

# Proposed Rules

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

RIN 3206-AJ30

#### Prevailing Rate Systems; Change in the Survey Cycle for the Pennington, SD, Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Office of Personnel Management is issuing a proposed rule that would change the timing of local wage surveys in the Pennington, South Dakota, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. The change would help balance the workload for the Department of Defense and improve the amount and quality of data it collects during local annual wage surveys in the Pennington wage area.

**DATES:** The Office of Personnel Management must receive comments by January 18, 2001.

**ADDRESSES:** Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415-8200, or FAX: (202) 606-4264.

#### FOR FURTHER INFORMATION CONTACT:

Chenty I. Carpenter at (202) 606-8359; by FAX at (202) 606-4264; or by email at cicarpen@opm.gov.

**SUPPLEMENTARY INFORMATION:** The Department of Defense (DOD) has requested that the Office of Personnel Management (OPM) change the timing of local wage surveys in the Pennington, South Dakota, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. Full-scale wage surveys currently begin in January of each even-numbered fiscal year. Full-scale wage surveys would begin in the future in June of each even-numbered fiscal year. Under section 532.207 of title 5, Code of

Federal Regulations, the scheduling of wage surveys takes into consideration the best timing in relation to wage adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby wage areas, and scheduling relationships with other pay surveys.

DOD asked OPM to change the starting time for local wage surveys in the Pennington wage area to June of even fiscal years to help avoid the problems created by inclement weather in western South Dakota during the month of January and to balance the overall workload of its NAF survey office. DOD would conduct its regular wage-change survey in January 2001, then it would conduct full-scale wage surveys in Pennington County in June 2001 and June 2002.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Pennington NAF wage area from January of even-numbered fiscal years to June of even-numbered fiscal years.

#### Regulatory Flexibility Act

I certify that this regulation would not have a significant economic impact on a substantial number of small entities because it would affect only Federal agencies and employees.

#### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

#### PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

#### Appendix A to Subpart B of Part 532 [Amended]

2. Appendix B to Subpart B is amended by revising under the State of South Dakota the

listing of beginning month of survey from "January" to "June" for the Pennington NAF wage area.

[FR Doc. 00-32286 Filed 12-18-00; 8:45 am]

BILLING CODE 6325-01-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 214

[INS No. 2068-00]

RIN 1115-AF85

#### Adding Actuaries and Plant Pathologists to Appendix 1603.D.1 of the North American Free Trade Agreement

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization Service's (Service) Regulations by adding the occupations of actuary and plant pathologist to the list of professions in Appendix 1603.D.1 to Annex 1603 of the North American Free Trade Agreement (NAFTA). This rule also proposes to modify the licensure requirements for Canadian citizens seeking admission to the United States as TN nonimmigrant aliens. These amendments are being proposed to reflect the agreements made among the three parties to the NAFTA. This rule will facilitate travel to the United States and benefit United States businesses.

**DATES:** Written comments must be submitted on or before February 20, 2001.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference the INS number 2068-00 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** John W. Brown, Adjudications Officer,

Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353-8177.

#### SUPPLEMENTARY INFORMATION:

##### What Is the NAFTA?

On December 17, 1992, The United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA). The NAFTA entered into force on January 1, 1994, creating one of the largest trading areas in the world. Besides trade, NAFTA allows for the temporary entry of qualified business persons from each of the parties to the agreement. The NAFTA is comprised of 22 chapters. Chapter 16 of the NAFTA is entitled "Temporary Entry of Business Persons," and in addition to reflecting the preferential trading relationship between the parties to the agreement, it reflects the member nations' desire to facilitate temporary entry on a reciprocal basis. It also establishes procedures for temporary entry, addresses the need to ensure border security and seeks to protect the domestic labor force in the member nations.

Articles 1605 of Chapter 16 of the NAFTA also established a Temporary Entry Working group (TEWG), comprised of representatives of each of the parties to the NAFTA, including immigration officials. The working group is required to meet at least once a year to consider several issues including the development of measures to further facilitate temporary entry of business persons on a reciprocal basis as well as proposed modifications of or additions to Chapter 16.

