under any civil or criminal fraud statute or any other statute or provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 1014, and 31 U.S.C. 3729.

(b) All producers receiving payments under this part will be jointly and severally liable to repay any unearned NAP payments.

§ 404.33 Appeals.

The appeal, reconsideration, or review of all determinations made under this part, except the designation of an area for which there is no appeal rights because it is determined a rule of general applicability, must be in accordance with part 780 of this title or the regulations promulgated by the National Appeals Division, whichever is applicable.

§ 404.35 Exemption from levy.

Any payment that is due any person under this part will be made without regard to questions of title under state law and without regard to any attachment, levy, garnishment, or any other legal process against the crop, and the proceeds thereof, which may be asserted by any creditor, except statutory liens of the United States.

§ 404.37 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible will be eligible for NAP payments under this part only if such person meets one of the following requirements:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 404.39 Death, incompetence, or disappearance.

In the case of death, incompetence or disappearance, of any person who is eligible to receive NAP payments in accordance with this part, such payments will be disbursed in accordance with part 707 of this title.

§ 404.41 OMB control numbers.

The provisions set forth in this interim rule contain information collection that require clearance by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*.). Previous information collection requirements have been approved under OMB control numbers 0560–0004, 0563–0007, 0563–0016, and 0563–0036. The new information collection requirements have been submitted to OMB for approval under OMB control number 0563–0016 and are not effective until approved by OMB.

Done in Washington, DC, on May 15, 1995.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 95–12292 Filed 5–15–95; 4:29 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 245, and 248

[INS No. 1688–95]

RIN 1115–AD89

Waiver of the Two-Year Home Country Physical Presence Requirement for Certain Foreign Medical Graduates

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by allowing certain foreign medical graduates who entered the United States in J–1 status, or who acquired J–1 status after arrival in the United States, to obtain a waiver of the 2-year home country residence and physical presence requirement under section 212(e)(iii) of the Immigration and Nationality Act (Act) pursuant to a request by a State Department of Public Health, or its equivalent. The waiver is intended to permit these foreign medical graduates to work at a health care facility in an area designated by the Secretary, Health and Human Services (HHS), as having a shortage of health care professionals (''HHS-designated shortage area''). This interim rule also contains provisions which will permit these foreign medical graduates to change their nonimmigrant status in the United States from J–1 exchange visitor to H–1B specialty occupation worker.

DATES: This interim rule is effective May 18, 1995. Written comments must be received on or before July 17, 1995.

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, please reference INS number 1688–95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514–3048 to arrange an appointment.

FOR FURTHER INFORMATION CONTACT: Sophia Cox, Senior Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Under section 212(e) of the Act, certain J–1 exchange visitors (and their J–2 dependent spouse and children) are subject to a 2-year home country residence and physical presence requirement (the ''2-year requirement''). Exchange visitors (and dependents) who are subject to this requirement must reside and be physically present in their country of nationality or last residence abroad (''home'' country) for an aggregate of at least 2 years following departure from the United States. J–1/J–2 exchange visitors who are subject to the 2-year requirement are not allowed to change their nonimmigrant status to, or be admitted to the United States under the H (temporary worker or trainee) or L (intracompany transferee) nonimmigrant categories, or acquire lawful permanent resident status, unless they have complied with this requirement or have been granted a waiver thereof.

The following categories of exchange visitors (and their accompanying spouse and children in dependent J–2 status) are subject to the 2-year requirement: (a) Those whose J–1 program was financed in whole or in part by an agency of the U.S. Government, or by the government of their ''home'' country; (b) those whose field of specialized knowledge or skill, as indicated on Form IAP–66 (Certificate of Eligibility), is required in their home country; and (c) those who entered the United States in J–1 status (or who acquired J–1 status subsequent to arrival in the United States) to receive graduate medical education or training.

Under section 212(e) of the Act, a waiver of the 2-year requirement may be granted by the Service upon the favorable recommendation of the Director of the United States Information Agency (USIA). Waivers can be obtained on the basis of: (a) Exceptional hardship to the applicant's U.S. citizen or permanent resident

spouse or children; (b) persecution on account of race, religion, or political opinion; (c) a ''no objection'' statement issued by the applicant's ''home'' country; or (d) a request made to USIA by an interested U.S. Government agency to recommend a waiver to the Service, because the applicant's work is deemed to serve the public interest. By statute, in the case of foreign medical graduates who entered the United States to receive graduate medical education or training (and accompanying J–2 dependents), a ''no objection'' statement does not constitute a basis for USIA to recommend a waiver to the Service. Therefore, even if a ''no objection'' statement on behalf of such a foreign medical graduate has been issued, the Service is statutorily required to deny the waiver application, if such a statement forms the only basis for the waiver request.

A substantial number of foreign medical graduates pursue waivers of the 2-year requirement through requests by an interested U.S. Government agency. Prior to the enactment of section 220 of the Immigration and Nationality Technical Corrections Act of 1994 (1994 Technical Corrections Act), Pub. L. 103–416, 108 Stat. 4310, 4319–4320, dated October 25, 1994, only Federal Government agencies were considered to be an ''interested United States Government agency'' eligible to submit a waiver request to USIA on behalf of a J–1 exchange visitor. Because State governments were not permitted to act as interested government agencies, they were required to solicit the assistance of an appropriate Federal agency. Section 212(e)(iii) of the Act, as amended by section 220(b) of the 1994 Technical Corrections Act, now permits State Departments of Public Health, or their equivalent, to submit waiver requests for foreign medical graduates directly to USIA, provided that certain conditions have been met, as explained below.

