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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revisions of Delegations of Authority

AGENCY: Office of the Secretary, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and from the Under Secretary for Rural Development of the Department of Agriculture (USDA) to reflect an internal change in the management of the Alternative Agricultural Research and Commercialization Corporation (AARCC) within USDA.

EFFECTIVE DATE: June 11, 2001.

FOR FURTHER INFORMATION CONTACT: David Suing, (202) 690–1633.

SUPPLEMENTARY INFORMATION: In fiscal year 2000, Congress provided no appropriation for AARCC. The AARCC Board of Directors subsequently resigned. This delegation of authority authorizes the Under Secretary for Rural Development, or the designee of the Under Secretary, to exercise decision-making authority over AARCC, the AARCC investment portfolio, and the AARCC revolving fund.

On March 9, 2000, the Delegations of Authority were revised, and the revision reflected a change in title from the Under Secretary for Rural Economic and Community Development to the Under Secretary for Rural Development. In order to maintain consistency, that title change also is reflected in this rule.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12866 and 12988. In addition, this action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and, thus, is exempt from the provisions of that Act. Accordingly, as authorized by section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, this rule may be made effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 6912(a)(1), 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR, 1949–1953 Comp., p. 1024.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretaries and Assistant Secretaries

2. In § 2.17, paragraph (a)(21)(xi) is revised to read as follows:

§ 2.17 Under Secretary for Rural Development.

(a) * * *

(21) * * *

(xi) Exercise administrative oversight and final decisionmaking authority over the Alternative Agricultural Research and Commercialization Corporation (AARCC) and the AARCC Revolving Fund, established pursuant to the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901 *et seq.*).

* * * * *

3. The heading of Subpart G, is revised to read as follows:

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

4. In § 2.48, add a new paragraph (a)(27) to read as follows:

§ 2.48 Administrator, Rural Business—Cooperative Service.

(a) * * *

(27) Exercise administrative oversight and final decision-making authority over the Alternative Agricultural Research and Commercialization Corporation (AARCC) and the AARCC Revolving Fund, established pursuant to the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901 *et seq.*).

* * * * *

Dated: May 25, 2001.

For Subpart C:

Ann M. Veneman,

Secretary.

Dated: May 18, 2001.

For Subpart G:

Dawn Riley,

Acting Deputy Under Secretary for Rural Development.

[FR Doc. 01–14335 Filed 6–8–01; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214, 248 and 299

[INS 2050–00]

RIN 1115–AF76

Petitioning Requirements for the H–1C Nonimmigrant Classification Under Public Law 106–95

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (Service) regulations in order to implement the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA) by providing instruction on the filing and adjudication of petitions for H–1C classification. This rule will facilitate the hiring of nonimmigrant alien nurses to reduce the shortage of nurses in health professional shortage areas in the United States.

DATES: *Effective Date:* This interim rule is effective June 11, 2001.

Comment Date: Written comments must be submitted on or before August 10, 2001.

ADDRESSES: Please submit written comments 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, please reference the INS number 2050–00 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, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION:

What Is the NRDAA?

On November 12, 1999, President Clinton signed into law the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95. The NRDAA created a new H–1C nonimmigrant category for registered nurses who will work in facilities that serve health professional shortage areas.

Is the H–1C Program Similar to the H–1A Program That Expired on September 1, 1995?

The H–1A program was created by the Immigration Nursing Relief Act of 1989 (INRA). While the NRDAA adopts, almost verbatim, many of the provisions of the INRA, there are some differences between the two programs. The NRDAA imposes more restrictions on the types of facilities that may petition for a nonimmigrant registered nurse and requires that these facilities make a greater number of attestations to the Department of Labor (DOL) than did the INRA. Whereas the INRA allowed for an unlimited number of H–1A nonimmigrant visas to be issued, the NRDAA places a state-by-state numerical cap on the number of H–1C nonimmigrant visas that may be issued. Also, unlike the INRA, the NRDAA does not recognize nursing education received in Canada. For the most part, however, the INRA and the NRDAA are identical and, therefore, much of the regulatory language from the H–1A program has been used for the H–1C program.

What Is an H–1C Nonimmigrant?

An H–1C nonimmigrant is an alien who is coming temporarily to the United States to perform services as a registered nurse, who meets the requirements of section 212(m)(1) of the Immigration and Nationality Act (Act), and will perform services at a facility (as defined at section 212(m)(6) of the Act) for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act.

What Are the Eligibility Requirements for an H–1C Nurse?

The NRDAA imposed three requirements on an alien seeking H–1C nonimmigrant status. First, the alien must have obtained a full and unrestricted license to practice professional nursing in the country where he or she obtained nursing education, or the alien must have received nursing education in the United States. Second, the alien must have passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or have a full and unrestricted license under state law to practice professional nursing in the state of intended employment. Finally, the alien must be fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and be authorized under such laws to be employed by the facility.

The NRDAA does not specifically designate any particular examination as an ''appropriate examination'' for the purpose of meeting the eligibility requirements for the H–1C classification. At present, the only ''appropriate examination'' available for a prospective H–1C alien is the examination offered by the Commission on Graduate of Foreign Nursing Schools (CGFNS). However, the Service may eventually recognize additional examinations for this purpose.

Questions concerning the test offered by CGFNS should be directed to CGFNS. CGFNS can be reached through its internet website, www.cgfns.org.

What Certification Requirements Are Imposed on an H–1C Alien?

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 Immigration and Nationality Act (the Act) for aliens coming to the United States to perform labor in certain health care occupations. As initially written by Congress, section 343 of IIRIRA provides that 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 of adjustment of status, the Attorney General, a certificate from the CGFNS, or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of Health and Human Services (HHS).

Pursuant to the statute, the certificate must verify that: (1) The alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type; (2) they are authentic; (3) the alien's license is unencumbered; (4) 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, 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 applicant's ability to speak and write English; and, finally, (5) if a majority of states licensing the profession in which the alien intends to work recognize a test predicting the success on the profession's licensing or certification examination, the alien has passed such an examination.

The NRDAA created an alternative certification requirement at section 212(r) of the Act for certain nurses, which may include some H–1C nonimmigrant aliens. Section 212(r) of the Act provides that section 212(a)(5)(C) of the Act shall not apply to a nurse who presents to the consular office (or in the case of adjustment of status, the Attorney General) a certified statement from the Commission on Graduates of Foreign Nursing Schools (CGFNS) (or an equivalent independent credentialing organization approved by the Attorney General and the Secretary of Health and Human Services) which certifies that:

- The alien has a valid and unrestricted license as a nurse in the state where the alien intends to be employed and such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;
- The alien has passed the National Council Licensure Examination (NCLEX);
- The alien is a graduate of an English-language nursing program in a country designated by the CGNFS which was in operation on or before the date of enactment of the NRDAA or has been approved by unanimous agreements by the CGFNS and any other approved credentialing organizations.

The Service has granted authorization to three organizations to issue

certificates to foreign health care workers pursuant to section 343 of IIRIRA through the publication of two interim rules. However, the two interim rules limited these organizations to issuing certificates to aliens in only three occupations who are coming to the United States as immigrants or who are applying for adjustment of status. Due to a number of problems implementing a final regulation fully implementing section 343, the Service has exercised its authority under section 212(d)(3) and waived the requirements of section 343 of IIRIRA as it relates to nonimmigrant aliens. The Service will continue to waive section 343 for nonimmigrant aliens until such time as the Service promulgates a final rule implementing section 343 of IIRIRA in full.

In order to avoid confusion for both health care workers and medical facilities, and to ensure equitable administration of these two statutory provisions, the Service will include the proposed regulations implementing section 212(r) in the soon to be published proposed rule implementing section 343 of IIRIRA. As a result, the Service will exercise the authority granted to it in section 212(d)(3) of the Act and waive section 212(r) for nonimmigrant aliens until publication of a final rule implementing both section 343 of IIRIRA and section 212(r) of the Act.

Who Can File a Petition for an H–1C Nonimmigrant?

An H–1C petition may be filed by a United States employer hospital (facility) which has filed an attestation with the DOL. The INS will rely on the determination made by DOL when it (DOL) reviews the attestation. The facility must have attested that:

- As of March 31, 1997, it was located in a health professional shortage area (as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e));
- Based on its settled cost report for the period beginning in FY 1994, it had:

1. At least 190 licensed acute care beds;

2. At least 35 percent of its inpatients days were for patients entitled to Medicare; and

3. At least 28 percent of its inpatient days were for patients who were entitled to Medicaid.

Are There Additional Attestation Requirements Provided for in the NRDAA?

Yes. The facility must also attest to the DOL that:

- The employment of the H–1C alien will not adversely affect the wages and working conditions of other nurses similarly employed;
- The H–1C alien will be paid the wage rate for registered nurses similarly employed by the facility;
- There is not a strike or lockout in the course of a labor dispute;
- It did not lay off and will not lay off a registered nurse already employed by it within the period beginning 90 days before and ending 90 days after the date of filing of any H–1C petition;
- The employment of the H–1C alien is not intended to influence an election for a bargaining representative for registered nurses of the facility;
- At the time of filing of the petition, notice of filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to the registered nurses employed at the facility through posting in conspicuous locations;
- It will never employ a number of H–1C aliens that exceeds 33 percent of the total number of registered nurses employed by it;
- The H–1C alien will not be authorized to perform nursing services at any worksite other than the worksite controlled by it, and
- It will not transfer the alien from one worksite to another.

The facility must also attest that it has taken steps to recruit and retain registered nurses who are United States citizens or immigrants. These steps include, but are not limited to:

- Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere;
- Providing career development programs and other methods of facilitating health care workers to become registered nurses;
- Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area; or
- Providing reasonable opportunities for meaningful salary advancement by registered nurses.

These steps do not need to have been taken by the facility prior to the enactment of the NRDAA.

A copy of the attestation shall be provided, within 30 days of the date of filing, to registered nurses employed at the facility on the date of its filing. The attestation shall apply to all H–1C petitions filed during the 1-year period beginning on the date of its filing with the Secretary of Labor if the facility states in each petition that it continues to comply with the conditions in the attestation. These attestation requirements are explained further in regulations issued by the Secretary of Labor at 20 CFR Part 655, subparts L and M, 65 FR 51138 (Aug. 22, 2000).

Does an Attestation Ever Expire?

Yes. An attestation will expire either at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor or at the end of the period of admission of the last H–1C alien with respect to whose admission it applies, whichever is later. With regard to an individual alien, the attestation remains valid as long as the alien is employed by the facility that made the attestation.

What Are the Penalties That the Attorney General May Impose on Facilities?

The NRDAA establishes that, if the Secretary of Labor finds that a facility (for which an attestation is made) has failed to meet a condition attested to, or that there was a misrepresentation of material fact in the attestation, the Secretary may impose such administrative remedies (including civil monetary penalties in an amount not to exceed $1,000 per nurse per violation, with the total penalty not to exceed $10,000 per violation) as the Secretary of Labor deems appropriate. The Secretary of Labor shall also notify the Attorney General of such finding and provide a recommendation regarding the length of the debarment period. The Service will give considerable weight to the Secretary's determination. Upon receipt of such notice, the Service will make a final determination as to the length of the period of debarment. The Service shall not approve H–1C petitions filed by that facility for aliens to be employed by the facility for a period of at least one year.

Where Should H–1C Petitions Be Filed?

All H–1C petitions must be filed on Form I–129 Petition for a Nonimmigrant Worker at the Vermont Service Center (VSC).

What Supporting Documents Should Be Submitted With the Petition?

The petitioning facility must submit the following documents at the time the H–1C petition is filed:

- A current copy of the DOL's notice of acceptance of the filing of its attestation on Form ETA 9081;
- A statement describing any limitations which the laws of the state or jurisdiction of intended employment place on the alien's services; and
- Evidence that the alien(s) named on the petition meets the definition of a

registered nurse as defined at 8 CFR 214.2(h)(3)(i)(A), and satisfies the requirements for an H–1C nonimmigrant in section 212(m)(1) of the Act.

Can an H–1C Alien Change Employers?

Yes. An alien admitted to the United States as an H–1C nonimmigrant alien can change H–1C employers provided that the alien has not reached the limit on his or her maximum period of stay in the United States. The maximum period of stay for an H–1C nonimmigrant is 3 years. An H–1C petition filed on behalf of an alien in the United States in H–1C status may be approved for a period of time not to exceed the third anniversary of the alien's initial admission into the United States. In addition, H–1C petitions filed by a subsequent facility will be counted against the numerical limitation for the state of the alien's intended employment if the subsequent employment is in a different state.

An H–1C nonimmigrant alien may not change employers until such time as the Service approves a new H–1C petition filed in the alien's behalf by the new employer.

Can an H–1C Alien Complete a 3-Year Period of Stay, Depart the United States, and Reapply for Admission as an H–1C at a Later Date?