##### What Business Persons Are Covered Under the NAFTA?

Annex 1603 to Article 1603 of the NAFTA establishes 4 categories of business persons to be allowed temporary entry into the territory of another NAFTA party. The 4 categories are: (1) Business visitors; (2) traders and investors; (3) intracompany transferees; and (4) professionals.

Business visitors under the NAFTA are admitted to the United States under the B-1 nonimmigrant classification [INA 101(a)(15)(B)]. A business visitor is a business person from another NAFTA party who seeks to engage in an occupation or profession with one of the seven categories of business activities listed in Appendix 1603.A.1. The seven categories of business activities listed in Appendix 1603.A.1 represent a complete business cycle and include: (1) Research and Design; (2) Growth, Manufacture and Production; (3) Marketing; (4) Sales; (5) Distribution; (6)

After-Sales Service; and (7) General Service.

Traders and investors are admitted to the United States under the E-1 and E-2 nonimmigrant categories, respectively [INA 101(a)(15)(E)].

A trader is an alien in the United States admitted solely to carry on trade of a substantial nature principally between the United States and the country of the alien's nationality. An investor is an alien who has invested or is actively in the process of investing a substantial amount of capital in a bona fide enterprises in the United States.

Intracompany transferees are admitted to the United States under the L-1 nonimmigrant classification [INA 101(a)(15)(L)]. An intracompany transferee is an alien who, within 3 years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for 1 year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary, and who seeks to enter the United States temporarily to render his or her services to a branch of the same employer or as parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

Professionals under the NAFTA are admitted to the United States as TN nonimmigrant aliens [INA 214(e)].

##### What Is a TN Nonimmigrant Alien?

A TN nonimmigrant is a citizen of Canada or Mexico who seeks admission to the United States, under the provisions of Section D of Annex 1603 of the NAFTA, to engage in business activities at a professional level as provided for in such annex. The code "TN" is an admission code developed by the United States government for Canadian and Mexican citizens admitted to the United States as business professionals under the NAFTA. The TN code is not part of the NAFTA agreement and is not used by the Canadian and Mexican governments. The NAFTA parties have agreed that 63 occupations qualify as professionals. These occupations are listed in the Appendix 1603.D.1 to Annex 1603 to the NAFTA found in § 214.6(c). The list represents the only professions that will enable an alien to obtain admission to the United States as a TN nonimmigrant alien.

##### What Changes Is the Service Proposing To Make in This Rule?

This rule proposes to add the occupation of actuary to the list of professions in Appendix 1603.D.1. In addition, this rule proposes to include plant pathologist to the Appendix

1603.D.1 as a footnote to the occupation of biologist. This rule also proposes to change the licensure requirements for Canadian TN aliens applying for admission to the United States. This provision is currently described at § 214.6(e)(3)(ii)(F). This rule also proposes to remove § 214.6(1), which relates to the transition period for Canadian citizens who were admitted to the United States under the United States-Canada Free Trade Agreement that existed before the effective date of the NAFTA. This rule also proposes to change all references to the Northern Service Center to the Nebraska Service Center to reflect the center's current name.

##### Why Is the Service Adding the Occupation of Actuary to Appendix 1603.D.1?

In June 1994, the American Academy of Actuaries and its Canadian and Mexican counterparts approached the United States Chapter 16 TEWG and requested that actuaries be added to the list of professions contained in Appendix 1603.D.1 to Annex 1603 to the NAFTA. After a series of negotiations and consultations, the NAFTA parties recognized that the occupation of actuary should be included in the list of professions in Appendix 1603.D.1. The parties agreed that the minimum educational requirements and alternative credentials for actuaries were a Baccalaureate or Licenciatura Degree in Actuarial Science or satisfaction of the necessary requirements to be recognized as an actuary by a professional actuarial association or society.

##### Why Is the Service Including the Occupation of Plant Pathologist in the Appendix 1603.D.1?

In 1990, the Canadian Phytopathological Society requested that the occupation of plant pathologist be added to the list of professions contained in Appendix 1603.D.1 to Annex 1603 to the NAFTA. The Society noted that most plant pathologists have either a Master's degree or a Ph.D. and are, therefore, professionals. After much negotiation and consultation, the Chapter 16 TEWG agreed that the occupation of plant pathologist should be included to the list of professions contained in the Appendix. This rule proposes to include the occupation of plant pathologist to the Appendix in § 214.6(c) as a footnote to the occupation of biologists. The NAFTA parties recognized that the occupation of plant pathologist should be referenced in the Appendix in the form of a footnote to the occupation of

biologist because the occupations are similar in educational requirements and duties.

