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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 235

RIN 1651-AA60

Extension of Time Limit on Admission of Certain Mexican Nationals

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Department of Homeland Security (the Department) regulations to extend the period of time certain Mexican nationals may remain in the United States without obtaining additional immigration documentation. Currently, Mexican nationals who present a Form DSP-150, B-1/B-2 Visa and Border Crossing Card (BCC) are not required to obtain a Form I-94 if their stay in the United States is less than 72 hours and they remain within 25 miles of the border (75 miles within Arizona). This interim rule extends the time limit to allow BCC holders to remain in the United States for up to 30 days without being issued a Form I-94. The geographic limitations remain unchanged. This interim rule is intended to promote commerce along the border while ensuring that sufficient safeguards are in place to prevent illegal entry into the United States.

DATES: This interim rule is effective August 13, 2004. Written comments must be submitted on or before October 12, 2004.

ADDRESSES: Written comments must be submitted to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Submitted comments may be inspected at the Bureau of Customs and

Border Protection, 799 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Office of Field Operations, Bureau of Customs and Border Protection, (202) 344-1401.

SUPPLEMENTARY INFORMATION:

Background

Border Crossing Cards Under the Current Regulations

Pursuant to 8 CFR 212.1(c)(1)(i), a visa and passport are not required of a Mexican national who is in possession of a BCC containing a machine-readable biometric identifier and who is applying for admission as a temporary visitor for business or pleasure from contiguous territory. If the BCC traveler is applying for admission from other than contiguous territory, he or she must present a valid passport. See 8 CFR 212.1(c)(2)(i).

Under Department regulations at 8 CFR 235.1(f)(1), each arriving nonimmigrant who is admitted to the United States, upon payment of the fee prescribed in 8 CFR 103.7(b)(1), is issued a Form I-94 as evidence of the terms of admission. Section 235.1(f)(1) exempts from the Form I-94 requirement a Mexican national in possession of a BCC or in possession of a passport and valid visa who is admitted as a nonimmigrant visitor, and any Mexican national entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office in the United States ("consular applicant"). See 8 CFR 212.1(c)(1)(ii). The exemption from the Form I-94 requirement only applies if the Mexican national is admitted for a period not to exceed 72 hours to visit within 25 miles of the border (75 miles in Arizona). Currently, if a BCC traveler wishes to stay longer than three days or travel further than 25 miles from the border (75 miles in Arizona), the BCC traveler may do so only upon payment of the fee prescribed at 8 CFR 103.7(b)(1) and issuance of a Form I-94. Forms I-94 are valid for multiple entries for 6 months.

How Does This Rule Change the Current Regulations?

This interim rule extends the current time limit to allow BCC holders to remain in the United States for up to 30 days without being issued a Form I-94.

This interim rule does not alter the geographic limitation.

Why Has the Department Decided To Extend the Time Restriction?

With passage of the North American Free Trade Agreement in 1994, commerce, tourism, and trade across the United States and Mexico border into neighboring communities have increased the economic interdependence among cities located in the border area. However, under the current regulations, Mexican BCC holders can only spend up to 72 hours in the United States without obtaining additional immigration documentation. This interim rule extends the 72-hour time limit to 30 days. The extension of the 72-hour time limit will help to facilitate commerce, tourism, and trade along the southern border of the United States. If Mexican nationals are able to remain in the United States for a longer period of time, they will aid the economic development of the southern border states.

In addition, this change will result in greater parity between the treatment of Mexican and Canadian nationals. With few exceptions, Canadian nationals may be admitted to the United States for up to six months without obtaining an additional travel document.

Because Mexican BCC holders can already obtain a Form I-94 to remain in the United States for an additional period of time, this interim rule promotes administrative efficiency by extending the time limit from 72 hours to 30 days without requiring additional paperwork.

