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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 1, 204, 205, 211, 212, 214, 216, 223, 233a, 235, 242, and 245

(Order No. 1294-88)

Marriage Fraud Amendments Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration Marriage Fraud Amendments of 1986 (Pub. L. 99-639) became effective on November 10, 1986. This act provides for conditional permanent resident status for certain alien spouses, sons and daughters of United States citizens and lawful permanent residents; for the removal of the conditional basis of such residence upon the filing of a joint petition by the conditional resident and the petitioning spouse; and for the termination of an alien's lawful permanent residence for failure to file the necessary petition or for other reasons. This rulemaking creates final regulations necessary for the implementation of the law.

EFFECTIVE DATE: August 10, 1988.

FOR FURTHER INFORMATION CONTACT: Michael L. Shaul, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-3946.

SUPPLEMENTARY INFORMATION: On January 27, 1988, the Immigration and Naturalization Service ("the Service") published proposed regulations relating to the Immigration Marriage Fraud Amendments of 1986 (IMFA) in the Federal Register at 53 FR 2426 and requested that interested parties submit comments on the proposed regulations by February 26, 1988. IMFA, and the

proposed regulations relating thereto, deal with a number of aspects of the issue:

First, IMFA creates a conditional basis of lawful permanent residence for aliens obtaining permanent residence within two years of marriage to a United States citizen or lawful permanent resident. It provides that the conditional basis shall be placed on the alien's permanent residence for a period of two years, and establishes a procedure by which the alien may seek removal of the conditions at the end of the two-year period. It further permits the revocation of an alien's permanent resident status under any of three conditions:

(1) If it is determined within the two-year period that the marriage was entered into for the purpose of obtaining an immigration benefit or has been judicially annulled or terminated, or that a fee or other consideration was given for the filing of a petition for an immigration benefit;

(2) If the alien and his/her spouse fail to file a joint petition for removal of the conditional status within the 90 days immediately preceding the second anniversary of the alien's having obtained conditional permanent residence, although such failure may be excused; or

(3) If the petition to remove the conditional basis of the alien's resident status is denied.

Second, section 2(b) of Pub. L. 99-639 provides for the deportation of an alien whose permanent resident status is revoked.

Third, IMFA precludes the approval of a petition filed on behalf of an alien who has conspired to engage in a fraudulent marriage or who has attempted to obtain an immigration benefit on the basis of such marriage.

Fourth, IMFA prevents an alien against whom an administrative or judicial proceeding is pending concerning his or her right to enter or remain in the United States from obtaining an immigrant benefit on the basis of a marriage occurring during such proceedings.

Fifth, IMFA precludes the approval of a spousal immigrant visa petition filed by an alien who obtained permanent residence through marriage unless:

(1) The alien petitioner has been a permanent resident for at least five years; or,

(2) The alien establishes by clear and convincing evidence that the prior

marriage was not entered into for the purpose of evading immigration laws; or,

(3) The alien's prior marriage was terminated through the death of his/her spouse.

Sixth, IMFA provides for criminal penalties for individuals who are convicted of having engaged in a fraudulent marriage.

Seventh, IMFA requires that the petitioner and beneficiary of a Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa (Form I-129F) have met within the two-year period immediately preceding the filing of the petition, unless such requirement is waived.

Eighth, IMFA requires that an alien finance or fiancée of a United States citizen must apply for permanent residence through the normal adjustment procedures contained in section 245 of the Immigration and Nationality Act, as amended (the Act), instead of the automatic procedures formerly contained in section 214(d) of the Act.

Ninth, IMFA creates a new section, 245(d), which precludes an alien who obtained conditional permanent residence as the spouse of a citizen or lawful permanent resident from adjusting status on any other basis. It also precludes an alien who entered the United States as a nonimmigrant under section 101(a)(15)(K) of the Act and failed to marry the citizen petitioner from obtaining permanent residence on any other basis.

In addition to creating new regulations, this rulemaking revises existing regulations, including those sections relating to:

(1) Revocation of visa petitions to allow for revocation of petitions approved contrary to the provisions of IMFA,

(2) Documentary requirements for immigrants to permit the readmission of an otherwise eligible conditional resident,

(3) Reentry permits and refugee travel documents to allow issuance of such documentation to conditional residents,

(4) Admission of aliens to provide procedures for the admission or readmission of conditional residents, and

(5) Deportation proceedings to provide for cancellation of an Order to Show Cause under certain circumstances and to specify the conditions under which an immigration judge shall grant

conditional residence in a deportation hearing.

During the comment period, the Service received a total of sixteen comments from interested parties. Ten comments were received from private law firms or attorney associations, four from Service employees, one from a citizen's group interested in immigration reform and one from a religious denomination. Most commenters chose to comment on several aspects of the regulations. All of the suggestions and opinions submitted by the commenters were carefully reviewed and given full consideration. Many of the comments suggesting minor changes in the rulemaking have been incorporated into the final regulations. The Service appreciates the time and effort devoted by each of the interested parties in this regard. A summary of these comments and the Service response follow (because most people made more than one comment, the total number of comments exceeds the number of commenters):

(1) *Comment:* Three parties wrote to express their disagreement with the basic purpose of IMFA (and, by extension the regulations) and to question the constitutionality of the statute.

Response: The Service fully supports IMFA; however, the rulemaking process is not the proper forum to discuss the issues of constitutionality.

(2) *Comment:* Two people wrote that the two forms mentioned in the rulemaking (Forms I-751 and I-752) should be included in 8 CFR 299, and their fees published in 8 CFR 103.1. Three others felt that the Service was remiss in not publishing regulations pertaining to section 212(a)(19), an exclusion ground which was amended by IMFA.

Response: The information about the forms will soon be published under a separate rulemaking. When the proposed rulemaking was drafted, the forms had not yet been developed, nor had the fees been determined. The separate rulemaking will reflect that the fee for filing the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) will be \$35.00, and the fee for filing the Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) will be \$65.00.

Likewise, the Service will consider publishing a proposed rulemaking relating to section 212(a)(19) of the Act. In so doing, the Service will solicit comments from the public on the proposal.

(3) *Comment:* A number of interested parties requested clarification about the

effects of IMFA on the ability of a resident alien to file a relative visa petition for a new spouse within five years of obtaining status through another marriage. Specifically, one asked if the Service could deny a petition based on information in the petitioner's file without affording the petitioner an opportunity to review and rebut the information, and another argued that the standard of proof regarding the nonfraudulent nature of the petitioner's prior marriage (through which status was acquired) is higher in the proposed regulations than in the statute.

Response: The first concern is unfounded, since existing regulations at 8 CFR 103.2(b)(2) require that an alien be given an opportunity to review and rebut any derogatory evidence upon which a decision is based and of which the alien is unaware (with the exception of classified information). With regard to the second concern, the language of the regulation has been changed to comport with the statutory language.

(4) *Comment:* Three commenters felt that the regulations do not adequately explain what procedure should be followed by an alien who cannot file the I-751 due to the termination of the marriage through divorce or annulment, or through the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing. Another requested that 8 CFR 216.4(a) be clarified to show that an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) could be filed in lieu of the joint petition (Form I-751) within the 90 days immediately preceding the second anniversary of the date on which the alien obtained conditional permanent resident status.

Response: The proper procedure is to file the I-752. The regulations have been revised at § 216.4(a) to clarify this point. 8 CFR 216.4(a) has been clarified as requested.

(5) *Comment:* Three persons wrote that the list of documents which may be submitted in support of the petition or waiver is too restrictive and does not take into account differences in culture, economic status or lifestyle which may affect a couple's ability to document their relationship.

Response: Recognizing that cultural, economic and other differences affect the documentation which is available to support the joint petition, the Service did not intend that the list be all inclusive. Accordingly, the regulation allows for the submission of "other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the

United States" (§ 216.4(a)(5)(vi)). However, as with all other applications and petitions, it is the responsibility of the applicant or petitioner to show that the documentation is both relevant and convincing.

(6) *Comment:* Two parties stated that prior to terminating status under the provisions of section 216(b) or 216(c) of the Act, the Service should issue a Notice of Intent to terminate status in all cases, not just those based upon information "which the alien cannot reasonably be expected to have." They reasoned that this will allow the alien an opportunity to rebut the evidence and may prevent the Service from terminating the status of a conditional resident inappropriately.

Response: The proposed regulation has been modified to state that the director must allow the alien an opportunity to review and rebut the evidence upon which the termination is based, in accordance with 8 CFR 103.2(b)(2). Although this will normally necessitate a written Notice of Intent to Terminate, the regulation does not preclude situations in which written notification is not needed (e.g., if the alien is the source of the Service's information).

(7) *Comment:* Some commenters wrote concerning the bar to approval of a petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws (section 204(c) of the Act). One writer asked whether there is a time limit or if there is a waiver that may be granted. Another expressed concern that the Service might base denials on information contained in its files without allowing the petitioner an opportunity to review and rebut the information.