As noted, under section 212(e) of the Act, the Service may not approve the applicant's waiver request unless the Director of the USIA has issued a favorable waiver recommendation. If USIA issues a favorable waiver recommendation, it notifies the Service thereof. Section 212(e) of the Act permits, but does not require, the Attorney General to grant the waiver pursuant to a favorable USIA recommendation. On the other hand, if USIA issues an unfavorable waiver recommendation, the Service must deny the waiver application. The Service's decision to deny the application may not be appealed, if the denial is based on lack of a favorable USIA waiver recommendation. Section 212(e) waivers are valid only for those exchange programs indicated in the waiver request. Any subsequent J program extension or program transfer may re-subject the exchange visitor (and his or her dependents) to the 2-year requirement.

Under current procedures, an application form is not required when the waiver application is based on an interested U.S. Government agency request or a no objection statement. Similarly, a form will not be required to apply for a waiver based on a request by a State Department of Public Health. The Service is in the process of developing an omnibus form to be used for all waiver applications, including waivers of the 2-year requirement. It should be noted that the burden rests on the applicant to establish eligibility for a waiver of the 2-year requirement. In certain cases, therefore, the Service may require other documentation from the applicant besides the favorable USIA recommendation to fully assess his or her waiver eligibility.

After the Service approves an application for a waiver of the 2-year requirement, the J–1 exchange visitor may seek H nonimmigrant status in order to engage in temporary employment for the organization or entity named in the waiver application. Foreign medical graduates who wish to work temporarily in the Unites States once a waiver of the 2-year requirement has been granted may seek H–1B classification as a specialty occupation worker. An alien may obtain H–1B status either through the simultaneous filing of an H–1B petition by the prospective employer and a change of status application by the alien, if the alien is in the United States, or through the filing of an H–1B petition alone and the alien subsequently obtaining the visa at a consular post abroad. Change of status applications are governed by section 248 of the Act. To request a change of nonimmigrant status from J–1 to H–1B, a change of status application must be filed simultaneously with the H–1B nonimmigrant visa petition, if the applicant is eligible. Once the H–1B petition and change of status application are approved, the alien will be permitted to remain in the United States and commence temporary employment with the employer or organization named in the approved H–1B petition.

As 8 CFR 248.2(c) currently reads, foreign medical graduates (and their dependents) who entered the United States on J–1 visas (or who acquired J–1 status after admission) to pursue graduate medical education or training are ineligible to apply for change of status under section 248 of the Act, even if a waiver of the 2-year requirement has been granted. This interim regulation revises 8 CFR 248.2(c) to conform with section 220 of the 1994 Technical Corrections Act. Accordingly, this interim regulation provides that foreign medical graduates who received a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health, or its equivalent, may apply for change of status from J–1 to H–1B, if they other wise satisfy the change of status criteria found under section 248 of the Act.

Public Law 103–416

Section 220 of the 1994 Technical Corrections Act, enacted on October 25, 1994, permits the Service to grant a waiver of the 2-year requirement to a limited number of foreign medical graduates who have received a bona fide offer of full-time employment and who agree to practice medicine at a health care facility located in an HHS-designated shortage area. Any foreign medical graduate who is subject to the 2-year requirement, and who meets the eligibility criteria, may apply for a waiver under Pub. L. 103–416, regardless of whether he or she is physically present in the United States.

To be eligible for the waiver, the foreign medical graduate must enter into an employment contract to practice medicine full-time for at least 3 years at a health care facility located in the HHS-designated shortage area, and must agree to commence such employment within 90 days of receipt of the waiver. The Service may grant the waiver only if the Department of Public Health, or its equivalent, of the State where the foreign medical graduate will be employed, submits a formal request to USIA for a waiver recommendation, and USIA submits a favorable waiver recommendation to the Service. Although the State Department of Public Health, or its equivalent, must request the waiver on behalf of the foreign medical graduate, the health care facility at which the foreign medical graduate will work need not actually be owned or operated by the State.

The Service notes that section 220 of Pub. L. 103–416 does not expressly waive the 2-year requirement for the accompanying spouse or children of the foreign medical graduate. Longstanding Service policy, however, permits J–1 exchange visitors to include their J–2 dependent spouse and children in the waiver application. Consequently, a foreign medical graduate seeking a waiver of the 2-year requirement under section 220 of Pub. L. 103–416 shall be

permitted to include his or her accompanying J–2 spouse and children in the waiver application.

Foreign Medical Graduate

In the context of this interim rule, a foreign medical graduate refers specifically to a foreign national who has graduated from a medical school outside of the United States, and who acquired J–1 status to pursue graduate medical education or training in the United States. Foreign medical graduates seeking J–1 classification to pursue graduate medical education or training in the United States are subject to strict requirements set forth in section 212(j)(1) of the Act, and are subject to the 2-year requirement.