Border Protection and National Security

Pursuant to 8 U.S.C. 1101(a)(6), each BCC must include a biometric identifier (such as the fingerprints or digital photograph of the alien) that is machine readable. Prior to issuing a BCC to a Mexican national, the Department of State conducts biographic and biometric checks on the individual (including an interview), and the fingerprints and photograph of the Mexican national are then embedded into the machine-readable BCC. The Mexican national must also provide information regarding residence, employment, and the reason for frequent border crossing. At time of entry into the United States, a holder of a BCC is inspected to determine that he or she is the rightful bearer of the

document when crossing through a U.S. port-of-entry.

The Department will monitor and evaluate any changes in the patterns of violations of terms of admission that may occur. In addition, the Department will monitor data on apprehensions of those Mexican BCC holders who do not have an approved Form I-94 and who violate their terms of admission by traveling beyond the 25 mile limit (75 miles in Arizona) or who remain in the United States for more than the 30-day limit set by this rule.

Does This Rule Extend the Time Limitation for Other Mexican Nationals Who Are Not Required To Obtain a Form I-94?

No. The 72-hour time limit for Mexican nationals entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office in the United States under 8 CFR 212.1(c)(1)(ii) remains unchanged. The 72-hour time limit for Mexican nationals in possession of a passport and valid visa who are admitted as nonimmigrant visitors without obtaining a Form I-94 under 8 CFR 235.1(f)(1) also remains unchanged.

Good Cause Exception

Implementation of this interim rule without prior public notice and the opportunity for comment is warranted under the exceptions found under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b) and (d), both for "good cause" and because this interim rule merely relieves prior existing restrictions. This interim rule will significantly reduce administrative burdens and allow critical border security resources to be focused on addressing security concerns rather than on processing paperwork.

Under the current system, if a BCC holder wishes to stay in the United States longer than three days, he or she may do so only upon issuance of a Form I-94 and paying the associated fees. This rule has resulted in many BCC travelers crossing back and forth over the border for the sole purpose of avoiding staying longer than 3 consecutive days. Other BCC travelers who frequently conduct cross-border commerce which requires stays longer than 72 hours are required to fill out identical Forms I-94 every 6 months. The result is that Department personnel at the border are confronted with longer lines and duplicative paperwork.

In light of the heightened security environment, the Department has determined that this interim rule is needed to ensure that available

resources are focused on security enhancing activities to the greatest extent possible. Moreover, the Department anticipates that that security could be enhanced because the increase from 72 hours to 30 days may encourage more people to obtain BCCs that contain machine-readable biometric identifiers. Therefore, delay of the effective date of this interim rule to allow for prior notice and comment would be impracticable and contrary to the public interest.

In addition, DHS finds that good cause exists under the Congressional Review Act, 5 U.S.C. 808, to implement this interim rule immediately upon publication in the **Federal Register**.

Comments

The Department will consider any written comments timely submitted to the Department in preparing a final rule, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and CBP regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572-8768.

The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.* small businesses, small organizations, and small governmental jurisdictions). Section 603(a) of the RFA requires that agencies prepare and make available for public comment an initial regulatory flexibility analysis whenever the agency is required by law to publish a general notice of proposed rulemaking. Because good cause exists under 5 U.S.C. 553(b) for issuing this regulation as an interim rule, no regulatory flexibility analysis is required under the RFA. Accordingly, the Department has not prepared an initial regulatory flexibility analysis for this rule.

Unfunded Mandates Reform Act of 1995

This interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This interim rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. However, DHS anticipates that there will be a reduction in the number of I-94s issued as a result of this interim rule, which will reduce the burden hours associated with the I-94 collection by an estimated 5,313 hours. The OMB control number is 1651-0111

Executive Order 12866, Regulatory Planning and Review

The Department has examined the economic implications of this interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The Department concludes that this interim final rule is not an economically significant regulatory action under section 3(f)(1) of the Executive Order, since it does not have an annual effect on the economy of \$100 million or more. The Department also concludes, however, that this interim final rule raises novel legal and policy issues under section 3(f)(4), and is therefore a significant regulatory action under the Executive Order.

