

# 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 HOMELAND SECURITY

### 8 CFR Part 214

[CIS No. 2295-03 and DHS-2004-0009]

RIN 1615-AB17

### Petitioning Requirements for the O and P Nonimmigrant Classifications

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) regulations to enable petitioners to file O and P nonimmigrant petitions up to one year prior to the petitioners' need for the alien's services. By extending the filing time requirement for O and P petitions, USCIS will be able to adjudicate petitions in a timely fashion and ensure that, if approvable, such petitions will be approved prior to the date of the need for the alien's services, which is often dictated by a scheduled event, competition or performance.

**DATES:** Written comments must be submitted on or before June 27, 2005.

**ADDRESSES:** You may submit comments, identified by CIS No. 2295-03 or DHS 2004-0009, by one of the following methods:

- EPA Federal Partner EDOCKET Web Site: <http://www.epa.gov/feddoCKET>. Follow instructions for submitting comments on the Web site.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [rfs.regs@dhs.gov](mailto:rfs.regs@dhs.gov). When submitting comments electronically, please include CIS No. 2295-03 in the subject line of the message.
- Mail: The Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. To ensure

proper handling, please reference CIS No. 2295-03 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- Hand Delivery/Courier: U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. Contact telephone number (202) 272-8377.

**Instructions:** All submissions received must include the agency name and docket number (if available) or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.epa.gov/feddoCKET>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

- Docket: For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddoCKET>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at the office of the Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529. To ensure proper handling, please reference CIS No. 2295-03 on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Kevin J. Cummings, Adjudications Officer, Business and Trade Services Branch/Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 305-3175.

### SUPPLEMENTARY INFORMATION:

#### 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. USCIS also invites comments that relate to the economic, environmental, or federalism affects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in developing these

procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. See **ADDRESSES** above for information on how to submit comments.

#### What Is an O and P Nonimmigrant Petition?

The O and P nonimmigrant classifications include individual aliens with extraordinary ability in the arts, sciences, education, business or athletics (including those in the motion picture and television industry), as well as internationally recognized athletic team members, entertainment groups, artists and other entertainers. Petitions for O and P nonimmigrant classifications are filed on Form I-129, Petition for Nonimmigrant Worker.

#### What Are the Current Timeframes for Filing O and P Nonimmigrant Petitions?

8 CFR 214.2(o)(2)(i) currently states that an O nonimmigrant petition may not be filed more than 6 months before the actual need for the alien's services. A P nonimmigrant petition may not be filed more than 6 months before the actual need for the alien's services under 8 CFR 214.2(p)(2)(i).

#### What Will Be the New Timeframes for Filing O and P Nonimmigrant Petitions?

USCIS is amending its regulations to allow an O or P petitioner to file a Form I-129 up to one year, but not earlier than 6 months, before the date of the petitioner's need for the alien's services. The rule also provides that USCIS may grant exceptions to the filing timeframes in emergency situations at the discretion of the USCIS Service Center Director, and in special filing situations as determined by USCIS Headquarters.

#### Why Is USCIS Extending the Filing Times for O and P Nonimmigrant Petitions?

Current filing times combined with processing times often result in an O or P petition being adjudicated at the same time or later than the date of the petitioner's stated need for the alien. This situation creates a hardship for petitioners who are seeking to employ the alien based on a scheduled performance, competition, or event and who may have booked a venue and sold advance tickets. If the petition is not

approved by the time of the petitioner's stated need, the petitioner may be required to cancel a scheduled event or performance, may lose funds advanced for booking a venue, and may be liable for the costs associated with ticket refunds and various associated costs. By extending the filing time requirement for O and P petitions, USCIS will be able to adjudicate petitions for O and P nonimmigrants in a timely fashion and ensure that, if approvable, such petitions will be approved in advance of the date of the scheduled event, competition or performance. Moreover, a large percentage of O and P petitioners seeking alien performers or athletes often schedule and must plan for competitions, events, or performances more than one year in advance, further supporting the amendment to the regulations that this rule makes.

#### **Why Is USCIS Requiring That O and P Nonimmigrant Petitions Be Filed No Earlier Than 6 Months of the Petitioner's Need for the Alien's Services?**

USCIS has determined that a large percentage of O and P petitioners seeking alien performers or athletes often schedule and plan for events more than a year in advance. Thus, filing the Form I-129 within 6 months of the petitioner's stated need should not be a hardship on those U.S. employers seeking O and P nonimmigrants. In addition, filing within a 6 month timeframe will ensure that USCIS is able to timely adjudicate and, if eligible, approve Form I-129 petitions prior to the scheduled event or performance. USCIS recognizes that there may be certain instances, and even emergency circumstances, where the U.S. employer is unable to file the Form I-129 six months in advance of his or her actual need or of the scheduled event or performance. In those instances, USCIS will review the specifics of the U.S. employer's case and may, in its discretion, permit the U.S. employer to file the O or P petition within a shorter timeframe. USCIS intends to use its discretion liberally in this regard. USCIS also reminds U.S. employers seeking O and P nonimmigrants that premium processing is available for these categories. See 8 CFR 103.2(f).

