its scope and proper implementation and requires extensive coordination between the Service and other Federal agencies. Prior to the publication of this rule, the Service met with representatives of HHS, as well as the United States Trade Representative, the Department of Labor (DOL), the Department of State (DOS), the DoE, the Department of Commerce (DOC), the CGFNS, the National Board for Certification in Occupational Therapy (NBCOT), various professional organizations representing these health care occupations, and many other interested parties.

The Purpose of the Interim Rule

The purpose of this interim rule is to establish temporary procedures which will: (1) Allow the immigration of certain health care workers into the United States on a permanent basis in order to prevent the disruption of critical health care services to the public; (2) provide for the immigration of certain health care workers who were petitioned on a permanent basis prior to the enactment of IIRIRA; and (3) establish a temporary mechanism to ensure that nurses and occupational therapists immigrating to this country have education, experience, and training which are equivalent to a United States worker in a similar occupation.

This interim rule provides a temporary mechanism for implementing section 343 with respect to nurses and occupational therapists. Aliens who obtain a certificate in accordance with this interim rule will be deemed to have satisfied the education, training, and licensing requirements of section 343. Credentialing organizations verifying that an alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application are required to determine, to the best of their ability, whether the alien appears to be classifiable under section 203(b) of the Act. (The Service has substituted the term ''admission'' for the term ''entry,'' in conformity with section 308(f) of Pub. L. 104–208 which amended the Act.) Although credentialing organizations are required to make certain verifications in accordance with this interim rule, the Service is not in any way deferring or delegating to the credentialing organizations the authority to make binding determinations regarding the alien's admissibility into the United States.

The decision to include nursing and occupational therapy in this interim rule was based on information from DOL that there is a sustained level of demand for foreign-trained workers in these two occupations. Moreover, organizations with an established track record in providing credentialing services exist for these two occupations. For the purposes of this interim rule, the Service finds that these two criteria allow the implementation of section 343 of IIRIRA on a temporary basis.

For the purposes of this interim rule, the term ''sustained level of demand'' means the presence of an existing demand for foreign health care workers in a particular occupation that is expected to continue in the foreseeable future.

The term ''organizations with an established track record'' means, for the purposes of this interim rule, an organization which has a record of issuing actual certificates, or documents similar to a certificate, that are generally accepted by the state regulatory bodies as certificates that an individual has met certain minimal qualifications.

The two organizations identified in this rule, the CGFNS for nurses and the NBCOT for occupational therapists, are organizations which have been issuing certificates, or similar documents, for a period of years and which have attained credibility with the various professional and regulatory bodies which deal with the two occupations listed in this rule. Therefore, the NBCOT and the CGFNS both meet the two criteria identified for inclusion in this interim rule. The Service has not identified other credentialing organizations which have an established track record in providing credentialing services for these two occupations other than the two organizations discussed in this rule.

During the period of time that the interim rule is in effect, the Service will entertain any requests to issue certificates from an organization which demonstrates a proven track record in issuing certificates for a health care occupation and where there is a sustained level of demand for foreign-trained individuals. Such organizations are encouraged to contact the Service at the address provided earlier in the rule.

The implementation of this interim rule on a limited basis also allows the Service additional time to obtain comment on a number of issues which extend beyond near-term immigration issues in nursing and occupational therapy to other policy concerns, such as the overall impact on the public health and the domestic labor market for a variety of health care occupations.

Given the complex nature of the requirements of section 343, the Service will publish a proposed rule in the near future which will, among other things, list all the occupations covered by section 343, further describe the procedures for obtaining and presenting the certificates, describe the standards required for an organization to obtain approval to issue certificates, and describe the procedure whereby an organization's authorization can be terminated by the Service. The Service believes that major issues such as the scope of covered occupations, the standards for obtaining authorization to issue certificates, and the procedure for termination of an organization's authority to issue certificates are better addressed through proposed rule making. The Service expects to publish the proposed rule as soon as possible, within approximately 1 year.

The Service's Temporary Policies and Their Effect

The Service has issued a number of temporary policy guidelines which will continue to apply while the Service develops a rule fully implementing section 343.

Occupations Covered

The current policy of the Service is that section 343 is applicable only to the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference published in the Congressional Record of September 24, 1996, Nos. 132–133, page H10900. The seven occupations are: Nursing, physical therapy, occupational therapy, speech language pathology, medical technology, medical technician, and physician's assistant.

