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 final 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 12988

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

Executive Order 12612

This regulation will not have a substantial direct effect on the States, on the relationships between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It merely implements section 220 of Pub. L. 103–416, which grants the States, in limited circumstances, the authority to submit requests for waiver recommendations to the Director of the USIA on behalf of certain foreign medical graduates. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

8 CFR Part 212

Administration practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR parts 212, 245 and 248, which was published at 60 FR 26676–26683 on May 18, 1995, is adopted as a final rule with the following changes:

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.

§ 212.7 [Amended]

2. Section 212.7 is amended in the fifth sentence of paragraph (c)(9) introductory text, by revising the reference to ''section 214(k) of the Act'' to read: ''section 214(l) of the Act (as redesignated by section 671(a)(3)(A) of Pub. L. 104–208)''.

3. Section 212.7 is amended by revising the reference to ''section 214(k)'' to read: ''section 214(l)'' wherever it appears in the following paragraphs:

a. Paragraph (c)(9)(iv); and

b. Paragraph (c)(9)(vi).

3. Section 212.7 is amended by revising the reference to ''section 214(k)(1)(B)'' to read: ''section 214(l)(1)(B)'' in the first sentence of the unnumbered paragraph immediately after paragraph (c)(9)(iv).

4. Section 212.7 is amended by revising paragraph (c)(9)(i)(A), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(c) * * *

(9) * * *

(i) * * *

(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, 2002, to pursue graduate medical education or training in the United States.

* * * * *

Dated: February 26, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–9831 Filed 4–15–97; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 214 and 274a

[INS 1653–94]

RIN 1115–AC72

Foreign Employers Seeking To Employ Temporary Alien Workers in the H, O, and P Nonimmigrant Classifications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (the Service) regulations by precluding foreign employers from directly filing petitions for O and P nonimmigrant aliens. Prospective foreign employers seeking to file petitions in these two classifications will be required to use the services of an agent in the United States. This rule also amends the H nonimmigrant regulations by requiring foreign employers seeking to petition for H–2B nonimmigrant aliens to use the services of an agent in the United States, removes the current reference to the term ''representative'' from the H–2B regulations, expands the definition of an agent with respect to the H, O, and P nonimmigrant classifications, and codifies existing policy with regard to the filing of nonimmigrant petitions for certain professional athletes. This rule brings the H, O, and P nonimmigrant regulations into conformity with the employer sanctions provisions of section 274A of the Immigration and Nationality Act (''the Act'').

EFFECTIVE DATE: April 16, 1997.

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 employer sanctions provisions of the Immigration and Nationality Act were created by the Immigration Reform and Control Act of 1986, Public Law 99–603, and are codified in section 274A of the Act, as amended. Among other things, section 274A of the Act contains provisions making it unlawful for a person or entity to hire an alien knowing the alien is not entitled to engage in employment. Section 274A of the Act also requires the employer to examine certain documentation in order to verify an individual's identity and eligibility to work in the United States. Civil and criminal penalties may be imposed upon employers who do not

comply with the employer sanctions provisions of section 274A of the Act.

The Service has historically allowed foreign employers, *i.e.*, those employers not amenable to service of process in the United States, to file petitions for certain nonimmigrant workers. However, in order for the Service to enforce the sanctions provisions of section 274A of the Act in an effective manner, an employer must have a legal presence in the United States for purposes of service of legal process. It has, therefore, been determined that, as in the case of the H nonimmigrant classification, foreign employers should be precluded from directly filing petitions for aliens in the O and P nonimmigrant classifications. Foreign employers will still be able to petition for an O and P nonimmigrant alien but will be required to use a United States agent to file the petition on their behalf. Through their United States agent, foreign employers will be responsible for complying with the provisions of section 274A of the Act. In order to accommodate the needs of those businesses which will use these classifications and, at the same time, effectively enforce the sanctions provisions, the definition of an agent found at 8 CFR 214.2(h)(2)(i)(F), 8 CFR 214.2(o)(2)(iv)(E), and 8 CFR 214.2(p)(2)(iv)(E) has been amended by this rule to include business representatives.

On August 15, 1994, the Service published in the **Federal Register** at 59 FR 41843 a proposed rule with requests for comments. Interested persons were invited to submit written comments on or before October 14, 1994.

Discussion of Comments on the Proposed Rule

The Service received four comments on the proposed rule. Each of the comments contained a discussion of a number of different issues. As a result, the number of issues discussed exceeds the total number of comments received. The commenters offered a number of suggestions and improvements for the final rule, some of which have been adopted. The following discussion addresses the issues raised by the specific issue proposed in the rule, provides the Service's position on the issues, and indicates the revisions adopted in the final rule based on the public's comments.

Proposal Number One—The ''30-Day Rule''

The Service proposed to codify its longstanding policy with respect to sports teams which allows professional athletes traded between teams to play for the new team prior to the filing of the appropriate petition, provided that the new team files a petition with the Service within 30 days of the trade. Since a single athlete can have a significant impact on a team's performance, and recognizing the length of time required to process certain I–129 petitions, the Service adopted a policy allowing players to play for the new team prior to the filing of the petition. Since no negative comments were received with respect to this particular proposal, the proposal will be adopted in the final rule.

One commenter did, however, note that 8 CFR 214.2(h)(6)(vii), which discusses the ''30-day rule,'' contained a typographical error. The error has been corrected in this final rule.

The Service has clarified the rule in two respects. First, the references in the proposed rule to ''U.S.-based'' organizations have been deleted, in order to avoid any confusion regarding whether a team employing a professional athlete pursuant to an H–2B, O–1, or P–1 petition is ''U.S.-based'' or not (for example, a minor league affiliate in the United States of a foreign major league franchise). The final rule applies to any trade of an alien professional athlete in an H–2B, O–1, or P–1 classification. Second, the Service has clarified that an athlete to whom the final rule applies will remain in status, and will be eligible to be employed by the team to which the athlete is traded, after the expiration of 30 days following the trade until the Form I–129 is adjudicated, as long as the new petition is filed within the 30-day time frame provided by the rule.

Proposal Number Two—Foreign Employers Filing O, P, and H–2B Petitions

All four of the commenters opposed the Service's proposal that foreign employers be precluded from filing O and P nonimmigrant petitions directly with the Service. The commenters raised seven separate arguments as to why the Service should not implement this proposal. All four of the commenters, however, suggested that, if the proposal was adopted, the term ''established U.S. agent'' contained in the proposed rule should be modified or altered to allow business entities in the United States which are related to the foreign employer to be classified as an agent and have the ability to file the petition.

After a careful review of the comments received from the public concerning this proposal, the Service will adopt without change the proposal contained in the proposed rule with respect to the filing of O or P petitions by foreign employers. It is the opinion of the Service that the adoption of the proposal does nothing more than reflect the intent of Congress when the employer sanction provisions were enacted. The purpose of this rule is to prevent abuses of section 274A of the Act by ensuring that the Service can enforce the section 274A provisions against foreign employers to the same extent as it currently does against domestic employers.

However, the Service will accept the suggestion of the commenters and modify the regulatory definition of the term ''United States agent'' to accommodate the needs of foreign employers. The final rule clarifies the definition of ''United States agent'' by specifying that general legal agency relationships satisfy this requirement. The proposed rule failed to state clearly that foreign employers are permitted to use an ''agent'' as commonly defined in legal agency terms. The final rule recognizes that the term ''agent'' need not be limited to a person or entity who has entered into a formal agency agreement with the employer. An ''agent'' can be someone authorized to represent and act for another, to transact business for another, or manage another's affairs. A United States agent filing a petition on behalf of a foreign employer must, however, be authorized by the foreign employer to file the petition, and to accept service of process in the United States in any proceeding under section 274A of the Act, on behalf of the foreign employer.

The Service has also clarified the final rule by defining ''foreign employer'' for purposes of the rule as ''any employer who is not amenable to the service of process in the United States.'' This definition is intended to include all employers of H–2B, O, or P aliens who are not amenable to service of process within the United States for any reason.

Discussion of the Specific Comments Raised in Objection to Proposal Number Two

The following discussion addresses each of the seven reasons raised by the commenters as to why the proposal that foreign employers should not be permitted to file an H, O, or P petition directly should not be adopted.

One commenter suggested that if the Service required foreign employers to use an agent in the United States to file an O or P petition, foreign countries would retaliate against U.S. workers abroad in some fashion.

It is the opinion of the Service that the employer sanctions provisions must be enforced with equal effect with respect

to all persons or entities, regardless of whether they are foreign or domestic, which employ aliens in the United States. While it is theoretically possible that certain countries may retaliate against the United States for enforcing these statutory provisions, the Service is required to follow the intent of Congress in enacting section 274A of the Act and safeguard against unauthorized employment in this country.

