Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581–0128; and § 70.77(a)(4)—No. 0581–0127.

A 30-day comment period is provided for interested persons to comment on this proposed rule. Given the current financial status of this program, this comment period is deemed appropriate in order to implement, as early as possible in FY 2008, any fee changes adopted as a result of this rulemaking action.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that Title 7, Code of Federal Regulations, parts 56 and 70 be amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 56.46 [Amended]

2. Section 56.46 is amended by:

A. Removing in paragraph (b), ''$69.68'' and adding ''$74.08, beginning January 27, 2008, and $77.28 on or after January 25, 2009,'' in its place.

B. Removing in paragraph (c), ''$80.12 per hour'' and adding ''$86.68 per hour, beginning January 27, 2008 and $93.24 per hour on or after January 25, 2009,'' in its place.

C. Removing in paragraph (d), ''$82.16'' and adding ''$87.56 beginning January 27, 2008, and $89.20 on or after January 25, 2009,'' in its place.

D. Removing in paragraph (e), ''$102.84 per hour'' and adding ''$112.00 per hour beginning January 27, 2008 and $116.08 per hour on or after January 25, 2009,'' in its place.

3. Section 56.52 is amended by:

A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and

B. Removing in paragraph (a)(4), ''$0.053'' and adding ''$0.055 beginning January 27, 2008, and $0.058 on or after January 25, 2009,'' in its place, and removing ''$3,075'' and adding ''$3,150 beginning January 27, 2008, and $3,225 on or after January 25, 2009,'' in its place.

§ 56.52 Charges for continuous grading performed on a resident basis.

* * * * *

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 56.30. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 56.46 (a) through (c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. * * *

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

§ 70.71 [Amended]

5. Section 70.71 is amended by:

A. Removing in paragraph (b) ''$69.68'' and adding ''$74.08 beginning January 27, 2008, and $77.28 on or after January 25, 2009,'' in its place.

B. Removing in paragraph (c) ''$80.12 per hour'' and adding ''$86.68 per hour beginning January 27, 2008, and $93.24 per hour on or after January 25, 2009,'' in its place.

C. Removing in paragraph (d), ''$82.16'' and adding ''$87.56 beginning January 27, 2008, and $89.20 on or after January 25, 2009,'' in its place.

D. Removing in paragraph (e), ''$102.84 per hour'' and adding ''$112.00 per hour beginning January 27, 2008, and $116.08 per hour on or after January 25, 2009,'' in its place.

6. Section 70.77 is amended by:

A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and

B. Removing in paragraph (a)(4), ''$0.00043'' and adding ''$0.00045 beginning January 27, 2008 and $0.00047 on or after January 25, 2009,'' in its place, and removing ''$3,075'' and adding ''$3,150 beginning January 27, 2008, and $3,225 on or after January 25, 2009,'' in its place.

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 70.34. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 70.71(a) through (c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. * * *

* * * * *

Dated: October 18, 2007

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–5571 Filed 11–2–07; 11:54 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

8 CFR Parts 100 and 212

[USCBP–2007–0084]

RIN 1651–AA71

Issuance of a Visa and Authorization for Temporary Admission Into the United States for Certain Nonimmigrant Aliens Infected With HIV

AGENCY: Customs and Border Protection; DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security (DHS) proposes to amend the regulations pertaining to admission of certain nonimmigrants to the United States. This rule proposes to authorize issuance of certain short-term nonimmigrant visas and temporary admission for aliens who are inadmissible solely due to their infection with the human immunodeficiency virus (HIV). The proposed rule would provide, on a limited and categorical basis, a more streamlined process to authorize these nonimmigrant aliens to enter the United

States as visitors (for business or pleasure) for up to thirty days, subject to certain conditions to ensure the control and departure of such aliens. Nonimmigrant aliens who do not meet the specific circumstances of these clarifying instructions or who do not wish to consent to the conditions that would be imposed by this proposed rule may still elect a case-by-case determination of their eligibility for a waiver of the nonimmigrant visa requirements for aliens afflicted with HIV. The proposed rule also updates regulatory language to conform to a statutory change brought about by the Immigration Act of 1990.

DATES: Comments must be received on or before December 6, 2007.

ADDRESSES: You may submit comments, identified by docket number, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Border Security Regulations Branch, Customs and Border Protection, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Michael D. Olszak, Customs and Border Protection, Office of Field Operations, (703) 261–8424.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Submitted comments may also be inspected on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., 5th Floor, Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

II. Intent of the Proposed Rule

This proposed rule, initiated at the direction of the President (*see* White House, *Fact Sheet: World AIDS Day 2006,* December 1, 2006) through the Secretary of State (*see* Section VIII), would establish a more streamlined process for issuance of a nonimmigrant visa and temporary admission to the United States for aliens who are inadmissible to the United States due to HIV infection. DHS is proposing to allow these aliens to enter the United States as visitors (for business or pleasure) for a temporary period not to exceed thirty days, without being required to seek such admission under the more complex (individualized, case-by-case) process provided under the current DHS policy. The proposed rule would provide an additional avenue for temporary admission of these aliens while minimizing costs to the government and the risk to public health. These goals are accomplished by setting requirements and conditions that govern an alien's admission, affect certain aspects of his or her activities while in the United States (*e.g.*, using proper medication when medically appropriate, avoiding behavior that can transmit the infection), and ensure his or her departure after a short stay. Nonimmigrant aliens who do not meet the specific circumstances of these clarifying instructions or who do not wish to consent to the conditions imposed by this rule may still elect a case-by-case determination of their eligibility for a waiver of the nonimmigrant visa requirements for aliens afflicted with HIV.