State Department of Public Health, or its Equivalent

Section 220 of Pub. L. 103–416 amends section 212(e)(iii) of the Act by permitting State Departments of Public Health (or their equivalent), in addition to U.S. Federal Government agencies, to submit requests for waiver recommendations directly to USIA on behalf of foreign medical graduates. Section 101(a)(36) of the Act defines the term ''State'' to include the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands, in addition to the 50 states. The same definition will apply to the term ''State'' in this rule. Further, it is the opinion of the Service that the statutory term ''State Department of Public Health, or its equivalent'' means the State agency or department that is responsible for public health issues, regardless of what the actual name of that agency or department is under State law.

Restrictions Imposed on the Waiver and the Change of Status Application

Section 214(k) of the Act, as added by section 220 of Pub. L. 103–416, imposes restrictions on waivers of the 2-year requirement for foreign medical graduates, when the application is based on a request by a State Department of Public Health, or its equivalent. By imposing conditions under section 214(k) of the Act, Congress manifested its intent that waivers of the 2-year requirement be granted only under strictly limited and controlled circumstances.

No objection statements. Section 214(k)(1)(A) of the Act provides that ''in the case of an alien who is otherwise contractually obligated to return to a foreign country, the government of such country (must) furnish ( ) the Director of the United States Information Agency with a statement in writing that it has no objection to the waiver.'' The foreign medical graduate seeking the waiver is responsible for ensuring that the ''no objection'' statement is provided directly to USIA. This additional requirement applies only when the foreign medical graduate seeks a waiver of the 2-year requirement pursuant to a request by a State Department of Public Health (or its equivalent). USIA addresses the question of what constitutes a contractual obligation in the preamble to its interim rule amending 22 CFR 514.44(e)(2), which was published in the **Federal Register** on April 3, 1995, at 60 FR 16785–16788.

Employment contracts. Section 214(k)(1)(B) of the Act provides that the Service may grant a waiver of the 2-year requirement based on a request by a State Department of Public Health only if the foreign medical graduate demonstrates a bona fide offer of full-time employment at a health facility and agrees to begin such employment within 90 days of receipt of the waiver. Section 214(k)(1)(B) of the Act also provides that the foreign medical graduate must agree to continue working at the health care facility named in the employment contract for at least 3 years. Such employment must be in accordance with the provisions of section 214(k)(2) of the Act. The USIA's implementing regulations at 22 CFR 514.44(e)(3)(B) therefore provide that the State Department of Public Health is required to submit the actual contract between the alien and the health care facility at the time the request for the favorable recommendation is made.

HHS-designated shortage areas. Section 214(k)(1)(C) of the Act provides that the foreign medical graduate must agree to practice medicine in accordance with section 214(k)(2) of the Act for at least 3 years ''only in the geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals.'' Since the Service is bound by HHS' determination of what constitutes a ''geographic area or areas * * * having a shortage of health care professionals,'' the request of a State Department of Public Health (or its equivalent), standing alone, cannot be deemed sufficient to meet his statutory requirement. The waiver application must be accompanied by evidence establishing that the geographic area or areas in which the foreign medical graduate will practice medicine are in HHS-designated shortage areas.

Numerical limitations on waivers under Pub. L. 103–416. Section 214(k)(1)(D) of the Act limits to 20-per-state the number of waivers the Service may grant under Pub. L. 103–416 each fiscal year. Consequently, if the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416, but the State requesting the waiver already has exhausted its annual waiver allotment, the Service is statutorily required to deny the waiver application. Accordingly, this rule provides that no appeal shall lie where the basis for denial is that the State has already been granted 20 waivers for that fiscal year.

Completion of the required 3-year employment contract as an H–1B nonimmigrant and change of nonimmigrant status from J–1 to H–1B. The restrictions imposed by Congress under section 214(k)(1) and (2) of the Act were intended to ensure that waivers of the 2-year requirement under Pub. L. 103–416 are granted only under strictly limited and controlled circumstances. These restrictions were also intended to ensure that foreign medical graduates who receive such a waiver actually provide health care services to those living HHS-designated shortage ares.

Under section 248(2) of the Act, a foreign medical graduate who came to the United States in J classification or acquired J classification in order to receive graduate medical education or training would normally be prohibited from filing an application for change of status. Section 214(k)(2)(A) of the Act, as added by section 220 of Pub. L. 103–416, however, provides that ''notwithstanding section 248(2), the Attorney General may change the status of an alien that qualifies under this subsection and section 212(e) to that of an alien described in section 101(a)(15)(i)(b).'' Section 214(k)(2) of the Act, as added by section 220 of Pub. L. 103–416 also states that no foreign medical graduate who has been granted a waiver and a change of nonimmigrant status from J–1 to H–1B, and who has failed to complete the 3-year employment contract with the sponsoring health care facility, shall be eligible to apply for an immigrant visa, for permanent residence, or for change of status to any other nonimmigrant category, until it has been established that he or she has resided and been physically present in his or her home country for an aggregate of 2 years following departure from the United States. Thus, section 212(k)(2) of the Act allows the foreign medical graduate to apply for change of nonimmigrant status from J–1, only to H–1B upon approval of the waiver, and also stipulates that a foreign medical graduate who fails to fulfill the required 3-year employment contract again becomes subject to the 2-year requirement. Taken together, these two provisions indicate that Congress

did not intend to permit the foreign medical graduate to proceed from J–1 status directly to lawful permanent resident status upon approval of the waiver.

Based on the above, the Service is of the opinion that, in enacting section 214(k) of the Act, Congress manifested its clear intent to require all foreign medical graduates, including those seeking to adjust their status or immigrate to this country, as well as those immediately changing status from J–1 to H–1B, to fulfill the 3-year employment contract or become subject to the 2-year requirement. To enable the Service to maintain control over the foreign medical graduate's stay in the United States in the manner intended by Congress, this interim rule provides that the foreign medical graduate must actually fulfill the contract with the health care facility named in the waiver application prior to obtaining permanent residence, or any nonimmigrant status other than H–1B. Accordingly, this interim regulation provides that a foreign medical graduate who received a waiver of the 2-year requirement under Pub. L. 103–416 may not apply for a change of status to another nonimmigrant category, for an immigrant visa, or for status as a lawful permanent resident prior to completing the required 3-year employment contract as an H–1B nonimmigrant with the health care facility named in the waiver application.

Eligibility to apply for change of status from J–1 to H–1B. While section 214(k)(2)(A) of the Act allows foreign medical graduates who received a waiver under Pub. L. 103–416 to apply for change of status from J–1 to H–1B (and their dependents from J–2 to H–4), it does not excuse the late filing of the application. Foreign medical graduates who have been granted a waiver of the 2-year requirement under Pub. L. 103–416, must be in valid J status when the change of status application is filed. Service regulations at 8 CFR 214.2(j)(1)(ii) provide that J–1 exchange visitors may be admitted to the United States for the duration of the exchange program, as noted on Form IAP–66, and an additional 30 days for travel. While J–1 exchange visitors are not authorized to work during this 30-day grace period (*see* § 274a.12(b)(11)), they are considered to be ''in status'' for purposes of applying for change of status under section 248 of the Act.

To prevent the foreign medical graduate from falling out of lawful nonimmigrant status, the Service encourages the State Department of Public Health to allow ample time for processing the waiver and subsequent filing and processing of the H–1B petition and change of status application. Foreign medical graduates who received a waiver under section 220 of Pub. L. 103–416 and whose J nonimmigrant stay has expired, or who have engaged in unauthorized employment, are ineligible to apply for change of status under section 248 of the Act. Such persons would not be precluded, however, from procuring an H–1B visa at a U.S. consular post abroad and seeking readmission to the United States in H–1B status to commence employment with the sponsoring health care facility.

Numerical limitations imposed on the issuance of H–1B visas. Although section 214(k)(2)(A) of the Act eases the change of status restrictions under section 248(2) of the Act, it does not ease the annual numerical limitations imposed on the H–1B specialty worker category under section 214(g)(1)(A) of the Act. Consequently, the Service would not be prohibited from granting a waiver of the 2-year requirement under Pub. L. 103–416, but would be statutorily prohibited from according H–1B status to the foreign medical graduate, if the annual numerical limitations imposed on the issuance of H–1B visas under section 214(g)(1)(A) of the Act have been reached.

Control measures to be implemented by the Service. As noted, waivers of the 2-year requirement pursuant to Pub. L. 103–416 are based on the premise that the foreign medical graduate's work at a health care facility will assist States in coping with health care shortages. To ensure compliance with section 214(k) of the Act, and to ensure that the public receives the intended benefit, the Service will implement the following measures.

The Form I–797 (Notice of Action) (including I–797A and I–797B) currently used to notify the alien of the approved waiver and/or change of status from J–1 to H–1B, if applicable, will explicitly state the terms and conditions of the waiver and change of status. To facilitate issuance of the H–1B visa abroad, or admission as an H–1B nonimmigrant at the port-of-entry in cases where the foreign medical graduate is ineligible or chooses not to apply for change of status, the H–1B approval notice shall indicate that he or she has obtained the necessary waiver under Pub. L. 103–416. Such notification serves two purposes. It ensures that the foreign medical graduate is made fully aware of the terms and conditions of his or her waiver and change of status. It also alerts the Service officer or State Health Department that special conditions have been placed on the alien's nonimmigrant status, thereby enabling the officer to take whatever steps are necessary to ensure that the alien's file is noted accordingly. When the foreign medical graduate's Form I–797 is later presented in support of an application for another benefit, such as an amended H–1B petition, a new H–1B petition for a different employer, or an adjustment of status application, the adjudicating officer will again be alerted to the special conditions that have been placed on the alien's nonimmigrant status. As a result, the Service will be able to verify whether the terms and conditions imposed under section 214(k) of the Act have been satisfied. These control measures are reflected in this interim rule at 8 CFR 212.7(c)(9)(ii).

Inability To Fulfill the Three-Year Employment Contract Due to Extenuating Circumstances

New section 214(k)(1)(B) of the Act grants the Attorney General discretion to excuse early termination of employment upon determining that extenuating circumstances so justify. The statute provides that extenuating circumstances may include the closure of the health care facility or hardship to the alien.