The statute provides that the period of admission to the United States for H–1C nonimmigrant aliens is 3 years. The Service interprets this 3-year period of time to represent the maximum period of admission for an H–1C alien. The alien's maximum period of admission begins on the date of the alien's initial admission to the United States and ends on the third anniversary of that date. Temporary absences outside of the United States for either business or personal reasons count towards the alien's maximum period of admission. Once an H–1C alien has reached the maximum period of admission in the United States, he or she is ineligible to receive an extension of temporary stay.

Can an H–1C Alien Obtain an Extension of Temporary Stay?

Yes. While an H–1C alien should be admitted to the United States for a maximum period of 3-years, there will be situations where an H–1C alien may not be able to be admitted for the 3-year period of time. For example, the alien's passport may not be valid for the required length of time (See section 212(a)(7)(B)(I) of the Act), or the alien may not be able to depart from his or her home country and apply for admission to the United States on the date that the H–1C petition becomes valid.

In no situation may the alien's stay be extended beyond the third anniversary of the alien's initial admission to the United States.

In general, all H–1C aliens should be admitted for a period of three years, if otherwise eligible under statute and regulation. In the case of an alien admitted to the United States for a period of time less than 3 years, the facility may file an I–129 petition to extend the alien's stay.

While the statute limits the period of employment for an H–1C alien to a maximum of 3 years, an alien may work for a petitioning employer for a period less than 3 years, depending upon the needs of the employer and the alien.

Can an H–1C Alien Depart the United States After 3 Years and Reapply for Admission as an H–1C Alien at a Later Date?

No. The statutory language of the NRDAA clearly limits the stay of an H–1C alien to a period of three years. To allow an alien to circumvent this 3-year limitation merely by leaving the United States and immediately returning defeats the purpose of the 3-year limitation on the alien's period of admission.

How Many H–1C Nonimmigrant Visas May Be Issued in a Fiscal Year?

The total number of H–1C nonimmigrant visas issued in each fiscal year shall not exceed 500. This is the national cap that cannot be exceeded in a fiscal year. In addition to the national cap of 500, the NRDAA also imposes caps on individual states on the basis of the state's population. The number of visas issued shall not exceed 25 for states with populations of less than 9 million, based upon the 1990 decennial census of population, and shall not exceed 50 for states with populations of 9 million or more. Based on the 1990 decennial census of population, the states with populations of 9 million or more are California, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas.

If the total number of visas available during the first three quarters of a fiscal year exceeds the number of qualified H–1C aliens, the excess visas shall be allocated to states, regardless of the states' numerical cap, during the last quarter of the fiscal year. Once the 500 national cap has been reached, the Service will reject any new petitions subsequently filed requesting a work start date prior to the first day of the next fiscal year.

How Will the Allocation of Unused H–1C Visas Be Handled?

H–1C petitions will be adjudicated in order of receipt. If a state reaches its annual cap during the first three quarters of a fiscal year, pending H–1C petitions for employment in that state will be put on hold until the fourth quarter of the fiscal year. If the national 500 cap has not been reached by the start of that quarter, then those petitions that were put on hold will be adjudicated at that time.

During the final quarter of the fiscal year, all unused H–1C nonimmigrant visas that have accrued during the previous three fiscal year quarters will be distributed to the next approvable petition, in order of receipt, regardless of whether the H–1C alien will be employed in a state that has already reached its numerical cap.

If a petition is put on hold because the H–1C alien will be employed in a state that has already reached its annual cap prior to the fourth quarter of a fiscal year, and the Service then approves 500 petitions nationwide prior to the fourth fiscal year quarter, or prior to adjudication of the held petition during that fiscal year, that petition will continue to be held pending the allocation of new visas in the next fiscal year.

The Service will publish quarterly reports concerning the number of approved H–1C petitions, by state, on the Service's website at *www.ins.usdoj.gov.* Again, once the 500 national cap has been reached, the Service will reject any new petitions subsequently filed requesting a work start date prior to the first day of the next fiscal year.

The first petition filed by a facility for an H–1C counts towards the numerical limitation for the state of the alien's intended employment, regardless of whether the alien was, or currently is, in H–1C status.

Are H–1C Nonimmigrant Aliens Required To Meet Any Licensure Requirements?

The purpose of the NRDAA is to alleviate nursing shortages in health professional shortage areas in the United States. As such, any alien admitted to the United States as an H–1C nonimmigrant must meet all licensing requirements for the state of intended employment and must continue to perform the duties of a registered nurse as an H–1C. Facilities and nurses are expected to comply with the licensing standards established by the state licensing board. Facilities are also required, pursuant to

§ 214.2(h)(11)(i)(A), to notify the Service if there are any changes in the terms or conditions of employment of the H–1C alien. The Service must be notified when an H–1C nurse is no longer licensed as a registered nurse in the state of employment.

How Will the Service Process Petitions That Are Revoked?

If an H–1C petition is revoked because the alien never assumed his or her employment with the petitioning facility, that number will be returned to the pool of unused numbers and will then be made available to the state in which the petitioning facility is located in the final quarter of the fiscal year in which the petition was revoked. H–1C petitions that are revoked by the Service where the alien worked for the petitioning facility will not be returned to the pool of unused numbers.

Can More Than One Alien Be Included on an H–1C Petition?

Yes. The NRDAA allows for a petitioning facility to include more than one alien nurse on a single petition.

If the number of alien nurses included in a petition exceeds the number available for the remainder of a fiscal year, the Service shall approve the petition for the beneficiaries to the allowable amount in the order that they are listed on the petition. The remaining beneficiaries will be considered for approval in the subsequent fiscal year.

Will the H–1C Classification Expire?

Yes. The H–1C classification will expire 4 years after the date that the regulations are first promulgated. As such, all petitions for H–1C alien nurses must be filed by June 13, 2005. In addition, an H–1C nurse may not be admitted to the United States beyond June 13, 2005.

Is a Facility Responsible for Paying the Alien's Return Transportation Home If the Alien Is Dismissed by the Facility Prior to the End of the Validity Period of the Petition?

No. Unlike the H–1B and H–2B nonimmigrant classifications, the NRDDA does not require a facility to pay the H–1C alien's return trip transportation home.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for immediate implementation of this interim rule without prior notice and comment is that the NRDAA became effective immediately upon enactment on November 12, 1999, and allows for facilities in medically underserved areas of the United States to petition for registered nurses. Sections 2(d) and (3) of the NRDAA, moreover, explicitly contemplate, and so implicitly authorize, the promulgation of this rule as an interim regulation. The Service is also aware of the effect that delays in issuing these interim regulations may have on public health in underserved areas of the United States.

For these reasons, the Commissioner of the Immigration and Naturalization Service has determined that delaying the implementation of this rule would be unnecessary and contrary to the public interest, and that there is good cause for dispensing with the requirements of prior notice. However, the Service invites public comment on this interim rule and will address those comments prior to the implementation of the final rule.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory and Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will facilitate the hiring of a limited number of nonimmigrant nurses for a temporary period of time to work in facilities serving health care professional shortage areas. These nurses are not considered small entities as that 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 Fairness 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 13132

This regulation 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 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The information collection requirement of Form I–129 contained in this rule previously was approved for use by the Office of Management and Budget (OMB). The OMB control number for this collection is 1115–0168.

This interim rule permits certain hospital facilities to file petitions on behalf of nonimmigrant registered nurses to work in underserved areas. In addition to the Form I–129, the petitioning facilities also must submit other documentation, including a current copy of the DOL's notice of acceptance of the filing of the facility's attestation on Form ETA 9081; a statement describing any limitations which the laws of the state or jurisdiction of intended employment place on the alien's services; and evidence that the alien(s) named on the petition meets the definition of a registered nurse as defined at 8 CFR 214.2(h)(3)(i)(A), and satisfies the requirements for an H–1C nonimmigrant in section 212(m)(1) of the Act. This additional documentation is considered an information collection.

Accordingly, the Service has submitted an information collection

request to the Office of Management and Budget (OMB) for emergency review and clearance in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Emergency review and approval has been granted by OMB. The emergency approval is only valid for 180 days.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Immigration and Naturalization Service, Policy Directives and Instructions Branch, 425 I Street, NW., Suite 4034, Washington, DC 20536; Attention: Richard A. Sloan, Director, (202) 514–3291.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Any comments on the information collection must be submitted on or before August 10, 2001. Your comments should address one or more of the following four 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 the 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.

Overview of This Information Collection

(1) *Type of information collection:* New.

(2) *Title of Form/Collection:* Petitioning requirements for H–1C nonimmigrant classification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No form number (File number OMB–26), Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Individuals or households. Section 101(a)(15)(H)(i)(c) of Act allows petitioning hospitals to import registered nurses to work at those hospitals as nonimmigrants. The information collection is necessary in order for the Service to make a determination that the eligibility requirements and conditions are met regarding the nurse/beneficiary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 respondents at 2 hours per response.

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 4,000 burden hours.

If additional information is required contact Richard A. Sloan, Director, (202) 514–3291.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR Part 2.

2. Section 214.1 is amended by:

a. Removing the reference ''101(a)(15)(H)(i)(A)'' and ''H–1A'' from the table in paragraph (a)(2);

b. Adding the reference ''101(a)(15)(H)(i)(C)'' and ''H–1C'' in proper numerical sequence, to the table in paragraph (a)(2), and by

c. Removing the reference ''H–1A,'' in paragraph (c)(1) first sentence.

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(2) * * *

Section	Designation
* * * * *	
101 (a) (15) (H) (I) (C)	H–1C
* * * * *	

§ 214.2 [Amended]

3. Section 214.2 is amended by revising the term ''H–1A'' to read ''H–1C'' wherever that term appears in the following paragraphs:

a. Paragraph (h)(1)(i),

b. Paragraph (h)(2)(i)(D),

c. Paragraph (h)(2)(i)(E),

d. Paragraph (h)(3)(iii) introductory text,

e. Paragraphs (h)(3)(v)(B) and (h)(3)(v)(C), and

f. Paragraphs (h)(4)(v)(A), and (h)(4)(v)(D).

4. Section 214.2 is amended by revising the reference *''H–1A''* to read *''H–1C''* in the paragraph heading for paragraphs (h)(3) and (h)(4)(v)(D).

5. Section 214.2 is further amended by:

a. Revising the reference ''101(a)(15)(H)(i)(a)'' to read ''101(a)(15)(H)(i)(c)'' in paragraph (h)(1)(i) second sentence;

b. Revising paragraph (h)(1)(ii)(A);

c. Revising paragraph (h)(2)(i)(A);

d. Revising the term ''beneficiary's'' to read ''alien's'' in paragraph (h)(2)(i)(E);

e. Revising paragraph (h)(2)(ii);

f. Revising paragraphs (h)(3)(i)(A), (h)(3)(i)(B), and (h)(3)(i)(D);

g. Removing and reserving paragraph (h)(3)(ii);

h. Removing the term ''or Canada'' in paragraph (h)(3)(iii)(A);

i. Revising paragraph (h)(3)(iii)(B);

j. Revising paragraph (h)(3)(iv);

k. Revising paragraphs (h)(3)(v)(A) and (h)(3)(v)(B);

l. Removing paragraph (h)(3)(v)(D);

m. Revising paragraph (h)(3)(vi)(A);

n. Adding a new paragraph (h)(8)(i)(E);

o. Revising paragraph (h)(8)(ii)(A);

p. Adding a new paragraph (h)(8)(ii)(F);

q. Adding a new paragraph (h)(9)(iii)(D);

r. Revising paragraph (h)(13)(ii);

s. Revising the reference ''(h)(13)(ii)'' to read ''(h)(13)(iii)'', and by removing the term ''H–1A,'' in paragraph (h)(13)(v);

t. Revising paragraph (h)(15)(ii)(A); and by

u. Revising paragraph (h)(16)(i), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(1) * * *

(ii) * * *

(A) An H–1C classification applies to an alien who is coming temporarily to the United States to perform services as

a registered nurse, meets the requirements of section 212(m)(1) of the Act, and will perform services at a facility (as defined at section 212(m)(6) of the Act) for which the Secretary of Labor has determined and certified to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) of the Act. This classification will expire 4 years from June 11, 2001.

* * * * *

(2) * * *

(i) * * *

(A) *General.* A United States employer seeking to classify an alien as an H–1B, H–2A, H–2B, or H–3 temporary employee shall file a petition on Form I–129, Petition for Nonimmigrant Worker, only with the service center which has jurisdiction in the area where the alien will perform services, or receive training, even in emergent situations, except as provided in this section. A United States employer seeking to classify an alien as an H–1C nonimmigrant registered nurse shall file a petition on Form I–129 at the Vermont Service Center. Petitions in Guam and the Virgin Islands, and petitions involving special filing situations as determined by Service Headquarters, shall be filed with the local Service office or a designated Service office. The petitioner may submit a legible photocopy of a document in support of the visa petition in lieu of the original document. However, the original document shall be submitted if requested by the Service.

* * * * *

(ii) *Multiple beneficiaries.* More than one beneficiary may be included in an H–1C, H–2A, H–2B, or H–3 petition if the beneficiaries will be performing the same service, or receiving the same training, for the same period of time, and in the same location

(3) * * *

(i) * * *

(A) For purposes of H–1C classification, the term ''registered nurse'' means a person who is or will be authorized by a State Board of Nursing to engage in registered nurse practice in a state or U.S. territory or possession, and who is or will be practicing at a facility which provides health care services.

(B) A United States employer which provides health care services is referred to as a *facility.* A *facility* may file an H–1C petition for an alien nurse to perform the services of a registered nurse, if the *facility* meets the eligibility standards of 20 CFR 655.1111 and the other requirements of the Department of Labor's regulations in 20 CFR part 655, subpart L.

* * * * *

(D) A petition or application for change of status for an H–1C nurse may be filed and adjudicated only at the Vermont Service Center.

(ii) [Reserved]

(iii) * * *

(B) Has passed the examination given by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or has obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or has obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and

* * * * *

(iv) *Petitioner requirements.* The petitioning facility shall submit the following with an H–1C petition:

(A) A current copy of the DOL's notice of acceptance of the filing of its attestation on Form ETA 9081;

(B) A statement describing any limitations which the laws of the state or jurisdiction of intended employment place on the alien's services; and

(C) Evidence that the alien(s) named on the petition meets the definition of a registered nurse as defined at 8 CFR 214.2(h)(3)(i)(A), and satisfies the requirements contained in section 212(m)(1) of the Act.

(v) *Licensure requirements.*

(A) A nurse who is granted H–1C classification based on passage of the CGFNS examination must, upon admission to the United States, be able to obtain temporary licensure or other temporary authorization to practice as a registered nurse from the State Board of Nursing in the state of intended employment.

(B) An alien who was admitted as an H–1C nonimmigrant on the basis of a temporary license or authorization to practice as a registered nurse must comply with the licensing requirements for registered nurses in the state of intended employment. An alien admitted as an H–1C nonimmigrant is required to obtain a full and unrestricted license if required by the state of intended employment. The Service must be notified pursuant to § 214.2(h)(11) when an H–1C nurse is no longer licensed as a registered nurse in the state of intended employment.

* * * * *

(vi) * * *

(A) If the Secretary of Labor notifies the Service that a facility which employs H–1C nonimmigrant nurses has failed to meet a condition in its attestation, or that there was a misrepresentation of a material fact in the attestation, the Service shall not approve petitions for H–1C nonimmigrant nurses to be employed by the facility for a period of at least 1 year from the date of receipt of such notice. The Secretary of Labor shall make a recommendation with respect to the length of debarment. If the Secretary of Labor recommends a longer period of debarment, the Service will give considerable weight to that recommendation.

* * * * *

(8) * * *

(i) * * *

(E) Aliens classified as H–1C nonimmigrants may not exceed 500 in a fiscal year.

(ii) * * *

(A) Each alien issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b), 101(a)(15)(H)(i)(c), or 101(a)(15)(H)(ii) of the Act shall be counted for purposes of the numerical limit. Requests for petition extension or extension of an alien's stay shall not be counted for the purpose of the numerical limit. The spouse and children of principal aliens classified as H–4 nonimmigrants shall not be counted against the numerical limit.

* * * * *

(F) The 500 H–1C nonimmigrant visas issued each fiscal year shall be allocated in the following manner:

(*1*) For each fiscal year, the number of visas issued to the states of California, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, and Texas shall not exceed 50 each (except as provided for in paragraph (h)(8)(ii)(F)(*3*) of this section).

(*2*) For each fiscal year, the number of visas issued to the states not listed in paragraph (h)(8)(ii)(F)(*1*) of this section shall not exceed 25 each (except as provided for in paragraph (h)(8)(ii)(F)(*3*) of this section).

(*3*) If the total number of visas available during the first three quarters of a fiscal year exceeds the number of approvable H–1C petitions during those quarters, visas may be issued during the last quarter of the fiscal year to nurses who will be working in a state whose cap has already been reached for that fiscal year.

(*4*) When an approved H–1C petition is not used because the alien(s) does not obtain H–1C classification, *e.g.,* the alien is never admitted to the United States, or the alien never worked for the facility, the facility must notify the Service according to the instructions

contained in paragraph (h)(11)(ii) of this section. The Service will subtract H–1C petitions approved in the current fiscal year that are later revoked from the total count of approved H–1C petitions, provided that the alien never commenced employment with the facility.

(*5*) If the number of alien nurses included in an H–1C petition exceeds the number available for the remainder of a fiscal year, the Service shall approve the petition for the beneficiaries to the allowable amount in the order that they are listed on the petition. The remaining beneficiaries will be considered for approval in the subsequent fiscal year.

(*6*) Once the 500 cap has been reached, the Service will reject any new petitions subsequently filed requesting a work start date prior to the first day of the next fiscal year.

(9) * * *

(iii) * * *

(D) *H–1C petition for a registered nurse.* An approved petition for an alien classified under section 101(a)(15)(H)(i)(c) of the Act shall be valid for a period of 3 years.

* * * * *

(13) * * *

(ii) *H–1C limitation on admission.* The maximum period of admission for an H–1C nonimmigrant alien is 3 years. The maximum period of admission for an H–1C alien begins on the date the H–1C alien is admitted to the United and ends on the third anniversary of the alien's admission date. Periods of time spent out of the United States for business or personal reasons during the validity period of the H–1C petition count towards the alien's maximum period of admission. When an H–1C alien has reached the 3-year maximum period of admission, the H–1C alien is no longer eligible for admission to the United States as an H–1C nonimmigrant alien.

* * * * *

(15) * * *

(ii) * * *

(A) *H–1C extension of stay.* The maximum period of admission for an H–1C alien is 3 years. An H–1C alien who was initially admitted to the United States for less than 3 years may receive an extension of stay up to the third anniversary date of his or her initial admission. An H–1C nonimmigrant may not receive an extension of stay beyond the third anniversary date of his or her initial admission to the United States.

* * * * *

(16) * * *

(i) *H–1B or H–1C classification.* The approval of a permanent labor certification or the filing of a preference petition for an alien shall not be a basis for denying an H–1C or H–1B petition or a request to extend such a petition, or the alien's admission, change of status, or extension of stay. The alien may legitimately come to the United States for a temporary period as an H–1C or H–1B nonimmigrant and depart voluntarily at the end of his or her authorized stay and, at the same time, lawfully seek to become a permanent resident of the United States.

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

6. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR Part 2.

§ 248.3 [Amended]

7. Section 248.3 is amended by revising the reference ''H–1A'' to read ''H–1C'' in paragraph (a) first sentence.

PART 299—IMMIGRATION FORMS

8. The authority citation for part 299 continues to read as follows:

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

9. Section 299.1 is amended in the table by revising the entry for Form ''I–129'' to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	*
I–129	12–11–91	Petition for Nonimmigrant Worker.
*	*	*

Dated: June 5, 2001.

Kevin D. Rooney,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–14538 Filed 6–8–01; 8:45 am]

BILLING CODE 4410–10–U

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 32

[Docket No. 01–12]

RIN 1557–AB82

Community Bank-Focused Regulation Review: Lending Limits Pilot Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing a final rule amending part 32, the regulation governing the percentage of capital and surplus that a national bank may loan to any one borrower. This final rule establishes a three-year pilot program that creates new special lending limits for 1–4 family residential real estate loans and loans to small businesses. Eligible national banks with main offices located in states that have a lending limit available for residential real estate, small business or unsecured loans that is higher than the current Federal limit may apply to take part in the pilot program. We will review and evaluate national banks' experience with the special limits over the three-year pilot period and determine at the end of the pilot whether to extend the program and retain, modify or rescind the exceptions. The final rule also permanently modifies the lending limit exemption for loans to or guaranteed by obligations of state and local governments.

EFFECTIVE DATE: The final rule is effective on September 10, 2001.

FOR FURTHER INFORMATION CONTACT: Deborah Katz, Senior Counsel, or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090; Jonathan Fink, Senior Attorney, Bank Activities and Structure Division (202) 874–5300.

Background

On May 12, 1999, the OCC issued an advance notice of proposed rulemaking (ANPR) inviting comment on possible regulatory changes that could benefit community banks. 64 FR 25469. The purpose of this community bank-focused regulation review was to explore ways that our regulations could be modified, consistent with safety and soundness, to reflect the fact that community banks operate with more limited resources and often present different risk profiles than larger institutions. We sought to identify