Nonimmigrant Health Care Workers

In order to ensure that health care facilities remain fully staffed and are able to continue to provide the same level and quality of service to the United States public pending promulgation of a final rule, the Service and DOS have agreed to exercise authority under section 212 (d) (3) of the Act and temporarily waive the certification requirement of section 343 for aliens coming to the United States as nonimmigrant care workers. The Service and the DOS have agreed to extend from 6 months to 1 year the period for which such a waiver is granted. This policy will continue until a final rule is published which fully implements section 343.

Immigrant Health Care Workers

There is a two-step process for an alien to become a permanent resident or enter the United States as an immigrant to perform labor as a health care worker. In general, a United States employer must file a Form I–140, Immigrant Petition for Alien Worker, with the Service with the appropriate supporting documentation. The Form I–140 petition establishes the alien's eligibility for the employment-based classification sought. Once the Form I–140 petition is approved by the Service, the alien may apply for an immigrant visa abroad at a consular post or apply for adjustment of status to that of a lawful permanent resident by filing a Form I–485, Application to Register Permanent Resident of Adjust Status in the United States.

The Service has no statutory authority to waive the requirements of section 343 for aliens coming to the United States permanently as immigrants to perform health care services in this country. Thus, the Service has adopted an interim policy whereby, instead of denying the applications for adjustment of status filed by uncertified aliens seeking to perform labor on a permanent basis in covered health care occupation, such applications are held in abeyance pending promulgation of the implementing regulations. Similarly, the DOS has no statutory authority to issue immigrant visas to such uncertified aliens, and has held visa applications from such persons in abeyance as well. As a result, the number of applications for adjustment of status which have been held in abeyance and the number of aliens unable to obtain immigrant visas has grown to significant proportions. The four service centers have advised that they are holding in excess of 11,000 such adjustment cases in abeyance.

Who Is Affected by the Rule—§ 212.15(a), (b) and (c)

This interim rule will apply to aliens coming to the United States as immigrants and to aliens applying for permanent residency to perform labor in the occupations of nurse and occupational therapist. This interim rule does not apply to any other health care occupation. The applications of aliens seeking to engage permanently in any of the other five health care occupations, *i.e.*, physical therapy, speech language pathology, medical technology, medical technician, and physician's assistant, listed in the Joint Explanatory Statement previously cited, will continue to be held in abeyance pending promulgation of a final regulation implementing section 343.

This interim rule does not affect the admission of nonimmigrant aliens coming to the United States to work

temporarily in any health care field. Nonimmigrants in the fields or nursing, occupational therapy, physical therapy, speech language pathology, medical technology, medical technician, or physician's assistant will continue to be admitted consistent with the Service's waiver policy previously described.

At this time, the Service has not extended the application of section 343 beyond the seven occupations listed in the Joint Explanatory Statement of the Committee of Conference. The Service, in consultation with HHS, may include additional health care occupations in its forthcoming proposed rule and expects to seek public comment on whether such occupations should be affected by section 343. Until a final regulation implementing section 343 is promulgated, however, the Service (as well as DOS) will continue to deem both immigrants and nonimmigrants in occupations other than the seven listed above to be exempt from the requirements of section 343. Applications for permanent resident status filed by aliens to work in the occupations of speech language pathologist, medical technologist, medical technicians, physical therapists, and physician assistants, however, will continue to be held in abeyance until a final rule is published. Further, the DOS has notified the Service that it will continue its policy of not issuing immigrant visas to aliens coming to the United States to perform labor in these five occupations until a final rule is published.

The Service has interpreted the term ''performing labor as a health care worker'' to mean providing direct or indirect health care services to a patient. Aliens coming to the United States to perform services in non-clinical health care occupations such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry, therefore, are not covered by the provisions of section 343. Individuals employed in these occupations do not perform patient care and, therefore, are not performing labor in a health care occupation as contemplated in the statute. Nevertheless, aliens who are indirectly involved in the performance of patient care, for example, supervisory nurses, must comply with the provisions of section 343.