III. Applicable Law and Regulations

An alien infected with HIV is inadmissible to the United States under section 212(a)(1)(A)(i) of the Immigration and Nationality Act of 1952 (INA), as amended, 8 U.S.C. 1182(a)(1)(A)(i). An inadmissible alien may be temporarily admitted to the United States under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A).

DHS may authorize temporary admission to the United States under 8 CFR 212.4(a) or (b). The categorical authorization process proposed in this rule would be added to 8 CFR 212.4 in new paragraph (f).

IV. HIV Infection as a Ground of Inadmissibility

The INA has provided since 1952 that aliens ''who are afflicted with any dangerous contagious disease'' are ineligible to receive a visa and are to be excluded from admission into the United States. Aliens infected with HIV have been inadmissible to the United States since 1987, when Congress directed the Department of Health and Human Services (HHS) to add HIV infection to its list of dangerous contagious diseases. Public Law 100–71, section 518, 101 Stat. 475 (July 11, 1987); 52 FR 32543 (Aug. 28, 1987). Accordingly, aliens infected with HIV have been ineligible to receive visas and have been excludable from admission to the United States because of infection with a dangerous contagious disease. *See* INA section 212(a)(6), 8 U.S.C. 1182(a)(6) (1988).

In 1990, Congress amended the INA by revising the classes of excludable aliens to provide that an alien ''who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance'' is excludable from the United States. Immigration Act of 1990, Public Law 101–649, section 601, 104 Stat. 4978 (Jan. 23, 1990); INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i), (effective June 1, 1991). HHS subsequently published a proposed rule that would have removed from the list all sexually transmitted diseases (including HIV). 56 FR 2484 (Jan. 23, 1991). Based on comments received and reconsideration of the issues, HHS published an interim rule retaining all sexually transmitted diseases on the list and committing its initial proposal to further study. 56 FR 25000 (May 31, 1991). While HHS again considered a regulatory amendment to remove HIV from the list, Congress amended INA section 212(a)(1) to specify that ''infection with the etiologic agent for acquired immune deficiency syndrome'' is a communicable disease of public health significance, thereby making explicit in the INA that aliens with HIV are ineligible for admission into the United States. National Institutes of Health Revitalization Act of 1993, Public Law 103–43, section 2007, 107 Stat. 122, (June 10, 1993).

The INA, as presently worded, makes inadmissible to the United States any alien ''who is determined (in accordance with regulations prescribed by the Secretary of Health and Human Services) to have a communicable disease of public health significance, which shall include infection with the

etiologic agent for acquired immune deficiency syndrome * * *.'' INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i). Therefore, any alien infected with HIV is inadmissible to the United States.

V. Authority To Grant Temporary Admission

The Secretary of Homeland Security has broad discretionary authority, subject to certain exceptions, to approve the issuance of a nonimmigrant visa and the temporary admission into the United States of an alien inadmissible due to many of the existing grounds of inadmissibility, including HIV infection. See INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). Pursuant to INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), the Secretary of Homeland Security may not authorize issuance of a nonimmigrant visa or admission into the United States of an otherwise inadmissible alien if the alien's inadmissibility is based on certain security or terrorism related grounds, specifically INA sections 212(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), (3)(E)(i), and (3)(E)(ii), 8 U.S.C. 1182(a)(3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), (3)(E)(i), and (3)(E)(ii). The Secretary is not prohibited from authorizing the issuance of a nonimmigrant visa or admission if the alien's inadmissibility is based on HIV infection under INA section 212(a)(1)(A), 8 U.S.C. 1182(a)(1)(A) (health-related grounds).

The Secretary of Homeland Security may authorize issuance of a nonimmigrant visa and temporary admission to the United States (*see* INA section 212(d)(3)(A)(i), 8 U.S.C. 1182(d)(3)(A)(i), and 8 CFR 212.4(a)) or authorize temporary admission only (*see* INA section 212(d)(3)(A)(ii), 8 U.S.C. 1182(d)(3)(A)(ii), and 8 CFR 212.4(b)). Nonimmigrant aliens may seek a nonimmigrant visa and temporary admission to the United States from a consular officer or the Secretary of State. An alien who is applying for a nonimmigrant visa and is known, or believed by, the consular officer to be ineligible for a visa, may, after approval by the Secretary of Homeland Security of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite his inadmissibility, be granted such a visa and may be admitted into the United States temporarily in the discretion of the Secretary of Homeland Security. [0] An applicant who has already been issued a nonimmigrant visa (or who has been granted a waiver of the nonimmigrant visa requirement) may apply to DHS for approval of temporary admission; such approval is granted at the discretion of the Secretary of Homeland Security.

When Congress first enacted this authority to authorize admission for nonimmigrants despite inadmissibility in 1952, the Committee on the Judiciary stated that ''cases will continue to arise where there are extenuating circumstances which justify the temporary admission of otherwise inadmissible aliens, both for humane reasons and for reasons of public interest.'' S. Rep. No. 1137, 82d Cong., 2d Sess. 12 (1952). This statement of Congressional understanding and purpose has continued validity today and supports the proposed streamlined process for authorizing, on a categorical basis, issuance of a nonimmigrant visa and temporary admission to the United States for HIV-positive aliens seeking admission to the United States under B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant status who satisfy the conditions discussed below.

The Secretary may exercise his discretion by rulemaking rather than on a case-by-case basis. As the Supreme Court noted, ''[e]ven if a statutory scheme requires individualized determinations * * *, the decisionmaker has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority.'' *Lopez* v. *Davis*, 531 U.S. 230, 243–44 (2001) (*quoting American Hosp. Ass'n* v. *NLRB*, 499 U.S. 606, 612 (1999)) (emphasis added). *See also id.* at 244 (noting that purely case-by-case decision making ''could invite favoritism, disunity, and inconsistency''). Accordingly, ''it is a well-established principle of administrative law that an agency to whom Congress grants discretion may elect between rulemaking and ad hoc adjudication to carry out its mandate.'' *Yang* v. *INS*, 79 F.3d 932, 936 (9th Cir.), *cert. denied*, 519 U.S. 824 (1996).

Absent an indication of contrary Congressional intent in the INA, the Secretary of Homeland Security may determine to exercise discretion under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), on a categorical basis, to authorize issuance of a nonimmigrant visa to, and admission of, otherwise inadmissible aliens, including aliens inadmissible due to HIV infection. Unlike other provisions governing the Secretary of Homeland Security's authority to waive grounds of inadmissibility, the language of INA section 212(d)(3)(A) does not clearly limit the Secretary's exercise of discretion under that provision to case-by-case determinations. The reference in the last sentence of section 212(d)(3)(A) to aliens, in the plural, provides contextual support for the Secretary exercising this discretion on a categorical basis. In contrast, an explicit waiver provision under the INA specifically requires the exercise of discretion ''in individual cases.'' INA section 212(d)(4), 8 U.S.C. 1182(d)(4) (permitting waiver of ''[e]ither or both of the requirements'' of INA section 212(a)(7)(B)(i), 8 U.S.C. 1182(a)(7)(B)(i)). The lack of comparable language limiting the Secretary's authority under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), indicates that Congress did not intend to prohibit the Secretary from exercising his authority on a categorical basis under this section.

DHS has previously granted blanket authorization under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), for specific, limited purposes, such as to permit HIV-positive aliens to attend particular events, including the Salt Lake City Olympic games, the United Nations General Assembly Special Session on HIV/AIDS in 2001, various Universal Fellowship of Metropolitan Community Churches events, and the 2006 Gay Games in Chicago. The legislative history of INA section 212(d)(3), 8 U.S.C. 1182(d)(3), suggests that DHS should apply the provision where ''there are extenuating circumstances which justify the temporary admission of otherwise admissible aliens, both for humane reasons and for reasons of public interest.'' S. Rep. No. 1137, *supra*, at 12. Authorization on a categorical basis, as proposed by this rule, would require approval only by the consular officer or the Secretary of State, provided that all requirements and conditions are satisfied; authorization under more expansive terms and conditions will still require individualized, case-by-case consideration by DHS.

VI. Current DHS Policy

DHS policy currently allows otherwise inadmissible aliens, pursuant to INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), to apply for admission on a case-by-case basis by employing a balancing test involving several factors (regardless of whether the authorization is applied for before a consular officer, the Secretary of State or directly to DHS). Consideration is given to the risk of harm to society if the applicant is admitted into the United States, the seriousness of any immigration law or criminal law violations (the basis for inadmissibility), and the nature of the reason for travel. *See Matter of Hranka*, 16 I&N Dec. 491 (BIA 1978). These are

general criteria applicable to any application for authorization under INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). This proposed rule would incorporate current policy further developed in a series of instructions from the former Immigration and Naturalization Service (INS) and the Department of Justice.

In cases involving HIV-positive aliens, DHS policy requires that consideration be given to whether: (1) The danger to the public health is minimal, (2) the possibility of the transmission of the infection is minimal, and (3) any cost will be incurred by any level of government agency in the United States (local, state, or federal) without the prior consent of that agency. Consular officers must find (based on evidence provided by the applicant that satisfies reviewing officials) that the former two factors are no more than minimal and that there will not be a cost to an agency absent prior consent.