Response: The law does not provide for either a waiver or an expiration of the bar. The restriction is both permanent and not waivable. As stated earlier, 8 CFR 103.2(b)(2) precludes decisions being based on information which the alien has not had an opportunity to review and rebut.

(8) *Comment:* Several questions arose regarding the requirement in section 204(h) of the Act that an alien who marries while in proceedings reside outside the United States for two years before an immigrant visa petition may be approved in his or her behalf. One writer (although recognizing that the language of the statute is mandatory) urged "the most humanitarian interpretation" of the requirement. Another could not understand whether the two year period began with the alien's departure from the United States

or with the marriage. Two others felt that the Service should accept petitions during the prohibited period and hold them for approval after the two years has elapsed, arguing that the statute prohibits petitions being approved, not filed. One commenter felt that the provisions of section 204(h) should not apply to marriages occurring after the issuance, but before the service, of the Order to Show Cause. Four others wrote that they should only apply to marriage occurring during the course of the actual hearing before the Executive Office for Immigration Review (EOIR) which includes both the Immigration Judge and the Board of Immigration Appeals, or during judicial review of the decision by the EOIR (i.e., that they should not apply to marriages celebrated during the period from the issuance of the Order to Show Cause to the opening of court by the judge, or from the time of the judge's decision to the alien's departure). Five parties felt that the provisions should only relate to exclusion and deportation proceedings, not rescission proceedings. Five others asked for clarification of the language of the rulemaking whereby the provisions of section 204(h) do not apply if the Order to Show Cause is terminated.

Response: The statute does not allow the Service any latitude in determining whether to apply the provisions of section 204(h) of the Act. If an alien marries during proceedings, a petition cannot be approved in his or her behalf until the requirement of two years of residence outside the United States has been met. Since this two year period begins with the alien's departure following the marriage, any period(s) of residence outside the United States prior to the marriage cannot be credited toward this requirement. However, it should be noted that the statute does not require that the alien remain outside the United States continuously for an uninterrupted time period, meaning that the alien could comply with the requirement by completing two or more periods of residency outside the United States as long as the aggregate total of such periods reached two years.

The suggestion that the Service accept petitions prior to the completion of the two year period for approval once the requirement is met must be rejected. The Service has long held that a petition must be approvable at the time that it is filed, not merely at some subsequent time. Allowing a petitioner to file a petition before it is approvable would enable the beneficiary to obtain a priority date to which he is not entitled, thereby giving the beneficiary an unfair

advantage over other immigrant visa applicants.

Section 204(h) prohibits the approval of petitions based on marriages celebrated during the period described in section 245(e)(2), which is "the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States," until the alien has completed the foreign residence requirement. This phrase encompasses more than just the period when the matter is pending before an immigration judge, on appeal to the Board of Immigration Appeals or under judicial review. It does not end when the order of the judge becomes final or when the time allotted for appeal or judicial review expires. Had Congress intended that the period described in section 245(e)(2) be limited to the period when the matter was pending before the EOIR or before the courts on judicial review, it would have so stated. Instead, Congress chose the broader concept including all administrative (Service or EOIR) and judicial (the Federal court system) proceedings, including Service proceedings occurring before and after EOIR of judicial proceedings. The application of this broader concept for this purpose in no way affects the long-established application of narrower concepts relating to the finality of orders, periods for judicial review, and so forth.

On the other hand, the Service agrees with those who feel that the period described in section 245(e)(2) does not include rescission proceedings, and references to such proceedings have been removed from the final regulations.

Normally, the departure of an alien from the United States terminates proceedings to exclude or deport the alien; however, the Board of Immigration Appeals has held that under certain situations the departure of an alien does not terminate proceedings (e.g., if the alien merely slips across the border and then reenters surreptitiously). The language of the regulation has been clarified to reflect that a departure which does not terminate the deportation or exclusion proceedings does not terminate the period described in section 245(e)(2) either.

(9) **Comment:** A few comments were received concerning the admission of aliens under the K-1 nonimmigrant category as fiances of U.S. citizens. One religious organization requested that such fiances be admitted for longer than 90 days, as the pre-marital counselling program of that denomination normally lasts at least four months; another

commenter suggested that the regulations specify that aliens admitted in this category are authorized to accept employment; a third felt that the Service should preclude the approval of a fiance petition arising out of an "arranged marriage" situation, finding that arranged marriages are "cruel and barbaric" and that permitting them in the regulations encourages fraud; and a fourth felt that district directors should have the authority to approve petitions as a matter of discretion when the petitioner and beneficiary have been precluded from seeing each other for more than two years.

Response: The 90 day period for the admission of a K-1 nonimmigrant is set by statute. Although it was previously possible for an alien to adjust under a separate provision of the law if the marriage took place more than 90 days after admission, IMFA now prohibits (by statute) such separate adjustment. Regardless of the benefits of a pre-marital counselling program, the Service cannot allow by regulation that which is precluded by statute.

K-1 nonimmigrants (and their dependent children admitted under the K-2 category) are already authorized to accept employment under 8 CFR 274a.12(a)(6), and it is not necessary to restate that authorization in this rulemaking.

Neither the letter nor the spirit of IMFA precludes fiance relationships based upon arranged marriages. It is therefore beyond the scope and the intent of the rulemaking to prohibit the approval of a fiance petition filed in such cases. It is within the intent of both the statute and the regulations to ensure, to the extent possible, that the marriage has not been arranged in order to circumvent the immigration laws of this country. Accordingly, the discretionary authority of the district director should be exercised to waive the "have met" requirement only when he or she is satisfied that the petitioner and beneficiary are not seeking to enter a fraudulent relationship, and that either all conditions of the arrangements have been complied with (in arranged marriages) or that extreme hardship to the petitioner would result (in other situations).

District directors already have, by statute and regulation, the authority to waive the requirement that the parties have previously met in person (section 3(a)(2) of IMFA and 8 CFR 214.2(k)(2) of this rulemaking). Inherent in this authority is the power to waive the requirement when the parties last met more than two years before the filing of the petition.

(10) *Comment:* One writer pointed out that there are now two sections 216 in the Act, the one created by the Marriage Fraud Amendments and another created by the Immigration Reform and Control Act of 1986 (IRCA). The IRCA section 216 relates to temporary agricultural workers, commonly referred to as "H-2As".

Response: The writer is correct. However, it should also be pointed out that the regulations pertaining to the H-2A program are contained in 8 CFR 214 (not 8 CFR Part 216) and that technical amendments to IRCA have been introduced in Congress which, if enacted, would redesignate the H-2A statutory provisions as section 218 of the Act.

(11) *Comment:* Several parties wrote concerning Service procedures for termination of the status of a conditional resident and issuance of an Order to Show Cause. Two commenters wrote that in terminating an alien's status pursuant to section 216 of the Act, the Service should not terminate "all rights and privileges thereto (including authorization to accept or continue in employment in this country)" at the same time. Instead, they felt that the Service should allow the alien to continue working until his case has been reviewed by an Immigration Judge in a deportation hearing. Another person believed that the issuance of an Order to Show Cause should not be mandatory in every termination case.

Response: The statute provides that the termination of status takes effect when the Attorney General reaches his decision, but that that determination may be reviewed in deportation proceedings. Because the alien's status is terminated, the basis for the alien's employment authorization as a permanent resident must also terminate at the same time. This does not preclude the alien from seeking and being granted employment authorization on another basis, specifically under 8 CFR 274a.12(c)(13) as an alien against whom deportation proceedings have been instituted. Any request for employment authorization on this basis would be adjudicated in accordance with the provisions of that regulation.

The only forum in which an alien may seek review of the Service's decision to terminate his or her status is during a hearing before an immigration judge. For this reason, the regulations provide that the district director shall issue an Order to Show Cause (which initiates the deportation proceeding) whenever an alien's status is terminated. Because of other factors, such as the need for the alien to request employment authorization, the issuance of the Order

to Show Cause should normally occur simultaneously with the issuance of the Notice of Termination; however, the Service cannot rule out the possibility that in some cases it may be to the advantage of both the Service and the alien for the issuance of the Order to Show Cause to be delayed.

(12) *Comment:* Believing that some aliens were incorrectly admitted to the United States without conditions between November 1986 and January 1987, one writer was concerned that aliens might be deprived of their status for failure to petition for removal when the alien did not know of the conditional basis of his status or of the requirement to file the petition.

Response: Immediately upon enactment of IMFA, the Service notified all ports of entry and all offices adjudicating applications for adjustment of the need to grant status conditionally under the provisions of the law, and of the need to notify the alien of the removal requirements. The Service will also mail written notification to all conditional residents reminding them of the need to seek removal of the conditions. These notifications will be sent to each conditional resident approximately 30 days before the beginning of the 90 day period during which he or she (and the spouse) must file the joint petition. Accordingly, the Service does not anticipate that a large number of aliens will be unaware of their obligations under the law. It should be noted that if an alien establishes that his failure to file the petition on time was for reasons beyond his control, the Service may accept a tardy petition.

(13) *Comment:* Three parties felt that the Service should not require a written request for rescheduling prior to the interview date if an alien and spouse are unable to appear for an interview in connection with the Form I-751. The statute does not require that it be submitted in advance, and the reasons preventing the couple from appearing may not arise until the last minute.

Response: The prior notification requirement has been deleted from the regulation. If the alien establishes good cause for rescheduling or waiving the interview, the Service may do so, even if the request is not received in advance. This applies to interviews conducted in conjunction with either the joint petition for removal (Form I-751) or the application for waiver of the requirement to file the joint petition (Form I-752).

(14) *Comment:* Several comments were received concerning the filing of a waiver by an alien whose marriage has been terminated. One writer objected to the use of the phrase "terminated by the

alien spouse" in the statute and similar language in the rulemaking, since the judge granting the divorce or annulment is the one who actually terminated the marriage. Another writer felt that the Service should allow the filing of a "good faith and good cause" waiver when the conditional resident was not the party initiating the divorce proceedings. A third commenter wrote that "fundamental fairness and due process require that in any instance where a finding has been made by a court of competent jurisdiction regarding actions of a U.S. citizen spouse, that the Service should accept those as fact and not attack them collaterally, save in those instances where compelling circumstances dictate otherwise. Even when the court's determinations are accepted as fact, the Service could still say that even based on these facts, they do not see that the alien was without fault."

Response: IMFA states that in order to apply for a "good faith and good cause" waiver, the qualifying marriage must have been "terminated (other than through the death of the spouse) by the alien spouse". This statutory language precludes the Service from granting a waiver when the divorce or annulment proceedings were initiated by the spouse of the conditional resident. For purposes of clarification, the language of the regulation has been modified slightly to show that the alien spouse must be the initiating party in the proceedings, not the terminating authority.

Although the Service will normally give considerable weight to the finding of the divorce court as to grounds for the action, the Service cannot be bound by the findings in all cases. It would simply be too easy for two parties to engage in a fraud marriage scheme involving concocted grounds which are not contested by the respondent. For this reason, the Service must be free to reach its own conclusions regarding the issue of "good cause". Since any decision by the Service on this issue is subject to review by the EOIR and then by the Federal courts, there is no reason to fear that the Service will not give appropriate weight to the findings of the divorce court.

(15) *Comment:* Two commenters wrote about the need for regulations concerning aliens who must be outside the United States during the period in which the joint petition (Form I-751) must be filed or while it is being adjudicated by the Service. One writer pointed out that the Service should provide for the admission of alien commuters (i.e., permanent residents who reside or work in contiguous

territory and commute to work across the border daily). Another requested clarification regarding procedures to be followed by aliens outside the United States pursuant to military or civilian orders of the United States government.

Response: The regulations have been modified to provide that a conditional resident alien (including an alien commuter) may be admitted to the United States with an expired Form I-551 if he is also in possession of a receipt showing that he has filed a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) within the six months immediately preceding the application for admission, provided the joint petition or application is still pending before the Service.

The regulations have also been clarified to explain that an alien travelling outside the country on government orders is deemed to be constructively within the United States for purposes of filing the joint petition.

(16) *Comment:* One commenter asked for clarification of the terms "extreme hardship", "good cause" and "pertinent" as they relate to applications for waivers of the requirement to file the joint petition. Another asked for clarification of the phrase "involved in a conspiracy" as used in 8 CFR 204.1 and of the phrase "within a reasonable time" as used in 8 CFR 212.7(a)(2).

Response: The terms and phrases in question are all used in the regulation in accordance with their common, everyday meaning. The modifiers "extreme", "good" and "reasonable" all call for the use of the director's discretion. By their nature, these regulations cannot further restrict that discretion. However, the review procedure (through the Executive Office for Immigration Review and the Federal courts) will safeguard against that discretion being improperly applied.

The phrase "involved in a conspiracy" would only apply to individuals who are found to have participated in the activity. It would not apply, for example, to an individual who introduced two people who later conspired on their own to commit fraud without the knowledge or participation of the first individual.

(17) *Comment:* One commenter requested that the Service explain the consequences if it fails to notify the alien of the requirement to file the petition or if it fails to adjudicate the petition or interview the petitioner within 90 days of its being filed, or within 90 days of the interview. Another requested that the Service provide the

attorney of record with a copy of the notification required at or about the beginning of the 90 day filing period.

Response: The language of the statute is explicit that the Service "shall provide notice" at the time of the alien's admission and "shall attempt to provide notice" at or about the beginning of the 90 day filing period respecting the requirements to file the petition to remove. The statute further provides that failure of the Service to meet these notification requirements does not relieve the alien of his or her obligations. Likewise, the statute requires that a determination on the merits of the petition be made within 90 days of the interview (unless the interview is waived).

(18) *Comment:* Finally, one writer opposed what he understood as the Service's intent to bar from adjustment of status an alien lawfully admitted to the United States as a conditional permanent resident.

Response: The regulatory language comports fully with the provisions of section 245(d) of the Act as amended by section 2(e) and 3(b) of IMFA. Section 245(d) prohibits the adjustment of an alien who is already a (conditional) permanent resident or of an alien who entered the United States as a K-1 or K-2 nonimmigrant (except as the spouse or step-child of the citizen who filed the fiance petition upon which the K-1 or K-2 visa was issued). Perhaps the commenter failed to read the new section 245(d) of the Act, or perhaps he misinterpreted the regulation as prohibiting a conditional resident from becoming a "full" or "non-conditional" permanent resident through the removal of conditions procedure set forth in section 216.

Additional technical amendments are included to correct typographical errors.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse 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, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The information collection requirements contained in this document have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act and are cited under 8 CFR 299.5 which will be published in the near future.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, Immigration.

8 CFR Part 204

Administrative practice and procedure, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 205

Administrative practice and procedure, Immigration.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passport and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Title I of Chapter 8 of the Code of Federal Regulations is amended as set forth below.

PART 1—DEFINITIONS

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

Authority: 66 Stat. 173; 8 U.S.C. 1101; 28 U.S.C. 509, 510; 5 U.S.C. 301.

2. In § 1.1, new paragraph (o) is added to read as follows:

§ 1.1 Definitions.

(o) The term "director" means either district director or regional service center director, unless otherwise specified.

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

3. The authority citation for Part 204 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255.

4. In § 204.1 existing paragraphs (a)(2) through (a)(4) are redesignated (a)(3) through (a)(5), respectively, and a new paragraph (a)(2) is added to read as follows:

§ 204.1 Petition.

(2) *Ineligible alien petitioners and beneficiaries*—(i) The Service may not approve a spousal second preference petition filed by an alien who, by virtue of a prior marriage, has been accorded the status of an alien lawfully admitted for permanent residence as the spouse of a citizen of the United States or as the spouse of an alien lawfully admitted for permanent residence unless:

(A) A period of five years has elapsed after the date the alien acquired permanent resident status; or

(B) The alien establishes by clear and convincing evidence that the prior marriage (on the basis of which the alien obtained lawful permanent resident status) was not entered into for the purpose of evading the immigration laws; or

(C) The marriage through which the petitioner obtained permanent residence was terminated through the death of the petitioner's spouse.

(ii) In determining whether the petitioner has met the burden of establishing that the marriage through which he or she obtained permanent residence was not entered into for the purpose of evading immigration laws, the director shall take into account such factors as the length of time the petitioner and the prior spouse resided together, the existence of children born of the marriage, joint ownership of assets and assumption of liabilities, the grounds for which the marriage was terminated and other factors which the director may deem relevant. Because

section 204(a)(2)(A)(ii) of the Act places the burden on the petitioner to establish "by clear and convincing evidence" that the prior marriage was not entered into for the purpose of evading the immigration laws, failure to meet this standard must result in the denial of the petition; however, such a denial will be without prejudice to the filing of a new petition once the petitioner has acquired five years of lawful permanent residence. The director may choose to initiate deportation proceedings against the petitioner based upon information gained through the adjudication of the petition, but failure to initiate such proceedings shall not establish that the petitioner's prior marriage was not for the purpose of evading immigration laws. Unless the petition is approved, the beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal second preference petition filed within the prohibited period.

(iii) The Service may not approve a visa petition filed on behalf of an alien by a United States citizen or lawful permanent resident spouse, which is based upon a marriage occurring after November 10, 1986 and while the alien is in either exclusion or deportation proceedings, or judicial proceedings relating thereto, until the alien has resided outside the United States for two years after the date of the marriage. The period during which the alien is in such proceedings commences with the issuance of the Order to Show Cause (Form I-221) or the Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer (Form I-122), and terminates when the alien departs from the United States while an order of deportation is outstanding or before the expiration of the voluntary departure time granted in connection with an alternate order of deportation under 8 CFR 243.5, or pursuant to an order of exclusion, or when the alien is found not to be excludable or deportable from the United States, or if the order to show cause or Form I-122 is cancelled by the district director or terminated by the immigration judge, Board of Immigration Appeals, or Federal court on judicial review. Any petition filed during this period shall be denied without prejudice to the filing of a new petition once the beneficiary has resided outside the United States for the required period of two years following the marriage. Furthermore, any such denial shall be without prejudice to the reopening of petition proceedings should the beneficiary be found not deportable or excludable from the United States, or if the order to show cause or notice of hearing is cancelled by the district

director or terminated by immigration judge, Board of Immigration Appeals or Federal court on judicial review. The beneficiary shall not be accorded a filing date within the meaning of section 203(c) of the Act based upon any spousal petition filed within the prohibited period.

(iv) Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any immigrant visa petition for immigrant visa classification filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 3 of this chapter.

5. In § 204.1, existing paragraphs (d)(2) through (d)(4) are redesignated as (d)(3) through (d)(5), respectively, and a new paragraph (d)(2) is added to read as follows:

§ 204.1 Petition.

(d) *Ineligible beneficiaries*. Section 204(c) of the Act prohibits the approval of an immigrant visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director shall deny any petition filed on behalf of such alien, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of such attempt or conspiracy must be documented in the alien's file. The decision of the director to deny the petition may be appealed in accordance with Part 103 of this chapter.

PART 205—REVOCATION OF APPROVAL OF PETITIONS

6. The authority citation for Part 205 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 180, 182; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, 1186a.

7. In § 205.1, a new paragraph (a)(10) is added to read as follows:

§ 205.1 Automatic revocation.

(a) (10) Upon a determination by the Service that it has approved a spousal immigrant visa petition based upon a marriage entered into while the beneficiary was under exclusion or deportation proceedings, or judicial proceedings relating thereto, and prior to the beneficiary's having resided outside the United States for at least two years in accordance with section 204(h) of the Act.

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

8. The authority citation for Part 211 is revised to read as follows:

Authority: 66 Stat. 166, 173, 181, 182, 194, 198, 218; 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1181, 1182, 1186a, 1203, 1225, 1257.

9. In § 211.1, paragraph (b)(1) is revised to read as follows:

§ 211.1 Visas.

(b) (1) *Alien Registration Receipt Card (Form I-151 or I-551)*—(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisions of section 216 of the Act, or within six months of that second anniversary if the alien is in possession of a receipt showing that he or she properly filed a Joint Petition for Removal of the Conditional Basis of Alien's Permanent Resident Status (Form I-751) or an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) pursuant to Part 216 of this Chapter, and:

(A) Is returning after a temporary absence abroad not exceeding one year, or

(B) Is an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties as a crewman.

(ii) *Alien travelling pursuant to government orders.* An Alien Registration Receipt Card, including an expired Alien Registration Receipt Card issued to a conditional permanent resident may be presented in lieu of an immigrant visa by an immigrant alien

who is returning to an unrelinquished lawful permanent residence in the United States, and:

(A) Is a civilian employee of the United States government returning from a foreign assignment pursuant to official orders; or

(B) Is a spouse or child of a civilian employee of the United States government or member of the United States Armed Forces, provided that the spouse or child resided abroad while the employee or serviceperson was on overseas duty, and the spouse or child is preceding or accompanying the employee or serviceperson, or is following to join the employee or serviceperson within four months of his or her return to the United States.

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

10. The authority citation for Part 212 is revised to read as follows:

Authority: 66 Stat. 166, 173, 182, 189, 198, 200, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1182b, 1182c, 1184, 1186a, 1225, 1226, 1228, 1252.

11. In § 212.7, paragraph (a) is revised to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) *Section 212(h) or (i)*—(1) *Filing procedure*—(i) *Immigrant visa or fiance(e) nonimmigrant visa applicant.* An applicant for an immigrant visa or "K" nonimmigrant visa who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

(ii) *Adjustment of status applicant.* An applicant for adjustment of status who is excludable and seeks a waiver under section 212(h) or (i) of the Act shall file an application on Form I-601 with the director or immigration judge considering the application for adjustment of status.

(2) *Termination of application for lack of prosecution.* An applicant may withdraw the application at any time prior to the final decision, whereupon the case will be closed and the consulate notified. If the applicant fails to prosecute the application within a reasonable time either before or after interview the applicant shall be notified that if he or she fails to prosecute the

application within 30 days the case will be closed subject to being reopened at the applicant's request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(3) *Decision.* If the application is approved the director shall complete Form I-607 for inclusion in the alien's file and shall notify the alien of the decision. If the application is denied the applicant shall be notified of the decision, of the reasons therefor, and of the right to appeal in accordance with Part 103 of this chapter.

(4) *Validity.* A waiver granted under section 212(h) or section 212(i) of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver. Once granted, the waiver shall be valid indefinitely, even if the recipient of the waiver later abandons or otherwise loses lawful permanent resident status, except that any waiver which is granted to an alien who obtains lawful permanent residence on a conditional basis under section 216 of the Act shall automatically terminate concurrently with the termination of such residence pursuant to the provisions of section 216. Separate notification of the termination of the waiver is not required when an alien is notified of the termination of residence under section 216 of the Act, and no appeal shall lie from the decision to terminate the waiver on this basis. However, if the respondent is found not to be deportable in a deportation proceeding based on the termination, the waiver shall again become effective. Nothing in this subsection shall preclude the director from reconsidering a decision to approve a waiver if the decision is determined to have been made in error.

PART 214—NONIMMIGRANT CLASSES

12. The authority citation for Part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1186a.

13. In § 214.2, paragraph (k) is revised to read as follows:

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

(k) *Fiancees and fiances of United States citizens*—(1) *Petition and supporting documents.* To be classified as a fiance or fiancée as defined in section 101(a)(15)(K) of the Act, an alien must be the beneficiary of an approved

visa petition filed on Form I-129F. The petition with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped, in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(2) *Requirement that petitioner and beneficiary have met.* The petitioner shall establish to the satisfaction of the director that the petitioner and beneficiary have met in person within the two years immediately preceding the filing of the petition. As a matter of discretion, the director may exempt the petitioner from this requirement only if it is established that compliance would result in extreme hardship to the petitioner or that compliance would violate strict and long-established customs of the beneficiary's foreign culture or social practice, as where marriages are traditionally arranged by the parents of the contracting parties and the prospective bride and groom are prohibited from meeting subsequent to the arrangement and prior to the wedding day. In addition to establishing that the required meeting would be a violation of custom or practice, the petitioner must also establish that any and all other aspects of the traditional arrangements have been or will be met in accordance with the custom or practice. Failure to establish that the petitioner and beneficiary have met within the required period or that compliance with the requirement should be waived shall result in the denial of the petition. Such denial shall be without prejudice to the filing of a new petition once the petitioner and beneficiary have met in person.

(3) *Children of beneficiary.* Without the approval of a separate petition on his or her behalf, a child of the beneficiary (as defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act) may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him or her.

(4) *Notification.* The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of the right to appeal in accordance with the provisions of Part 103 of this chapter.

(5) *Validity.* The approval of a petition under this paragraph shall be valid for a period of four months. A petition which has expired due to the passage of time may be revalidated by a director or a consular officer for a period of four months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(6) *Adjustment of status from nonimmigrant to immigrant—(i) Nonimmigrant visa issued prior to November 10, 1986.* If the beneficiary contracts a valid marriage with the petitioner within 90 days of his or her admission to the United States pursuant to a valid K-1 visa issued prior to November 10, 1986, and the beneficiary and his or her minor children are otherwise admissible, the director shall record their lawful admission for permanent residence as of the date of their filing of an application for adjustment of status to lawful permanent resident (Form I-485). Such residence shall be granted under section 214(d) of the Act as in effect prior to November 10, 1986 and shall not be subject to the conditions of section 216 of the Act.

(ii) *Nonimmigrant visa issued on or after November 10, 1986.* Upon contracting a valid marriage to the petitioner within 90 days of his or her admission as a nonimmigrant pursuant to a valid K visa issued on or after November 10, 1986, the beneficiary and his or her minor children may apply for adjustment of status to lawful permanent resident under section 245 of the Act. Upon approval of the application the director shall record their lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act.

* * * * *

14. A new Part 216 is added to read as follows:

**PART 216—CONDITIONAL BASIS OF
LAWFUL PERMANENT RESIDENCE
STATUS FOR CERTAIN ALIEN
SPOUSES AND SONS AND
DAUGHTERS**

Sec.
216.1 Definition of conditional permanent resident.
216.2 Notification requirements.
216.3 Termination of conditional resident status.

Sec.
216.4 Petition to remove conditional basis of lawful permanent resident status.

216.5 Waiver of requirement to file petition to remove conditions.

Authority: 66 Stat. 166, 173, 179, 184, 217, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1154, 1184, 1186a.

§ 216.1 Definition of conditional permanent resident.

A conditional permanent resident is an alien who has been lawfully admitted for permanent residence within the meaning of section 101(a)(20) of the Act, except that a conditional permanent resident is also subject to the conditions and responsibilities set forth in section 216 of the Act and Part 216 of this chapter. Unless otherwise specified, the rights, privileges, responsibilities and duties which apply to all other lawful permanent residents apply equally to conditional permanent residents, including but not limited to the right to apply for naturalization (if otherwise eligible), the right to file petitions on behalf of qualifying relatives, the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed; the duty to register with the Selective Service System, when required; and the responsibility for complying with all laws and regulations of the United States. All references within this chapter to lawful permanent residents apply equally to conditional permanent residents, unless otherwise specified.

§ 216.2 Notification requirements.

(a) *When alien acquires status of conditional permanent resident.* At the time an alien acquires conditional permanent residence through admission to the United States with an immigrant visa or adjustment of status under section 245 of the Act, the Service shall notify the alien of the conditional basis of the alien's status, of the requirement that the alien apply for removal of the conditions within the ninety days immediately preceding the second anniversary of the alien's having been granted such status, and that failure to apply for removal of the conditions will result in automatic termination of the alien's lawful status in the United States.

(b) *When alien is required to apply for removal of the conditional basis of lawful permanent resident status.* Approximately 90 days before the second anniversary of the date on which the alien obtained conditional permanent residence, the Service should notify the alien a second time of the requirement that the alien and the

petitioning spouse must file a petition to remove the conditional basis of the alien's lawful permanent residence. Such notification shall be mailed to the alien's last known address.

(c) *Effect of failure to provide notification.* Failure of the Service to provide notification as required by either paragraph (a) or (b) of this section does not relieve the alien and the petitioning spouse of the requirement to file a joint petition to remove conditions within the 90 days immediately preceding the second anniversary of the date on which the alien obtained permanent residence.

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) of the Act are true. Prior to issuing the Notice of Termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and of all rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the district director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the district director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with Part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the district director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) of the Act are true.

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the district director determines that the alien obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 242 of the Act.

§ 216.4 Petition to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition—(1) General procedures.* Within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained permanent residence, the alien and the alien's spouse who filed the original immigrant visa petition or fiancé/fiancée petition through which the alien obtained permanent residence must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) with the Service. The petition shall be filed within this time period regardless of the amount of physical presence which the alien has accumulated in the United States. Before Form I-751 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b) of this chapter and by documentation as described in paragraph (a)(5) of this section, and it must be properly signed by the alien and the alien's spouse. If the joint petition cannot be filed due to the termination of the marriage through annulment, divorce, or the death of the petitioning spouse, or if the petitioning spouse refuses to join in the filing of the petition, the conditional permanent resident may apply for a waiver of the requirement to file the joint petition in accordance with the provisions of § 216.5 of this part.

(2) *Dependent children.* Dependent children of a conditional permanent resident who acquired conditional permanent resident status concurrently with the parent may be included in the joint petition filed by the parent and the parent's petitioning spouse. A child shall be deemed to have acquired conditional residence status concurrently with the parent if the child's residence was acquired on the same date or within 90 days thereafter. Children who cannot be included in a joint petition filed by the parent and parent's petitioning spouse due to the child's not having acquired conditional resident status concurrently with the parent, the death of the parent, or other reasons may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752).

(3) *Jurisdiction.* Form I-751 shall be filed with the director of the regional service center having jurisdiction over the alien's place of residence.

(4) *Physical presence at time of filing.* With the exception of an alien who is outside the United States pursuant to military or civilian orders (including a dependent of a serviceperson or civilian employee who is included on the official orders of that serviceperson or civilian

employee), an alien must be physically present in the United States at the time of filing the joint petition. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien and the petitioning spouse comply with the interview requirements described in § 216.4(b). An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(5) *Documentation.* Form I-751 shall be accompanied by evidence that the marriage was not entered into for the purpose of evading the immigration laws of the United States. Such evidence may include:

- (i) Documentation showing joint ownership of property;
- (ii) Lease showing joint tenancy of a common residence;
- (iii) Documentation showing commingling of financial resources;
- (iv) Birth certificates of children born to the marriage;
- (v) Affidavits of third parties having knowledge of the bona fides of the marital relationship, or
- (vi) Other documentation establishing that the marriage was not entered into in order to evade the immigration laws of the United States.

(6) *Termination of status for failure to file petition.* Failure to properly file Form I-751 or Form I-752 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of proceedings to remove the alien from the United States. In such proceedings the burden shall be on the alien to establish that he or she complied with the requirement to file the joint petition within the designated period. Form I-751 may be filed after the expiration of the 90-day period only if the alien establishes to the satisfaction of the director, in writing, that there was good cause for the failure to file Form I-751 within the required time period. If the joint petition is filed prior to the jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent residence status, remove the conditional basis of such status and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the joint

petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(b) *Interview*—(1) *Authority to waive interview.* The director of the regional service center shall review the Form I-751 filed by the alien and the alien's spouse to determine whether to waive the interview required by the Act. If satisfied that the marriage was not for the purpose of evading the immigration laws, the regional service center director may waive the interview and approve the petition. If not so satisfied, then the regional service center director shall forward the petition to the district director having jurisdiction over the place of the alien's residence so that an interview of both the alien and the alien's spouse may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* Unless waived, an interview on the Form I-751 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office, files control office or suboffice having jurisdiction over the residence of the joint petitioners.

(3) *Termination of status for failure to appear for interview.* If the conditional resident alien and/or the petitioning spouse fail to appear for an interview in connection with the joint petition required by section 216(c) of the Act, the alien's permanent residence status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien shall be provided with written notification of the termination and the reasons therefor, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish compliance with the interview requirements. If the alien submits a written request that the interview be rescheduled or that the interview be waived, and the director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the interview is rescheduled at the request of the petitioners, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* The director shall adjudicate the petition

within 90 days of the date of the interview, unless the interview is waived in accordance with paragraph (b)(1) of this section. In adjudicating the petition the director shall determine whether—

(1) The qualifying marriage was entered into in accordance with the laws of the place where the marriage took place;

(2) The qualifying marriage has been judicially annulled or terminated, other than through the death of a spouse;

(3) The qualifying marriage was entered into for the purpose of procuring permanent residence status for the alien; or

(4) A fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) in connection with the filing of the petition through which the alien obtained conditional permanent residence.

If derogatory information is determined regarding any of these issues, the director shall offer the petitioners the opportunity to rebut such information. If the petitioners fail to overcome such derogatory information the director may deny the joint petition, terminate the alien's permanent residence and issue an order to show cause to initiate deportation proceedings. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If the director approves the joint petition he or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate office of the Service for processing for a new Alien Registration Receipt Card (if necessary), at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If the director denies the joint petition, he or she shall provide written notice to the alien of the decision and the reason(s) therefor and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any

Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from the decision of the director; however, the alien may seek review of the decision in deportation proceedings. In such proceedings the burden of proof shall be on the Service to establish, by a preponderance of the evidence, that the facts and information set forth by the petitioners are not true and that the petition was properly denied.

§ 216.5 Waiver of requirement to file petition to remove conditions.

(a) *General.* A conditional resident alien who is unable to meet the requirements for removal of the conditional basis of his or her permanent residence status may file an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752), if the alien was not at fault in failing to meet the filing requirement and the conditional resident alien is able to establish that:

(1) Deportation from the United States would result in extreme hardship, or

(2) The marriage upon which his or her status was based was entered into in good faith on the conditional resident alien's part, but the conditional resident sought termination of the marriage for good cause.

(b) *Fee.* Form I-752 shall be accompanied by the appropriate fee required under § 103.7(b) of this Chapter.

(c) *Jurisdiction.* Form I-752 shall be filed with the regional service center director having jurisdiction over the alien's place of residence.

(d) *Interview.* The regional service center director may refer the application to the appropriate district, files control office or suboffice and require that the alien appear for an interview in connection with the application for a waiver. The director shall deny the application and initiate deportation proceedings if the alien fails to appear for the interview as required, unless the alien establishes good cause for such failure and the interview is rescheduled.

(e) *Adjudication of waiver application*—(1) *Application based on claim of hardship.* In considering an application for a waiver based upon an alien's claim that extreme hardship would result from the alien's deportation from the United States, the director shall take into account only those factors which arose subsequent to the alien's entry as a conditional permanent resident. The director shall bear in mind that any deportation from the United States is likely to result in a certain degree of hardship, and that only in

those cases where the hardship is extreme should the application for a waiver be granted. The burden of establishing that extreme hardship exists rests solely with the applicant.

(2) *Application for waiver based upon the alien's claim that the marriage was entered into in good faith.* In considering whether an alien entered into a qualifying marriage in good faith, the director shall consider evidence relating to the amount of commitment by both parties to the marital relationship. Such evidence may include—

(i) Documentation relating to the degree to which the financial assets and liabilities of the parties were combined;

(ii) The length of time during which the parties cohabited after the marriage and after the alien obtained permanent residence;

(iii) The grounds for which the marriage was terminated, except that a finding by the court that the petitioning spouse was at fault shall not be deemed to be conclusive evidence that the alien spouse sought termination of the marriage for good cause, nor shall a divorce obtained in an area which does not require the determination of fault be deemed to be evidence that the alien spouse sought termination of the marriage for good cause; or

(iv) Other evidence deemed pertinent by the director.

(f) *Decision.* The director shall provide the alien with written notice of the decision on the application for waiver. If the decision is adverse, the director shall advise the alien of the reasons therefor, notify the alien of the termination of his or her permanent residence status, instruct the alien to surrender any Alien Registration Receipt Card issued by the Service and issue an order to show cause placing the alien under deportation proceedings. No appeal shall lie from the decision of the director; however, the alien may seek review of such decision in deportation proceedings.

PART 223—REENTRY PERMITS

15. The authority citation for Part 223 is revised to read as follows:

Authority: 66 Stat. 173, 194, 100 Stat. 3537; 8 U.S.C. 1103, 1186a, 1203.

16. Section 223.2 is revised to read as follows:

§ 223.2 Period of validity.

A reentry permit is valid for a maximum period of two years unless otherwise restricted. However, a permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act is not valid for a

period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained conditional permanent residence) unless and until the conditions have been removed. The period of validity commences on the date of issuance and not on the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

PART 223a—REFUGEE TRAVEL DOCUMENT

17. The authority citation for Part 223a is revised to read as follows:

Authority: 66 Stat. 173, 181, 182, 200, 201, 100 Stat. 3537; 8 U.S.C. 1103, 1181, 1182, 1186a, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

18. Section 223a.4 is revised to read as follows:

§ 223a.4 Application.

An application for a refugee travel document shall be submitted on Form I-570 at least 45 days prior to the proposed date of departure from the United States. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence and shall be accompanied by Form I-94 or Form I-151 or Form I-551. The applicant shall be notified of the decision on the application. If the application is approved, the refugee travel document shall be issued and the immigration status which may be accorded to the alien upon his or her return to the United States shall be specified therein. Unless the applicant is in the United States as a conditional entrant or lawful permanent resident, the status of "Parolee" shall be specified. If the applicant is in the United States as a conditional entrant, that status shall be specified. If the applicant is a lawful permanent resident, that status shall be specified. If the applicant is a lawful permanent resident subject to the conditions of section 216 of the Act, that status and the conditional basis of that status shall be specified. If the application is denied, the applicant shall be notified of the reasons therefor and of the right to appeal in accordance with the provisions of part 103 of this chapter.

19. Section 223a.5(a) is revised to read as follows:

§ 223a.5 Validity of refugee travel document.

(1) *General.* A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. However, a

permit issued to an alien who has been admitted as a lawful permanent resident on a conditional basis pursuant to section 216 of the Act may not be valid for a period which exceeds the date by which the alien must apply for removal of the conditional basis of his or her status (i.e., the second anniversary of the date on which the alien obtained permanent residence) unless and until the conditions have been removed. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

20. The authority citation for Part 235 is revised to read as follows:

Authority: 66 Stat. 166, 173, 182, 188, 191, 198, 200, 201, 202, 208, 100 Stat. 3537; 8 U.S.C. 1101, 1103, 1182, 1183, 1186a, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

21. Section 235.11 is added to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General.* An alien seeking admission to the United States with an immigrant visa as the spouse, son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and the petitioning spouse must file a Joint Petition to Remove the Conditional Basis of Alien's Permanent Residence (Form I-751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien admitted as a lawful permanent resident on a conditional basis if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the

marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status (Form I-751) or of an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in Part 211.1(b)(1) of this Chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) of the Act, shall be placed under exclusion proceedings. However, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition is filed jointly by the alien and petitioning spouse and approved by the Service, or if an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752) is filed by the alien and approved by the Service.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

22. The authority citation for Part 242 is revised to read as follows:

Authority: 66 Stat. 173, 208, 214, 235, 100 Stat. 3537; 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1254, 1362.

23. In § 242.7, paragraph (a) is revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause prior to jurisdiction vesting with the Immigration Judge pursuant to § 3.14 of this chapter provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States;

(5) The respondent was placed under proceedings for failure to file a timely petition as required by section 216(c) of the Act, but his or her failure to file a timely petition was excused in accordance with section 216(d)(2)(B) of the Act; or

(6) The Order to Show Cause was imprudently issued.

24. In § 242.17, paragraph (a) is revised to read as follows:

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of Parts 244, 245 and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 of the Act. However, the Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status required by section 216(c) of the Act shall be made to the director in accordance with Part 216 of this chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is

classified under Executive Order No. 12356 (47 FR 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes he or she can do so consistently with safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

25. The authority citation for Part 245 is revised to read as follows:

Authority: 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218, 100 Stat. 3539; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 1257.

26. In § 245.1 paragraphs (b)(12), (b)(13), (b)(14) and (h) are added to read as follows:

§ 245.1 Eligibility.

(b) * * *

(12) Any alien who is already an alien lawfully admitted to the United States for permanent residence on a conditional basis pursuant to section 216 of the Act, regardless of any other quota or non-quota immigrant visa classification for which the alien may otherwise be eligible.

(13) Any alien admitted to the United States as a nonimmigrant fiancé as defined in section 101(a)(15)(K) of the Act, unless the alien is applying for adjustment of status based upon a marriage which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of the alien pursuant to § 214.2(k) of this chapter.

(14) Any alien who seeks to adjust status based upon a marriage which occurred on or after November 10, 1986 and after the issuance of an Order to Show Cause (Form I-221) issued pursuant to Part 242 of this chapter, or after the issuance of a Notice to Alien Detained for Hearing by an Immigration Judge (Form I-122) issued pursuant to Part 235 of this chapter, unless he has resided outside the United States for two years following the marriage. However, this restriction shall no longer apply if the alien is found not to be deportable in deportation proceedings, if

the alien is found to be admissible in exclusion proceedings, or if the Order to Show Cause is cancelled pursuant to § 242.7 of this chapter.

(h) *Conditional basis of status.*

Whenever an alien spouse (as defined in section 216(g)(1) of the Act) or an alien son or daughter (as defined in section 216(g)(2) of the Act) is granted adjustment of status to that of lawful permanent residence, the alien shall be considered to have obtained such status on a conditional basis subject to section 216 of the Act.

27. Section 245.8 is revised to read as follows:

§ 245.8 Medical examination.

Pursuant to section 234 of the Act, an applicant for adjustment of status shall be required to have a medical examination by a selected civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. A medical examination shall not be required of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act and who was medically examined when processed for parole by a Service officer in the United States or abroad, unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a non-immigrant fiancé or fiancée of a United States citizen as defined in section 101(a)(15)(K) of the Act pursuant to § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than one year prior to the date of application for adjustment of status. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

Dated: August 4, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-17999 Filed 8-9-88; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-24; Amdt. 39-5964]

Airworthiness Directives; McDonnell Douglas Helicopter Company (MDHC) Model 369D, E, F, and FF Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires an initial inspection, a repetitive pilot's preflight check, the removal of damaged parts, and a repetitive inspection of the tail rotor transmission/tail boom extension mounting studs on all MDHC Model 369D, E, F, and FF helicopters. This AD is prompted by several reports of tail rotor transmission/tail boom extension mounting studs having failed due to fatigue, which could result in the loss of the tail rotor assembly in flight with subsequent loss of the helicopter.

EFFECTIVE DATE: August 24, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 24, 1988.

Compliance: As indicated in the body of this AD.

ADDRESSES: The applicable service information notice may be obtained from Mr. Barry Hautz, LH3/G35, McDonnell Douglas Helicopter Company, 5000 E. McDowell Road, Mesa, Arizona 85205-9797.

A copy of each document supporting the AD is contained in the Rules Docket, Office of the Regional Counsel, Federal Aviation Administration, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Sol Davis, Aerospace Engineer, Airframe Branch, ANM-123L, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, California 90806; telephone (213) 988-5233.

SUPPLEMENTARY INFORMATION: There have been reports of the tail rotor transmission/tail boom extension mounting studs having failed due to fatigue. In some cases, a considerable loss of the mounting studs clamping force has occurred which allowed prohibitive amounts of vibratory motion of the tail rotor transmission relative to the tail boom casting. In one documented case, the tail rotor

assembly came off in flight. MDHC has issued Mandatory Service Information Notice No. DN-151/EN-39/FN-28, dated October 10, 1987, detailing the inspection requirements.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive is being issued which requires: (1) An initial inspection of the studs prior to further flight; (2) a pilot's repetitive preflight visual check of tail rotor transmission/tail boom extension mounting studs and torque paint striping; (3) the removal of all mounting studs which are damaged or deformed; and (4) a repetitive inspection of the torque on each nut at intervals not to exceed 100 hours' time in service on MDHC Model 369D, E, F and FF helicopters.

The regulations set forth in this amendment are promulgated pursuant to authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety, Incorporation by reference.

Adoption of the Amendment

PART 39—AIRWORTHINESS DIRECTIVES

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new AD:

McDonnell Douglas Helicopter Company (MDHC) (Hughes Helicopters, Inc.): Applies to Model 369D, E, F, and FF helicopters, certificated in any category, which have tail rotor transmission/tail boom extension mounting studs Part Number (P/N) MS51992A803-13 or -14 installed (Docket No. 88-ASW-24).

Compliance is required as indicated unless previously accomplished.

(a) To prevent failure of the tail rotor transmission mounting studs (P/N MS51992A803-13 or -14) on MDHC Model 369 D/E helicopters, accomplished the following:

(1) Prior to further flight after the effective date of this AD, conduct an initial inspection of the tail rotor transmission attachment to the tail boom casting for any indications of relative motion between the parts in accordance with MDHC Service Information Notice (SIN) DN-151/EN-39/FN-28, Part I, paragraphs a, b, c, d, and e, dated October 10, 1987.

(2) Prior to each flight after the effective date of this AD, check the tail rotor transmission installation for security in accordance with MDHC SIN DN-151/EN-39/FN-28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

Note. The authorized person that performs the check must make an entry as required by § 43.9, and the record must be maintained as required by FAR §§ 91.173, 121.380, or 135.439.

(3) If there are indications of relative motion between the tail rotor transmission and the tail boom casting found by the inspection and check of paragraphs (a)(1) and (a)(2) of this section, prior to further flight, remove the tail rotor transmission and replace all four mounting studs in accordance with MDHC SIN DN-151/EN-39/FN-28, Part III, paragraphs a thru j, dated October 10, 1987.

(4) At intervals not to exceed 100 hours' time in service from the last inspection after the effective date of this AD, conduct repetitive inspections of the torque of each mounting nut and reapply torque stripe paint in accordance with MDHC SIN DN-151/EN-39/FN-28, Part IV paragraphs a and b, dated October 10, 1987.

(b) To prevent failure of the tail boom extension mounting studs (P/N

MS51992A803-13 or -14) on MDHC Model 369 F/FF helicopters, accomplish the following:

(1) Prior to further flight after the effective date of this AD, conduct an initial inspection of the tail boom extension attachment to the tail boom casting for any indications of relative motion between the parts in accordance with MDHC (SIN) DN-151/EN-39/FN-28, Part I, paragraphs a, b, c, d, and e, dated October 10, 1987.

(2) Prior to each flight after the effective date of this AD, check the tail boom extension installation for security in accordance with MDHC SIN DN-151/EN-39/FN-28, Part II, paragraph a, dated October 10, 1987. The checks required by this paragraph may be performed by the pilot and must be recorded in accordance with FAR § 43.9.

Note. The authorized person that performs the check must make an entry as required by § 43.9, and the record must be maintained as required by FAR §§ 91.173, 121.380, or 135.439.

(3) If there are indications of relative motion or fretting products between the tail boom casting and the tail boom extension found by the above inspections or checks, prior to further flight, remove tail boom extension and replace all four studs in accordance with MDHC SIN DN-151/EN-39/FN-28, Part III, paragraphs b thru j, dated October 10, 1987.

(4) At intervals not to exceed 100 hours' time in service from the last inspection after the effective date of this AD, conduct repetitive inspections of the torque of each mounting nut and reapply torque stripe paint in accordance with MDHC SIN DN-151/EN-39/FN-28, Part IV, paragraphs a and b, dated October 10, 1987.

(c) An alternate means of compliance which provides an equivalent level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, 3229 East Spring St., Long Beach, CA 90806.

(d) In accordance with §§ 21.197 and 21.199, the helicopter may be flown to a base where compliance may be accomplished.

These inspections and procedures shall be done in accordance with MDHC Mandatory SIN DN-151/EN-39/FN-28, dated October 10, 1987. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from MDHC, Attention: Mr. Barry Hautz, LH3/G35, 5000 E. McDowell Road, Mesa, Arizona 85205-9797. A copy may also be inspected at the Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, or at the Office of the Federal Register 1100 L Street NW., Room 8401, Washington, DC.

This amendment becomes effective August 24, 1988.

Issued in Fort Worth, Texas, on June 20, 1988.

L.B. Andriesen,

Acting Director, Southwest Region:

[FR Doc. 88-17806 Filed 8-9-88; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-ANE-46; Amdt. 39-5943]

Airworthiness Directives; Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB Series Engines Equipped With Air Conditioners

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an existing Airworthiness Directive (AD) 87-26-01, which required the removal of the air conditioner compressor drive belt from Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with an air conditioner. The amendment is needed to return the air conditioner to service in all affected airplanes.

DATES: Effective—August 10, 1988.

Compliance—As required in the body of the AD, unless already accomplished.

Comments for inclusion in the docket must be received on or before September 9, 1988.

Incorporation by Reference—Approved by the Director of the Federal Register as of August 10, 1988.

ADDRESSES: Comments on the amendment may be mailed in duplicate to, Federal Aviation Administration, New England Region, Office of the Regional Counsel, Attention: Rules Docket Number 87-ANE-46, 12 New England Executive Park, Burlington, Massachusetts 01803, or delivered in duplicate to Room 311 at the above address.

Comments delivered must be marked: "Rules Docket Number 87-ANE-46".

Comments may be inspected at the New England Region, Office of the Regional Counsel, Room 311, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

Teledyne Continental Motors Service Bulletins (SB's) No. M88-5 and No. M88-6, may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601.

A copy of each SB is contained in Rules Docket Number 87-ANE-46, in the Office of the Regional Counsel, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts, 01803, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT:

Jerry Robinette, Aerospace Engineer, Propulsion Branch, ACE-140A, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810.

SUPPLEMENTARY INFORMATION: This amendment supersedes Amendment 39-5882 (53 FR 9866; March 28, 1988) AD 87-26-01, which currently requires, as an interim measure, the removal of the air conditioner compressor drive belt on Teledyne Continental Motors Models IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with air conditioners. After issuing Amendment 39-5882, the FAA has determined that Teledyne Continental Motors has redesigned the starter adapter shaftgear which had failed due, in part, to loads imposed by the air conditioner drive belt. The redesigned shaftgear is incorporated in the starter drive assembly provided by Teledyne Continental Motors.

Compliance with AD 87-14-02 (52 FR 36754; October 1, 1987), issued against the starter drive assembly is not required when compliance with this AD is accomplished since both AD's pertain to the same assembly, and this AD requires the replacement of the assembly with the latest design.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

The regulations set forth in this amendment are promulgated pursuant to the authority in the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301, *et seq.*), which statute is construed to preempt state law regulating the same subject. Thus, in accordance with Executive Order 12612, it is determined that such regulations do not have federalism implications warranting the preparation of a Federalism Assessment.

Although this action is in the form of a final rule which involves requirements mandating action and, thus, was not preceded by notice and public procedure, comments are invited on the rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above.

All communications received on or

before the closing date for comments will be considered by the Director. This rule may be amended in light of comments received. Comments that provide a factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effectiveness of the AD and determining whether additional rulemaking is needed.

Comments are specifically invited to the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of this AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 87-ANE-46". The post card will be dated/time stamped and returned to the commenter.

Conclusion: The FAA has determined that this regulation is an emergency regulation that is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedure of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT**".

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation

Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. by adding to § 39.13 the following new Airworthiness Directive (AD) which supersedes AD 87-26-01, Amendment 39-5882 (53 FR 9866; March 28, 1988), as follows:

Teledyne Continental Motors (TCM): Applies to IO-520-BA, BB, IO-550-B, and TSIO-520-BE, LB, UB, and WB series engines equipped with air conditioners.

Compliance is required as specified in the body of the AD, unless already accomplished. To prevent possible starter adapter shaftgear assembly failure, accomplish the following:

(a) Before further flight, remove the top engine cowl and gain access to the air conditioner (freon compressor) drive pulley and with a light and mirror, determine if the sheave attach nut is a steel locking type (Reference paragraph II of TCM Service Bulletin (SB) M87-24, dated December 15, 1987).

(1) If the nut is a steel locking type, remove the freon compressor drive belt.

(2) If the nut is castellated, determine via log books and maintenance records that the castellated nut is the original nut and has not been substituted for a steel locking type nut.

(i) If the castellated nut is the original, no further action is required.

(ii) If the castellated nut is not the original, but a substitution for the original installed steel locking type nut, remove the freon compressor drive belt.

(iii) If it cannot be determined that the castellated nut is the original, remove the freon compressor drive belt.

Note.—Compliance with paragraph (b) below before further flight, may be accomplished in lieu of paragraph (a) above.

(b) Within the next 25 flight hours, after the effective date of this AD, remove the starter adapter assembly (starter drive assembly) and replace in accordance with the following table:

Engine model	Replacement starter drive assembly P/N
IO-520-BA, BB, IO-550-B	642087A23R
TSIO-520-LB, WB	642087A22R
TSIO-520-BE.....	642087A24R
TSIO-520-UB.....	646757A4R

Note.—Return the starter drive assembly less drive sheave to the manufacturer for replacement.

(1) Install the replacement assembly in accordance with paragraph 3 of TCM SB M88-5, dated April 4, 1988, and appropriate maintenance manuals.

(2) Install the drive belt and insure proper alignment of the sheaves in accordance with paragraphs 1 through 3 of TCM SB M88-6, dated April 4, 1988.

(c) Replace top engine cowl.

(d) Make appropriate log book entry showing compliance with this AD.

Note.—Compliance with AD 87-14-02 issued against the starter drive assembly is not required when compliance with this AD is accomplished.

(e) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(f) Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Atlanta Aircraft Certification Office, Federal Aviation Administration, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349.

(g) Upon submission of substantiating data by an owner or operator, through an FAA maintenance inspector, the Manager, Atlanta Aircraft Certification Office, may adjust the compliance time specified in this AD.

Notes.—1. New or rebuilt TSIO-520-BE engines (used on Piper PA46-310P Malibu) shipped from TCM as a replacement engine in conjunction with compliance to AD 87-26-08 (TCM SB M87-25) should not order a replacement starter drive assembly as these engines already have the replacement starter drive assembly installed.

2. Installation of the replacement starter drive assembly on the TSIO-520-BE engine (used on Piper PA46-310P Malibu) does not require engine removal (Piper Aircraft Corporation SB 876B refers to this subject).

TCM SB M88-5, dated April 4, 1988, and TCM SB M88-6, dated April 4, 1988, identified and described in this document, are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. The documents may also be examined at the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Room 311, Rules Docket Number 87-ANE-46, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

This amendment becomes effective on August 10, 1988.

Issued in Burlington, Massachusetts, on June 23, 1988.

Timothy P. Forte,

Acting Director, New England Region.

[FR Doc. 88-17807 Filed 8-9-88; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Part 399

[Docket No. 80466-8066]

Chlorendic Anhydride; Reduction in Export Control

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which lists those items subject to Department of Commerce export controls. Chlorendic anhydride, an organic chemical produced from hexachloropentadiene and maleic anhydride, is currently controlled for national security reasons under Export Control Commodity Number (ECCN) 5799C on the CCL. The chemical nomenclature for chlorendic anhydride is 1, 4, 5, 6, 7, 7 hexachloro-5-norbornene-2, 3 dicarboxylic anhydride.

In response to an exporter's petition, the Department of Commerce undertook a review of the rationale for the controls and decided to terminate the control of chlorendic anhydride on the grounds that the availability of this chemical to controlled countries would no longer make a significant contribution to the military potential of those countries. This decision was made in consultation with the Departments of Defense, Energy and State pursuant to section 5(a) of the Export Administration Act of 1979, as amended. This chemical remains subject to export controls to Country Groups S and Z for foreign policy reasons. To implement this decision, this chemical is now being added to 15 CFR 399.2, Supp. No. 1, Interpretation 24, and, as a result, will be covered by ECCN 6799G.

FOR FURTHER INFORMATION CONTACT: Jim Seevaratnam, Capital Goods Technology Center, Bureau of Export Administration, (Telephone: (202) 377-5695).

SUPPLEMENTARY INFORMATION

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts

this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule also is exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule removes a burden under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) by eliminating the requirement for a validated license to Country Groups Q, W, Y, the People's Republic of China, and Afghanistan. The reporting requirement for validated licenses has been approved by the Office of Management and Budget under control number 0625-0001.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

Lists of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368-399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L.

99-84 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 399.2 [Amended]

2. In Supplement No. 1 to § 399.2, under Interpretation 24, in the list entitled "Organic Chemicals" add the following chemical in alphabetical order:

Chlorendic anhydride

Dated: July 21, 1988.

Michael E. Zacharia,

Assistant Secretary for Export Administration.

[FR Doc. 88-18048 Filed 8-9-88; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260 and 284

[Docket No. RM87-17-001, Order No. 493-A]

Natural Gas Data Collection System

Issued August 1, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is granting rehearing in part and denying rehearing in part of Order No. 493 (53 FR 15023 (Apr. 27, 1988)), a final rule requiring natural gas companies to use an electronic medium when filing certain rate filings, certificate and abandonment applications and FERC Forms. This order extends the implementation dates for electronic data submission of certain FERC Forms and stays the implementation of electronic data submission of rate filings and certificate and abandonment applications. This order on rehearing also provides that an implementation conference will be held on September 12 and 13, 1988.

Finally, on July 1, 1988, OMB approved the information collection provisions in Order No. 493. This order on rehearing provides notice of the OMB approval and a list of the OMB control numbers.

DATES: This order on rehearing is effective September 1, 1988. The

implementation conference will hold on September 12-13, 1988.

The implementation date for FERC Form Nos. 8 and 11 is November 30, 1988; for FERC Form No. 16 is April 30, 1989; and for rate, tariff and certificate applications is March 31, 1989.

FOR FURTHER INFORMATION CONTACT:

Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION:

The Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. The full text of this order on rehearing is available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa,¹ Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is granting rehearing in part and denying rehearing in part of Order No. 493, a final rule requiring natural gas companies to use an electronic medium when filing certain rate filings, certificate and abandonment applications and FERC Forms.² This order extends the

¹ Commissioner Sousa resigned effective July 31, 1988; however, he was present and voted on this item at the meeting of July 27, 1988.

² 53 FR 15023 (Apr. 27, 1988), III FERC Stats. & Regs. ¶ 30,808 (Apr. 5, 1988); order granting rehearing for the purpose of further consideration and suspending effective date, 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30,813 (May 2, 1988); order providing new effective date, 53 FR 19283 (May 27, 1988), III FERC Stats. & Regs. ¶ 30,817 (May 19, 1988).

implementation dates for electronic data submission of certain FERC Forms and stays the implementation of electronic data submission of rate filings and certificate and abandonment applications. This order on rehearing also provides that an implementation conference will be held on September 12 and 13, 1988.

Finally, on July 1, 1988, OMB approved the information collection provisions in Order No. 493. This order on rehearing provides notice of the OMB approval and a list of the OMB control numbers.

II. Background

The Commission issued Order No. 493 on April 5, 1988. The final rule amended the Commission's regulations to require that on or after September 30, 1988, rate filings, including the affected tariff sheets, submitted pursuant to § 154.63; certificate and abandonment applications, including the affected tariff sheets, under Subparts A, E and F of Part 157; blanket certificate applications under Subpart G of Part 284; and FERC Form Nos. 8, 11 and 16 in Part 260, must be filed on an electronic medium. Additionally, on or after September 30, 1988, the final rule required any natural gas company filing a general rate proceeding pursuant to section 4 of the Natural Gas Act and § 154.63, or submitting a restatement of the natural gas company's base tariff rate pursuant to § 154.303(e), to make a one-time only filing which submits the company's entire tariff, except for executed service agreements, on an electronic medium. The final rule also required natural gas companies to submit FERC Form Nos. 2, 2A, 14 and 15 on an electronic medium on or after December 30, 1988. The final rule provided a waiver for natural gas companies that do not have any electronic capability to comply with the electronic data submission requirement. The final rule also revised the Commission's confidentiality procedures in § 388.112 to provide procedures for protecting confidential data filed on an electronic medium.

Finally, the rule severed FERC Form No. 591 from this rulemaking docket and established a new docket number RM88-12-000 in which to consider it. This action provided the Commission additional time to address concerns raised by the comments to the proposed FERC Form No. 591.

The Commission granted rehearing for the purpose of further consideration on May 2, 1988.³ The order granting

³ 53 FR 16058 (May 5, 1988), III FERC Stats. & Regs. ¶ 30,813.