DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1806–96]

RIN 1115–AD74

Processing of Certain H–1A Nurses Under Public Law 104–302

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (the Service) regulations by describing the procedures for an H–1A nurse to obtain an extension of stay based on Public Law 104–302, ''[a]n Act to extend the authorized period of stay within the United States for certain nurses.'' This is necessary as a response to concerns that certain geographical locations in the United States continue to experience a shortage of registered nurses.

DATES: The interim rule is effective March 7, 1997. Written comments must be submitted on or before May 6, 1997.

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 1806–96 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, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The H–1A nonimmigrant classification, which provided for the temporary admission of registered nurses to the United States, expired on September 1, 1995. However, on October 11, 1996, Congress enacted Public Law 104–302, ''[a]n Act to extend the authorized period of stay within the United States for certain nurses,'' in response to concerns that certain geographic locations in the United States continue to experience a shortage of registered nurses. The legislation provides for the granting of an extension of stay until September 30, 1997, to certain aliens who: (1) entered the United States as H–1A nurses; (2) were within the United States on or after September 1, 1995, and who were within the United States on October 11, 1996; and (3) whose period of authorized stay has expired or would expire before September 30, 1997, but for the enactment of the legislation. This rule will amend the Service's regulation at 8 CFR 214.2(h)(15)(ii)(A) to include these requirements.

Public Law 104–302 does not provide for the approval of new H–1A petitions and relates solely to extensions of stay for certain aliens who are in, or have previously been accorded, nonimmigrant H–1A status as registered nurses. This rule amends the description of the H–1A classification found at 8 CFR 214.2(h)(1)(ii)(A) and removes the references to the H–1A classification at 8 CFR 214.2(h)(2)(i)(A) and at 8 CFR 214.2(h)(9)(iii)(A) in order to clarify these recently enacted statutory changes. The definition of an H–1B nonimmigrant alien found at 8 CFR 214.2(h)(1)(ii)(B) is amended to reflect that registered nurses are no longer statutorily excluded from the H–1B classification due to the expiration of the H–1A nonimmigrant classification. The rule also amends 8 CFR 214.2(h)(2)(i)(D) and 8 CFR 214.2(h)(13)(ii) to reflect changes affecting employers and travel restrictions, respectively.

Eligibility

The legislation does not make available the H–1A classification for registered nurses seeking initial entry into the United States but merely provides for the extension of stay until September 30, 1997, for those H–1A nurses who meet the above requirements. Under this legislation, the Service may not approve an H–1A petition filed on behalf of an alien who has not previously been accorded H–1A classification. Since the legislation was designed solely to extend the H–1A stay of registered nurses affected by the 1995 sunset of the H–1A classification, an alien must have been employed in H–1A classification as a registered nurse on September 1, 1995, to obtain the benefits of the legislation. An alien who was not employed as a registered nurse in H–1A classification on September 1, 1995, is not eligible for an extension of temporary stay under this legislation. Further, because Pub. L. 104–302 deals solely with extensions of H–1A stay, this provision does not apply to aliens who were previously accorded H–1A classification and subsequently obtained a different nonimmigrant classification.

The legislation effectively overrides the regulatory 5-year limitation of temporary stay previously imposed by the Service on H–1A registered nurses. Thus, an eligible alien may seek an extension of H–1A stay regardless of the length of time that he or she was in the United States in such nonimmigrant classification. The regulation at 8 CFR 214.2(h)(13)(ii) has been amended to reflect this change.

Filing Requirements

This interim regulation requires that an employer seeking the services of an H–1A registered nurse pursuant to Public Law 104–302 file a Form I–129, Petition for Nonimmigrant Worker, at the appropriate Service Center to obtain an extension of the alien's stay in the United States. The purpose of requiring the filing of a petition is to ensure that a nurse is, in fact, eligible for the benefits of the legislation. The filing and subsequent approval of the petition will also provide assurance to the petitioner that the alien's employment will not result in an employer sanctions violation.