In determining whether to excuse the foreign medical graduate's early termination of employment with the health care facility named in the waiver application, the Service will carefully consider whether, based on all the facts before it, excusing such early termination would be consistent with the purpose of the statute—provision of health care services for at least a 3-year period of time in an HHS-designated shortage area. Closure of the facility, for example, could, under certain circumstances, warrant excusing failure to fulfill the 3-year employment contract, provided that the foreign medical graduate can establish that he or she has procured employment for the balance of the 3-year period with another health care facility in an HHS-designated shortage area. Similarly, an alien who claims that his or her inability to fulfill the 3-year employment contract is due to hardship shall also be required to submit evidence of new employment for another health care facility in an HHS-designated shortage area. A foreign medical graduate who seeks to establish extenuating circumstances on the basis of hardship also must submit evidence that the hardship was caused by unforeseen circumstances beyond his or her control. In short, before the Service will consider excusing the foreign medical graduate's early termination of

the 3-year employment contract with the health care facility named in the waiver application due to extenuating circumstances, the alien must submit an employment contract for the balance of this period with another health care facility in an HHS-designated shortage area. *See* section 214(k)(3) of the Act (the foreign medical graduate may only work in HHS-designated shortage areas during the required 3-year period of employment following approval of the waiver).

Changes in Employment During the Required Three-Year Period Following Approval of the Waiver

Any material change in the alien's H–1B employment must be reported to the Service by filing either an amended H–1B petition indicating any changes in the terms and conditions of the alien's current H–1B employment, or by filing a new petition if the alien seeks to change H–1B employers, in the manner generally required under current regulations at 8 CFR 214.2(h)(2)(i) (D) and (E), and 8 CFR 214.2(h)(11).

An amended H–1B petition for a foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103–416 shall be accompanied by evidence that he or she will continue practicing medicine in an HHS-designated shortage area for the health care facility named in the waiver application and in the original H–1B petition.

A foreign medical graduate who has been granted a waiver of the 2-year requirement under Pub. L. 103–416, who has not fulfilled the 3-year employment contract with the health care facility named in the waiver application, and who seeks to change H–1B employers due to extenuating circumstances or hardship is responsible for ensuring that the new health care facility files an H–1B petition. In such cases, the new petition shall be accompanied by a copy of Form I–797 (or I–797A or I–797B, as appropriate) relating to the original H–1B petition and an explanation from the alien, with supporting evidence, establishing that extenuating circumstances or hardship necessitate a change in employment. The new H–1B petition shall also be accompanied by an employment contract showing that the alien will practice medicine at the health care facility for the balance of the required 3-year period, and evidence that the geographic area or areas of intended employment designated in the new H–1B petition are in an HHS-designated shortage area.

The Service may consult with the Secretary of HHS to verify whether the area of intended employment specified in the new H–1B petition is in fact located in an HHS-designated shortage area. Further, in exercising its statutory discretion to excuse an alien's failure to complete the requisite 3-year employment contract, the Service, if it deems appropriate, may consult with USIA, the State Department of Public Health which initiated the waiver request, and the health care facility named in the original waiver application.

If, in the exercise of its discretion, the Service determines that extenuating circumstances or hardship exist, that employment will continue at a health care facility in an HHS-designated shortage area, and that both the new petitioner and the beneficiary have otherwise satisfied the H–1B eligibility criteria enumerated under 8 CFR 214.2(h), the new petition may be approved, and the foreign medical graduate may be permitted to serve the balance of the 3-year employment period at the health care facility named in the new H–1B petition.

Effect of Failure To Abide by the Terms and Conditions of the Waiver Granted Under Pub. L. 103–416

Section 241(a)(1)(C)(i) of the Act provides for the deportation of any alien admitted as a nonimmigrant who fails to: (a) Maintain the nonimmigrant status under which he or she was admitted; (b) fails to maintain the nonimmigrant status to which he or she was changed under section 248 of the Act; or (c) fails to comply with the conditions of any such nonimmigrant status. J–1 foreign medical graduates who do not fulfill the 3-year employment contract for the health care facility named in the waiver application (unless the Attorney General has determined there are extenuating circumstances or hardship to the alien), who do not work in HHS-designated shortage areas, or who change employment without permission from the Service, will be deemed not to be maintaining their nonimmigrant status or complying with the terms and conditions imposed upon the waiver and change of status application, and will therefore be deportable under section 241(a)(1)(C)(i) of the Act.

Application Period

Section 220(c) of Pub. L. 103–416 states that the statutory amendments to section 212(e) of the Act shall apply to aliens admitted to the United states under section 101(a)(15)(J) of the Act, or who acquire J status after admission to the Unites States before, on, or after the date of enactment, and before June 1, 1996. Consistent with Congress' intent to relieve health care shortages in HHS-designated shortage areas, the Service interprets this provision to mean that any foreign medical graduate who entered the United States in J nonimmigrant status, or who acquired J status upon arrival to pursue graduate medical education or training, before June 1, 1996, is eligible to apply for a waiver of the 2-year requirement pursuant to section 220 of Pub. L. 103–416, and for subsequent change of nonimmigrant status to H–1B. Further, if the foreign medical graduate acquired J status before June 1, 1996, in order to pursue graduate medical education or training, he or she will be eligible to request a section 220 waiver, even if the training is completed after June 1, 1996.