The Service received comments expressing similar fears at the time it published its interim rule relating to the O and P classifications following enactment of the Immigration Act of 1990 (IMMACT 90). Specifically, the commenters suggested at the time that, as drafted, the Service's regulations would result in retaliatory actions towards U.S. workers abroad. Such fears have proven to be unfounded. In fact, more than 4 years after the effective date of IMMACT 90, the Service is unaware of any instances of retaliatory actions taken by foreign countries against United States entertainers and athletes abroad.

The Service received two comments which stated that requiring a foreign company to create a legal relationship with an agent within the United States will discourage foreign employers from filming and otherwise working in the United States, thereby harming the U.S. economy and jeopardizing American workers' jobs.

The Service believes that, as a practical matter, this rule is not onerous and will not have a negative effect upon such foreign employers or an adverse effect upon the U.S. economy. One of the commenters acknowledged that foreign companies are required to comply with all United States laws, including section 274A of the Act, and, in most cases, already have either a direct presence within the United States or an existing relationship with a United States entity. Far from imposing undue burdens on foreign companies, this regulation is intended only to ensure that employers who are not amenable to the service of process in the United States are held to the same standard of conduct as all other employers with respect to section 274A of the Act, by providing the Service with a mechanism for ensuring adequate service of process on such employers. In this regard, this regulation is similar to the laws of many states which require outside businesses to have a registered agent for service of legal process.

Further, because this rule expands the term ''United States agent'' to include a business representative, the Service believes most foreign employers will be able to continue their activities with very little or no additional burden or inconvenience. Foreign employers will, as a general rule, already have an agency relationship in place in the United States.

One commenter suggested that adoption of this proposal would discourage foreign employers from complying with U.S. immigration laws.

It is the opinion of the Service that the vast majority of individuals are honest and will comply with the law and applicable regulations. Further, as indicated in the discussion of the prior comment, the definition of agent has been modified by this rule and, as a result, compliance with the proposal will not be difficult to achieve.

One commenter stated that the rule should not be adopted since it was never anticipated by Congress that a foreign movie production company merely using United States-based venues to film a movie would be required to complete an employment verification eligibility form (Form I–9) for its O–1 and H–2B nonimmigrant employees. In drafting section 274A of the Act, Congress did not differentiate among employers based upon their country of license or registry. The implementation of this rule does not alter the existing responsibilities of all employers, domestic or foreign, to comply with section 274A of the Act with respect to employment within the United States.

Two commenters suggested that requiring the employer of an O or P nonimmigrant alien to complete a Form I–9 is superfluous since the employer has already received Service approval to work in the United States. The employment verification provisions are statutory and, therefore, the Service lacks the authority to waive this requirement. Moreover, since foreign employers have always been responsible for complying with the employer sanctions provisions of the Act, this rule does not add any additional verification requirements.

One commenter stated that there is no evidence that foreign employers are violating section 274A of the Act or that the Service is unable to take enforcement actions against them. Moreover, the commenter stated, if the foreign employer is still to remain liable for section 274A violations, then the foreign employers should be able to file O and P petitions directly. The Service is required to enact regulations which enable it to execute its various duties and responsibilities. Evidence of abuse is not a prerequisite for promulgating rules. As noted above, this rule is designed to ensure compliance with section 274A of the Act by providing a means of enforcing this section with respect to foreign as well as domestic employers. Direct filing of O and P petitions by foreign employers not amenable to service of process within the United States defeats this purpose, since, in certain cases, the Service may be unable to pursue actions against such employers for violations of section 274A of the Act. Foreign employers who benefit from this privilege must be held fully accountable for complying with our laws by rendering themselves amenable to service of process in enforcement actions. Since all employers, domestic or foreign, who use agents to fulfill their section 274A duties remain liable for violations, this rule will ensure effective enforcement against violating employers.

One commenter suggested that the language of the proposed rule does not solve enforcement problems with respect to section 274A. Specifically, the commenter questioned how the use of an agent could enhance the Service's enforcement if the agent itself has no liability under the Act. The commenter argued that, if the agent has no liability, then that contradicts 8 CFR part 274a unless the agents are not recruiters or referrers for a fee. See section 274A of the Act. Alternatively, if there is no existing liability, the commenter added, then the Service cannot argue that it is being hampered in its ability to enforce the employer sanctions provisions of the Act.