#### **Will USCIS Extend the Filing Timeframes for Other Nonimmigrant Classifications Associated With the Form I-129?**

No. At this time, USCIS is satisfied that the petitions for the other Form I-129 classifications are processed by the date of the petitioner's stated need. Moreover, a large percentage of cases

filed under these other categories are for ongoing, long-term employment rather than one-time performances or specific entertainment events or series of events that are usually planned, booked, and funded well in advance. In addition, the O and P nonimmigrant classifications do not require a current test of the U.S. labor market or a certification from the Department of Labor indicating that the hiring of a foreign laborer will not result adversely affect the domestic U.S. workforce. Further, USCIS is concerned that expanding the filing times for all Form I-129 petitioners would lead to an increase in cases where the need for the alien has not fully materialized and may lead to an increase in adjudications of petitions regarding speculative employment.

USCIS, however, specifically invites comments on whether it should extend the filing timeframes for all Form I-129 petitioners. USCIS also requests comments on whether such an extension may increase the potential for fraud or abuse of the O and P classifications (as well as other nonimmigrant categories covered by the Form I-129 petition) and suggestions for addressing such fraud or abuse should it occur.

#### **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, certifies that this rule will not have a significant economic impact on a substantial number of small entities. As stated under the certification required by Executive Order 12866, section 1(b)(6), DHS has determined that there are no new costs to either the government or the public associated with this rule. This rule does not alter any of the substantive petitioning requirements related to the Form I-129 or the evidentiary standards for establishing eligibility for the O and P nonimmigrant classification. This rule will ensure that certain O and P nonimmigrant petitions are adjudicated well in advance of the date of the employers' stated need and thus prevent employers from having to cancel an event, competition or performance either because the petition was denied at the last minute, or because the petition was not adjudicated in advance of the need. Employers will be less likely to lose booking costs or have to issue refunds if they receive a decision on the petition well in advance of the event, competition, or performance.

#### **Unfunded Mandates Reform Act of 1995**

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

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness 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 rule is considered by the Department of Homeland Security 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 benefits of this rule as required by Executive Order 12866, section 1(b)(6) and has determined that there are no new costs to either the government or the public associated with this rule. The rule does not alter any of the substantive petitioning requirements related to the Form I-129 or the evidentiary standards for establishing eligibility for the O or P nonimmigrant classification. Further, DHS has determined that the benefits of this rule justify any *de minimus* costs that may be incurred by the government or public associated with the change in filing time frames. The rule will ensure that certain O and P nonimmigrant petitions are adjudicated well in advance of the date of the employers' stated need and thus prevent employers from having to cancel an event, competition or performance either because the petition was denied at the last minute, or because the petition was not adjudicated in advance of the need. Employers will not lose booking costs or have to issue refunds if they receive a decision on the petition well in advance of the event, competition, performance,

etc. Finally, this rule will ensure that employers have sufficient time to seek a new beneficiary or beneficiaries in the event a petition is denied.

#### Executive Order 13132

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

#### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

#### List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, 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 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301-1305 and 1372; 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, 8 CFR part 2.

2. Section 214.2 is amended by:

- a. Revising the second sentence in paragraph (o)(2)(i) and adding a new sentence immediately thereafter; and by
- b. Revising the tenth sentence in paragraph (p)(2)(i) and adding a new sentence immediately after.

The revisions read as follows:

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

\* \* \* \* \*

(o) \* \* \*

(2) \* \* \*

(i) *General.* \* \* \* The petition may be filed up to one year, but not earlier than 6 months, before the actual need for the alien's services. Exceptions may be granted in emergency situations at the discretion of the USCIS Service Center Director, and in special filing situations as determined by USCIS Headquarters. \* \* \*

\* \* \* \* \*

(p) \* \* \*

(2) \* \* \*

(i) *General.* \* \* \* The petition may be filed up to one year, but not earlier than 6 months before the actual need for the alien's services. Exceptions may be granted in emergency situations at the discretion of the USCIS Service Center Director, and in special filing situations as determined by USCIS Headquarters. \* \* \*

\* \* \* \* \*

\* \* \* \* \*

Dated: April 22, 2005.

**Michael Chertoff,**

*Secretary.*

[FR Doc. 05-8471 Filed 4-27-05; 8:45 am]

**BILLING CODE 4410-10-P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 114

[Docket No. 04-064-1]

#### Viruses, Serums, Toxins, and Analogous Products; Expiration Date Required for Serials and Subserials and Determination of Expiration Date of Product

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the Virus-Serum-Toxin Act regulations to require licensees and permittees to confirm the proposed expiration dating period of products by potency testing serials on multiple occasions throughout the proposed dating period, rather than only at release and at the approximate expiration date as is currently required. We would require that those stability test data be submitted to the Animal and Plant Health Inspection Service for review and filing, and that the approval date be specified in a filed Outline of

Production. In addition, after a product is licensed and its dating period confirmed, the licensee or permittee would have to submit a plan to monitor the stability of the product and the suitability of its dating period; that plan would have to include regular testing of serials for potency during and at the end of dating. The proposed changes would help clarify the distinction between specifying an expiration date for an individual serial of a product and establishing the appropriate expiration dating period for the product. The effect of these proposed changes would be to establish a single uniform standard for determining expiration dates for veterinary biological products.

**DATES:** We will consider all comments that we receive on or before June 27, 2005.

**ADDRESSES:** You may submit comments by any of the following methods:

- **EDOCKET:** Go to <http://www.epa.gov/feddoCKET> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.

- **Postal Mail/Commercial Delivery:** Please send four copies of your comment (an original and three copies) to Docket No. 04-064-1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 04-064-1.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the instructions for locating this docket and submitting comments.

**Reading Room:** You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

**Other Information:** You may view APHIS documents published in the **Federal Register** and related information on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy