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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212 and 214

[CIS No. 2320-04]

RIN 1615-AB28

Extension of the Deadline for Certain Health Care Workers Required To Obtain Certificates

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (BCIS) regulations to extend the deadline by which certain health care workers from Canada and Mexico must obtain health care worker certifications. This rule applies only to affected health care workers who, before September 23, 2003, were employed as “trade NAFTA” (TN) or “trade Canada” (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. A “trade NAFTA” nonimmigrant alien is a citizen of Canada or Mexico who is admitted to the United States to engage in business activities at a professional level as agreed to under the North American Free Trade Agreement. A “trade Canada” nonimmigrant alien is a Canadian citizen who was admitted to the United States temporarily to engage in business activities at a professional level as agreed to under the United States-Canada Free Trade Agreement. This interim rule does not change the licensing requirements for employment purposes. Publication of this rule ensures that the United States health care system is not adversely affected by the expiration of the transition period for certain health care workers to present the required certification.

DATES: *Effective date:* This interim rule is effective on July 26, 2004.

Comment date: Written comments must be submitted on or before September 20, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Department of Homeland Security, Bureau of Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20528. To ensure proper handling please reference BCIS No. 2320-04 on your correspondence. You may also submit comments electronically to DHS at rfs.regs@dhs.gov. When submitting comments electronically you must include BCIS No. 2320-04 in the subject box so that the comments can be electronically routed to the appropriate office in BCIS. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Office of Program and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20528, telephone (202) 353-8177.

SUPPLEMENTARY INFORMATION: Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-208, 110 Stat. 3009, 636-37 (1996), now codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(5)(C)), and section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106-95, codified at section 212(r) of the Act (8 U.S.C. 1182(r)), provide that an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization, verifying that the alien meets certain education, training, licensure and competency requirements. The certification requirement became effective for nonimmigrant aliens employed in the United States on September 23, 2003, by a final rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901 (the Final

Rule). The Final Rule provided that, as of September 23, 2003, all nonimmigrant aliens affected by the certification requirements of section 212(a)(5)(C) of the Act must obtain the required certificate.

Because the process of obtaining the certificate is not an immediate one, the final rule provided for a one-year transition period. Under the transition period, affected nonimmigrant aliens would receive a waiver so that the failure to obtain a certificate would not be a ground of inadmissibility under the Act, upon the condition that the certificate be obtained within a year of the granting of the waiver. The transition period expires on July 26, 2004.

DHS, however, has determined that an extension of the transition period is required for certain Canadian and Mexican nonimmigrant health care workers. Many Canadian and Mexican citizens travel regularly across their respective borders as well as to other regions outside the United States. After July 26, 2004, the expiration of the one-year period, those aliens who have not yet received their certificates will be inadmissible and thus unable to cross borders into the United States.

These health care workers will be immediately inadmissible and ineligible to work in the United States under their current nonimmigrant classification. The inability of these aliens to return to the United States upon expiration of the one-year transition period would cause disruption to their employers, who would have been relying on these employees for at least the last year. Regional health care systems would be disrupted by preventing these regular employees from returning to work for a period of time.

After consideration of these factors and in consultation with other Federal agencies, DHS decided to extend the transition period for an additional year for certain health care workers in order to ensure that the United States public and health care system is not adversely affected by the lack of available health care workers who would otherwise be unable to reenter the United States as TN nonimmigrant health care workers. (When the North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, the United States-Canada Free Trade Agreement was suspended for such time as the United

States and Canada are parties of NAFTA. At that time, NAFTA TN classification replaced the TC classification. Thus, for purposes of this interim rule any reference to TN includes those aliens previously classified as TC nonimmigrants.)

This interim rule extends the transition period provided for at 8 CFR 212.15(n) for Canadian and Mexican TN nonimmigrant health care workers subject to the certification requirement who, before September 23, 2003 (the effective date of the Final Rule), were employed as TN nonimmigrants and held licenses from a U.S. jurisdiction. DHS understands that many of these TN nonimmigrants actually live in Canada or Mexico, and regularly travel to their jobs in the United States or to other regions outside the United States. Because many of the aliens to be protected by this interim rule are regular travelers, it is not necessary for them actually to have been physically present in the United States on September 23, 2003 in order to benefit from this extended transition period. This interim rule also amends 8 CFR 214.1(i) to explain how an alien may establish that he or she is eligible for the waiver of the certification requirement, as the burden remains on the alien to establish eligibility for a waiver of the certification requirement.