A person or entity acting as an agent may be subject to liability under section 274A for acts or omissions committed in that capacity. The issue, however, is not whether the agent is subject to section 274A of the Act, but whether the foreign employer can be served with process in a section 274A proceeding. As this commenter correctly indicates, foreign employers were, and continue to be, responsible for complying with section 274A of the Act. This rule does not expand or alter the requirements or liability imposed by section 274A of the Act. Foreign employers with a legal presence in the United States are subject to the Service's enforcement powers. Unfortunately, foreign employers not physically present in the United States who use the privilege of directly petitioning for O and P visas may presently be able to avoid Service enforcement of section 274A because of difficulties in serving process on the employer abroad. It is necessary, therefore, to ensure that these foreign employers can be held accountable for complying with section 274A of the Act in the same manner as all other employers. This rule accomplishes that goal by using well-established agency

principles, *i.e.*, requiring the foreign employer to have an agent within the United States able to file the petition, and to accept service of process in any section 274A proceeding, on the employer's behalf.

Employers have always been able to delegate or contract their section 274A responsibilities to an agent, while still remaining fully liable for any violations. This rule does not change that. A foreign employer is free to delegate its section 274A compliance responsibilities to the agent filing the petition on its behalf, to another agent, or to carry out those responsibilities itself. The final rule requires only a limited agency for the purpose of filing the petition, and accepting service of process in section 274A proceedings, on behalf of the foreign employer. For purposes of this regulation, the term ''service of process'' is intended to include any method of commencing enforcement activity of proceedings that involves notice to the employer, including notices of inspection of Forms I–9, subpoenas, Notices of Intent to Fine, or complaints.

Another commenter stated that the sole effect of adopting the proposed rule would be to enhance the Service's ability to enforce employer sanctions provisions against a foreign employer who seeks to employ an O or P nonimmigrant alien. The purpose of the proposal with respect to foreign employers was to require those employers to comply with the same rules and regulations as all employers regardless of the nationality of their employees. Therefore, the commenter's statement is accurate.

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. The majority of foreign employers who petition for nonimmigrant workers already have established a presence in the United States or use the services of a United States agent. Therefore, the number of small entities affected by this rule would be minimal.

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.

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.

Paperwork Reduction Act

This final rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule were previously cleared by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 214

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

8 CFR Part 274a

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

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended by 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 paragraph (h)(2)(i)(F);
b. Revising paragraph (h)(6)(iii)(B); and by
c. Adding a new paragraph (h)(6)(vii), to read as follows:

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

* * * * *

(h) * * *

(2) * * *

(i) * * *

(F) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or, a person or entity authorized by the employer to act for, or in place of, the employer as it agent. A petition filed by a United States agent is subject to the following conditions;

(*1*) An agent performing the function of an employer must guarantee the wages and other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries of the petition. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(*2*) A person or company in business as an agent may file the H petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishment, venues,

or locations where the services will be performed. In questionable cases, a contract between the employers and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for an H nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

* * * * *

(6) * * *

(iii) * * *

(B) An H–2B petitioner shall be a United States employer, a United States agent, or a foreign employer filing through a United States agent. For purposes of paragraph (h) of this section, a foreign employer is any employer who is not amendable to service of process in the United States. A foreign employer may not directly petition for an H–2B nonimmigrant but must use the services of a United States agent to file a petition for an H–2B nonimmigrant. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the employer. The petitioning employer shall consider available United States workers for the temporary services or labor, and shall offer terms and conditions of employment which are consistent with the nature of the occupation, activity, and industry in the United States.

* * * * *

(vii) *Traded professional H–2B athletes.* In the case of a professional H–2B athlete who is traded from one organization or another organization, employment authorization for the player will automatically continue for a period of 30 days after the player's acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for H–2B nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete shall be deemed to be in valid H–2B status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

* * * * *

3. Section 214.2 is amended by:

a. Revising paragraph (o)(2)(i);

b. Revising paragraph (o)(2)(iv)(A);

c. Revising paragraph (o)(2)(iv)(E); and by

d. Adding a new paragraph (o)(2)(iv)(G), to read as follows:

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

* * * * *

(o) * * *

(2) *Filing of petitions*—(i) *General.* Except as provided for in paragraph (o)(2)(iv)(A) of this section, a petitioner seeking to classify an alien as an O–1 or O–2 nonimmigrant shall file a petition on Form I–129, Petition for a Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. An O–1 or O–2 petition shall be adjudicated at the appropriate Service Center, even in emergency situations. Only one beneficiary may be included on an O–1 petition. O–2 aliens must be filed for on a separate petition from the O–1 alien. An O–1 or O–2 petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (o) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. A foreign employer may not directly petition for an O nonimmigrant alien but instead must use the services of a United States agent to file a petition for an O nonimmigrant alien. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept services of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. An O alien may not petition for himself or herself.