Foreign medical graduates who acquire J nonimmigrant status to pursue graduate medical education or training on or after June 1, 1996, however, will not be eligible to apply for benefits under Pub. L. 103–416, even if they wish to practice medicine in an HHS-designated shortage area. Those foreign medical graduates may, however, pursue a non-section 220 waiver under section 212(e) of the Act.

Good Cause Exception

This interim rule is effective on publication in the Federal Register although 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. The provisions of Pub. L. 103–416, which provide a great public benefit, are already in effect. Adopting this rule without prior notice and comment allows foreign medical graduates whose J status is about to expire to apply for the waiver as soon as possible, thereby avoiding potential interruption of their lawful status during the normal notice and comment period. The rule also enables State Departments of Public Health to seek immediately the assistance of certain foreign medical graduates to ease local medical care shortages. Adopting this rule as an interim rule therefore benefits both foreign medical graduates and those who live in HHS-designated shortage areas.

Regulatory Flexibility Act

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

economic impact on a substantial number of small entities because of the following factors. This interim rule will have limited or no effect on small entities, because only 20 waivers are authorized per State annually to foreign medical graduates under Pub. L. 103–416.

Executive Order 12866

This interim rule is not 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 Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Exetutive Order 12612

This interim rule will not have substantial direct effect 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. Section 220 of Pub. L. 103–416 merely enables the States, in addition to Federal Government agencies, to submit waiver requests for foreign medical graduates directly to USIA, while preserving the authority of the Federal Government to grant or deny such waiver requests. The ability of Federal Government agencies to continue submitting waiver requests to USIA is not changed or curtailed in any way by this rule. Therefore, in accordance with Executive Order 12612, it has been determined that this interim rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that this interim rule has been assessed in light of the criteria in Executive Order 12606, and has determined that the regulation would enhance family well-being by allowing certain dependent J–2 family members to obtain derivative H–4 status in the United States based on the waiver granted to the principal physician and the principal's change of status from J–1 to H–1B, without the need to travel abroad to procure the nonimmigrant visa and seek re-admission to the United States. Permitting such changes of non-immigrant status allows the principal physician's dependent spouse and children to: (a) Accompany him or her while employed temporarily as an H–1B nonimmigrant; and (b) remain in this country on a permanent basis should he or she subsequently apply for, and be granted approval of, adjustment of status to that of a lawful permanent resident. This rule also enhances family well-being by allowing families in HHS–designated shortage areas to get much needed medical treatment and care.

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been cleared by the Office of Management and Budget Under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 212

Administrative practices and procedure, Aliens, Immigration, passports and visa, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, 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. In § 212.7, paragraphs (c)(9) and (c)(10) are redesignated as paragraphs (c)(10) and (c)(11), respectively, and a new paragraph (c)(9) and (c)(11), respectively, and a new paragraph (c)(9) is added to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(c) * * *

(9) *Waivers under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent).* In accordance with section 220 of Pub. L. 103–416, an alien admitted to the United States as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired status under section 101(a)(15)(J) of the Act after admission to the United States, to participate in an exchange program of graduate medical education or training (as of January 9, 1977), may apply for a waiver of the 2-year home country residence and physical presence requirement (the ''2-year requirement'') under section 212(e)(iii) of the Act based on a request by a State Department of Pubic Health, or its equivalent. To initiate the application for a waiver under Pub. L. 103–416, the Department of Public Health, or its equivalent, or the State in which the foreign medical graduate seeks to practice medicine, must request the Director of USIA to recommend a waiver to the Service. The waiver may be granted only if the Director of USIA provides the Service with a favorable waiver recommendation. Only the Service, however, may grant or deny the waiver application. If granted, such a waiver shall be subject to the terms and conditions imposed under section 214(k) of the Act. Although the alien is not required to submit a separate waiver application to the Service, the burden rests on the alien to establish eligibility for the waiver. If the Service approves a waiver request made under Pub. L. 103–416, the foreign medical graduate (and accompanying dependents) may apply for change of nonimmigrant status, from J–1 to H–1B and, in the case of dependents of such a foreign medical graduate, from J–2 to H–4. Aliens receiving waivers under section 220 of Pub. L. 103–416 are subject, in all cases, to the provisions of section 214(g)(1)(A) of the Act.

(i) *Eligiblity criteria.* J–1 foreign medical graduates (with accompanying J–2 dependents) are eligible to apply for a waiver of the 2-year requirement under Pub. L. 103–416 based on a request by a State Department of Public Health (or its equivalent) if:

(A) They were admitted to the United States under section 101(a)(15)(J) of the Act, or acquired J nonimmigrant status before June 1, 1996, to pursue graduate medical education or training in the United States.

(B) They have entered into a bona fide, full-time employment contract for 3 years to practice medicine at a health care facility located in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (''HHS-designated shortage area'');

(C) They agree to commence employment within 90 days of receipt of the waiver under this section and agree to practice medicine for 3 years at the facility named in the waiver application and only in HHS-designated shortage areas. The health care facility named in the waiver application may be operated by:

(*1*) An agency of the Government of the United States or of the State in which it is located; or

(*2*) A charitable, educational, or other not-for-profit organization; or

(*3*) Private medical practitioners.