This interim rule also makes a technical correction to the introductory text of 8 CFR 214.1(j). For employment-based nonimmigrant classifications, Form I-129 is used both to classify the alien for the nonimmigrant status and also actually to change the alien to that classification (if the alien entered in a different classification) or to extend the period of the alien's authorized stay. The introductory text of 8 CFR 214.1(j) currently suggests that the Form I-129 would be denied entirely if the necessary certification is lacking. But this suggestion is not technically correct. That an alien may ultimately be inadmissible does not necessarily warrant denial of the employer's request to classify the alien for a relevant nonimmigrant classification. Inadmissibility requires only that BCIS may not grant the actual extension or stay or change of status. Approval of the classification itself is still useful to the employer, as it will facilitate the alien's admission, should the alien later acquire the certification, without the employer's having to file a new petition. This interim rule revises 8 CFR 214.1(j) to clarify this distinction.

Who Is Not Covered by the Extension of the Transition Period?

This extension does not apply to any alien whose initial admission as a TN nonimmigrant health care worker occurred on or after September 23, 2003, the effective date of the final rule. Any alien admitted after the effective date of the final rule was admitted on notice of the certification requirement. Given such notice, it is appropriate to impose the certification requirement on these health care workers without offering them an additional extension to comply with the regulation.

Will Other Aliens Subject to the Certification Requirement Receive Waivers?

For all aliens not described in this interim rule, the transition period will still expire on July 26, 2004, or one year from the date the alien received the waiver, whichever is later, as provided for by 8 CFR 212.15(n). Thus, any alien not described in this interim rule who seeks admission after July 26, 2004 to work in a covered health care field will be inadmissible if the alien has not obtained the required certificate. As provided in section 212(d)(3) of the Act and 8 CFR 212.15(n), the Secretary may continue to waive this ground of admissibility on a case-by-case basis.

Good Cause Exception

Implementation of this rule as an interim rule with a request for public comment after the effective date is based upon the "good cause" exception found at 5 U.S.C. 553(b)(3)(B) and (d)(3). This interim rule accommodates the needs of the health care industry and the Canadian and Mexican TN nonimmigrants affected by the rule by providing these aliens an additional year to come into compliance with the requirements of sections 212(a)(5)(C) and (r) of the Act. Failure to provide this accommodation would likely cause significant disruption in the provision of health care in border regions. Therefore, delay of the publication of this interim rule to allow for prior notice and comment would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

Further, because this interim rule grants an exemption, on a temporary basis, from the certificate requirement, DHS finds that the 30-day effective date requirement under the Administrative Procedure Act is waived under 5 U.S.C. 553(d)(1) and this interim rule will be effective on July 26, 2004. DHS nevertheless invites written comments on this interim rule, and will consider

any timely comments in preparing a final rule.

Regulatory Flexibility Act

DHS has reviewed this regulation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, DHS certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is the same as that provided in the Final Rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901. It is still projected that there will be, at most, 21 small businesses that apply to the DHS to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate. There is no change in the number of entities projected to apply for authorization or to the fee required for submission of the application since the Final Rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 12866

This interim rule is considered by DHS 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 (OMB) for

review. DHS has assessed both the costs and the benefits of this interim rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this rule justify its costs.

Briefly, that assessment is as follows:

The costs described in the Final Rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901 are still applicable. In the Final Rule, DHS determined that any entity seeking authorization to issue health care worker certifications must apply for authorization on Form I-905. DHS determined that \$230 was the appropriate fee for Form I-905 after comparing the processing of the form to the process involved with Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of \$230. The application requirement and processing fees are still applicable and remain unchanged by the extension of the transition period. DHS has estimated that there will be approximately 10 applicants who will each have a time burden of approximately 4 hours, and who will be required to pay a total of \$2,300. The number of projected applicants and the time burden also remains unchanged by the extension of the transition period. Once the Form I-905 is approved by BCIS, an authorized entity will be authorized to issue health care worker certification for a period of 5 years, and will be able to recoup the costs of the Form I-905 by charging a fee for each certificate that it issues. This process and procedure remains unchanged by the extension of the transition period for TN nonimmigrant health care workers for one year.

Each credentialing organization may still set its own fee to recover the costs of issuing of a health care worker certificate, although the price may vary between organizations. The CGFNS is the organization that is currently authorized to issue certifications to the largest number of applicants. DHS has estimated that the total time burden associated with each certification is still approximately 220 minutes and remains unchanged by the extension of the transition period. The current price for a CGFNS certificate or certified statement is approximately \$325, which is charged to an individual alien. In some cases, a petitioning employer may choose to pay on behalf of the alien.

Finally, DHS has determined that the benefit to the United States public will be that health care facilities remain adequately staffed to support their medical needs. Upon expiration of the transition period, many Canadian and Mexican health care workers, who

regularly travel to their respective countries and to other regions outside the United States, will not be able to get back into the United States to resume work without the required certification. Many health care facilities along the border regions rely on the commuter health care workers. The transition period will allow the health care workers additional time to obtain the certification, thus allowing them to return to work. Without the extended transition period, the health care facilities in these areas will be immediately faced with a staff shortage, causing an adverse affect on their ability to render critical health care services. A shortage of health care workers will cause a significant strain on the quality of care offered to the United States public. Additionally, the consequences of understaffing could be dire. It is in the public interest to extend the transition period to ensure that health care facilities remain fully staffed and are able to provide the same level and quality of service to the public.

Executive Order 13132

The interim 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, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act of 1995

This interim rule does not impose any new reporting or record keeping requirements. The information collection requirement contained in this interim rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this information collection is 1615-0062 and is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and record keeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and record keeping requirements, Students.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

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

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227.

■ 2. Section 212.15 is amended by revising paragraphs (n)(1) and the introductory text of paragraph (n)(2) introductory text to read as follows:

§ 212.15 Certificates for foreign health care workers.

* * * * *

(n) *Transition.*

(1) *One year waiver.* (i) Pursuant to section 212(d)(3) of the Act (and, for cases described in paragraph (d)(1) of this section, upon the recommendation of the Secretary of State), the Secretary has determined that until July 26, 2004 (or until July 26, 2005, in the case of a citizen of Canada or Mexico who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), DHS, subject to the conditions in paragraph (n)(2) of this section, may in its discretion admit, extend the period of authorized stay, or change the nonimmigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act, provided the alien is not otherwise inadmissible.

(ii) After July 26, 2004 (or, after July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), such discretion shall be applied on a case-by-case basis.

(2) *Conditions.* Until July 26, 2004 (or until July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the temporary admission, extension of stay, or change of status of an alien described in 8 CFR part 212(d)(1) or (d)(2) of this

section that is provided for under this paragraph (n) is subject to the following conditions:

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–05; 1372; 1379; 1731–32; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively.

- 4. Section 214.1 is amended by:
- a. Revising paragraph (i); and by
- b. Revising the introductory text of paragraph (j); and by
- c. Revising paragraph (j)(2), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(i) *Employment in a health care occupation.* (1) Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a health care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(2) A TN nonimmigrant may establish that he or she is eligible for a waiver described at 8 CFR 212.15(n) by providing evidence that his or her initial admission as a TN (or TC) nonimmigrant health care worker occurred before September 23, 2003, and he or she was licensed and employed in the United States as a health care worker before September 23, 2003. Evidence may include, but is not limited to, copies of TN or TC approval notices, copies of Form I–94 Arrival/Departure Records, employment verification letters and/or pay-stubs or other employment records, and state health care worker licenses.

(j) *Extension of stay or change of status for health care worker.* In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor

in a health care occupation described in 8 CFR 212.15(c), the petitioning employer may file a Form I–129 to extend the approval period for the alien's classification for the nonimmigrant status. If the alien is in the United States and is eligible for an extension of stay or change of status, the Form I–129 also serves as an application to extend the period of the alien's authorized stay or to change the alien's status. Although the Form I–129 petition may be approved, as it relates to the employer's request to classify the alien, the application for an extension of stay or change of status shall be denied if:

* * * * *

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While DHS may admit, extend the period of authorized stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004 (or on or before July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has not obtained the requisite certification 1 year after the initial date of admission, change of status, or extension of stay as a health care worker.

Dated: July 19, 2004.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–16709 Filed 7–21–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18580; Directorate Identifier 2004–CE–12–AD; Amendment 39–13735; AD 2004–15–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to inspect the hydraulic tube/hose assemblies, the engine fuel feed tube assemblies, and the engine wire harnesses for proper clearance and damage (as applicable). If improper clearance or damage is found on any assembly, you must replace and/or modify the affected assembly. This AD is the result of reports of loss of the hydraulic system functions during different operations caused by improper clearance between certain components. This resulted in damage to the tubing in the hydraulic system assemblies. Analysis shows a similar condition on the engine fuel feed assemblies. We are issuing this AD to detect, correct, and prevent such damage or improper clearance in the affected areas, which could result in failure of one or more of these systems. These failures could lead to loss of hydraulic system operations, engine shutdown, and false readings for fuel pressure, oil pressure, and other oil indications. These conditions could consequently result in reduced or loss of control of the airplane.

DATES: This AD becomes effective on August 23, 2004.

As of August 23, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by October 4, 2004.

ADDRESSES: Use one of the following to submit comments on this AD:

- **DOT Docket Web site:** Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

- **Fax:** 1–202–493–2251.

- **Hand Delivery:** Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.