* * * * *

(iv) *Other filing situations*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

* * * * *

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary, the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

(*1*) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.

(*2*) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues, or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

* * * * *

(G) *Traded professional O–1 athletes.* In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete shall be deemed to be in valid O–1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

* * * * *

4. Section 214.2 is amended by:

a. Revising paragraph (p)(2)(i); and by

b. Revising paragraph (p)(2)(iv), to read as follows;

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

* * * * *

(p) * * *

(2) *Filing of petitions*—(i) *General.* A P–1 petition for an athlete or entertainment group shall be filed by a United States employer, a United States sponsoring organization, a United States agent, or a foreign employer through a United States agent. For purposes of paragraph (p) of this section, a foreign employer is any employer who is not amenable to service of process in the United States. Foreign employers seeking to employ a P–1 alien may not directly petition for the alien but must use a United States agent. A United States agent petitioning on behalf of a foreign employer must be authorized to file the petition, and to accept service of process in the United States in proceedings under section 274A of the Act, on behalf of the foreign employer. A P–2 petition for an artist or entertainer in a reciprocal exchange program shall be filed by the United States labor organization which negotiated the reciprocal exchange agreement, the sponsoring organization, or a United States employer. A P–3 petition for an artist or entertainer in a culturally unique program shall be filed by the sponsoring organization or a United States employer. Essential support personnel may not be included on the petition filed for the principal alien(s). These aliens require a separate petition. Except as provided for in paragraph (p)(2)(iv)(A) of this section, the petitioner shall file a P petition on Form I–129, Petition for Nonimmigrant Worker, with the Service Center which has jurisdiction in the area where the alien will work. The petition may not be filed more than 6 months before the actual need for the alien's services. A P–1, P–2, or P–3 petition shall be adjudicated at the appropriate Service Center, even in emergency situations.

* * * * *

(iv) *Other filing situations*—(A) *Services in more than one location.* A petition which requires the alien to work in more than one location (*e.g.*, a tour) must include an itinerary with the dates and locations of the performances and must be filed with the Service Center which has jurisdiction in the area where the petitioner is located. The address which the petitioner specifies as its location on the petition shall be where the petitioner is located for purposes of this paragraph.

(B) *Servcies for more than one employer.* If the beneficiary or beneficiaries will work for more than one employer within the same time period, each employer must file a separate petition with the Service Center that has jurisdiction over the area where the alien will perform the services, unless an agent files the petition pursuant to paragraph (p)(2)(iv)(E) of this section.

(C) *Change of employer*—(*1*) *General.* If a P–1, P–2, or P–3 alien in the United States seeks to change employers or sponsors, the new employer or sponsor must file both a petition and a request to extend the alien's stay in the United States. The alien may not commence employment with the new employer or sponsor until the petition and request for extension have been approved.

(*2*) *Traded professional P–1 athletes.* In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for P–1 nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete shall be deemed to be in valid P–1 status, and employment shall continue to be authorized, until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(D) *Amended petition.* The petitioner shall file an amended petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or the beneficiary's eligibility as specified in the original approved petition. A petitioner may add additional, similar or comparable performance, engagements, or competitions during the validity period of the petition without filing an amended petition.

(E) *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an United States agent is subject to the following conditions:

(*1*) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.

(*2*) A person or company in business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues, or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

(*3*) A foreign employer who, through a United States agent, files a petition for a P nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the Act and 8 CFR part 274a.

(F) *Multiple beneficiaries.* More than one beneficiary may be included in a P petition if they are members of a group seeking classification based on the reputation of the group as an entity, or if they will provide essential support to P–1, P–2, or P–3 beneficiaries performing in the same location and in the same occupation.

(G) *Named beneficiaries.* Petitions for P classification must include the names of beneficiaries and other required information at the time of filing.

(H) *Substitution of beneficiaries.* A petitioner may request substitution of beneficiaries in approved P–1, P–2, and P–3 petitions for groups. To request substitution, the petitioner shall submit a letter requesting such substitution, along with a copy of the petitioner's approval notice, to the consular office at which the alien will apply for a visa or the Port-of-Entry where the alien will apply for admission. Essential support personnel may not be substituted at consular offices or at Ports-of-entry. In order to add additional new essential support personnel, a new I–129 petition must be filed with the appropriate Service Center.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

6. Section 274a.12 is amended by:

a. Revising paragraph (b)(9);

b. Revising paragraph (b)(13); and by

c. Revising paragraph (b)(14), to read as follows:

§ 174a.12 Clauses of aliens authorized to accept employment.