This interim rule amends 8 CFR 214.2(h)(15)(ii)(A) by providing a list of the evidence which must be submitted with the request for the extension of the alien's stay in H–1A classification. The interim rule requires that the employer submit evidence that the alien is licensed to practice as a registered nurse in the state of intended employment, that the alien was employed as a registered nurse on September 1, 1995, that the alien was in the United States on or after September 1, 1995, and, for an alien who was no longer in status on October 11, 1996, due to the 1995 sunset of the H–1A classification, that the alien was in the United States on October 11, 1996. In this regard, because the intent of Public Law 104–302 was to avoid disruption of much needed health care services, the Service interprets the requirement that an alien have been ''within'' the United States on October 11, 1996, to include H–1A registered nurses who, although not physically present in the United States on that date, subsequently were readmitted to this country pursuant to an unexpired H–1A petition.

Affected Groups

The regulation contemplates three separate groups of H–1A nurses who may be affected by this legislation.

The first group of H–1A nurses is comprise of those nurses who are currently in a valid nonimmigrant status but whose stay will expire prior to September 30, 1997. The registered nurses who meet the statutory requirements will have their H–1A nonimmigrant stay extended through September 30, 1997, upon the approval of Form I–129, Petition for

Nonimmigrant Worker, filed by their employer at the appropriate Service Center. In accordance with 8 CFR 274a.12(b)(20), such nurses will be authorized to continue employment with the petitioning employer pending Service adjudication of the petition.

The second group of H–1A nurses is comprised of those nurses who were employed in H–1A classification as a registered nurse on September 1, 1995, and whose period of authorized stay in the United States had expired prior to the effective date of this legislation. Provided they meet the statutory requirements, the H–1A stay of these nurses shall also be extended through September 30, 1997, upon the approval of Form I–129 filed by their United States employer at the appropriate Service Center. In accordance with 8 CFR 274a.12(b)(20), such nurses will also be authorized to continue employment with the petitioning employer pending Service adjudication of the petition.

An otherwise qualified registered nurse in this second group who was employed in H–1A classification on September 1, 1995, but is no longer in a valid nonimmigrant status due to the expiration of the H–1A classification, is eligible for an extension of temporary stay regardless of whether the alien continued to work as a registered nurse after September 1, 1995. The petition extension may be filed by any facility as defined in 8 CFR 214.2(h)(3)(i)(B). Further, an alien granted an extension of stay under this provision is considered to have maintained a valid nonimmigrant status through September 30, 1997, for all purposes under the Immigration and Nationality Act, as amended (the ''INA'').

A third group of H–1A aliens, those whose period of authorized stay will not expire until after September 30, 1997, are not affected by the legislation. These H–1A nurses may remain in the United States until the validity of their petition expires.

This legislation does not affect the status of an alien who was admitted to the United States as an H–1B nonimmigrant alien to perform services in the field of professional nursing. Further, this legislation does not preclude the Service from approving an H–1B petition filed for a professional nurse, if all regulatory and statutory provisions relating to the H–1B classification are met.

Change of Employers

Subsection (b) of the statute specifically provides that an H–1A nurse may not change employers in the United States. The regulation at 8 CFR 214.2(h)(2)(i)(D) has been amended to reflect this restriction. However, a mere change in employer ownership or a change in work location with the same employer does not, for the purposes of the H–1A classification, constitute a change of employers.

Travel Restrictions

The legislation also provides that the extension of the authorized period of stay for certain nurses does not in any way extend the H–1A alien's visa. Further, Public Law 104–302 does not authorize the re-entry of any person who was outside the United States on the date of enactment and who was not the beneficiary of an unexpired, approved H–1A petition to obtain the benefits of the legislation. Hence, an alien who was outside the United States on the date the legislation was enacted and who previously held H–1A nonimmigrant classification which has expired is ineligible for H–1A classification. An alien who obtains an extension of stay based on this legislation and subsequently departs the United States will be required to obtain appropriate documentation from the Department of State in order to apply for admission to the United States in H–1A classification. The regulation at 8 CFR 214.2(h)(13)(ii) has been amended to reflect this change.

Maintenance of Status

An H–1A alien who obtains an extension of stay based on this legislation is considered to have maintained lawful nonimmigrant status through September 30, 1997. This provision also applies to the spouse and child of the H–1A nonimmigrant alien. The regulation at 8 CFR 214.2(h)(15)(ii)(A) has been amended to reflect this change. Upon approval of the extension, such persons shall be accorded H–4 nonimmigrant status. In addition, a spouse or child granted an extension of stay under this section of law is considered to have maintained a valid nonimmigrant status for all purposes under the INA.

This rule also amends the regulation at 8 CFR 214.2(h)(9)(iii) to reflect a technical change in the title of the Chief of the Administrative Appeals Unit, Central Office, to the Director of the Appeals Office, Headquarters.

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. First, the provisions of Public Law 104–302 require that the Service issue implementing regulations not later than 30 days after the date that the legislation was enacted. As a result of this provision, the Service does not have sufficient time to solicit comments from the public prior to publishing a notice of proposed rulemaking. Second, the Service notes that this provision is intended solely to grant a benefit to eligible aliens and the general public.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This interim rule merely clarifies the requirements for obtaining an extension of stay under Public Law 104–302.

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 one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is 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 and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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

Executive Order 12988

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

List of Subjects in 8 CFR Part 214

Adminsistrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, part 214 of 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 214.2 is amended by:

a. Revising paragraphs (h)(1)(ii)(A) and (B) (*1*);

b. Revising paragraphs (h)(2)(i)(A) and (D);

c. Removing paragraph (h)(9)(iii)(A);

d. Redesignating paragraphs (h)(9)(iii) (B), (C), and (D) as paragraphs (h)(9)(iii) (A), (B), and (C) respectively;

e. Revising paragraph (h)(13)(ii); and by

f. Revising paragraph (h)(15)(ii)(A); to read as follows:

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

* * * * *

(h) * * *

(1) * * *

(ii) *Description of classification.*

(A) An H–1A 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 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 expired on September 1, 1995, but certain aliens previously accorded H–1A classification are eligible to obtain and extension of stay until September 30, 1997, pursuant to Public Law 104–302.

(B) * * *

(*1*) To perform services in a specialty occupation (except agricultural workers, and aliens described in section 101(a)(15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

* * * * *

(2)*Petitions*—(i) *Filing of petitions*—(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. 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.

* * * * *

(D) *Change of employers.* If the alien is in the United States and seeks to change employers, the prospective new employer must file a petition on Form I–129 requesting classification and extension of the alien's stay in the United States. If the new petition is approved, the extension of stay may be granted for the validity of the approved petition. The validity of the petition and the alien's extension of stay shall conform to the limits on the alien's temporary stay that are prescribed in paragraph (h)(13) of this section. The alien is not authorized to begin the employment with the new petitioner until the petition is approved. An H–1A nonimmigrant alien may not change employers.

* * * * *

(13) * * *

(ii) *H–1A limitation on admission.* An alien who was previously accorded H–1A nonimmigrant status, which expired on or before October 11, 1996, may not be admitted to the United States after October 11, 1996, in order to apply for an extension of authorized stay as provided in Public Law 104–302. Except as provided in paragraph (15)(ii)(A) of this subsection, and H–1A alien who has spent 5 years in the United States under section 101(a)(15)(H) of the Act may not change status, or be readmitted to the United States in any H classification unless the alien has resided and been physically present outside the United States, except for brief trips for pleasure or business, for the immediate prior year.

* * * * *

(15) * * *

(ii) * * *

(A) *H–1A extension of stay.* An alien who previously entered the United States pursuant to an H–1A visa may receive an extension of H–1A temporary stay until September 30, 1997, provided that the alien was within the United States in valid H–1A classification on or after September 1, 1995, regardless of whether the alien continued to work as a registered nurse after September 1, 1995; that the alien's period of H–1A temporary stay has expired or would expire before September 30, 1997; and, if the alien was not in valid H–1A nonimmigrant status on October 11, 1996, that the alien was within the United States on October 11, 1996. An extension of stay may not be granted to an H–1A nonimmigrant alien beyond September 30, 1997. An H–1A alien granted an extension of stay, and the spouse and child of such nonimmigrant, shall be considered to have maintained nonimmigrant status through September 30, 1997, for all purposes under the Immigration and Nationality Act, as amended. Public Law 104–302 does not apply to an H–1A alien who otherwise failed to maintain his or her valid H–1A nonimmigrant status or has changed from H–1A to another nonimmigrant status. A request for an extension of stay for an H–1A nonimmigrant must be filed on Form I–129, Petition for Nonimmigrant Worker, at the appropriate Service Center with the following:

(*1*) Evidence that the alien was employed as a registered nurse on September 1, 1995:

(*2*) Evidence that the beneficiary is licensed to practice as a registered nurse in the state of intended employment;

(*3*) Evidence that the alien was within the United States on or after September 1, 1995. For purposes of this provision, an alien will be deemed to have been within the United States on September 1, 1995, who, although not physically present in the United States on that date, was subsequently admitted to the United States in H–1A classification pursuant to an unexpired H–1A visa; and

(*4*) If the alien was not in valid H–1A nonimmigrant status on October 11, 1996, evidence that the alien was within the United States on October 11, 1996. For purposes of this provision, an alien will be deemed to have been within the United States on October 11, 1996, who, although not physically present in the United States on that date, was subsequently admitted to the United States in H–1A classification pursuant to an unexpired H–1A visa.

* * * * *

§ 214.2 [Amended]

3. In § 214.2, newly redesignated paragraph (h)(9)(iii)(B)(*2*)(*ii*) is amended in the second sentence by revising the phrase ''Chief of the Administrative Appeals Unit, Central Office'' to read: ''Director, Administrative Appeals Office, Headquarters''.

Dated: February 28, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–5660 Filed 3–6–97; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–ANE–44]

Removal of Class D and E Airspace; South Weymouth, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action removes the Class D and Class E airspace areas at South Weymouth, MA due to the closure of the South Weymouth Naval Air Station (KNZW).

EFFECTIVE DATE: This rule was effective 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final with a request for comments in the Federal Register on December 19, 1996 (61 FR 66908). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 30. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–5716 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 96–ANE–46]

Amendment to Class E Airspace; Springfield/Chicopee, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action modifies the Class E airspace at Springfield/Chicopee, MA by removing the Class E airspace extending upward from the surface, effective during the times when the Airport Traffic Control Tower (ATCT) is not operating. This action results from the elimination of continuous weather reporting at Westover ARB/Metropolitan Airport (KCEF).

EFFECTIVE DATE: This rule was effective 0901 UTC, January 30, 1997.

FOR FURTHER INFORMATION CONTACT: Sandra V. Bogosian, Operations Branch, ANE–530.4, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7534; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: The FAA published this direct final with a request for comments in the Federal Register on December 19, 1996 (61 FR 66911). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 30. No adverse comments were received, and thus this notice confirms that this final rule became effective on that date.

Issued in Burlington, MA, on February 28, 1997.

David J. Hurley,

Manager, Air Traffic Division, New England Region.

[FR Doc. 97–5714 Filed 3–6–97; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 97–ANE–11]

Amendment to Class E Airspace; Nashua, NH, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace at Nashua, HN, Newport, RI, Mansfield, MA, Providence, RI, and Taunton, MA by removing from their descriptions references to Class E airspace areas removed by previous actions. This action is necessary to keep the descriptions of controlled airspace areas operationally current.

DATES: Effective 0901 UTC, May 22, 1997.

Comments for inclusion in the Rules Docket must be received on or before April 7, 1997.

ADDRESSES: Send comments on the rule to: Manager, Operations Branch, ANE–530, Federal Aviation Administration, Docket No. 97–ANE–11, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7530; fax (617) 238–7596.

The official docket file may be examined in the Office of the Assistant Chief Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7050; fax (617) 238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Operations Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: Raymond Duda, Operations Branch, ANE–530.3, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7533; fax (617) 238–7596.

SUPPLEMENTARY INFORMATION: On February 16, 1996, the FAA published final rule that removed the Class E airspace at Moore Army Airfield, Fort