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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 226

Disposition of Equipment Acquired Under the Food Service Equipment Assistance in the Child Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care Food Program (CCFP) regulations regarding property management requirements to make the CCFP regulations consistent with the Department's regulations, Uniform Federal Assistance Regulations, 7 CFR Part 3015, published on November 10, 1981, at 46 FR 55636. This rule is also intended to clarify the CCFP requirements for management of property and disposition of equipment purchased with Food Service Equipment Assistance (FSEA) funds.

The Uniform Federal Assistance Regulations provides specific requirements regarding real property, equipment, and supplies whose acquisition is financed by Federal grant funds. It should be noted that 7 CFR Part 3015 is final and no authority exists for these requirements to be modified in the CCFP regulations.

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Walstrom or Ms. Mary Lou Wheeler at the Child Care and Summer Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 416, Alexandria, Virginia 22302, during regular business hours (8:30 a.m. to 5:00 p.m.) Monday through Friday, or call (703) 756-3688.

SUPPLEMENTARY INFORMATION:

Classification. This action has been reviewed under Executive Order 12291 and has been classified *not major* because it will not have an annual effect on the economy of $100 million, will not cause a major increase in cost or prices for Program participants, individual industries, Federal agencies, State or local government agencies or geographic regions, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

This final rule has also been reviewed with regard to the requirements of Pub. L. 96-354, the Regulatory Flexibility Act. Pursuant to that review, Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities.

The Uniform Federal Assistance Regulations (7 CFR Part 3015) were submitted for comment on July 20, 1981, and made final on November 10, 1981. 7 CFR 3015.1 indicates that the requirements of that part supersede any individual USDA regulation. Therefore, good cause exists for dispensing with public comment on this technical incorporation of those already effective rules.

Background

Effective October 1, 1981, Section 810(f) of Pub. L. 97-35, the Omnibus Budget Reconciliation Act of 1981, repealed the Food Service Equipment Assistance Program. As stated in the preamble to the interim CCFP regulation (November 27, 1981, 46 FR 57980), the provisions which prescribed the procedures for administering and distributing FSEA funds to CCFP institutions were deleted, but the definition of FSEA and property management requirements contained in § 226.24 were retained. Section 226.24 sets forth the requirements for management and disposition of property acquired in whole or part with FSEA funds.

Section 226.24—Property Management Requirements, is based on OMB Circular A-102, Attachment N, Property Management Standards. OMB Circular A-102 prescribes uniform standards governing the utilization and disposition of property furnished (1) by the Federal Government; (2) acquired in whole or in part with Federal funds; or (3) whose cost was charged to a project supported by a Federal grant. When the Department issued 7 CFR Part 3015, the requirements of Circular A-102 were included as part of the Department's regulations as Subpart R-Property. The requirements of 7 CFR 226.24 and Subpart R of 7 CFR Part 3015 are similar in most respects. However, the terms "recipient", "subrecipient", and "awarding agency" cited in 7 CFR Part 3015 are being clarified in this rule to identify the CCFP entity. In States that are administered by the Regional Office, "recipient" is the institution and the "awarding agency" is the Food and Nutrition Service (FNS). When the States administer the Program, the "recipient" is the State agency, the "subrecipient" is the institution, and the "awarding agency" is FNS. Disposition of property must be conducted in accordance with 7 CFR Part 3015. These Uniform Federal Assistance Regulations authorize some additional options which may be followed with regard to disposition of property whose acquisition cost was $1000 or more, and also provides a description of the conditions for the retention of these proceeds.

7 CFR Part 3015 allows the recipient (whether the State agency or the institution) to dispose of the original or replacement equipment acquired in part or whole with grant funds whose acquisition cost was less than $1000. The recipient may (1) sell, (2) retain, or (3) otherwise dispose of such equipment with no further obligation to the Federal government. However, if the acquisition cost of the equipment exceeded $1000, the Federal government shall have the right to an amount calculated by multiplying the current market value or the proceeds from the sale by the Federal share of the equipment. If the recipient is still receiving grants from the same Federal Program and the awarding agency approves, the net amount due may be used for allowable Program costs. Otherwise, the net amount must be returned to the awarding agency by check or money order.

7 CFR Part 3015 also provides that when the equipment has been disposed of, and the recipient has retained the

proceeds, the recipient (State agency only) or the awarding agency shall, as part of their closeout review procedures, review the recipients records to support the use of proceeds for Program purposes. When the records indicate that the proceeds have not been used to enhance the food service program, and the recipient is not receiving grant support from the same Federal program, the awarding agency shall have the authority to recover such funds or waive the recovery procedures. However, the institution may retain ten percent of the proceeds or $100, whichever is greater, for the expense involved in the disposition of the equipment. When the recipient (State agency only) recovers proceeds from equipment disposition, replacement or transfer, it must continue to account for the use of the net Federal share for CCFP purposes by reporting any funds obtained on the SF-269 report. The Uniform Federal Assistance Regulations, 7 CFR Part 3015, and existing CCFP regulations require that these records and all other Program records must be maintained for three years.