* * * * *

(b) * * *

(9) A temporary worker or trainee (H–1, H–2A, H–2B, or H–3), pursuant to § 214.2(h) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional H–2B athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 to petition for H–2B classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

* * * * *

(13) An alien having extraordinary ability in the sciences, arts, education, business, or athletics (O–1), and an accompanying alien (O–2), pursuant to § 214.2(o) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional O–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 petition for O nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease.

(14) An athlete, artist, or entertainer (P–1, P–2, or P–3), pursuant to § 214.2(p) of this chapter. An alien in this status may be employed only by the petitioner through whom the status was obtained. In the case of a professional P–1 athlete who is traded from one organization to another organization, employment authorization for the player will automatically continue for a period of 30 days after the acquisition by the new organization, within which time the new organization is expected to file a new Form I–129 for P–1 nonimmigrant classification. If a new Form I–129 is not filed within 30 days, employment authorization will cease. If a new Form I–129 is filed within 30 days, the professional athlete's employment authorization will continue until the petition is adjudicated. If the new petition is denied, employment authorization will cease;

* * * * *

Dated: February 13, 1997.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 97–9814 Filed 4–15–97; 8:45 am]

BILLING CODE 4410–10–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–38490; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Revised compliance dates; exemptive order.

SUMMARY: The Securities and Exchange Commission (''Commission'') is announcing the revised phase-in schedule for compliance with Rules 11Ac1–1(c)(5) (''ECN Amendment'' of the ''Quote Rule'') and 11Ac1–4 (''Limit Order Display Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') and is providing exemptive relief to accomodate the new schedule. In addition, the Commission is providing exemptive relief from compliance with the 1% requirement of the Quote Rule with respect to non–19c–3 securities.

DATES: *Effective:* April 9, 1997. *Compliance Dates:* The phase-in schedule with respect to 550 additional Nasdaq securities will be as follows: 50 Nasdaq securities on April 21, 1997; 50 Nasdaq securities on April 28, 1997; 50 Nasdaq securities on May 5, 1997; 50 Nasdaq securities on May 12, 1997; 50 Nasdaq securities on May 19, 1997; 50 Nasdaq securities on May 27, 1997; 50 Nasdaq securities on June 2, 1997; 50 Nasdaq securities on June 9, 1997; 50 Nasdaq securities on June 23, 1997; 50 Nasdaq securities on June 30, 1997; and 50 Nasdaq securities on July 7, 1997. Concurrently, the Commission is exempting responsible brokers and dealers, electronic communications networks, exchanges and associations from compliance with the Order Execution Rules, with respect to the Nasdaq securities that are not phased-in under such schedule, until July 28, 1997. In addition, the Commission is exempting substantial market makers and specialists from compliance with the 1% requirement of the Quote Rule with respect to non-Rule 19c–3 securities until July 28, 1997.

FOR FURTHER INFORMATION CONTACT: David Oestreicher, Special Counsel, or Gail Marshall-Smith, Special Counsel, (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1996, the Securities and Exchange Commission adopted Rule 11Ac1–4, the Limit Order Display Rule, and amendments to Rule 11Ac1–1, the Quote Rule under the Exchange Act.[1] The Limit Order Display Rule requires over-the-counter (''OTC'') market makers and exchange specialists to publicly display certain customer limit orders. The ECN Amendment of the Quote Rule requires OTC market makers and specialists to publicly disseminate the best prices that they enter into an electronic communications network (''ECN''),[2] or to comply indirectly with the ECN Amendment by using an ECN that furnishes the best market maker and specialist prices therein to the public quotation system (the ''ECN Display Alternative'').[3] In addition, the Quote Rule term ''subject security''[4] was amended, thereby requiring OTC market makers and specialists to publish quotes in any exchange-listed security if their volume in that security exceeds 1% of the aggregate volume during the most recent calendar quarter.[5]

[1] *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) (''Adopting Release'').

[2] 17 CFR 240.11Ac1–1(c)(5)(i).

[3] 17 CFR 240.11Ac1–1(c)(5)(ii).

[4] 17 CFR 240.11Ac1–1(a)(25).

[5] 17 CFR 11Ac1–1(c)(1). *See* Securities Exchange Act Release No. 38110 (January 2, 1997), 62 FR 1279 (January 9, 1997) which changed the effective date of the 1% Rule, with respect to the amended