Costs. DHS expects the costs of this rulemaking to be negligible. Because Mexican BCC holders already can obtain a Form I-94 to remain in the United

States for an additional period of time, this interim rule simply promotes administrative efficiency by expanding the time limit from 72 hours to 30 days without requiring additional paperwork.

Benefits. This rule will affect those BCC holders issued I-94s for the purpose of staying in the country, within 25 miles of the border, for longer than 3 days but less than 30 days. DHS assumes that approximately 1%, or approximately 21,250, of the total I-94s are currently issued to BCC holders for this purpose and therefore those I-94s would no longer be required to be issued under this interim rule. DHS acknowledges that this estimate is uncertain and requests comment.

BCC holders will benefit from no longer being required to obtain an I-94 in order to remain along the border for an extended period of time. These individuals will no longer be required to request and receive an I-94 which is done in secondary examination at the land border ports. The process requires an interview, the payment of a \$6.00 fee, and often requires the BCC holder to produce documentation concerning their intentions in the United States. The process takes an average of approximately 15 minutes.

In addition to the previously mentioned BCC holders who will no longer be required to obtain I-94's, DHS estimates that between 200,000 and 400,000 BCC holders will utilize the expanded time period to remain in the United States for longer than the current 72 hours limit. Additionally, this interim rule will likely motivate more Mexican nationals without BCC's to obtain BCCs in order to take advantage of the extended time-limit. These factors will facilitate commerce along the U.S. border and increase the demand by BCC holders for goods and services provided by border communities in the United States. As more Mexican nationals take advantage of the extended time-limit and remain in the United States for a longer period of time, the border communities in the United States will also benefit from a greater demand for goods and services provided by those communities.

Executive Order 12988, Civil Justice Reform

This interim rule meets the applicable standards set forth in Executive Order 12988. Among other things, the regulation does not preempt, repeal or modify any Federal statute; provides clear standards; has no retroactive effects; defines key terms; and is drafted clearly.

Executive Order 13132, Federalism

This interim rule will not have federalism implications because the regulations will not have financial or other effects on States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government.

Drafting Information

The principal author of this document was Christopher W. Pappas, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects in 8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ Part 235 of title 8 of the Code of Federal Regulations (8 CFR part 235) is amended as follows:

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 1. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103; 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32.

■ 2. Section 235.1 is amended by:
 ■ a. Revising paragraph (f)(1)(iii); and
 ■ b. Revising paragraph (f)(1)(v), to read as follows:

§ 235.1 Scope of Examination.

* * * * *

(f) * * *

(1) * * *

(iii) Except as provided in paragraph (f)(1)(v) of this section, any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1)(i) of this chapter and is admitted for a period not to exceed 30 days to visit within 25 miles of the border; or

(B) In possession of a valid visa and passport or exempt from a visa and passport pursuant to § 212.1(c)(1)(ii) of this chapter; and is admitted for a period not to exceed 72 hours to visit within 25 miles of the border;

* * * * *

(v) Any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1)(i) of this

chapter and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 30 days; or

(B) In possession of a valid visa and passport or exempt from a visa and passport pursuant to § 212.1(c)(1)(ii) of this chapter; and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 72 hours.

* * * * *

Dated: August 10, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–18651 Filed 8–12–04; 8:45 am]

BILLING CODE 4410–10–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH50

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International, Inc., NAC–MPC cask system listing within the “List of Approved Spent Fuel Storage Casks” to include Amendment No. 4 to Certificate of Compliance (CoC) Number 1025. Amendment No. 4 will modify the present cask system design to incorporate vacuum drying enhancements under a general license. Specifically, the amendment will increase vacuum drying time limits, delete canister removal from concrete cask requirements, revise surface contamination removal time limits, and revise allowable contents fuel assembly limits.

DATES: The final rule is effective October 27, 2004, unless significant adverse comments are received by September 13, 2004. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.