Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS No. 1811–96]

RIN 1115–AE61

Habitual Residence in the Territories and Possessions of the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations, by adding provisions governing rights and limitations on ''habitual residence'' under the Compact of Free Association between the United States and the Government of the Marshall Islands and the Government of the Federated States of Micronesia, and the Compact of Free Association between the United States and the Government of Palau (collectively, Compacts). This proposed rule defines ''habitual resident'' and imposes nondiscriminatory limitations on habitual residence in accordance with the provisions of the respective Compacts. The increasing population of citizens of the freely associated states (FAS) in the territories and possessions of the United States requires action to maintain the benefits to the citizens of the FAS of employment and education in the territories and possessions, and the economic benefit to the territories and possessions of their presence, while simultaneously minimizing costs resulting from granting unlimited access of such FAS citizens to the territories and possessions.

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1811–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

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

SUPPLEMENTARY INFORMATION:

Background

With the enactment of Public Law 99–239, which approved the Compact between the United States and the Government of the Marshall Islands and the Government of the Federated States of Micronesia, and Public Law 99–658, which approved the Compact between the United States and Palau, the majority of citizens of these territories, the former Trust Territory of the Pacific Islands, now called the freely associated states (FAS), became eligible to enter, live, work, and be educated in the United States and its territories and possessions without regard to requirements in sections 212(a)(5)(A) and 212(a)(7)(A) and (B) of the Immigration and Nationality Act (Act). *See* section 141(a) of the Compacts. Both Compacts, at section 141(b), provide that the right of citizens of the FAS to establish habitual residence in a territory or possession of the United States may be subjected to nondiscriminatory limitations.

Section 643 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), requires the Commissioner to issue regulations regarding the ''rights of 'habitual residence' in the United States'' under the terms of the Compacts. Because the Compacts permit limitations on habitual residence only in the territories and possessions of the United States, the Service interprets section 643 of IIRIRA to apply only in the territories and possessions and not in the 50 states or the District of Columbia.

This proposed rule defines ''habitual resident'' and imposes minimal limitations on the right of FAS citizens to establish habitual residence within the territories and possessions of the United States. These limitations shall be applicable to habitual residents living in Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of Puerto Rico. They do not apply to FAS citizens living in the 50 states or the District of Columbia.

Section 503 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, approved by Congress in Public Law 94–241, provides that the ''immigration and naturalization laws of the United States'' shall not apply to the Northern Mariana Islands ''except in the manner and to the extent made applicable to them by the Congress by law.'' To date, Congress has not taken action to apply the Federal immigration and naturalization laws to the Commonwealth of the Northern Mariana Islands (CNMI). This proposed rule, therefore, does not affect the right of FAS citizens to establish habitual residence in the CNMI as long as the Act has not been made applicable to the CNMI. The CNMI, however, may establish nondiscriminatory limitations on habitual residence that are consistent with the Compact and United States treaties and law.

''Habitual Resident'' Defined

In the proposed rule, the Service defines an habitual resident as an FAS citizen, as defined in section 141(a) of both Compacts, who has been physically present in a territory or possession of the United States for a cumulative total of 1 year during any continuous 24-month period, and who is not:

(1) A dependent of a representative to the United States pursuant to article V of either of the Compacts;

(2) A member of the United States Armed Forces serving in an active duty capacity;

(3) A nonimmigrant under another (non-Compact) category;

(4) A lawful permanent resident; or

(5) A full-time student under Compact provisions in a territory or possession of the United States and maintaining status.

Notwithstanding section 101(a)(15) of the Act, an FAS citizen who enters the United States under section 141 of the Compacts is a nonimmigrant under the terms of the Compacts. The term ''habitual residence,'' defined in section 461 of the Compacts, may be applied to FAS citizens and may be subjected to nondiscriminatory limitations under section 141(b) of the Compacts.

Community Concerns

Officials of the United States territories and possessions have reported that there are growing numbers of unemployed FAS citizens who reside in those territories and possessions and who adversely impact limited community resources. At the same time, these officials also express concern that imposing severe restrictions on the right of FAS citizens to establish habitual residence may deprive their communities of needed FAS workers who enhance the economy of those territories and possessions.