Since the Department is amending § 226.24 on property management requirements to conform with 7 CFR Part 3015, the definition on nonexpendable personal property in § 226.2 is obsolete and has been deleted.

The Department believes that these options provided by 7 CFR Part 3015 will provide the States with greater flexibility in Program management, and will involve less paperwork when such funds are recovered.

List of Subjects in 7 CFR Part 226

Day care, Food assistance programs, Grant programs—health, Infants and children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

PART 226—CHILD CARE FOOD PROGRAM

Accordingly, Part 226 is to be amended as follows:

§ 226.2 [Amended]

1. Section 226.2 is amended to remove the definition of "nonexpendable personal property."

2. Section 226.24 is revised to read as follows:

§ 226.24 Property management requirements.

Institutions and administering agencies shall follow the policies and procedures governing title, use, and disposition of equipment obtained by purchase, whose cost was acquired in whole or part with food service equipment assistance funds in accordance with the Department's Uniform Federal Assistance Regulations (7 CFR Part 3015).

In accordance with the Paperwork Reduction Act of 1980, (44 U.S.C. 3507), the reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) under clearance 0584-0055.

(Section 2, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1766); Section 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779))

Dated: September 9, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-24981 Filed 9-13-83; 8:45 am]

BILLING CODE 3410-30-M

Farmers Home Administration

7 CFR Part 1951

Analyzing Credit Needs and Graduation of Borrowers

Correction

In FR Doc. 83-24301, beginning on page 40202 in the issue of Tuesday, September 6, 1983, make the following correction to Subpart F:

On page 40209, in "Exhibit B", second column, eleventh line of item "15.", "will include * * *" should read "will not include * * *".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 214

Powers and Duties of Service Officers; Availability of Records; Nonimmigrant Classes; Temporary Alien Employees

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the application procedure for an extension of stay for a temporary worker. It also allows nonimmigrant temporary workers (H-1 and H-3) to be admitted to the United States for longer periods which are commensurate with the purposes of their admission. Certain employers are permitted to file a blanket petition to classify certain classes of their employees as eligible for intra-company transferee visas. These changes benefit the Service and the public by reducing the number of extensions of stay and petitions filed and enhance compliance.

EFFECTIVE DATE: October 14, 1983.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives & Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-3048

For Specific Information: Thomas E. Cook, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone: (202) 633-5014

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 14631-14638 of the **Federal Register** of April 5, 1983 and initiated comments for 30 days ending May 5, 1983.

Comments on Proposed Regulation

The Service received 18 comments. Seventeen expressed support for the rule change but suggested modifications. Only one comment expressed general concern with the proposal. Among the comments, seven basic problem areas were identified and are discussed below:

(1) Section 214.2(1)(3). Eight commenters suggested that the validity period of the L blanket petition should be indefinite or that the Service should extend the proposed three years. We will study the issue of extending the three-year validity at a later date based on experience with the program. The request for an indefinite validity is not feasible in the L classification. The L-1 visa is intended for a nonimmigrant who enters the United States "temporarily" on an intra-company transfer to render services to his or her employer or a related company. In the case of students and exchange visitors (examples referred to by the commenters), it is relatively easy to determine the length of the temporary stay. Time limits may not be inherent or expressed in the various positions which may be covered by a blanket petition, and the consular officer is not in a position to know whether the applicant has previously received visas from other consulates. The only practical way to control abuse and assure that the applicant for the L-1 visa will be entering the United States for a temporary stay is to limit the blanket petition to the period of need or three years, whichever is shorter. Where appropriate, extensions of stay may be granted. In the case of the L beneficiary, the temporary nature of the stay must be examined on a case-by-case basis, depending on the nature of the services he or she is coming to render. The three-year renewals by petitioner and

beneficiary will provide a mechanism for ensuring compliance with the Act.

(2) Section 214.2(h)(10). Two commenters opposed the filing of additional Forms I–129B (Petition to Classify Nonimmigrant as Temporary Worker or Trainee) and I–539 (Application for Extension of Stay) as an added complication. This requirement is the most effective way of ending the current confusion, described below in description of final rule, as to what can be appealed and what benefit is actually sought. Also, to monitor compliance with the regulations requires that individual applicants for extension of stay be examined in greater detail, which is afforded by the information on Form I–539.

(3) Section 214.2(l)(1)(A). Five commenters objected to the definition of "executive" as too restrictive. Four objected to the concept of including the definition, one felt that it would eliminate alien executives who worked under a different management system than that used in the United States. It was written as a general description of duties which would qualify a person as an executive. These guidelines, in the Service's opinion, are flexible enough to allow aliens functioning as executives to justify their claim to executive status.

(4) Section 214.2(l)(1)(iii)(C). Six commenters requested that the Service lower the number of past L approvals required to qualify for the blanket petition or apply a different system. The main purpose of the revision was to streamline processing in cases where the petitioner makes frequent intracompany transfers of a similar nature and has demonstrated familiarity with applicable requirements. The decision to use ten approvals as the qualifying number was based on information from the business community prior to publication. The issue has been reevaluated based on the comments and the qualifying number of approvals is lowered from ten to five.

(5) Section 214.2(l)(1)(iii). Eight commenters objected to the exclusion of specialized knowledge from the blanket petition. The final rule remains unchanged, based on the Service's past experience in adjudicating this classification. The exclusion of specialized knowledge is necessary to give INS the necessary control in monitoring compliance afforded by adjudication of individual petitions. The Department of State has concurred with these regulations including INS' decision to exclude specialized knowledge from the blanket petition.

(6) Four commenters opposed the codification of Service interim decisions into the regulations. In the twelve years since the L classification was created, there have been numerous precedent decisions relating to the eligibility of intra-company transferees. The principles of these decisions have been included in the new L regulation to provide better information to members of the public who do not have access to the numerous administrative decisions.

(7) Three commenters pointed out that there is no provision for an appeal if the person requesting a L visa under a blanket petition is refused by an American consular officer on the ground that he is not an executive or manager. A revision to Service Operations Instruction 214(l) will provide that if an American consular officer refuses to issue an L visa on the basis that the applicant is neither an executive nor a manager within the meaning of these regulations, the applicant shall be advised that an individual petition may be filed with INS in his behalf. Denial of such a petition can be appealed under 8 CFR 103.

(8) Section 214.2(h)(8) and (l)(5). One comment questioned the Service's authority to establish revocation procedures for nonimmigrant visa petitions. It is the view of the Service that the elimination of specific statutory authority to revoke nonimmigrant visa petitions was inadvertent. Also, section 214 (8 U.S.C. 1184) of the Act, does provide the Attorney General with the authority to prescribe regulations for admission to the United States of any alien for such time, and under such conditions as deemed necessary.

Description of Final Rule

This rule provides that when an alien applies for an extension of stay under section 101(a)(15) (H) or (L) of the Act, the period of validity of the previously approved visa petition must have been extended. This action formalizes a procedure which already takes place whenever an extension requested by an H or L applicant is granted. The Service desires to clarify that the decision to deny an extension of stay request is separate from the decision to deny a request for extension of the validity of a visa petition. The denial of a request by an H or L applicant for an extension of stay made on Form I–539 is nonappealable. Denial of a request to extend a previsouly approved visa made on Form I–129 is appealable. This rule, by providing separate Service actions on the two types of requests, will benefit the public by ending any confusion as to what benefit is being sought and what appeal rights are available. This rule therefore requires all H's and L's to file separate extension of stay requests on Form I–539. While this will increase the number of these filings, the Service believes that proper enforcement of the regualtions requires that individual applicants for extension be examined in the greater detail afforded by the information in Form I–539.

Section 214.2 (h)(8) and (l)(5) adds adds a procedure for revoking the previous approval of a nonimmigrant visa petition filed on Form I–129B. The new procedure allows for two types of revocation proceedings, automatic and on notice. Automatic revocation of an approved Form I–129B would occur when the petitioner dies, goes out of business, or files written withdrawal of the petition. The automatic revocation proceedings are not appealable.

The revocation on notice procedure is initiated by the district director, by serving a notice of intent to revoke the visa petition. Upon receipt of this notice, the petitioner may submit evidence in rebuttal to the reasons for the proposed revocation. The district director shall consider all evidence submitted in making the decision. His decision may be appealed to the regional commissioner under part 103 of this chapter. When the beneficiary of a revoked petition is in the United States, a copy of the revocation is furnished to the alien and an appropriate period in which to voluntarily depart the United States is set.

Section 214.2(h)(6) allows for an initial approval period not to exceed two years for H–1 petitions (aliens of distinguished merit and ability). Approvals of H–3 (trainee) petitions will be granted for the duration of the approved training program. Experience with the administration of the H–1 and H–3 categories of nonimmigrants has shown that extending the initial approval period will greatly benefit the public without causing an adverse impact on compliance. First extension requests filed by the vast majority of aliens of distinguished merit and ability (H–1) are routinely granted. Upon initial approval of a petition for a trainee (H–3), the Service determines that the stated length of the training program is appropriate; therefore, admitting an H–3 for the length of that approved training program relieves the Service from unnecessary review of extension requests.

Section 214.2(l)(1)(ii) adds definitions of three major terms contained in section 101(a)(15)(L) of the Act (8 U.S.C. 1101(15)(L)). Those terms are *managerial capacity, executive capacity*, and *specialized knowledge*. Administration of this section of law during the past twelve year has produced a body of administrative law and practive which

the proposed definitions reflect. See *Matter of Raulin*, 13 I. & N. Dec. 654 (RC 1970), *Matter of Michelin Tire*, 17 I. & N. Dec. 248 (BIA 1977), *Matter of Penner*, Interim Decision 2865 (INS 1982), *Matter of Colley*, Interim Decision 2881 (INS 1981) and *Matter of Isovic*, Interim Decision 2933 (INS 1982).

The rule provides for a blanket petition procedure under which a petitioner may transfer managers and executives, for a temporary period, to the United States under section 101(a)(15)(L) of the Act based upon the approval of a single blanket petition (Form I–129B). After approval of a petition, all executives or managers whom the petitioner desires to transfer to the United States, in the positions covered by the blanket petition, are permitted to apply directly to an American embassy or consulate for L–1 visa issuance for a period of three years with possible extensions. A separate visa petition for each such individual is not required. Authority to determine that the individual manager or executive qualifies under the Act and regulations is vested in the consular officer. Service Operation Instructions will be amended to provide that if the consular officer finds that an applicant is not a manager or executive, an individual petition may be filed with the appropriate district office in the beneficiary's behalf. The length of stay for a beneficiary will run concurrently with, but not exceed the validity of, the approved blanket petition. Section 214.2(1)(iii)(C) applies only to executives and managers under the intra-company transferee classification and does not apply to an alien classified as an intra-company transferee under "specialized knowledge". To qualify, the petitioner must produce evidence that he has had at least five approved visa petitions during the past year.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a major rule within the meaning of Section 1(b) of E.O. 12291 because it is not likely to result in a major increase in costs or prices, nor result in adverse effects on competition, employment, investment, productivity, or innovation.

List of Subjects

8 CFR Part 103

Administrative practice and procedure.

8 CFR Part 214

Administrative practice and procedure, Aliens, Authority delegation, Employment, Organization and functions, Passports and visas.

Accordingly, Title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. Section 103.1, is amended by adding paragraph (l)(2)(xxiv) to read as follows:

§ 103.1 Delegation of authority.

* * * * *

(l) * * *

(2) * * *

(xxiv) Decisions revoking approval of certain petitions, as provided in § 214.2.

* * * * *

PART 214 — NONIMMIGRANT CLASSES

2. Section 214.2 is amended by revising paragraphs (h)(1), (h)(6), (h)(7), (h)(8) and (h)(9); paragraphs (h)(3a) and (h)(11) are removed, revised, and designated as (h)(14) and (h)(10) respectively; paragraph (h)(10) is redesignated as (h)(11); a new paragraph (h)(12) is added and former paragraph (h)(12) is redesignated as (h)(13).

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

* * * * *

(h) *Temporary employees*—(1) *Petitions.* Any alien defined in section 101(a)(15)(H) of the Act must be the beneficiary of an approved or extended visa petition filed on Form I–129B. The petition must be accompanied by the evidence listed in parts (2), (3), or (4) of this paragraph. The petitioner need not be a United States resident.

(i) *Jurisdiction.* An employer shall file the petition and supporting documents with the district director having administrative jurisdiction over the place in the United States where the beneficiary will perform services or receive training. If the services will be performed or the training will be received in more than one location in the United States, the petition must be filed with a Service officer having jurisdiction over at least one of those areas.

(ii) *Multiple beneficiaries.* An employer may include more than one beneficiary in an H petition if the beneficiaries will be performing the same type of service or receiving the same type of training, applying for visas at the same consulate, and performing services or receiving training in the same Service district.

(iii) *Change in employment or training.* If an alien in the United States desires to perform temporary service or training for another petitioner, the new employer must file a new petition on Form I–129B and the petition must accompany an application of an extension of stay, Form I–539. If the new petition is approved, an extension of stay may be granted for the validity of the approved visa petition.

* * * * *

(6) *Approval of petition*—(i) *General.* In adjudicating the petition, the district director shall consider all the evidence submitted, and any other evidence as he may independently require or obtain to assist his adjudication. The district director shall notify the petitioner on Form I–171C of the approval of the petition. An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary service but not to exceed two years. An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program. If a certification by the Secretary of Labor or his designated representative is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition will not be valid beyond the date to which the certification is valid. When the certification does not state a validity period, approval of the petition will not exceed 1 year from the date on which the certification was issued.

(ii) *Spouse and dependents.* The spouse and minor children of the beneficiary are entitled to nonimmigrant H classification if accompanying or following to join the beneficiary in the United States. Neither the spouse nor children may accept employment unless they are the beneficiaries of an approved petition filed in their behalf and have been granted a nonimmigrant classification authorizing their employment.

(7) *Denial of petition*—(i) *Notice of intent.* Only when an adverse decision is proposed on the basis of evidence not submitted by the petitioner, shall the district director notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will

be granted a period of 10 days from the date of the notice in which to do so. Any rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner will be notified of the decision, the reasons for the denial, and the right to appeal under Part 103 of this chapter. A denial decision by the district director will set forth the pertinent facts adduced from the evidence considered and give the specific reasons for the decision in the light of the facts and relating provisions of section 101(a)(15)(H) of the Act.

(8) *Revocation of approval of petitions*—(i) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner dies, goes out of business, or files a written withdrawal of the petition. When it comes to the attention of the district director that the approval has been automatically revoked, the district director shall promptly notify the petitioner of the revocation by letter.

(ii) *Revocation on notice.* The approval of a petition may be revoked if the beneficiary is no longer employed by the petitioner in the same capacity as specified in the petition or if the beneficiary is no longer receiving training as specified in the petition. The approval may also be revoked if it is determined that the statement of facts contained in the petition was not true and correct. If the district director finds that any of the above conditions exist, a notice of intent to revoke will be sent to the petitioner. The petitioner may submit evidence in rebuttal within 10 days from the date of the notice. Any rebuttal material will be considered in making the final decision. The petitioner may appeal a revocation on notice to the regional commissioner under Part 103 of this chapter.

(9) *Admission.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission will not exceed the date of validity of the petition.

(10) *Extension of stay.* An extension may be authorized in increments of not more than 12 months each under the same terms and conditions that apply to admission. If maintaining status, the beneficiary may apply for an extension for the validity period of the approved visa petition by submitting Form I-539. An application for an extension of stay on behalf of a group of beneficiaries covered by the same original petition must be filed on Form I-539 by each individual alien, but only one Form I-129B for extension of visa petition validity is required. In the case of an extension of stay for an alien ensemble performing as a group, only one Form I-539 is required with an attached list of beneficiaries. A change in the previously authorized employment or training requires the filing of a new petition by the prospective employer or trainer and the filing of an I-539 by the beneficiary. The forms I-539 and I-129B may be filed concurrently. For an alien defined in section 101(a)(15)(H)(ii) of the Act, the application for extension of stay must be accompanied by a labor certification or a notice that the certification cannot be made, and the alien shall not be granted an extension which would result in an unbroken stay in the United States for more than 3 years. An application for an alien athlete or entertainer, admitted under section 101(a)(15)(H)(ii) of the Act to perform services in the United States Virgin Islands, cannot be approved for extension of stay beyond a total of 45 days. There is no appeal from the denial of an alien's request for an extension of stay filed on Form I-539.

(11) *Effect of strike.* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, and the beneficiary has entered the United States to take up the employment or training, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C.) 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, the beneficiary has entered the United States to take up employment, and if the beneficiary is an "employee" within the definition of the NLRA; the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizens or lawful permanent resident workers who voted, or a majority of such workers are participating in the strike.

(v) As used in this section, "place of employment" means wherever the employer or a joint employer does business.

(12) *Extension of visa petition validity.* A visa petition extension may be authorized in increments of not more than 12 months each, under the same terms and conditions that applied to the original approval. If there is no change in the previously approved visa petition, an extension may be requested by submitting Form I-129B. Supporting documents are not required unless requested by the Service.

(13) *Special classes.* The services of an entertainer beneficiary shall be restricted to the activity, area, and employer specified in the approved petition. Any engagement not specified in the original petition requires a new petition. A new petition is also required if the entertainer's services are engaged by a new employer of by a new agent or are to be performed in another area, except that a new petition is not required for the appearance of an alien performer on a bona fide charity show without compensation; provided, the alien is already in the United States under an approved visa petition. A show is not considered a "bona fide charity show" within the meaning of this paragraph if any of the musicians,

entertainers, or other performers receive compensation, including reimbursement for expenses, for their performance. A petition is not required for an appearance, interview, or demonstration, if without remuneration, by any nonimmigrant alien who is not an entertainer by occupation. A separate petition and fee are required for each group of variety entertainers comprising a separate and distinct act.

(14) *Use of Form I–171C.* The Service shall notify the petitioner on Form I–171C whenever a visa petition or an extension of a visa petition is approved under the H classification. The petitioner may furnish the Form I–171C to any one of the beneficiaries who desires to depart from and return to the United States within the period for which the visa petition is valid, but may not duplicate the original form received from the Service; however, additional original forms may be requested. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use Form I–171C, as stated on the form, to apply for a new or revalidated visa. If the beneficiary is exempt from the visa requirement, the beneficiary may present the original Form I–171C at the United States port of entry upon return to be considered for readmission until the expiration date of the validity of the visa petition as shown on Form I–171C.

* * * * *

3. In § 214.2, paragraph (l) is revised to read as follows:

(l) *Intra-company transferees*—(1) *Petition.* Any alien defined in section 101(a)(15)(l) of the Act must be the named beneficiary of an approved or extended visa petition filed on Form I–129B, or be assigned to a position identified in an approved blanket petition made on the same form. The petition must be accompanied by the evidence listed in part (iii) of this paragraph. The petitioner need not be a United States resident.

(i) *Jurisdiction.* The prospective employer must file a separate petition for each beneficiary with the district director having jurisdiction over the place in the United States where the beneficiary will perform the services. In case of a blanket petition, the petition must be filed with the district director having jurisdiction over the employer's main office in the United States. The authority to determine the individual eligibility of beneficiaries covered by blanket petitions under this section is delegated to United States consular officers.

(ii) *Definitions.* As used in this part:

(A) "Managerial capacity" means an assignment within an organization in which the employee directs the organization or a customarily recognized department or subdivision of the organization, controls the work of other employees, has the authority to hire and fire or recommend those actions as well as other personnel actions (promotion, leave authorization, etc.), and exercises discretionary authority over day-to-day operations. This does not include the first-line level of supervision unless the employees supervised are managerial or professional.

(B) "Executive capacity" means an assignment within an organization in which the employee directs the management of an organization and establishes organizational goals and policies, exercises a wide latitude of discretionary decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business.

(C) "Specialized knowledge" means knowledge possessed by an individual which relates directly to the product or service of an organization or to the equipment, techniques, management, or other proprietary interests of the petitioner not readily available in the job market. The knowledge must be relevant to the organization itself and directly concerned with the expansion of commerce or it must allow the business to become competitive in the market place.

(D) "New office" means an office that has been in operation for less than one year.

(iii) *Evidence*—(A) *General.* A petitioner seeking to accord an alien classification under section 101(a)(15)(L) of the Act shall attach a statement to the petition describing the capacity in which the beneficiary will be employed in the United States. The documentary evidence must establish that the service currently performed by the beneficiary, and those to be performed in the United States, have been and will be either executive, managerial, or involve specialized knowledge. The statement must satisfy the requirement in part (1)(ii) of this section. If the petition indicates that the beneficiary is coming to open or to be employed in a new office in the United States, the petition must be accompanied by evidence that sufficient physical premises to house the United States operation have been secured by purchase, lease, or rental, and the petitioner has sufficient resources to remunerate the beneficiary. An individual petition is required in the case of all petitions involving new offices.

(B) *Individual petition.* A petition must be accompanied by evidence of the corporate interrelationship between the foreign company and the United States-based company in order to establish existence of the interrelationship described in section 101(a)(15)(L) of the Act. A statement explaining the temporary need for the beneficiary's services must also accompany the petition. If the beneficiary is an owner, operator, or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and also include evidence that the beneficiary will be transferred to an assignment outside the United States upon completion of the temporary services in the United States.

(C) *Blanket petitions.* A petitioner may file a blanket petition if it has transferred at least 5 "L" managerial or excecutive beneficiaries to the United States during the previous 12 months. The petition must be accompanied by evidence that this requirement has been met. The petition must also be accompanied by evidence of the corporate interrelationship of all foreign and domestic entities which the petitioner identified in the petition and a list of the positions to which its executives or managers may be assigned in the United States. If an organization will identify more than 10 positions, the petitioner may furnish a description of its personnel structure and identify the level above which it will or may seek to transfer managers or executives. Qualified employees who are being transferred into managerial and executive positions identified in the approved blanket petition shall apply directly to an American embassy or consulate for visa issuance without being named in an individual visa petition. A beneficiary of a blanket petition may be admitted as a manager or executive with any organization or division named in the approved visa petition. When the beneficiary of a revoked petition is in the United States, a copy of the revocation shall be furnished to the alien with a date on which to depart the United States.

(2) *Certification of documents by attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(l) of this part may be accepted, without the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(h) of this chapter. However, the original document shall be submitted if requested by the Service.

(3) *Approval of petition.*—(i) *General.* The district director shall notify the petitioner on Form I–171C upon approval of a visa petition filed on Form I–129B. An individual petition approved under this paragraph is valid for the period of established need for the beneficiary's temporary services, not to exceed three years. A blanket petition approved under this paragraph is valid for a period of three years from the date of approval of the petition. A blanket petition may be approved in whole or in part. Only those interrelationships found to qualify under section 101(a)(15)(L) of the Act shall be approved. A petitioner may utilize the services of a beneficiary in any qualifying executive or managerial position and for any company found qualified in the blanket petition.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to the same nonimmigrant classification and length of stay if accompanying or following to join the beneficiary in the United States. Neither the spouse nor children may accept employment unless they are the beneficiaries of an approved petition filed in their behalf and have been granted a nonimmigrant classification authorizing their employment.

(4) *Denial of petition*—(i) *General.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Individual petition.* If an individual petition is denied, the petitioner will be notified of the denial, the reasons for the denial, and of the right to appeal on Form I–292.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified of the decision and the reasons for the denial in part resulting from a finding that some of the claimed inter-company relationships and/or positions do not qualify under section 101(a)(15)(L) of the Act. The district director shall forward the denial along with Form I–171C, Notice of Approval, when the petition is denied in part. Form I–171C shall list those inter-company relationships and positions which were found to qualify. If the decision of the district director is reversed on appeal, a new Form I–171C shall be furnished to the petitioner to reflect the changes made as a result of the appeal.

(5) *Revocation of approval of petitions*—(i) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner dies, goes out of business, or files a written withdrawal of the petition. When it comes to the attention of the district director that the approval has been automatically revoked, the district director shall promptly notify the petitioner of the revocation by letter.

(ii) *Revocation on notice.* The approval of a petition may be revoked if the ownership and control of the related businesses are altered, and the interrelationship or employment of the beneficiary no longer qualify under section 101(a)(15)(L) of the Act. The petitioner shall notify the Service of any changes in the relationships between authorized companies and any changes to the employment of the beneficiary. If the district director's review of the change finds that the inter-relationship or employment is no longer eligible within the meaning of section 101(a)(15)(L) of the Act, a notice of intent to revoke shall be sent to the petitioner. If an inter-relationship previously approved under a blanket petition is found to no longer qualify, a notice of intent to revoke only that portion of the petition affected by the determination shall be sent to the petitioner. Upon receipt of this notice, the petitioner may submit evidence in rebuttal of the reasons for the proposed revocation. The district director will consider all evidence in making the decision. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I–171C shall be sent to the petitioner with the revocation notice. The petitioner may appeal a revocation on notice to the regional commissioner under Part 103 of this chapter.

(6) *Admission.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the date of validity of the petition.

(7) *Extension of stay.* An alien classified under section 101(a)(15)(L) of the Act shall apply for an extension of stay on Form I–539. The Form I–539 must be accompanied by a statement of continued need signed by an authorized company representative. Extensions of stay may be authorized in increments not to exceed 12 months for a beneficiary of an individual petition and not exceed 36 months for an alien admitted under a blanket petition authorization. No extension will be granted to exceed the validity of the approved petition. The same terms and conditions authorizing the approval of the petition and admission of the beneficiary shall apply. However, an alien admitted under the authority of an approved blanket petition may be reassigned to any business in a managerial or executive position included in the approval of the blanket petition without referral to the Service. The application for extension of stay for a beneficiary of an approved blanket petition must be filed with the Service office that approved the original visa petition. The spouse and unmarried minor children of an L–1 beneficiary may be included in the extension application and given extensions of stay to the same date as the beneficiary. A new Form I–171C shall be sent to the applicant if the extension is approved. There is no appeal from the denial of an extension of stay. Form I–129B may be filed concurrently for extension of visa petition validity.

(8) *Extension of visa petition validity.* An individual petition may be extended in increments of not more than 12 months each by submitting Form I–129B if all existing conditions in the original approval remain the same. Supporting documents are not required unless requested by the Service. A blanket petition may be extended for an additional three year period by submitting a Form I–129B with the file number of the previously approved petition. Supporting documents are not required if all existing business relationships and authorized positions remain the same. When listed oganizations or positions are to be amended, a revised petition must be filed on Form I–129B. Form I–171C must list all qualifying inter-company relationships which have qualified under this part.

(9) *Labor disputes.* A petition will be denied if a strike or other labor dispute involving a work stoppage or layoff of employees is in progress in the occupation and at the place the beneficiary is to be employed. If the petition has already been approved, the approval of the beneficiary's employment is automatically suspended while the srike or other labor dispute is in progress.

(10) *Use of Form I–171C.* The Service shall notify the petitioner on Form I–171C upon approval of a visa petition filed on Form I–129B. The Form I–171C will include the name of the beneficiary or, in the case of a blanket petition, will identify the positions and organizations included in the petition. Each alien seeking a visa to occupy a position named in an approved blanket petition must submit a copy of Form I–171C with a letter from the petitioner which identifies: the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties and salary under both the new and former positions, and the dates and locations of previous L stays in the

United States. The employer of a beneficiary named in an individual visa petition may request the Service to issue an original form I-171C to the employee to facilitate entry into the United States for a beneficiary who does not require an nonimmigrant visa. The original Form I-171C may be retained by the beneficiary and presented for entry during the validity of the petition; provided, the beneficiary is entering or reentering the United States to resume the same employment with the same petitioner within the validity period of the petition. However, an L-1 beneficiary admitted under the authorization of a blanket petition may be readmitted even though reassigned to a different managerial or executive position or organization named on the Form I-171C. The original Form I-171C received from the Service may only be duplicated by employers who have approved blanket petitions; however, additional forms may be requested by individual petitioners.

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(Secs. 103, 214, Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1184))

Dated: August 23, 1983.

Alan C. Nelson,

Commissioner of Immigration and Naturalization.

[FR Doc. 83-24860 Filed 9-13-83; 8:45 am]

BILLING CODE 4410-10-M

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8 CFR Part 238

Contracts With Transportation Lines; Wardair Canada (1975) Ltd.

Correction

In FR Doc. 83-23777 appearing on page 39214 in the issue of Tuesday, August 30, 1983, make the following correction:

On page 39214, second column, under "Supplementary Information", eighth line, "Immigration and Nationally Act" should read "Immigration and Nationality Act".

BILLING CODE 1505-01-M

FARM CREDIT ADMINISTRATION

12 CFR Part 614

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: Farm Credit Administration ("FCA"), by its Federal Farm Credit Board is amending its regulation dealing with banks for cooperatives' authorization to make both secured and unsecured loans. This amendment will permit the treatment of loans secured by payment in kind ("PIK") contracts as loans secured by warehouse receipts or other title documents. This final regulation is identical to an interim regulation which was published on June 29, 1983 (48 FR 29833) and which was effective on that date. No comments were received on the interim regulation.

EFFECTIVE DATE: June 29, 1983.

FOR FURTHER INFORMATION CONTACT: Gary L. Norton, Office of General Counsel, Farm Credit Administration, Washington, D.C. 20578, (202) 426-7631.

SUPPLEMENTARY INFORMATION: FCA regulation 12 CFR 614.4260 establishes the loan and security requirements for loans made by the banks for cooperatives ("BCs"). The regulation provides that loans which are secured by warehouse receipts or other title document are eligible for advances up to 75 percent of the unhedged net value of the commodity or 90 percent of the hedged value of the commodity.

On March 4, 1983, the Agricultural Stabilization and Conservation Service, USDA, published a final rule which provides for a payment-in-kind ("PIK") program for acreage diversion for the 1983 crops of wheat, corn, grain sorghum, rice, and upland cotton. Under the program, producers will be offered a quantity of a commodity as compensation for diverting acreage normally planted to that commodity in addition to that being taken out of production under the 1983 acreage reduction and cash land diversion programs for wheat, corn, grain sorghum, rice, and upland cotton previously announced. The USDA has determined that the diversion of this additional acreage from the production of such crops is necessary to adjust the total national acreage of such commodities to achieve desirable production goals and that producers should be compensated by receipt of like commodities. (48 FR 9232 codified at 7 CFR Part 770).

The Federal Farm Credit Board ("Federal Board") has determined that PIK contracts which have been assigned by producers to marketing cooperatives should be treated as title documents for purposes of 12 CFR 614.4260 because of the unique safeguards contained in the PIK program and in light of cross compliance requirements and provisions for liquidated damages. Accordingly, the final regulation amends 12 CFR 614.4260 to provide that BC loans secured by contract rights under the PIK program will be eligible for the same net value loan advance amounts as loans secured by title documents.

In permitting these higher percentage advances the Federal Board recognizes that since PIK commodities are not eligible for Commodity Credit Corporation ("CCC") loans the BCs will not be able to rely on the CCC loan rates as price floor for commodities covered by the contracts and therefore the BCs must exercise care in valuing these commodities.

Because of the immediate need to provide authority for higher percentage loan advances for BC loans secured by PIK contracts and the need of the BCs to avoid delay when making commitments to advance funds under these loans the Federal Board determined, pursuant to 5 U.S.C. 553, it was unnecessary and contrary to the public interest to provide notice and opportunity for public comment prior to the effective date of the interim regulation. Accordingly the interim regulation was effective June 29, 1983. The public was provided 30 days to comment on the interim regulation. No comments were received. The interim regulation is now being published as a final regulation without change.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Credit, Rural areas.

PART 614—LOAN POLICIES AND OPERATIONS

For the reasons set out in the preamble, 12 CFR Part 614 is amended by revising §614.4260, paragraph (c) to read as follows:

* * * * *

§ 614.4260 Banks for cooperatives.

* * * * *

(c) Seasonal loans made to finance commodities that qualify for special interest rate (where applicable) and lending limit consideration shall be secured. Loans secured by a chattel mortgage, factor's lien, security agreement, or security other than warehouse receipts or other title documents shall not exceed 65 percent of the net value of unhedged or 85 percent of the net value of hedged commodities and the borrower must have sufficient working capital to keep the loan properly margined. Loans secured by warehouse receipts or other title documents shall not exceed 75 percent of the unhedged net value of the commodity or 90 percent of the hedged net value and the borrower must have sufficient working capital to keep the loan properly margined. Loans secured by contract rights under the Agricultural Stabilization and Conservation Service,