Other specific instructions clarify that nonimmigrant visas may be granted and temporary admission may be provided to short-term nonimmigrant individuals with HIV who establish that their entry into the United States, for up to thirty days, would confer a public benefit that outweighs any risk to the public health. A sufficient public benefit can include attendance at academic or health-related activities (including seeking medical treatment), conducting temporary business in the United States, or visiting close family members in the United States. Currently, applicants whose situations do not fit the specific circumstances of these clarifying instructions, such as those entering for periods of more than thirty days or for tourism purposes alone, must apply for case-by-case consideration and authorization. These applicants must satisfy the more general criteria of the general policy (risk of harm to society, seriousness of immigration/criminal violations, reason for travel), as these criteria apply to all situations. Determination of the risk of harm to society includes whether the danger to the public health and the possibility of transmission of the infection are minimal and whether there will be any cost incurred by any level of government agency in the United States.

In addition, supplemental instructions provide that DHS may grant authorization for admission whenever the Secretary of HHS advises that attendance at a scientific, professional, or academic conference in the United States is in the public interest, and the alien establishes that his or her visit to the United States is for the purpose of seeking admission to such a designated conference and will not exceed ten days.

Under the current policy, these criteria are applied on a case-by-case basis to applications (or a consular officer's or the Secretary of State's recommendation) for authorization for admission. In practice, DHS, the Department of State (DOS), and the Department of Justice (DOJ)(through the former Immigration and Naturalization Service (INS)) have denied very few applications (or recommendations) for authorization for admission when the specific criteria for short stays of up to thirty days were satisfied or when the Secretary of HHS initiated the designated-event waiver for visits of up to ten days. However, some applications have been denied when the applicant failed to meet all relevant criteria, e.g., when an applicant refused to provide adequate assurance that he or she would comply with medical advice against engaging in behavior that would risk transmitting the infection to others.

In addition, under the general criteria, as applied in practice to HIV-positive applicants for admission, these applicants must establish that they are aware of their HIV positive condition, have received (and are following) adequate medical counseling, are currently under medical care, and are traveling to the United States with, or will have access to, a supply of drugs, as medically appropriate, that is adequate to cover the length of the anticipated stay. The applicant also must be able to demonstrate that he or she has adequate insurance, which is accepted in the United States, or other financial means available to cover anticipated medical expenses.

VII. Experience Gained

During the twenty years since Congress directed HHS to add infection with HIV to the list of dangerous contagious diseases, thus adding infection with HIV as a ground of inadmissibility under the INA, the Executive Branch has gained considerable experience in deciding when to allow the admission of nonimmigrant aliens with HIV infection. The history of this period has shown that DHS and the Department of Justice have consistently approved DOS consular recommendations that nonimmigrant visas be granted to aliens with HIV infection when the applicant: Sought to travel to the United States for thirty days or less for a lawful purpose consistent with the business visitor or tourist nonimmigrant classification; had been diagnosed with HIV infection; had received medical counseling; was in compliance with medically-advised behavior and medically-prescribed treatment protocols; was able to demonstrate availability once in the United States of an adequate supply of antiretroviral medications if medically appropriate; and was not likely to require assistance that would result in any cost incurred by any level of government agency in the United States without the prior consent of that agency.

HHS and its components also have gained considerable expertise regarding the threat to the public posed by HIV-positive individuals. HHS has expressed the view that present DHS policy has provided adequate protection to the public health of the United States and HIV-positive aliens who are aware of their medical conditions, receive appropriate medical counseling, and are in compliance with medically appropriate treatment protocols and medically advised behavior have presented little risk to the public health in the United States.

VIII. Presidential Directive Predicating This Rulemaking

On December 1, 2006, President Bush directed the Secretary of State to request that the Secretary of Homeland Security initiate a rulemaking that would propose a categorical waiver of inadmissibility for aliens who are HIV-positive and who seek to enter the United States on short-term visas. In furtherance of the President's directive, Secretary of State Rice, by letter dated June 6, 2007, recommended that the Secretary of Homeland Security grant a limited waiver of inadmissibility under the INA to persons who are currently inadmissible to the United States solely due to their HIV-positive condition. Secretary Rice specifically recommended a waiver for persons who seek short-term B–1 and B–2 visas and do not have active, contagious, symptomatic infections associated with HIV or AIDS.

DHS shares the President's and Secretary Rice's firm commitment to enable, on a categorical basis, the admission into the United States for short visits of HIV-positive aliens, who do not exhibit symptoms indicative of an active AIDS-related condition that is contagious, through a permanent, streamlined process that employs standardized criteria as opposed to the current case-by-case, individualized process.

IX. The Proposed Rule

DHS is proposing, on a categorical basis under new provisions of 8 CFR 212.4(f), to authorize issuance of visas and admission of nonimmigrant aliens who are currently inadmissible to the

United States solely due to their HIV-positive status. DHS is proposing this categorical authorization to allow application for admission to the United States under B–1 (business visitor) or B–2 (visitor for pleasure) status for a period not to exceed thirty days if the applicant establishes specific facts and meets certain conditions.

A. Safeguards

This proposed rule does not conflict with Congress' restriction regarding HIV as a communicable disease of public health significance and is consistent with Congress' humanitarian purpose in enacting INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). The proposed regulations demonstrate DHS's recognition of the seriousness of HIV infection and, at the same time, comply with the statute by prescribing ''conditions * * * to control and regulate the admission and return of inadmissible aliens applying for temporary admission.'' INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A). Thus, under the proposed rule, an HIV-positive applicant for a nonimmigrant visitor visa would be required to satisfy criteria designed to ensure that the risk to the public health is minimized to the greatest reasonable extent and that no cost will be imposed on any level of government in the United States (local, state, federal) without prior consent of a government agency. The short duration of admission under the proposed regulations, and the various conditions designed to control the alien's temporary stay and ensure his or her return, minimize the risk of disease transmission in the United States, as well as the risk of increased burden on our public health resources. HIV-positive aliens not meeting the criteria under the proposed regulations would still be able to seek individualized (case-by-case) consideration for admission pursuant to INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), under current DHS policy.

B. Specific Conditions of Admission, Control, and Return

The proposed rule includes specific requirements (based in part on criteria discussed above), which are set forth here by type.

(1) *Medical etiology.* A visa applicant, who has tested positive for HIV, must show a controlled state of HIV infection such that there is no anticipated need for additional medical care during the applicant's visit to the United States. A controlled state of HIV infection means that the applicant does not exhibit, at the time of application, symptoms indicative of an active AIDS-related condition that is contagious or that requires urgent treatment.

In cases involving HIV-positive aliens, DHS policy requires that consideration be given to whether: (1) The danger to the public health is minimal, (2) the possibility of the transmission of the infection is minimal, and (3) any cost will be incurred by any level of government agency in the United States (local, state, or federal) without the prior consent of that agency. Consular officers must find (based on evidence provided by the applicant that satisfies reviewing officials) that the former two factors are no more than minimal and that there will not be a cost to an agency absent prior consent.

(2) *Understanding.* The applicant must establish that he or she is aware of, understands, and has been counseled on the nature and severity of his or her medical condition. As part of this process, the applicant also must establish that he or she has been counseled on and is aware of the communicability of his or her medical condition, including the fact that the applicant must not donate blood or blood components.

(3) *Limited potential health danger.* The applicant must establish that his or her admission to the United States for a short duration poses minimal risk of danger to the public health in the United States. The applicant must establish that his or her admission poses a minimal risk of danger of transmission of the infection to any other person in the United States through demonstration of knowledge of the routes of transmission of HIV, including sexual contact, sharing needles, and blood transfusions.

(4) *Continuity of health care.* As with existing policy, admission is contingent upon assurances that the applicant will not impose costs on the health care system of the United States. Accordingly, the applicant must establish that he or she has, or will have access to, an adequate supply of antiretroviral drugs if medically appropriate for the anticipated stay in the United States. The Food and Drug Administration (FDA) has developed enforcement policies under which it may exercise its enforcement discretion not to interdict the importation of unapproved medications for personal use in such circumstances. See *http://www.fda.gov/ora/compliance_ref/rpm/chapter9/ch9-2.html*.

Moreover, the applicant must establish that he or she possesses sufficient assets or insurance, that is accepted in the United States, that would cover any medical care that the applicant might require in the event of illness at any time while in the United States. These two factors lead to a third factor: The applicant must establish that his or her admission will not create any cost to the United States, or a state or local government, or any agency thereof, without the prior written consent of that agency.

(5) *Temporary Admission.* The proposed categorical treatment, like the individualized treatment under current DHS policy, is designed only for a temporary admission. Accordingly, the applicant must establish that he or she is seeking admission solely for activities that are consistent with the B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant classifications. Travel for tourism only is an activity consistent with this categorical admission. The applicant must understand that because of his or her inadmissibility, he or she is not eligible to seek admission under the Visa Waiver Program. INA section 217, 8 U.S.C. 1187. Under current statutes and regulations, all HIV-positive applicants for admission from Visa Waiver Program countries must apply for and be granted a visa to be admitted to the United States. The applicant must also understand and agree that no single admission to the United States will be for more than thirty days. Because the proposed regulations apply to a specific ground of inadmissibility, the applicant must establish that no other ground of inadmissibility applies. Authorization for admission may not be granted if any other ground of inadmissibility exists. If the applicant requires an additional waiver of inadmissibility, the applicant must use the process described in either 8 CFR 212.4(a) or (b), as applicable.

(6) *Enforcement of the Authorization Agreement.* As this authorization for admission is being granted for a narrow, limited purpose, DHS believes that the applicant must agree to certain conditions. DHS believes that the applicant must understand and agree in writing, once the Department of State issues a waiver form, that he or she, for the purpose of admission pursuant to this waiver, is waiving the opportunity to apply for any extension of nonimmigrant stay, a change of nonimmigrant status, or adjustment of status to that of permanent resident,[1] whether filed affirmatively with DHS or defensively in response to an action for removal. DHS alternatively solicits comments on whether consular officers may orally advise or provide written notification to the applicant that he or

[1] Nothing within this proposed rule would prohibit an alien from applying for an immigrant visa before a consular officer abroad.

she has waived the opportunity to apply for any extension of nonimmigrant stay, a change of nonimmigrant status, or adjustment of status to that of permanent resident in lieu of the applicant executing a written waiver of these opportunities. If the applicant chooses not to waive the opportunity to apply for any extension of nonimmigrant stay, a change of nonimmigrant status, or adjustment of status to that of permanent resident, the applicant is not eligible for the streamlined process delineated in this proposed rule. However, the applicant may still elect a case-by-case determination of his or her eligibility for a waiver of the nonimmigrant visa requirements for aliens afflicted with HIV.

Furthermore, under the proposed rule, an applicant must understand and agree that any failure to comply with conditions of admission will make him/her permanently ineligible for authorization for admission under the proposed regulations.

(7) *Duration.* The nonimmigrant visa issued to the applicant will be valid for twelve months or less and may be used for a maximum of two applications for admission. The authorized period of stay will be for thirty calendar days calculated from the initial admission under this visa. The holder of the nonimmigrant visa will be permitted to apply for admission at a United States port of entry at any time during the validity of the visa if he or she is otherwise admissible in B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant status.

C. Benefit of the Proposed Regulations

An alien inadmissible to the United States due to HIV infection under INA section 212(a)(1)(A)(i), 8 U.S.C. 1182(a)(1)(A)(i) (or any other ground of inadmissibility under section 212(a), 8 U.S.C. 1182(a), except (3)(A)(i)(I), (3)(A)(ii), (3)(A)(iii), (3)(C), (3)(E)(i), or (3)(E)(ii)), has been, and is currently, able to apply for admission pursuant to INA section 212(d)(3)(A), 8 U.S.C. 1182(d)(3)(A), under either 8 CFR 212.4(a) or (b). Although authorization for admission pursuant to 8 CFR 212.4(a) is sought from a consular officer or the Secretary of State, it is an application for issuance of a nonimmigrant visa and temporary admission that requires the approval of the Secretary of Homeland Security. Authorization for admission pursuant to 8 CFR 212.4(b) is applied for, with payment of a fee, directly to DHS (on Form I–192) by an alien who already has a nonimmigrant visa, or for whom the nonimmigrant visa requirement is waived, and is approved at the discretion of the Secretary of Homeland Security.

These existing processes require action by DHS upon submission of eligibility information (the same kind of information that is required under the proposed regulations) that must be reviewed, evaluated, and ruled upon on a case-by-case (or individualized) basis. In contrast, the proposed regulation would authorize a consular officer or the Secretary of State to categorically grant a nonimmigrant visa and authorize the applicant to apply for admission into the United States, notwithstanding an applicant's inadmissibility due to HIV infection, if the applicant meets applicable requirements and conditions, without the additional step of seeking review and decision by DHS prior to granting of the nonimmigrant visa. Using a categorical authorization would provide a more streamlined and quicker process for obtaining temporary admission under INA section 212(d)(3)(A)(i), 8 U.S.C. 1182(d)(3)(A)(i).

X. Other Proposed Amendment

DHS also is proposing to amend 8 CFR 212.4(e) to reflect changes in the grounds of inadmissibility brought about by the Immigration Act of 1990. Section 212.4(e) authorizes the temporary admission of a nonimmigrant visitor notwithstanding inadmissibility under INA section 212(a)(1), if the alien is accompanied by a member of his or her family or a guardian. Prior to June 1, 1991, INA section 212(a)(1) made excludable from the United States aliens who were ''mentally retarded.'' Effective June 1, 1991, the Immigration Act of 1990 reorganized all medical grounds of excludability into a new general provision, INA section 212(a)(1). The references in 8 CFR 212.4(e) to INA section 212(a)(1) were never updated. There is no present ground of inadmissibility for aliens who are ''mentally retarded.'' However, INA sections 212(a)(1)(A)(iii)(I) and 212(a)(1)(A)(iii)(II), 8 U.S.C. 1182(a)(1)(A)(iii)(I) and 8 U.S.C. 1182(a)(1)(A)(iii)(II), make inadmissible aliens who have, or have had, a mental disorder with associated threatening or harmful behavior. DHS is proposing to amend 8 CFR 212.4(e) by replacing the references to INA section 212(a)(1) with references to the current INA sections relating to the grounds of inadmissibility for aliens with mental disorders, INA sections 212(a)(1)(A)(iii)(I) and 212(a)(1)(A)(iii)(II). As neither the current nor the proposed regulations authorize the granting of a nonimmigrant visa, only aliens who already have facially valid nonimmigrant visas or for whom the nonimmigrant visa requirement is waived would be able to benefit from the proposed amendment to 8 CFR 212.4(e).

XI. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act.

DHS has reviewed the proposed rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Thus, the RFA does not apply.

B. Unfunded Mandates Reform Act of 1995

The proposed 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.

C. Executive Order 12866

This rule has been determined to be a significant regulatory action under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review. There are no new costs to the public associated with this rule. This rule does not create any new or additional requirements.

D. Executive Order 13132

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988

The proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all

Departments are required to submit to OMB, for review and approval, any reporting and recordkeeping requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 100

Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas.

Proposed Amendments to the Regulations

For the reasons stated in the preamble, parts 100 and 212 of chapter I of title 8 of the Code of Federal Regulations (8 CFR parts 100 and 212) are proposed to be amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The general authority citation for part 100 continues to read as follows:

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

§ 100.7 [Amended]

2. Section 100.7 is amended by removing the citation ''212.4(g)'' in the list of parts and sections and adding in its place the citation ''212.4(h)''.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The general authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458).

* * * * *

4. Section 212.4 is amended by:

a. In paragraph (e), removing the citation ''212(a)(1)'' in the paragraph text and adding in its place ''212(a)(1)(A)(iii)'', and removing the citation ''212(a)(1) of the Act'' and adding in its place ''212(a)(1)(A)(iii)(I) or (II) of the Act due to a mental disorder and associated threatening or harmful behavior'';

b. Redesignating paragraphs (f), (g), (h), and (i) as paragraphs (g), (h), (i), and (j) and adding new paragraph (f) to read as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).

* * * * *

(f) *Inadmissibility under section 212(a)(1) for aliens inadmissible due to HIV.*

(1) *General.* Pursuant to the authority in section 212(d)(3)(A)(i) of the Act, any alien who is inadmissible under section 212(a)(1)(A)(i) of the Act due to infection with the etiologic agent for acquired immune deficiency syndrome (HIV infection) may be issued a B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant visa by a consular officer or the Secretary of State, and be authorized for temporary admission into the United States for a period not to exceed thirty days, provided that the authorization is granted in accordance with paragraphs (f)(2) through (f)(7) of this section. Application under this paragraph (f) may not be combined with any other waiver of inadmissibility.

(2) *Conditions.* An alien with HIV infection who applies for a nonimmigrant visa before a consular officer may be issued a B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant visa and admitted to the United States for a period not to exceed thirty days, provided that the applicant establishes that:

(i) The applicant has tested positive for HIV;

(ii) The applicant is not currently exhibiting symptoms indicative of an active, contagious infection associated with acquired immune deficiency syndrome;

(iii) The applicant is aware of, has been counseled on, and understands the nature, severity, and the communicability of his medical condition;

(iv) The applicant's admission poses a minimal risk of danger to the public health in the United States and poses a minimal risk of danger of transmission of the infection to any other person in the United States;

(v) The applicant will have in his or her possession, or will have access to, as medically appropriate, an adequate supply of antiretroviral drugs for the anticipated stay in the United States and possesses sufficient assets, such as insurance that is accepted in the United States, to cover any medical care that the applicant may require in the event of illness at any time while in the United States;

(vi) The applicant's admission will not create any cost to the United States, or a state or local government, or any agency thereof, without the prior written consent of the agency;

(vii) The applicant is seeking admission solely for activities that are consistent with the B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant classification;

(viii) The applicant is aware that no single admission to the United States will be for a period that exceeds 30 days;

(ix) The applicant is otherwise admissible to the United States and no other ground of inadmissibility applies;

(x) The applicant is aware that he or she cannot be admitted under section 217 of the Act (Visa Waiver Program);

(xi) The applicant is aware that any failure to comply with any condition of admission set forth under this paragraph (f) will thereafter make him or her ineligible for authorization under this paragraph; and

(xii) The applicant, for the purpose of admission pursuant to a waiver under this paragraph (f), waives any opportunity to apply for an extension of nonimmigrant stay, a change of nonimmigrant status, or adjustment of status to that of permanent resident;

(3) *Nonimmigrant visa.* A nonimmigrant visa issued to the applicant for purposes of temporary admission under section 212(d)(3)(A)(i) of the Act and this paragraph (f) may not be valid for more than 12 months or for more than two applications for admission during the 12 month period. The authorized period of stay will be for thirty calendar days calculated from the initial admission under this visa.

(4) *Application at U.S. port.* If otherwise admissible, a holder of the nonimmigrant visa issued under section 212(d)(3)(A)(i) of the Act and this paragraph (f) is authorized to apply for admission at a United States port of entry at any time during the period of validity of the visa in only the B–1 (business visitor) or B–2 (visitor for pleasure) nonimmigrant categories.

(5) *Admission limited.* Notwithstanding any other provision of this chapter, no single period of admission under section 212(d)(3)(A)(i) of the Act and this paragraph (f) may be authorized for more than 30 days.

(6) *Failure to comply.* No authorization under section 212(d)(3)(A)(i) of the Act and this paragraph (f) may be provided to any alien who has previously failed to comply with any condition of an admission authorized under this paragraph.