This rule addresses these concerns. The Service believes that imposing limitations on habitual residence will help to preserve the lawful status of the habitual residents who are lawfully and gainfully employed or otherwise financially self-sufficient. It will also protect the economies of the respective territories or possessions in which they reside by permitting the removal of FAS citizens who are not individually financially self-sufficient and are not being financially supported by their family. The Service interprets the provision in the Compacts that residence of less than 1 year is not ''habitual residence'' to mean residence in a territory or possession of the United States for aggregate periods of less than 1 year is not considered to be habitual residence. Therefore, this regulation will not affect FAS citizens whose residence in the territories and possessions of the United States adds up to less than 1 year.

Considerations for Rulemaking

Recommendations were solicited from the Governments of the Virgin Islands, Puerto Rico, Guam, and the Northern Mariana Islands by the United States Department of Interior, Office of Insular Affairs. The Office of Insular Affairs also solicited suggestions from the governments of the FAS. In its cover letter to the presidents of the freely associated states, the Office of Insular Affairs suggested that the imposition of limitations on habitual residence might include a provision allowing an habitual resident in a United States territory or possession to remain there if the habitual resident is gainfully employed.

The Office of Insular Affairs received three responses to its inquiry. The Governor of the United States Virgin Islands stated that migration of FAS citizens presented no adverse consequence for his territory. The President of Palau responded with general opposition to the imposition of any limitations. The Ambassador of the Federated States of Micronesia (FSM) to the United States stated that the FSM would not be concerned if the United States established a work requirement for FAS citizens who are habitual residents in a United States territory. He requested, however, that an unemployed spouse, pre-school children, and elderly relatives be allowed to reside in the territory with a working habitual resident.

Numerical Limitations Considered

Numerical limitations on habitual residence were considered by the Service and rejected at this time. The Service believes such limitations would not directly address the overall problem of restricting the entry of unemployed aliens into the U.S. territories and possessions. Further, such numerical limitations would possibly be more restrictive than is warranted at this time. The imposition of numerical limitations would fail to distinguish between employed and unemployed FAS citizens residing within U.S. possessions and territories. Newly arrived FAS citizens who desired to establish habitual residence after 1 year for the purpose of the continuation of lawful employment within a territory would be subject to numerical availability, while chronically unemployed habitual residents who have resided in the territory for a longer period, and who fell within a numerical availability quota, might continue in an indefinite lawful status. This method appears inequitable for the alien and unresponsive to the problem of restricting the flow of unemployed aliens into the territories.

Time Limitations Considered

Time limitations were also considered and rejected as not clearly necessary at this time. Lawfully and gainfully employed FAS citizens are currently recognized as an asset to their communities. They fulfill a need for labor and contribute to the economic development of the territory. Their continued presence eliminates the need for training newcomers. The earnings they send home also benefit the FAS economies. The imposition, therefore, of limitations on the maximum period of stay of these workers does not appear necessary at this time.

Limitations Based on Employment

Limiting habitual residence to lawfully and gainfully employed FAS citizens who are financially self-sufficient was determined to be the method which best complied with both the letter and the spirit of the Compacts and represented the minimal limitation currently needed to respond affirmatively and effectively to community concerns of the growing numbers of unemployed habitual residents. This method allows for the preservation of status for current habitual residents who are lawfully and gainfully employed, and allows for additional FAS citizens to engage in lawful and gainful employment in the territories and possessions of the United States in the future under the provisions of the Compact.

The Service considered the special problem posed by FAS citizens engaged in seasonal employment in United States territories and possessions and the need for the proposed rule to have provisions or exceptions regarding seasonal employment. Agriculture and commercial fishing are contributors to the economy of United States territories and possessions, and it is not the Service's intent to deprive these industries of needed FAS workers. The Service believes that the proposed rule as written is sufficient to protect the lawful nonimmigrant status of FAS seasonal workers, and that exceptions or provisions regarding seasonal workers are not needed at this time. The Service reserves the right to amend the rule to include provisions or exceptions regarding FAS seasonal workers employed in U.S. territories and possessions, should conditions warrant, and seeks public comment in this regard.

Annual Registration Considered

The Service considered imposing a registration requirement to ensure that FAS citizens after 1 year fall within the ambit of the limitations on habitual residence. The Service rejected annual registration due to resource limitations and the lack of empirical data establishing the necessity of registration at this time. Rather, the Service will assess and determine continued eligibility for habitual residence on a case-by-case basis when status eligibility is raised through complaints or other information available to the Service.

Proposed Limitations on Habitual Residence

In accordance with section 141(b) of the Compacts, the Service proposes to limit habitual residence in the territories and possessions of the United States (except the CNMI as long as the Act has not been made applicable to the CNMI) to those eligible FAS citizens:

(1) Who are actively engaged in lawful, full-time occupations; or

(2) Whose income or other financial resources meet or exceed the minimum Service guidelines for fiscal sufficiency,

which has been determined as at least 100 percent of the official poverty guidelines, see 45 CFR Pt. 1611, App. A, for an individual or for a family unit; and

(3) Who are not in receipt of public benefits in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), Pub. L. 104–193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Pub. L. 105–33, 111 Stat. 638, 639 (''unauthorized public benefits'').

The unemployed spouse and all other eligible dependents, who are themselves FAS citizens and habitual residents, shall also be considered to be in lawful nonimmigrant status, provided they are financially supported by the principal habitual resident, and provided that, as a family unit, their income or other financial resources meet or exceed 100 percent of the official poverty guidelines for a family of the appropriate size, and they are not individually in receipt of unauthorized public benefits.

The Service proposes that the employment requirement of this provision not apply to habitual residents who are of lawful independent financial means, including those who are retired. To maintain their lawful status within the territories, habitual residents who are of lawful independent financial means or who are retired must, however, maintain an income or possess sufficient financial resources which meet or exceed 100 percent of the official poverty line for a family of the appropriate size. Further, such persons shall not be in receipt of unauthorized public benefits. These limitations are not discriminatory because they do not discriminate between or among the different freely associated states. Moreover, they do not discriminate against citizens of the FAS as compared with nonimmigrant citizens of other countries because there are no other nonimmigrant aliens who are permitted to enter, live, work, and be educated in the United States without regard to the requirements of section 212(a)(5)(A) and (7)(A) and (B) of the Immigration and Nationality Act.

Violation of Status

Any habitual resident who is unemployed for a period in excess of 60 consecutive days, or whose income as an individual or as a family unit falls below the official poverty guidelines, or who is in receipt of unauthorized public benefits, shall be considered to be in violation of status and subject to removal from the United States territory or possession in which he or she resides. The unemployed spouse and other eligible dependents of an habitual resident shall be considered to be in violation of status and subject to removal from the United States territory or possession in which they reside should the principal habitual resident become unemployed for a period of more than 60 consecutive days, or should their income as a family unit fall below the official poverty guidelines. This means that the principal habitual resident and his or her habitual resident dependents will all be considered to be in violation of status either if the principal is unemployed for more than 60 consecutive days, or if the family unit falls below the official poverty guidelines. Without the financial support of the principal habitual resident, the dependents would be in unlawful status. It is only through the support of the principal alien that they are considered to be in lawful status. Similarly, the principal alien must be held responsible for the support of his or her dependent family members in the territories and possessions so that the taxpayers will not be burdened by their support.

If any eligible dependent receives unauthorized public benefits, that individual dependent will be considered to be in violation of status and subject to removal from the U.S. territory or possession in which he or she resides. This provision will require the removal of any dependent who receives unauthorized public benefits, potentially resulting in the separation of families or the removal of an individual dependent who is elderly, infirm, of tender years, or otherwise unable to support himself or herself. For that reason, we invite public comment on whether the selection of this option in the proposed rule, i.e., removal of only the family member who receives unauthorized public benefits, is preferable to a provision requiring the removal of the entire family unit (the principal habitual resident and all of his or her habitual resident dependents) upon receipt by one family member of unauthorized public benefits.

Reservation of Right to Modify Limitations

This proposed rule establishes limitations on habitual residence at minimal levels. The Service reserves the right to modify these limitations and/or impose a registration requirement in the future should conditions warrant these actions.

Request for Comments

The Service seeks public comments regarding this proposed rule, including proposed limitations on habitual residence of individuals and families within the territories and possessions of the United States and the need for provisions or exceptions to the rule regarding FAS seasonal workers.

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 significant economic impact on a substantial number of small entities. This rule merely defines the rights and limitations of an existing class of nonimmigrants. It will affect certain individual aliens, not small entities.

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 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates 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 the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612,

it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

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

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Students.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 48 U.S.C. 1901 note, 1931 note; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; 8 CFR part 2.

2. Section 214.7 is added to read as follows:

§ 214.7 Habitual residence in the territories and possessions of the United States.