(D) The Department of Public Health, or its equivalent, in the State where the health care facility is located has requested the Director, USIA, to recommend the waiver, and the Director, USIA, submits a favorable waiver recommendation to the Service; and

(E) Approval of the waiver will not cause the number of waivers granted pursuant to Pub. L. 103–416 and this section to foreign medical graduates who will practice medicine in the same state to exceed 20 during the current fiscal year.

(ii) *Decision on waivers under Pub. L. 103–416 and notification to the alien.*—(A) *Approval.* If the Director of USIA submits a favorable waiver recommendation on behalf of a foreign medical graduate pursuant to Pub. L. 103–416, and the Service grants the waiver, the alien shall be notified of the approval on Form I–797 (or I–797A or I–797B, as appropriate). The approval notice shall clearly state the terms and conditions imposed on the waiver, and the Service's records shall be noted accordingly.

(B) *Denial.* If the Director of USIA issues a favorable waiver recommendation under Pub. L. 103–416 and the Service denies the waiver, the alien shall be notified of the decision and of the right to appeal under 8 CFR part 103. However, no appeal shall lie where the basis for denial is that the number of waivers granted to the State in which the foreign medical graduate will be employed would exceed 20 for that fiscal year.

(iii) *Conditions.* The foreign medical graduate must agree to commence employment for the health care facility specified in the waiver application within 90 days of receipt of the waiver under Pub. L. 103–416. The foreign medical graduate may only fulfill the requisite 3-year employment contract as an H–1B nonimmigrant. A foreign medical graduate who receives a waiver under Pub. L. 103–416 based on a request by a State Department of Public Health (or equivalent), and changes his or her nonimmigrant classification from J–1 to H–1B, may not apply for permanent residence or for any other change of nonimmigrant classification unless he or she has fulfilled the 3-year employment contract with the health care facility and in the specified HHS-designated shortage area named in the waiver application.

(iv) *Failure to fulfill the three-year employment contract due to extenuating circumstances.* A foreign medical graduate who fails to meet the terms and conditions imposed on the waiver under section 214(k) of the Act and this paragraph will once again become subject to the 2-year requirement under section 212(e) of the Act.

Under section 214(k)(1)(B) of the Act, however, the Service, in the exercise of discretion, may excuse early termination of the foreign medical graduate's 3-year period of employment with the health care facility named in the waiver application due to extenuating circumstances. Extenuating circumstances may include, but are not limited to, closure of the health care facility or hardship to the alien. In determining whether to excuse such early termination of employment, the Service shall base its decision on the specific facts of each case. In all cases, the burden of establishing eligibility for a favorable exercise of discretion rests with the foreign medical graduate. Depending on the circumstances, closure of the health care facility named in the waiver application may, but need not, be considered an extenuating circumstance excusing early termination of employment. Under no circumstances will a foreign medical graduate be eligible to apply for change of status to another nonimmigrant category, for an immigrant visa or for status as a lawful permanent resident prior to completing the requisite 3-year period of employment for a health care facility located in an HHS-designated shortage area.

(v) *Required evidence.* A foreign medical graduate who seeks to have early termination of employment excused due to extenuating circumstances shall submit documentary evidence establishing such a claim. In all cases, the foreign medical graduate shall submit an employment contract with another health care facility located in an HHS-designated shortage area for the balance of the required 3-year period of employment. A foreign medical graduate claiming extenuating circumstances based on hardship shall also submit evidence establishing that such hardship was caused by unforeseen circumstances beyond his or her control. A foreign medical graduate claiming extenuating circumstances based on closure of the health care facility named in the waiver application shall also submit evidence that the facility has closed or is about to be closed.

(vi) *Notification requirements.* A J–1 foreign medical graduate who has been granted a waiver of the 2-year requirement pursuant to Pub. L. 103–416, is required to comply with the terms and conditions specified in section 214(k) of the Act and the implementing regulations in this section. If the foreign medical graduate subsequently applies for and receives H–1B status, he or she must also comply with the terms and conditions of that nonimmigrant status. Such compliance shall also include notifying the Service of any material change in the terms and conditions of the H–1B employment, by filing either an amended or a new H–1B petition, as required, under §§ 214.2(h)(2)(i)(D), 214.2(h)(2)(i)(E), and 214.2(h)(11) of this chapter.

(A) *Amended H–1B petitions.* The health care facility named in the waiver application and H–1B petition shall file an amended H–1B petition, as required under § 214.2(h)(2)(i)(E) of this chapter, if there are any material changes in the terms and conditions of the beneficiary's employment or eligibility as specified in the waiver application filed under Pub. L. 103–416 and in the subsequent H–1B petition. In such a case, an amended H–1B petition shall be accompanied by evidence that the alien will continue practicing medicine with the original employer in an HHS-designated shortage area.

(B) *New H–1B petitions.* A health care facility seeking to employ a foreign medical graduate who has been granted a waiver under Pub. L. 103–416 (prior to the time the alien has completed his or her 3-year contract with the facility named in the waiver application and original H–1B petition), shall file a new H–1B petition with the Service, as required under §§ 214.2(h)(2)(i) (D) and (E) of this chapter. Although a new waiver application need not be filed, the new H–1B petition shall be accompanied by the documentary evidence generally required under § 214.2(h) of this chapter, and the following additional documents:

(*1*) A copy of Form I–797 (and/or I–797A and I–797B) relating to the waiver and nonimmigrant H status granted under Pub. L. 103–416;

(*2*) An explanation from the foreign medical graduate, with supporting evidence, establishing that extenuating circumstances necessitate a change in employment;

(*3*) An employment contract establishing that the foreign medical graduate will practice medicine at the health care facility named in the new H–1B petition for the balance of the required 3-year period; and

(*4*) Evidence that the geographic area or areas of intended employment indicated in the new H–1B petition are in HHS-designated shortage areas.

(C) *Review of amended and new H–1B petitions for foreign medical graduates granted waivers under Pub. L. 103–416 and who seek to have early termination of employment excused due to extenuating circumstances.—(1) Amended H–1B petitions.* The waiver granted under Pub. L. 103–416 may be affirmed, and the amended H–1B petition may be approved, if the petitioning health care facility establishes that the foreign medical graduate otherwise remains eligible for H–1B classification and that he or she will continue practicing medicine in an HHS-designated shortage area.

(*2*) *New H–1B petitions.* The Service shall review a new H–1B petition filed on behalf of a foreign medical graduate who has not yet fulfilled the required 3-year period of employment with the health care facility named in the waiver application and in the original H–1B petition to determine whether extenuating circumstances exist which warrant a change in employment, and whether the waiver granted under Pub. L. 103–416 should be affirmed. In conducting such a review, the Service shall determine whether the foreign medical graduate will continue practicing medicine in an HHS-designated shortage area, and whether the new H–1B petitioner and the foreign medical graduate have satisfied the remaining H–1B eligibility criteria described under section 101(a)(15)(H) of the Act and § 214.2(h) of this chapter. If these criteria have been satisfied, the waiver granted to the foreign medical graduate under Pub. L. 103–416 may be affirmed, and the new H1–B petition may be approved in the exercise of discretion, thereby permitting the foreign medical graduate to serve the balance of the requisite 3-year employment period at the health care facility named in the new H–1B petition.

(D) *Failure to notify the Service of any material changes in employment.* Foreign medical graduates who have been granted a waiver of the 2-year requirement and who have obtained H–1B status under Pub. L. 103–416 but fail to: Properly notify the Service of any material change in the terms and conditions of their H–1B employment, by having their employer file an amended or a new H–1B petition in accordance with this section and § 214.2(h) of this chapter; or establish continued eligibility for the waiver and H–1B status, shall (together with their dependents) again become subject to the 2-year requirement. Such foreign medical graduates and their accompanying H–4 dependents also become subject to deportation under section 241(a)(1)(C)(i) of the Act.

* * * * *

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; and 8 CFR part 2.

§ 245.1 [Amended]

4. In § 245.1, paragraph (c)(2) is amended by removing the ''; '' at the end of the paragraph and replacing it with a ''.''; and by adding a new sentence at the end of paragraph (c)(2) to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(2) * * * An alien who has been granted a waiver under section 212(e)(iii) of the Act based on a request by a State Department of Health (or its equivalent) under Pub. L. 103–416 shall be ineligible to apply for adjustment of status under section 245 of the Act if the terms and conditions specified in section 214(k) of the Act and § 212.7(c)(9) of this chapter have not been met;

* * * * *

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

5. 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.

6. In § 248.2, paragraph (c) is amended by removing the ''; and'' at the end of the paragraph and replacing it with a ''.''; and by adding two new sentences at the end of paragraph (c) to read as follows:

§ 248.2 Ineligible classes.

* * * * *

(c) * * * This restriction shall not apply when the alien is a foreign medical graduate who was granted a waiver under section 212(e)(iii) of the Act pursuant to a request made by a State Department of Public Health (or its equivalent) under Pub. L. 103–416, and the alien complies with the terms and conditions imposed on the waiver under section 214(k) of the Act and the implementing regulations at § 212.7(c)(9) of this chapter. A foreign medical graduate who was granted a waiver under Pub. L. 103–416 and who does not fulfill the requisite 3-year employment contract or otherwise comply with the terms and conditions imposed on the waiver is ineligible to apply for change of status to any other nonimmigrant classification; and

* * * * *

Dated: April 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–12272 Filed 5–17–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–82–AD; Amendment 39–9234; AD 95–10–17]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Lockheed Model L–1011–385 series airplanes. This action requires inspections to detect cracking or severing of the fuselage frames, and an additional inspection or repair, if necessary. This amendment is prompted by reports indicating that fatigue cracking was found on certain fuselage frames on these airplanes. The actions specified in this AD are intended to prevent reduced structural integrity of the fuselage shell due to the problems associated with fatigue cracking.

DATES: Effective May 23, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 23, 1995.

Comments for inclusion in the Rules Docket must be received on or before July 17, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 95–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the FAA, Transport Airplane Directorate,