(7) *Additional limitations.* The Secretary of Homeland Security or the Secretary of State may require additional evidence or impose additional conditions on granting authorization for temporary admissions under this paragraph (f) as international conditions may indicate.

(8) *Option for case-by-case determination.* If the applicant does not meet the criteria under this paragraph (f), or does not wish to agree to the conditions for the streamlined 30-day visa under this paragraph (f), the applicant may elect to utilize the process described in either paragraph (a) or (b) of this section, as applicable.

* * * * *

Michael Chertoff,

Secretary.

[FR Doc. E7–21841 Filed 11–5–07; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 104

[Notice 2007–23]

Reporting Contributions Bundled by Lobbyists, Registrants and the PACs of Lobbyists and Registrants

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed rules implementing new statutory provisions regarding the disclosure of information about bundled contributions provided by certain lobbyists and registrants. The proposed rules would require authorized committees, leadership PACs and political committees of political parties to disclose certain information about lobbyists and registrants and lobbyists' and registrants' political committees that provide bundled contributions. No final decisions have been made by the Commission on any of the proposed regulations in this Notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 30, 2007. The Commission will announce the date of a hearing at a later date. Anyone seeking to testify at the hearing must file written comments by the due date and must include in the written comments a request to testify.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to *bundling07@fec.gov*. If e-mail comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is proposing changes to its rules to implement section 204 of Public Law 110–81, 121 Stat. 735, the ''Honest Leadership and Open Government Act of 2007,'' signed September 14, 2007. The new law amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*) (''the Act'') by requiring certain political committees to disclose information about each lobbyist and registrant, and each political committee established or controlled by a lobbyist or registrant (''lobbyist/registrant PAC'' [1]), that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of $15,000 during a specific period of time.[2] *See* 2 U.S.C. 434(i) (henceforth referred to as the ''new law'' or ''new 2 U.S.C. 434(i)''). The Commission uses the term ''lobbyist/registrant'' to refer to registrants and lobbyists under the Lobbying Disclosure Act of 1995 (''LDA'').

The Commission proposes to implement these provisions by adding a new subparagraph to 11 CFR 100.5(e) and adding a new section to the reporting rules at 11 CFR Part 104. The proposed reporting requirements would apply only to authorized committees of Federal candidates, political committees of political parties, and political committees directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding Federal office (''leadership PACs'' [3]).

I. Background

A. The Current Statutory and Regulatory Framework

Currently, the Act and Commission regulations impose certain reporting and recordkeeping requirements for contributions received and forwarded by any person to a political committee. Each person who receives and forwards contributions to a political committee must also forward certain information identifying the original contributor. *See* 2 U.S.C. 432(b); 11 CFR 102.8.

Additionally, 2 U.S.C. 441a(a)(8) and 11 CFR 110.6 impose certain reporting and recordkeeping requirements for contributions received and forwarded by persons known as ''conduits'' or ''intermediaries'' to the authorized committees of Federal candidates. The Commission is not proposing any changes to these rules.

B. Revisions to 2 U.S.C. 434(i)—Reporting Requirements

New 2 U.S.C. 434(i) requires authorized committees of Federal candidates, leadership PACs and political committees of political parties to disclose certain information about any person reasonably known by the committee to be a lobbyist/registrant or lobbyist/registrant PAC that forwards, or is credited with raising, two or more bundled contributions aggregating in excess of $15,000 to the committee within a ''covered period'' of time. 2 U.S.C. 434(i)(1), (2), (3) and (8). Reporting committees must disclose the name and address of the lobbyist/registrant or lobbyist/registrant PAC, the lobbyist/registrant's employer (for individual persons), and the aggregate amount of contributions bundled to the committee within the covered period. 2 U.S.C. 434(i)(1).

[1] ''PAC'' is an acronym often used to refer to a political action committee other than an authorized committee or a political committee of a political party.

[2] As discussed *infra*, the new law requires the reporting of information about certain bundled contributions that have been ''provided'' to certain political committees, and defines a ''bundled contribution'' as a contribution that is either ''forwarded'' to the political committee by a lobbyist/registrant or lobbyist/registrant PAC, or that is received by the political committee from the contributor but ''credited'' to the lobbyist/registrant or lobbyist/registrant PAC that ''raised'' it. 2 U.S.C. 434(i)(1), (8)(A). To clarify that the reporting requirement does not apply only to contributions that have been provided directly to a political committee by a lobbyist/registrant or lobbyist/registrant PAC, this NPRM describes the reporting requirement as applying to lobbyist/registrants or lobbyist/registrant PACs that have either forwarded, or that have been credited with raising, bundled contributions.

[3] The new law provides a definition of leadership PAC that the Commission proposed to implement as 11 CFR 100.5(e)(6) in a separate rulemaking regarding candidate travel. *See* 72 FR 59953 (October 23, 2007). The Commission assumes that a definition will be promulgated in the travel rulemaking before these disclosure rules are promulgated and thus, cites to 11 CFR 100.5(e)(6).