(a) *Definitions as used in this section.*

(1) *Dependent* means a citizen of the freely associated states (FAS), as defined in section 141(a) of the Compacts of Free Association, approved by Public Law 99–239 with respect to the Governments of the Marshall Islands and the Federated States of Micronesia, and by Public Law 99–658, with respect to the Republic of Palau (Compacts), who is a habitual resident, reliant on a principal habitual resident for support, and:

(i) The unemployed spouse of a principal habitual resident;

(ii) A child, unmarried and under 21 years of age, of a principal habitual resident or of his or her unemployed spouse;

(iii) The parent of a principal habitual resident; or

(iv) The parent of the unemployed spouse of a principal habitual resident.

(2) *Family unit* means a principal habitual resident and his or her dependents.

(3)(i) *Full-time employment* means any lawful occupation of a current and continuing nature that provides:

(A) Forty hours of gainful employment each week; or

(B) An annual income that meets or exceeds 100 percent of the official poverty guidelines, see 45 CFR part 1611, appendix A, for an individual or a family unit of the appropriate size.

(ii) For purposes of computing ''full-time employment,'' while attending an accredited college in the territory on a part-time basis, each college credit-hour of study diminishes by 3 hours the 40-hour gainful employment requirement.

(4) *Habitual resident* means an FAS citizen as defined in section 141(a) of the Compacts who has been physically present in a territory or possession of the United States (except the CNMI, as long as the Act has not been made applicable to the CNMI), after admission under section 141(a) of the respective Compact, for a cumulative total of 1 year during any continuous 24-month period, except that no period of time in which the citizen of the FAS is in a territory or possession of the United States as a:

(i) Full-time student under Compact provisions;

(ii) Dependent of a resident representative as described in section 152 of the Compacts;

(iii) Member of the United States Armed Forces serving in an active duty capacity;

(iv) Nonimmigrant under another (non-Compact) category; or

(v) Lawful permanent resident of the United States, shall be taken into account in determining the period of habitual residence in the territories or possessions of the United States.

(5) *Principal habitual resident* means an employed FAS citizen, or FAS citizen of lawful independent means, or retired FAS citizen, upon whose lawful status the unemployed spouse and all unemployed dependents are reliant.

(b) *General.* The regulations in this section regarding habitual residence in the territories and possessions of the United States are applicable to habitual residents living in Guam, American Samoa, the United States Virgin Islands, the Commonwealth of Puerto Rico, and any other territory or possession of the United States if the Immigration and Nationality Act is applicable in that territory or possession.

(c) *Rights.* Under the provisions of the Compacts, FAS citizens, who are eligible Compact entrants pursuant to section 141(a) of the Compacts, have the right to enter, reside, and work in the United States, its territories or possessions in nonimmigrant status and without regard to sections 212(a)(5)(A) and 212(a)(7) (A) and (B) of the Act.

(d) *Limitations.* The right of eligible FAS citizens to establish habitual residence in a lawful nonimmigrant status within a possession or territory is limited to those eligible FAS citizens who:

(1)(i) Are actively engaged in a lawful, full-time occupation; or

(ii) Possess an annual income of sufficient financial resources which meet or exceed 100 percent of the official poverty guidelines; and

(2) Are not in receipt of public benefits, in violation of section 401 or 411 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193, 110 Stat. 2261, 2268, as amended by sections 5561 and 5565 of the Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 638, 639 (''unauthorized public benefits'').

(e) *Dependents.* The dependent of an habitual resident, or of the spouse of an habitual resident, who is an FAS entrant and otherwise in lawful status, shall also be considered to be in lawful nonimmigrant status provided the dependent is financially supported by the principal habitual resident; the financial resources of the family unit meet or exceed 100 percent of the official poverty guidelines, see 45 CFR part 1611, appendix A, for a family unit of the appropriate size; and the dependent is not in receipt of unauthorized public benefits.

(f) *Investors.* An FAS investor, for the purposes of this section, shall be considered to be self-employed and shall be subject to the benefits, limitations, and requirements contained in this section.

(g) *Violation of status.* Any habitual resident who ceases to work for a period exceeding 60 consecutive days for reasons other than a lawful strike or other lawful labor dispute involving work stoppage; or whose annual income or financial resources, as an individual or as a family unit, fall below the official poverty guidelines; or who as an individual receives unauthorized public benefits, shall be considered to be in violation of status pursuant to section 237(a)(1)(C)(i) of the Act and subject to removal from the United States territory or possession in which he or she resides.

(h) *Dependents subject to removal.* A dependent of an habitual resident who is in lawful habitual resident status solely due to his or her relationship with a principal habitual resident, shall lose such lawful status and be subject to removal from the United States territory or possession in which he or she resides if:

(1) The principal habitual resident ceases to work for a period exceeding 60 consecutive days;

(2) The annual family income or financial resources of the dependent's

family unit fall below the official poverty guidelines; or

(3) The dependent receives unauthorized public benefits.

Dated: May 28, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 214

[INS 1769–96]

RIN 1115–AE–38

Petitioning Requirements for the H Nonimmigrant Classification

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations to accommodate the needs of certain United States employers with respect to the filing of new and amended petitions for H–1B nonimmigrant workers. This rule was written in response to a number of complaints received from certain industries which asserted that the current H regulations contain requirements with which some U.S. employers cannot comply. In addition, the current regulations contain certain procedures which are burdensome to both the Service and to the public. Specifically, this rule proposes to amend the Service's regulation with regard to the submission of itineraries with certain H–1B petitions and to amend the Service's regulations regarding the H–1B classification by allowing petitioners to obtain and submit the required certified labor condition application after the petition is initially filed with the Service, but before the petition is adjudicated. Finally, this rule proposes to amend the Service's regulation regarding the revocation of approved H petitions where the beneficiary is no longer employed by the petitioner. This rule will make the H–1B nonimmigrant classification easier for certain U.S. employers to use and will make the requirements for the H–1B nonimmigrant classification more consistent with the practices of the business world.

DATES: Written comments must be submitted on or before August 3, 1998.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1769–96 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3240.

SUPPLEMENTARY INFORMATION: The current regulation at 8 CFR 214.2(h)(2)(i)(B) provides that an H petition which requires an alien beneficiary to perform services in more than one location must include an itinerary with dates and locations of the services or training to be performed. This regulatory provision was promulgated primarily to address certain practices in the entertainment industry, which, prior to the passage of the Immigration Act of 1990, was one of the largest users of the H–1B classification. (Entertainers now typically enter the United States in the O and P nonimmigrant classifications.) Specifically, this regulation was intended to preclude foreign entertainers who were admitted in H classification for the purpose of performing at a specific engagement from engaging in freelance work in this country subsequent to their admission. The regulation was designed to ensure that aliens seeking H nonimmigrant status have an actual job offer and are not coming to the United States for the purpose of seeking employment following arrival in this country.

Since promulgation of this regulation, however, many industries in the United States, such as the health care and computer consulting industries, have begun to rely more frequently on the use of contract workers. It has been the experience of the Service that many bona fide businesses which provide contract workers to certain industries under the H–1B classification have experienced difficulty in providing complete and detailed itineraries due to the unique employment practices of such industries. For example, companies which are in the business of contracting out physical therapists or computer professionals often get requests from customers to fill a position with as little as 1 day advance notice. Clearly an H–1B petitioner in this situation could not know of all particular contract jobs at the time that it first files the H–1B petition with the Service. As a result, many such bona fide employment contractors do not know all of the locations where a contract worker will be employed at the time the Form I–129, Petition for a Nonimmigrant Worker, is initially filed.

Moreover, some employers who use the H–1B classification may have a legitimate, but unforeseeable, need to transfer their employees on short notice from one work site to another within the organization, such as from the employer's Los Angeles office to its New York office. Under the current regulation, however, such an employer is required to submit with its petition a complete itinerary listing all of the locations where the contract workers will be employed. The regulation as now written, therefore, does not fully reflect current legitimate business practices.

In response to these problems, the Service now proposes to amend its regulations at 8 CFR 214.2(h)(2)(i)(B) and at 8 CFR 214.2(h)(2)(i)(F) to allow certain petitioners to submit a general statement describing the locations where the alien is to be employed, thereby eliminating the necessity of submitting a complete itinerary. A complete itinerary must be submitted only in those instances where the employer is aware of the actual itinerary or where the petitioner is an agent that does not actually employ the beneficiary but merely represents the alien and the alien's employer.

In those instances where the employer does not yet know the alien's complete itinerary at the time the petition is filed, the employer must submit, in lieu of a complete itinerary, a list of the places where it knows the beneficiary will definitely be employed, together with a description of the alien's job duties at those locations. In addition, the employer must submit, to the extent possible, a list describing the alien's possible places of employment and the duties which the alien would perform at such locations. The employer may also be asked to submit a letter with the petition describing its past hiring practices, including a list of past places where it has employed similarly situated persons. The letter must describe the employer's tentative plans to use the beneficiary in an H–1B capacity in the future. However, the absence of a past hiring practice is not a bar to the approval of the petition. Petitions filed without any itinerary may not be approved since this type of petition involves purely speculative employment. Of course, the petitioner