#### **What Is the Effect of Adding Actuaries to and Including Plant Pathologists on the Appendix 1603.D.1?**

Including a footnote for plant pathologists and adding actuaries to the Appendix will make it easier for individuals employed in these professions in one NAFTA party to obtain admission to the territory of another NAFTA party. Since the addition and inclusion of these occupations facilitates the temporary entry of individuals employed in these professions, it comports with one of the general principles described in Article 1601 of the NAFTA.

#### **Why Is the Service Proposing To Change the Licensure Requirements for Citizens of Canada Seeing Admission as a TN Alien?**

The Service's current regulations, promulgated after the NAFTA went into effect in 1994, require the presentation of a license as a condition for admission of a Canadian TN to the United States.

To ensure that the Service's regulations implementing Chapter 16 are in conformity with the obligations of the United States under the agreement, this rule proposes to remove § 214.6(e)(3)(ii)(F) that requires the presentation of a license before a Canadian citizen can be admitted to the United States as a TN nonimmigrant alien.

However, Canadian TN nonimmigrant aliens will still be required to obtain the appropriate state license to practice their profession in the United States. The Statement of Administrative Action provides that, "Nothing in NAFTA will permit Mexican or Canadian professionals to practice a licensed profession in the United States, even on a temporary basis, without meeting all applicable state licensing criteria and receiving such a license \* \* \*."

#### **Does This Proposed Regulation Affect the Licensure Requirements for Mexican TN Aliens?**

No, the Service is not proposing to remove the licensure requirement for Mexican TN nonimmigrant aliens described in § 214.6(d)(2)(iv). The NAFTA imposes several additional requirements on Mexican citizens seeking TN classification in the United States for a period of time not to exceed ten years (December 31, 2003), [See Annex 1603.D.5. of the NAFTA]. These requirements were described in section 341 of the U.S. Statement of Administrative Action that was

presented to Congress at the time of enactment of the NAFTA

Implementation Act [Pub. L. 103-182].

One of the additional requirements is that the entry of a citizen of Mexico, as a TN nonimmigrant, is subject to the petitioning requirements of section 214(c) of the Immigration and Nationality Act and the Service's implementing regulations found in § 214.2. Therefore, a U.S. employer seeking the services of a Mexican TN alien must file a Form I-129, Petition for Nonimmigrant Worker, with the required supporting documentation which includes any required state license. The Service is not proposing to remove the licensure requirement for Mexican citizens because the petition requirement remains in effect at this time.

#### **What Is the Effect of Changing the Licensure Requirements?**

This change will have no effect on the health and welfare of United States citizens who may be impacted by the alien's engaging in professional activities in the United States. In those jurisdictions where a particular profession or occupation requires licensure, State or Federal law will continue to require the alien's employer to insure that the alien has the proper license before the alien commences employment. In this regard a Canadian TN alien will be treated in the same fashion as a United States worker. While this rule will ensure that the Service will not require the alien to present the license to be admitted to the United States, the alien will still have to have a license to work in the United States consistent with Chapter 12 of the NAFTA.

It must be remembered that a TN alien is admitted into the United States for the purpose of engaging in business activities at a professional level. Like other aliens who fail to maintain the terms and conditions of their nonimmigrant status, a TN alien who fails to engage in activities at a professional level for the specified employer may be amenable to removal under section 237(a)(1) of the act, or ineligible for an extension of temporary stay under § 214 or a change of nonimmigrant status under section 248 of the Act.

The TN classification is not the appropriate classification for obtaining training or meeting professional licensure requirements in the United States. Such activities are consistent with the B-1 nonimmigrant classification. As noted earlier, the NAFTA provides for the admission of B-1 nonimmigrant aliens.

#### **What Technical Changes Is the Service Making in This Rule?**

*This rule also proposes to remove § 214.6(1).* That section discusses the transition period for Canadian citizens who were admitted to the United States under the former United States-Canada Free Trade Agreement (CFTA). The regulatory provision is no longer applicable because of the passage of time since the entry into force of the NAFTA that subsumed the CFTA.

In addition, this rule proposes to change all references to the "Northern Service Center" in the regulation to the "Nebraska Service Center," the current name of the facility.

Finally, this rule proposes to remove the term "diplomas, or certificates" from the regulation at § 214.6(d)(2)(ii) and at § 214.6(e)(3)(ii) since these regulatory cites are inconsistent with footnote number 3 and 4 to the appendix. The footnotes clearly require that diplomas and certificates must be issued in Canada or Mexico, respectively. Therefore, diplomas and certificates received by an alien from another country would not establish the alien's eligibility for TN classification.

#### **Does This Rule Have Any Impact on Any of the Service's Recently Published Interim or Proposed Rules?**

This rule does not have any affect on the Service's recently published interim rules relating to certificates for health care workers or any regulation dealing with nonimmigrant aliens. This rule deals solely with the NAFTA.

#### **Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Although a small number of entities maybe affected by the changes proposed in this regulation, actuaries and plant pathologists affected by this rule will benefit by their ability to transfer to the United States and work in their chosen field in a more expeditious fashion.

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

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions

of the Unfunded Mandates Reform Act of 1995.

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

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

#### Executive Order 12866

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

#### Executive Order 13132

The regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Immigration and Naturalization Service has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### Executive Order 12988 Civil Justice Reform

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

#### Paperwork Reduction Act

This proposed rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule were previously approved for use by the Office of Management and Budget (OMB). The OMB control numbers for this collection are contained in 8 CFR 299.5, Display of control numbers.

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

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions,

Reporting and recordkeeping requirements, Students.

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

#### PART 214—NONIMMIGRANT CLASSES

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

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR Part 2.

2. Section 214.6 is amended by:

- Adding the profession of "Actuary" immediately after "Accountant" to the appendix in paragraph (c);
- Adding footnote 1a to the table of footnotes;

- Revising the profession "Biologist" under the heading "Scientist" in the appendix to paragraph (c);
- Revising the term "Northern Service Center" to "Nebraska Service Center" in paragraphs (d)(1) and (h)(1);

- Removing the term "diplomas, or certificates" from paragraph (d)(2)(ii), third sentence;
- Removing the term "licenses," from paragraph (e)(3)(ii), introductory text, third sentence;

- Removing the term "diplomas, or certificates" from paragraph (e)(3)(ii), introductory text, fourth sentence;
- Adding the word "and" at the end of paragraph (e)(3)(ii)(D);

- Removing the "; and" at the end of paragraph (e)(3)(ii)(E), and adding a period in its place;
- Removing paragraph (e)(3)(ii)(F): and by

- removing paragraph (1), to read as follows:

**§214.6 Canadian and Mexican citizens seeking temporary entry to engage in business activities at a professional level.**

\* \* \* \* \*

(c) \* \* \*

#### Appendix 1603.D.1 (Annotated)

\* \* \* \* \*

—Actuary—Baccalaureate or Licenciatura Degree in Actuarial Science; or satisfaction of the necessary requirements to be recognized as an actuary by a professional actuarial association or society.<sup>1a</sup>

\* \* \* \* \*

—SCIENTIST

—Biologist (including Plant Pathologist)—Baccalaureate or Licenciatura Degree.

\* \* \* \* \*

<sup>1a</sup> A professional actuarial association or society means a professional actuarial association or society operating in the territory of at least one of the Parties.

Dated: December 13, 2000.

Mary Ann Wyrsh,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 00-32281 Filed 12-18-00; 8:45 am]

BILLING CODE 4410-10-M

#### DEPARTMENT OF TRANSPORTATION

#### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-321-AD]

RIN 2120-AA64

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB-135 and EMB-145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB-135 and EMB-145 series airplanes. This proposal would require replacement of the engine oil pressure sensors with new sensors, and installation of an oil tank pressure relief kit. Additionally, the proposal would require revision of the Airplane Flight Manual that would specify new oil pressure limits. This action is necessary to prevent rejected takeoffs due to exceeding engine oil pressure limits, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by January 18, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-321-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov.

Comments sent via fax or the Internet must contain "Docket No. 2000-NM-321-AD" in the