Since the statute specifically refers only to aliens who are seeking to enter the United States under section 203(b) of the Act for the purpose of performing labor as health care workers, section 343 does not apply to the spouse and dependent children of such aliens. Dependent aliens are admitted to the United States for the primary purpose of family unity and are merely accompanying the principal alien. Therefore, the admissibility of dependent aliens is not affected by the provisions of section 343. For similar reasons, it is the position of the Service that an alien who has applied for adjustment of status under section 245 of the Act on the basis of a family-sponsored immigrant petition pursuant to section 203(a) of the Act or on the basis of an employment-based immigrant petition in a non-health care occupation does not have to comply with section 343 of IIRIRA.

Additionally, an alien who applies for adjustment of status pursuant to sections 209, 210, 245a, 249 or any other section of the Act is not affected by the provisions of section 343 of IIRIRA. This distinction derives from the fact that section 343 of IIRIRA applies only to aliens who are coming to the United States for the primary purpose of performing labor as a health care worker. Aliens applying for adjustment of status under these statutory provisions, regardless of their ultimate professional goal, will not be deemed to be adjusting status for the purpose of performing labor as a health care worker.

Organization Granted Temporary Approval To Issue Certificates for Nurses and Occupational Therapists—§ 212.15(e)

This rule grants temporary authorization to the CGFNS to issue certificates to aliens coming to the United States on a permanent basis to work in the field of nursing. This rule grants temporary authorization to the NBCOT to issue certificates to aliens coming to the United States on a permanent basis to work in the field of occupational therapy.

Under this interim rule, CGFNS is authorized to issue certificates only for the occupation of nurse, for which it has an established track record of issuing certificates, and not for the occupation of occupational therapy. Since CGFNS does not have an established track record of issuing certificates for occupational therapists at this time, it will be limited to issuing certificates for occupation of nursing for the validity period of this interim rule.

The Service defers consideration of whether CGFNS may be authorized to issue certificates for other health care occupations, including occupational therapy, until the promulgation of its forthcoming proposed rule.

This interim rule authorizes NBCOT, on a temporary basis, to issue certificates in accordance with section 343 for the occupation of occupational therapy. NBCOT is authorized to issue such certificates solely because of NBCOT's proven track record in issuing certificates for the position of occupational therapist and the current acceptance of these certificates by the various state regulatory boards in the field of occupational therapy.

Insofar as this interim rule addresses the certification requirements for aliens seeking to immigrate to the United States, the Service has determined that it is unnecessary to require that the certificate issued by CGFNS or NBCOT be valid for a specific period of time beyond the date of admission or adjustment of status. The Service may nevertheless consider imposing such a validity period in the context of promulgating its proposed rule.

English Language Requirement—§ 212.15(g)

Purusant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the ''sole discretion'' to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA.

The HHS has identified two testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The two testing services are the Educational Testing Service (ETAS) and the Michigan English Language Assessment Battery (MELAB). The new regulation at § 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

In developing the English language test scores, HHS consulted with the DoE and appropriate health care professional organizations. The HHS also examined a study sponsored in part by NBCOT entitled ''Standards for Examinations Assessing English as a Second Language'' in arriving at these scores. The scores reflect the current industry requirements for the occupations.

Under this interim regulation, an organization approved to issue certificates may use either of the above-named testing services. It should be noted, however, that HHS has

determined that occupational therapists should only take the test administered by ETS. The HHS has advised the Service that it made this determination based on the fact that all 50 states have accepted the NBCOT requirements which list the ETS as the only acceptable examination.

In addition, organizations authorized to issued certifications are encouraged to develop a test specifically designed to measure English language skills and seek HHS approval of the test. While HHS has identified MELAB and ETS for purposes of this interim rule, other testing services may submit information about their testing services to the Service so that HHS and the DOE could review whether the testing service should be included in the final rule.

HHS has advised that graduates of health professional programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirements of section 343 of IIRIRA for the duration of the interim rule. The HHS has determined that, for purposes of this rule, aliens who have graduated from these programs have competency in oral and written English because the level of English that they would need to graduate from these programs is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the test described above.

Presentation of the Certificate—§ 212.15(d) and § 245.14

Section 343 of IIRIRA is codified in section 212(a) of the Act as a new ground of inadmissibility. In genral, grounds listed in section 212(a) are bars to admission to the United states which must be overcome when an alien applies for admission. This interim rule provides that the certificate must be presented to a consular officer at the time that the alien applies for an immigrant visa and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time the alien applies for an immigrant visa at a consular post abroad and seeks admission or adjustment of status to that of a permanent resident.

The Service and the DOS will consider, in the context of the proposed rulemaking, whether it would be more efficient to review the certificate as part of the review of the alien's qualifications for classification at the time that a Form I–140 is adjudicated by the Service. In this regard, it should be noted that such a filing procedure has long been used with respect to labor certifications under section 212(a)(5)(A) of the Act.

Good Cause Exception

This interim rule is effective 60 days from the date of publication in the **Federal Register.** The Service invites post-promulgation comments and will address any such comments in a final rule. For the following reasons, the Service finds that good cause exists for adopting this rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. Although section 343 went into effect on September 30, 1996, due to the complexities of the requirements of section 343, and the need to coordinate the interests and concerns of a great number of Federal agencies, the health care sector, and members of the affected public, the Service is still in the process of developing a proposed rule in order to solicit comment from the public. A continued delay in the implementation of this provision, however, could have a negative effect on the availability of health care in this country, particularly in medically under-served areas for nursing and occupational therapy, and will create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with 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. This rule has been drafted in a way to minimize the economic impact that it has on small business while meeting its intended objective. The health care workers who will be issued certificates are not considered small entities as the term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 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.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 12612

The regulation adopted 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 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act of 1995

The information required on the certificate for health care workers showing that the alien possesses proficiency in the skills that affect the provisions of health care services in the United State (as provided in § 212.15(f)) is considered an information collection. Since a delay in issuing this interim rule could create a further backlog with respect to pending applications filed by aliens seeking to immigrate to perform labor in a health care occupation, the INS is using emergency review procedures, for review and clearance by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (PRA) of 1995.

The OMB approval has been requested by November 13, 1998. If granted, the emergency approval is only valid for 180 days. Comments concerning the information collection should be directed to: Office of Information and Regulatory Affairs

(OMB), OMB Desk Officer for the Immigration and Naturalization Service, Office of Management and Budget, Room 10235, Washington, DC 20503.

During the first 60 days of this same period a regular review of this information will also be undertaken. Written comments are encouraged and will be accepted until December 14, 1998. Your comments should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Service, in calculating the overall burden this requirement will place upon the public, estimates that approximately 7,000 certificates will be issued annually. The Service also estimates that it will take the testing entity approximately 2 hours to comply with the requirements. This amounts to 14,000 total burden hours.

Organizations and individuals interested in submitting comments regarding this burden estimate or any aspect of these information collection requirements, including suggestions for reducing the burden, should direct them to: Immigration and Naturalization Service, Director, Policy Directives and Instructions Branch (HQPDI), 425 I Street NW., Room 5307, Washington, DC 20536.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.15 is added to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *Inadmissible aliens.* With the exception of the aliens described in paragraph (b) of this section, any alien coming to the United States for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible to the United States unless the alien presents a certificate as described in paragraph (f) of this section.

(b) *Inapplicability of the ground of inadmissibility.* The following aliens are not subject to this ground of inadmissibility:

(1) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical health-care occupation is one where the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry;

(2) The spouse and dependent children of any immigrant alien who is seeking to immigrate in order to accompany or follow to join the principal alien; and

(3) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than an alien who is seeking to immigrate on the basis of an employment-based immigrant visa petition which was filed for the purpose of obtaining the alien's services in a health care occupation described in paragraph (c) of this section.

(c) *Occupations affected by this provision.* With the exception of the aliens described in paragraph (b) of this section, any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training, is subject to this provision:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(d) *Presentation of the certificate.* An alien described in paragraph (a) of this section who is applying for admission as an immigrant seeking to perform labor in a health care occupation as described in this section must present a certificate to a consular officer at the time of visa issuance and to the Service at the time of admission or adjustment of status. The certificate must be valid at the time of visa issuance and admission at a port-of-entry, or, if applicable, at the time of adjustment of status.

(e) *Organizations approved by the Service to issue certificates for health care workers.* (1) The Commission on Graduates of Foreign Nursing Schools is authorized to issue certificates under section 343 for the occupation of nurse. (2) The National Board for Certification in Occupational Therapy is authorized by the Service to issue certificates under section 343 for the occupation of occupational therapist.

(f) *Contents of the certificate.* A certificate must contain the following information:

(1) The name and address of the certifying organization;

(2) A point of contact where the organization may be contacted in order to verify the validity of the certificate;

(3) The date of the certificate was issued;

(4) The occupation for which the certificate was issued;

(5) The alien's name, and date and place of birth;

(6) Verification that the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(7) Verification that the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(8) Verification that the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States as an immigrant under section 203(b) of the Act. This verification is not binding on the Service; and

(9) Verification either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of States licensing the occupation for which the certificate is issued, or that the alien has passed the occupation's licensing or certification examination.

(g) *English testing requirement.* (1) With the exception of those aliens described in paragraph (g)(2) of this

section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of Health and Human Services has determined that an alien must have a passing score on one of the two tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate.

(2) Aliens exempt form the English language requirement. Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are exempt from the English language requirement.

(3) Approved testing services.

(i) Michigan English Language Assessment Battery (MELAB).

(ii) Test of English as a Foreign Language, Educational Testing Service (ETS).

(4) Passing scores for various occupations. (i) *Occupational therapists.* An alien seeking to perform labor in the United States as an occupational therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL), Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. Certifying organizations shall not accept the results of the MELAB for the occupation of occupational therapists. Aliens seeking to obtain a certificate to work as an occupational therapist must take the test offered by the ETS. MELAB scores are not acceptable for these occupations.

(ii) *Registered nurses.* An alien coming to the United States to perform labor as a registered nurse must obtain the following scores to obtain a certificate: ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50; MELAB: Final Score 79; Oral Interview: 3+.

(iii) *Licensed practical nurses and licensed vocational nurses.* An alien coming to the United States to perform labor as a licensed practical nurse or licensed vocational nurse must have the following scores to be issued a certificate: ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50; MELAB: Final Score 77; Oral Interview: 3+.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; 8 CFR part 2.

4. Section 245.14 is added to read as follows:

§ 245.14. Adjustment of status of certain health care workers.

An alien applying for adjustment of status to perform labor in a health care occupation as described in 8 CFR 212.15(c) must present evidence at the time he or she applies for adjustment of status, and, if applicable, at the time of the interview on the application, that he or she has a valid certificate issued by the Commission on Graduates of Foreign Nursing Schools or the National Board of Certification in Occupational Therapy.

Dated: October 6, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–27522 Filed 10–13–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 93–076–12]

RIN 0579–AA59

Animal Welfare; Marine Mammals, Swim-With-the-Dolphin Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Applicability of regulations.

SUMMARY: We are announcing that, until further notice, the Animal and Plant Health Inspection Service will not apply to wading programs the standards in the ''swim-with-the-dolphin'' regulations pertaining to participant/attendant ratio and space for the interactive area.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1228, (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1998, the Animal and Plant Health Inspection Service published a final rule in the **Federal Register** (63 FR 47128–47151, Docket No. 93–076–10) that amended the Animal Welfare regulations in 9 CFR, part 3, subpart E (referred to below as the regulations), to establish standards for ''swim-with-the-dolphin'' (SWTD) programs. The rule became effective October 5, 1998. The regulations include standards for space (see § 3.111(a)) and standards for the ratio of human participants to attendants or other authorized SWTD personnel (i.e., head trainer/behaviorist or trainer/supervising attendant) (see § 3.111(e)(4)).

This document announces that, as of October 5, 1998, and until further notice, we are not applying to wading programs the standards in § 3.111(a) for space for the interactive area or the standards in § 3.111(e)(4) for human participant/attendant ratio. For the purposes of this action, wading programs are those in which human participants interact with dolphins by remaining stationary and non-buoyant. We will more fully examine the issue of interactive space requirements and human participant/attendant ratios for programs in which contact between humans and cetaceans is limited and controlled, with negligible movement of humans within the enclosure, and in the near future will publish a document in the **Federal Register** requesting information from the public concerning such programs.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

Done in Washington DC, this 6th day of October 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–27368 Filed 10–13–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE148, Special Condition 23–98–04–SC]

Special Conditions; Raytheon Aircraft Company Model 300 Airplane; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to California Microwave, Inc., 701 Wilson Point Road, Martin State Airport, Box 4, Baltimore, Maryland 21220, for a Supplemental Type Certificate on the Raytheon Model 300 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel