

Presidential Documents

Title 3—

The President

Proclamation 6691 of May 18, 1994

National Trauma Awareness Month, 1994

By the President of the United States of America

A Proclamation

All of us are potential victims of physical trauma. Even though we may lead relatively calm and safe lives, we can never fully escape the risks of traumatic injury. Each year, no fewer than 150,000 Americans die as a result of massive damage to skin or to internal organs, providing a sobering reminder that we must renew our efforts to create a healthier and safer society.

While traumatic physical injury threatens all of us, young children are at particularly high risk for its tragic effects. In fact, six times as many children are killed by traumatic incidence than by cancer. No matter who falls victim, trauma exacts a tremendous toll.

In addition to the vast physical and emotional suffering that occurs, trauma also causes staggering economic losses. This year alone, Americans will spend more than \$175 billion for the health care costs and loss of productivity associated with trauma.

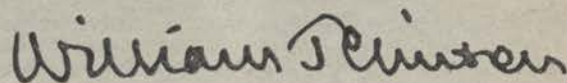
We now consider trauma to be among the most neglected medical conditions in our country, and it is vital that we take steps to diminish its terrible damage.

Fortunately, we can substantially reduce the threat and the impact of traumatic injury through a concerted campaign of prevention and of improvement in care. By using established safety procedures in our homes and at work and by teaching basic safety to our children, we can significantly lower the number of traumatic accidents that occur each year. We can also help prevent many of the fatalities associated with trauma by learning how to properly treat its victims. By rededicating ourselves to understanding life-threatening trauma and by making the most effective uses of emergency medical services, we can all contribute to creating a healthier society.

The Congress, by Public Law 103-39, has designated May 1994 as "National Trauma Awareness Month," and has authorized and requested the President to issue a proclamation in observance of this month.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the month of May 1994 as National Trauma Awareness Month. I call upon all Americans to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.



Journal of the

Proceedings of the

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Rules and Regulations

Federal Register

Vol. 59, No. 98

Monday, May 23, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206-AF62

Prevailing Rate Systems; Definition of Travis and Burnet Counties, TX, to Other NAF Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to abolish the Travis, Texas, Nonappropriated Fund (NAF) Federal Wage System wage area. The Travis NAF wage area is composed of Travis County, Texas (survey area), and Burnet County, Texas (area of application). This regulation redefines Travis County, Texas, to the Bexar, Texas, NAF wage area as an area of application and Burnet County, Texas, to the Bell, Texas, NAF wage area as an area of application. Because of downsizing associated with a scheduled base closure, the Travis NAF wage area did not have the required minimum of 26 NAF wage employees within the survey area, and no local activity within the Travis NAF wage area had the capability to conduct a wage survey.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Brenda Roberts, (202) 606-2848.

SUPPLEMENTARY INFORMATION: On August 30, 1993, OPM published an interim rule (58 FR 45413) to abolish the Travis, Texas, NAF wage area and define it to other NAF wage areas for pay-setting purposes. The interim rule provided a 30-day period for public comment. OPM received no comments during the comment period. Therefore, the interim rule is being adopted as a final rule.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they 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.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule amending 5 CFR part 532 published on August 30, 1993 (58 FR 45413) is adopted as final without any changes.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94-12365 Filed 5-20-94; 8:45 am]

BILLING CODE 5325-01-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 68

Regulations and Standards for Inspection and Certification of Certain Agricultural Commodities and Their Products

AGENCY: Federal Grain Inspection Service, USDA.¹

ACTION: Confirmation of regulations.

SUMMARY: The Federal Grain Inspection Service (FGIS) has reviewed subpart A of the part 68 regulations under the Agricultural Marketing Act of 1946, as amended (Act). Pursuant to this review, FGIS has determined that no change will be made to these regulations.

FOR FURTHER INFORMATION CONTACT: George Wollam, FGIS, USDA, room 0624 South Building, P.O. Box 96454, Washington, DC, 20090-6454; FAX (202) 720-4628; telephone (202) 720-0292.

SUPPLEMENTARY INFORMATION: An advance notice of proposed rulemaking

¹ The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

requesting public comment on subpart A of the part 68 regulations under the Act was published in the *Federal Register* on August 27, 1993, (58 FR 45295).

FGIS solicited data, views, and arguments concerning the need for revising these regulations, the potential for improvement, and language clarity. FGIS also requested comments on several issues identified by interested parties. The objective of this review was to ensure that the regulations continue to serve the needs of the marketplace to the greatest extent possible.

Within the 90-day comment period that ended on November 26, 1993, only one written comment was received. This comment, submitted by the Rice Millers' Association (RMA), asked FGIS to postpone proposing any rulemaking action that would "allow requests for divided-lot certificates to be made for up to 1 year from the outstanding certificate date and, at the discretion of the Service, after the identity of the commodity has been lost" pending further review of the potential impact of much action. FGIS appreciates RMA's concern and will study this issue further. No changes will be proposed at this time.

Based on the information available, FGIS has determined that subpart A of the part 68 regulations under the Act are meeting the needs of the industry and no changes are necessary at this time.

Authority: Secs. 202-208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

Dated: May 12, 1994.

David R. Shipman,

Acting Administrator.

[FR Doc. 94-12472 Filed 5-20-94; 8:45 am]

BILLING CODE 3410-EN-M

Farmers Home Administration

7 CFR Part 1942

RIN 0570-AA08

Rural Business Enterprise Grants and Television Demonstration Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulation that is utilized by the Rural

Development Administration (RDA) to make grants to facilitate the development of small and emerging business enterprises in rural areas. A change is needed to implement Title V, Section 516(d) of Public Law 102-552, Farm Credit Banks and Associations Safety and Soundness Act of 1992, which provides that grants may also be made to create, expand, and operate rural distance learning networks and rural learning programs that provide educational or job training instruction related to potential employment or job advancement for adult students. The intended effect is to make this an eligible grant purpose under the Rural Business Enterprise Grant program.

DATES: Interim rule effective May 23, 1994. Written comments must be submitted on or before July 22, 1994.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Rural Development Administration, room 6320, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1490.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this interim final rule in conformance with Executive Order 12866, and the Office of Management and Budget has determined that it is a "significant regulatory action."

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." RDA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91-190), an Environmental Impact Statement is not required.

Executive Order 12778

This document regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7

CFR part 1900, subpart B, must be exhausted prior to filing suit.

Intergovernmental Review

This action affects the following RDA program as listed in the Catalog of Federal Domestic Assistance under 10.769 Rural Business Enterprise and Television Demonstration Grants and is subject to the provisions of E.O. 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983, 49 FR 2267, May 31, 1984, 50 FR 14088, April 10, 1985.)

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0132 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This interim rule does not revise or impose any new information collection requirement from those approved by OMB.

Discussion of the Interim Rule

It is the policy of the Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. However, the Department is making this action effective immediately upon publication in the *Federal Register* without securing prior public comment. The purpose of this rule is to implement Title V, Section 516(d), of Public Law 102-552, Farm Credit Banks and Association Safety and Soundness Act of 1992, which amends Section 310B(c) (7 U.S.C. 1932(c)) of the Consolidated Farm and Rural Development Act which allows grants for the creation, expansion, and operation of rural distance learning networks or rural learning programs that provide educational instruction or job training instruction related to potential employment or job advancement for adult students. This rule making action does not encompass discretionary decision making by the agency, but merely adds the text of Section 516(d)'s amendment to Section 310B(c) of the Consolidated Farm and Rural Development Act into the regulations governing the Rural Business Enterprise Grant program. That program provides grants to facilitate the development of small and emerging private business enterprises in rural areas. This assistance is expected to further the

development of small and emerging private business enterprises in rural areas by making available to developing businesses qualified employees necessary for successful startup or expansion. While the Department is reluctant to short circuit prior public comment, it is certain that failure to implement the program will result in negative impact in rural areas by not fully utilizing the grant program to its fullest authorization for avenues to help facilitate the development of businesses in rural areas. Because the appropriated funds for the program are not available past the end of fiscal year 1994, it is essential that this authorization be implemented this fiscal year.

The rule describing procedures and practices for applying for and obtaining this grant assistance is already in place under the Rural Business Enterprise Grant program. This rule simply adds education and training of adult students as an eligible grant purpose under the program. Requiring prior notice and comment would result in substantial delays in making the use of these grant funds available to the public for education purposes. Public controversy over adding this eligible use of grant funds is unlikely. The Agency, however, is also providing for public comment so that, in the event that members of the public do wish to suggest alternative rule provisions or courses of action in implementing this program, they will have an opportunity to give RDA the benefit of their views in the near future. In the event that public comments are received, the Department will consider them, and issue such amendments to those rules as may be appropriate, as quickly as possible.

List of Subjects in 7 CFR Part 1942

Business and industry, Grant programs—Housing and community development, Industrial parks, Rural areas.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 16 U.S.C. 1005, 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart G—Rural Business Enterprise Grants and Television Demonstration Grants

2. Section 1942.306 is amended by adding a new paragraph (a) (10) to read as follows:

§ 1942.306 Purposes of grants.

(a) * * *

(10) Create, expand, and operate rural distance learning networks or rural learning programs, that provide educational instruction or job training instruction related to potential employment or job advancement for adult students.

Dated: April 5, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94-12471 Filed 5-20-94; 8:45 am]

BILLING CODE 3410-32-U

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****8 CFR Parts 103, 211, 216, 235, and 242**

[INS No. 1429-92]

RIN 1115-AC53

Conditional Permanent Resident Regulations for Alien Entrepreneurs, Spouses, and Children

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule implements provisions of section 121 of the Immigration Act of 1990, by providing for removal of conditional resident status of certain alien entrepreneurs, their spouses, and children. It sets forth the standards and procedures for the removal of the conditional basis of permanent resident status through the filing of a petition by the alien entrepreneur. This rule will allow alien entrepreneurs to continue their commercial enterprise while providing jobs in the United States.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION:**Background**

As part of the Immigration Act of 1990, Public Law 101-649, November 29, 1990, Congress created the Employment Creation immigrant visa category under section 203(b)(5) of the Immigration and Nationality Act (Act). Section 203(b)(5) of the Act sets aside immigrant visas for aliens seeking to

enter the United States for the purpose of engaging in a new commercial enterprise. To qualify under this immigrant visa category, the alien must invest \$1,000,000 (or \$500,000 in certain targeted areas) and create at least ten full-time jobs. On November 29, 1991, the Immigration and Naturalization Service (Service) issued a final regulation on implementing the provisions of section 203(b)(5) of the Act.

Under section 121 of the Immigration Act of 1990 (section 216A of the Act), Congress determined that aliens admitted to the United States under the Employment Creation category as alien entrepreneurs and their spouses and children should be admitted as conditional permanent residents as a means to deter immigration-related entrepreneurship fraud. Section 216A of the Act provides for a two-year conditional resident status for alien entrepreneurs and their spouses and unmarried children. It also provides for termination of status if the Service determines that the qualifying commercial enterprise was improper and sets forth the criteria and procedures for the alien entrepreneur to remove conditional resident status.

Termination of Conditional Resident Status

Section 216A(b) of the Act calls for the termination of the alien's conditional permanent resident status during the two-year period if the Service determines that establishment of the commercial enterprise was intended solely as a means to evade United States immigration laws; that the alien did not establish the new commercial enterprise; that the alien did not invest or was not in the process of investing the prescribed capital; that the alien was not sustaining the new commercial enterprise or the investment of capital; or that the alien was not otherwise conforming to the requirements of his or her status. In addition, in light of Congress' intent to prevent further processing of an alien's visa if it becomes known that the alien obtained the money invested through other than legal means, this regulation adds an additional ground to terminate an alien entrepreneur's conditional permanent resident status. Section 216A(b) of the Act provides that if the Service decides to terminate the alien entrepreneur's conditional permanent resident status, the alien shall be notified of such decision and may request a review of the Service's determination in a deportation proceeding. In a deportation proceeding, the Service has the burden of proof to establish by a preponderance

of the evidence that one of the reasons for termination is true. Accordingly, 8 CFR 216.3 will be revised to allow for termination of conditional permanent resident status for alien entrepreneurs.

Petition for Removal of Conditions

Section 216A(c)(1) and 216A(d)(2)(A) of the Act require that the alien entrepreneur file a petition for removal of conditions during the 90-day period before the second anniversary of the alien's obtaining conditional permanent resident status. The final regulation provides that the alien entrepreneur file Form I-829, Petition by Entrepreneur to Remove Conditions, with the Service Center having jurisdiction over the location of the alien's commercial enterprise. The petition should include the alien entrepreneur's spouse and children, even if the children marry or reach the age of twenty-one during the period of conditional residence. The final rule also permits the spouse and children of a deceased principal alien entrepreneur to file a petition and have conditions removed, if the spouse and/or children can show that, despite the entrepreneur's death, the requirements for removal of conditions have been met.

Under the final regulation, the Service Center will review the petition for removal of conditions. If the Service Center director determines in his or her discretion that a decision may be made on the basis of the petition and accompanying evidence without the necessity of an interview, the director will render a decision on the petition. If the director determines that an interview is needed, the Service Center director will schedule the alien entrepreneur for an interview at a local Service district office or sub-office having jurisdiction over the alien's commercial enterprise. The district director will then render a decision on the petition.

If the alien entrepreneur fails to file a timely petition for removal of conditions or, without good cause shown, fails to appear for a scheduled personal interview, the alien's status will be terminated and an order to show cause will be issued. The Service's decision may be reviewed in deportation proceedings, but, in all instances, the burden will rest with the alien to show compliance with the filing and interview requirements. The Service may accept and consider a late petition if the alien demonstrates good cause and extenuating circumstances for failing to file a timely petition.

Decision on Petition

Section 216A(d)(1) of the Act provides that each petition shall contain facts and information demonstrating that a commercial enterprise was established by the alien, the alien invested or was actively in the process of investing the requisite capital, and the alien sustained the commercial enterprise and the investment of the required capital during the two years of conditional residence. Under 8 CFR 216.6(a)(4)(iii), the alien entrepreneur will be considered to have "sustained" the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. This liberal interpretation of the term "sustained" permits the Service maximum flexibility in determining whether the requirements for removal of conditional resident status have been met, as well as following Congress' intent to ensure that "all aliens receiving visas in this section * * * continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained." See S. Rep. No. 101-55, 101st Cong., 1st Sess. 22 (1989). The Service recognizes that a bona-fide and good faith investment may not, by the end of the two-year period, meet all the expectations envisioned when the alien entrepreneur obtained conditional resident status. The determination of whether the alien entrepreneur has invested a substantial portion of the requisite capital in good faith will be made on a case-by-case basis. As discussed in the preamble to the proposed rule, in determining whether the alien entrepreneur has demonstrated that he or she invested the requisite capital in good faith, the Service will examine his or her intent based on both objective and subjective standards. See 59 FR 1317-18. The alien entrepreneur has the burden of proof that he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment during the two-year conditional resident period.

On January 10, 1994, at 59 FR 1317-1323, the Service published a proposed rule with request for comments in the *Federal Register*. Interested persons were invited to submit written comments on or before February 9, 1994. The Service received three comments relating to the proposed rule.

Comments

Two commenters criticized the proposed regulation for lacking any time limits for the Service to adjudicate a petition for removal of conditions. One commenter suggested that if the Service takes no action on a petition, the petition should be automatically granted after a set period of time.

Section 216A(c)(3) of the Act provides that the Attorney General make a determination on a petition to remove conditions within 90 days of the date the petition is filed or within 90 days of the interview, whichever is later. Accordingly, 8 CFR 216.6(b)(1) of the proposed regulation states that the Service Center director must either waive the interview requirement and adjudicate the petition or arrange for an interview within 90 days of the date the alien entrepreneur filed the petition. This regulation is, of course, subject to the provisions of 8 CFR 103.2(b)(10)(i). 8 CFR 216.6(c)(1) provides that a decision on a petition shall be made within 90 days of the date of filing or within 90 days of the date of interview, whichever is later. The above provisions in the proposed regulation adequately address the commenters' concerns as well as meet the adjudication time line set forth in section 216A(c)(3) of the Act.

There is no provision in section 216A requiring the Service to approve a petition if the Service fails to adjudicate a petition within 90 days after filing or after an interview. Section 216A(c)(3) of the Act states that the Service must make a determination whether the facts and information described in the contents of the petition are true. Requiring the Service to "automatically" approve a petition after the 90-day period has elapsed would be contrary to the language of section 216A(c)(3) of the Act.

Two of the commenters suggested that the Service list additional types of evidence in 8 CFR 216.6(a)(4)(ii) to show that the alien invested or was actively in the process of investing the requisite capital. This regulation states that such evidence may include, but is not limited to, an audited financial statement. The commenters contended that although an audited financial statement is only a suggested document, it might set too high a standard in the mind of a Service examiner. They suggested other types of evidence such as bank statements or certificates from certified public accountants or officers of the investment entity.

As clearly stated in the regulation, an audited financial statement is only a suggested type of evidence. There is no

basis for the contention that mentioning an audited financial statement in the regulation would set too high a standard. The Service recognizes that it is not common practice for all companies to have audited financial statements. The regulation will be amended to include "other probative evidence" indicating establishment of a commercial enterprise. The Service notes that it is possible that the evidence necessary to meet the documentation requirements of 8 CFR 216.6(a)(4)(iii), such as bank statements, would be sufficient to meet the evidence required under 8 CFR 216.6(a)(4)(i) and (ii). Accordingly, 8 CFR 216.6(a)(4)(ii) will be amended to also include "other probative evidence" that a commercial enterprise has been established.

Two of the commenters were concerned that proposed 8 CFR 216.6(a)(4)(iii) requires that the alien entrepreneur make the full capital investment in cash within the two-year conditional residence period. They argued that the wording of the proposed regulation should specifically cover situations where only a portion of the capital in the form of cash has been invested, with the remainder of the capital to be invested by the commercial enterprise. The proposed regulation refers to substantially meeting and maintaining the alien entrepreneur's capital investment. See 8 CFR 216.6(a)(4)(iii). As noted previously in this preamble, the regulation contemplates certain limited circumstances in which the entire amount of the requisite capital has not been invested by the end of the two-year period. Further, the word capital refers not only to a cash investment, but also to other types of investments which meet the definition of capital found in 8 CFR 204.6(e). The proposed regulation is sufficiently flexible to permit situations in which the requisite capital invested is in a form other than cash. For these reasons, the proposed rule, therefore, will not be amended.

One commenter contended that the Service should state in the regulations that a good faith commitment on a debt agreement, which is secured by the alien entrepreneur's assets, should suffice to meet the requirement that the alien entrepreneur has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained the investment. Under the statute, changing the wording of the regulation to include a good faith commitment is not warranted. Section 216A(d)(1) of the Act requires that the alien entrepreneur invested or was actively in the process of investing the requisite capital and

sustained those actions during the two-year conditional residence period. The language of section 216A(d)(1)(B) of the Act uses the past, rather than the present, tense in requesting information showing that the alien entrepreneur invested or was actively in the process of investing the requisite capital. While there is no statutory requirement with respect to when the requisite capital must have been invested during the two-year period, it is clear that, by using the past tense, Congress expressed its intent that substantially all of the requisite capital be invested by the alien entrepreneur before the expiration of conditional resident status. Accordingly, the Service will not adopt the commenter's suggestion.

Two commenters recommended that the divorced spouse of the principal entrepreneur be entitled to have his or her conditional resident status removed. One of those commenters also suggested that children who reach the age of 21 or marry during the conditional residence period should be able to have their conditional resident status removed. Section 216.6(a)(1) of the proposed regulation clearly states that children who marry or reach the age of 21 during the conditional residence period can be included in the principal alien entrepreneur's petition to remove the conditions. The Service has carefully considered the commenters' suggestion that divorced spouses of alien entrepreneurs should also be allowed to remove their conditional residence status. The Service agrees with the commenters that divorced spouses of alien entrepreneurs should be able to remove their conditional resident status as long as the divorce occurred during the conditional residence period. Accordingly, section 216.6(a)(1) of the final regulation will allow divorced spouses of alien entrepreneurs to remove their conditional resident status. The children and the present or former spouse of the alien entrepreneur may be included in the entrepreneur's petition to remove the conditions or they may file a separate petition to remove conditions. They are eligible to have their conditional resident status removed only if the Service removes the alien entrepreneur's conditional resident status.

Two commenters urged the Service to state in the regulations that the legality of the source of the alien entrepreneur's funds should be determined by U.S., rather than foreign standards. The commenters are concerned that aliens would be precluded from applying lawfully acquired funds which were taken out of a country in violation of its export currency laws and placed in a

new commercial enterprise in the United States as qualifying capital. The only provision in the proposed regulations concerning source of capital is 8 CFR 216.3(a), which states that the Service shall terminate the alien entrepreneur's status if it becomes known to the government that the alien obtained his or her capital through other legal means (such as through the sale of illegal drugs). When the alien files Form I-526, Immigrant Petition by Alien Entrepreneur, he or she must show that the capital invested was obtained through lawful means. See 8 CFR 204.6(j)(3). The commenters' suggestion is more appropriately addressed to 8 CFR 204.6(j)(2)(ii), which addresses this issue in more detail. The Service notes, however, that without more specific information about the particular country's currency restriction laws, it is difficult to determine whether capital, in a given case, was obtained through other than lawful means. Each petition must be adjudicated on a case-by-case basis. Accordingly, the Service does not feel that it is appropriate to amend this regulation.

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. This rule is intended to allow alien entrepreneurs to continue their commercial enterprises thereby providing jobs in the United States. This rule merely sets forth the procedures for terminating the conditional resident status of alien entrepreneurs already present in the country and for removing the conditional basis of permanent resident status for such persons. This rule, therefore, will have, at most, an indirect and attenuated effect on such business entities.

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 has waived its review process under section 6(a)(3)(A).

Executive Order 12612

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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12606

The Commissioner of the Immigration and Naturalization Service certifies that she has addressed this rule in light of the criteria in Executive Order 12606 and has determined that it will have no effect on family well-being.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5. The OMB control number for the Form I-829 is 1115-0190.

List of Subjects

8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegations (Government agencies), Bonding, Fees, Forms, Freedom of Information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, 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.

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

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

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by:

- a. Removing the "Form I-752" from the listing forms;
- b. Revising the description for "Form I-751"; and by
- c. Adding the "Form I-829", to the listing of forms, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I-751. For filing petition to remove the conditions on residence which is based on marriage—\$75.00.

* * * * *

Form I-829. For filing petition by entrepreneur to remove conditions—\$90.00.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS; IMMIGRANTS; WAIVERS

3. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

4. In § 211.1, paragraph (b)(1)(i) introductory text is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b)(1) * * *

(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 or 216A of the Act, whichever is applicable, or within six months of the date of filing a Petition to Remove the Conditions on Residence (Form I-751) or a Petition by Entrepreneur to Remove Conditions (Form I-829) pursuant to 8 CFR part 216, if the alien is in possession of a Service-issued receipt for such filing, and:

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

5. The heading for part 216 is revised as set forth above.

6. The authority citation for part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.1 [Amended]

7. Section 216.1 is amended in the first sentence by revising the phrase "section 216 of the Act" to read: "section 216 or 216A of the Act, whichever is applicable."

§ 216.2 [Amended]

8. Section 216.2(b) is amended in the first sentence by adding the phrase "or the alien entrepreneur" between the words "spouse" and "must".

9. Section 216.2(c) is amended by adding the phrase "or the alien entrepreneur" between the words "spouse" and "of"; and by removing the word "joint".

10. Section 216.3 is revised to read as follows:

§ 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 conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a Notice of Intent to Terminate an alien's conditional resident status, the director shall not adjudicate Form I-751 or Form I-829 until it has been determined that the alien's status shall not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. 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 all of the 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 director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the 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 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) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, 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.

11. In § 216.4, paragraph (a)(1) is amended by revising the phrase "a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status" in the first sentence, to read: "a Petition to Remove the Conditions on Residence".

12. In § 216.4, the heading is revised and paragraph (a)(1) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) * * *

(1) *General procedures.* * * * Upon receipt of a properly filed Form I-751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

* * * * *

13. In § 216.4, paragraph (a)(2) is amended in the last sentence, by revising the phrase "an Application for

Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I-752)" to read: "a separate Petition to Remove the Conditions on Residence (Form I-751)".

14. In § 216.4, paragraph (a)(6) is amended in the first sentence by removing the phrase "or Form I-752".

15. In § 216.5, the section heading and paragraph (a), introductory text, are revised to read as follows:

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.

(a) *General.* A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file a Petition to Remove the Conditions on Residence (Form I-751), if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

* * * * *

§ 216.5 [Amended]

16. In § 216.5, paragraphs (b) and (c) are amended by revising the phrase "Form I-752" to read: "Form I-751".

17. A new § 216.6 is added to read as follows:

§ 216.6 Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition—(1) General procedures.* A petition to remove the conditional basis of the permanent resident status of an alien accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the alien entrepreneur on Form I-829, Petition by Entrepreneur to Remove Conditions. The alien entrepreneur must file Form I-829 within the 90-day period preceding the second anniversary of his or her admission to the United States as a conditional permanent resident. Before Form I-829 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b)(1) of this chapter, and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the alien. Upon receipt of a properly filed Form I-829, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition. The entrepreneur's spouse and children should be included in the petition to remove conditions. Children who have reached the age of twenty-one or who

have married during the period of conditional permanent residence and the former spouse of an entrepreneur, who was divorced from the entrepreneur during the period of conditional permanent residence, may be included in the alien entrepreneur's petition or may file a separate petition.

(2) *Jurisdiction.* Form I-829 must be filed with the regional service center having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Physical presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and children, if necessary, to comply with the interview requirements contained in the Act. 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 complies with the interview requirements described in paragraph (b) of this section. 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.

(4) *Documentation.* The petition for removal of conditions must be accompanied by the following evidence:

(i) Evidence that a commercial enterprise was established by the alien. Such evidence may include, but is not limited to, Federal income tax returns;

(ii) Evidence that the alien invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement or other probative evidence; and

(iii) Evidence that the alien sustained the actions described in paragraph (a)(4)(i) and (a)(4)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. Such evidence may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements.

(iv) Evidence that the alien created or can be expected to create within a

reasonable time ten full-time jobs for qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien entrepreneur must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. Such evidence may include payroll records, relevant tax documents, and Forms I-9.

(5) *Termination of status for failure to file petition.* Failure to properly file Form I-829 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 resident status and the initiation of deportation proceedings. The director shall send a written notice of termination and an order to show cause to an alien entrepreneur who fails to timely file a petition for removal of conditions. No appeal shall lie from this decision; however, the alien may request a review of the determination during deportation proceedings. In deportation proceedings, the burden of proof shall rest with the alien to show by a preponderance of the evidence that he or she complied with the requirement to file the petition within the designated period. The director may deem the petition to have been filed prior to the second anniversary of the alien's obtaining conditional permanent resident status and accept and consider a late petition if the alien demonstrates to the director's satisfaction that failure to file a timely petition was for good cause and due to extenuating circumstances. If the late petition is filed prior to 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 resident 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 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.

(6) *Death of entrepreneur and effect on spouse and children.* If an entrepreneur dies during the prescribed two-year period of conditional permanent residence, the spouse and children of the entrepreneur will be eligible for removal of conditions if it can be demonstrated that the conditions

set forth in paragraph (a)(4) of this section have been met.

(b) *Petition review*—(1) *Authority to waive interview*. The director of the service center shall review the Form I-829 and the supporting documents to determine whether to waive the interview required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, the service center director may waive the interview and approve the petition. If not so satisfied, then the service center director shall forward the petition to the district director having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States so that an interview of the alien entrepreneur 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 relating to the Form I-829 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office that has jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Termination of status for failure to appear for interview*. If the alien fails to appear for an interview in connection with the petition when requested by the Service, the alien's permanent resident status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien will be provided with written notification of the termination and the reasons therefore, 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 by a preponderance of the evidence that he or she complied with the interview requirements. If the alien has failed to appear for a scheduled interview, he or she may submit a written request to the district director asking that the interview be rescheduled or that the interview be waived. That request should explain his or her failure to appear for the scheduled interview, and if a request for waiver of the interview, the reasons such waiver should be granted. If the district director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the district director waives the interview, he or she shall

restore the alien's conditional permanent resident status, cancel any outstanding order to show cause in accordance with § 242.7 of this chapter, and proceed to adjudicate the alien's petition. If the district director reschedules that alien's interview, he or she shall restore the alien's conditional permanent resident status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the interview is rescheduled at the request of the alien, 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*. (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the interview, whichever is later. In adjudicating the petition, the director shall determine whether:

(i) A commercial enterprise was established by the alien;

(ii) The alien invested or was actively in the process of investing the requisite capital; and

(iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.

(iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

(2) If derogatory information is determined regarding any of these issues or it becomes known to the government that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the opportunity to rebut such information. If the alien entrepreneur fails to overcome such derogatory information or evidence the investment funds were obtained through other than legal means, the director may deny the petition, terminate the alien's permanent resident status, and issue an order to show cause. 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 resident status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval*. If, after initial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien's permanent resident status as of the second anniversary of the alien's entry as a conditional permanent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate district office for processing for a new Alien Registration Receipt Card, Form I-551, at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial*. If, after initial review or after the interview, the director denies the 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 and that of his or her spouse and any children 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 this decision; however, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true and that the petition was properly denied.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

18. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

19. In § 235.11, paragraphs (a) and (c) are revised to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General*—(1) *Conditional residence based on family relationship*. An alien seeking admission to the United States with an immigrant visa as the spouse or 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 his or her petitioning spouse must file a Petition to Remove the Conditions on Residence (Form I-751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Petition by Entrepreneur to Remove Conditions (Form I-829) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(c) *Expired conditional permanent resident 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 Petition to Remove the Conditions on Residence (Form I-751) or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), a Petition by Entrepreneur to Remove Conditions (Form I-829). 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 § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under exclusion proceedings. However, in a case where conditional residence was based on a marriage, exclusion proceedings may be terminated and the alien may be admitted as a returning resident if the required petition (Form I-751) is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition (Form I-829) is filed by the alien entrepreneur and approved by the Service.

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

20. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

21. 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 1 of the Act of November 2, 1966, 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) or by an alien entrepreneur (as defined in section 216A(f)(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 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with part 216 of the 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 that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she 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 that he or she can do so while 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.

* * * * *
Dated: April 21, 1994.

Doris Meissner,
Commissioner, Immigration and
Naturalization Service.

[FR Doc. 94-12524 Filed 5-20-94; 8:45 am]
BILLING CODE 4410-10-M

8 CFR Parts 210a, 214, 241, and 242

[INS No. 1438-93; AG Order No. 1879-94]

RIN 1115-AC86

Revision of Grounds for Deportation; Conforming Regulations

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule makes technical amendments to conform agency regulations with statutory provisions regarding general classes of deportable aliens. These amendments are necessary due to statutory changes. They will ensure implementation of, and regulatory compliance with, the statutory changes.

EFFECTIVE DATE: May 23, 1994.

FOR FURTHER INFORMATION CONTACT:

Robert A. Jacobson, Director, Deportation Branch, Detention and Deportation Division, Immigration and Naturalization Service, 425 I Street NW., room 6008, Washington, DC 20536-0002, telephone (202) 514-2865.

SUPPLEMENTARY INFORMATION:

Background

On August 13, 1991, an interim rule with request for comments was published in the *Federal Register* at 56 FR 38331. This rule amended pertinent sections of 8 CFR parts 210a, 214, 241, and 242 to reflect the technical

amendments necessary for conformity with section 241 of the Immigration and Nationality Act (Act), Ch. 477, 66 Stat. 163 (1952), as amended by section 602 of the Immigration Act of 1990 (IMMACT 90), Act of Nov. 29, 1990, Public Law 101-649, 104 Stat. 4978. Section 307(b) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Technical Amendments), Act of Dec. 12, 1991, Public Law 102-232, 105 Stat. 1733, subsequently made minor corrections in section 241 of the Act.

The majority of the amendments made to section 241 of the Act by section 602 of IMMACT 90 were technical in nature, relating in large part to citation changes. Consequently, the majority of changes to 8 CFR parts 210a, 214, 241, and 242 in the interim rule were also technical in nature. Those regulatory changes which did alter substantive rights were so identified in the interim rule. The comment period for the interim rule ended on September 27, 1991. The Service did not receive any comments. Moreover, the Technical Amendments did not substantively change the interim rule. The interim rule is, therefore, adopted as final with minor technical changes.

Regulatory Citation in the Interim Rule

In the supplementary information to the interim rule, 8 CFR 214.2(a)(10) was erroneously referred to as "(s)ection 241.2(a)(10)." Also, 8 CFR 214.2(f)(12)(i)(E), referred to in the supplementary information and amended by the interim regulations, has since been redesignated as 8 CFR 214.2(f)(16)(i)(D). Finally, 8 CFR 242.7a was erroneously referred to in the paragraph heading of 8 CFR 242.7a of the interim regulations as "§ 241.7a."

Changes to Title 8, Code of Federal Regulations

The regulations at 8 CFR 242.8(a), as well as at 8 CFR 242.17(d) (in both the paragraph heading and the regulatory text), are amended by substituting "241(a)(1)(E)(iii)" for "241(a)(1)(E)(ii)." These changes are necessary because the Technical Amendments redesignated section 241(a)(1)(E)(ii) of the Act as section 241(a)(1)(E)(iii). Although this amendment is not directly related to the other citation changes in Part 242, 8 CFR 242.20 is amended by substituting "§ 3.39" for "§ 3.37," redesignated by a recent regulatory change.

Table of Citation Changes

A table of citation changes in section 241 of the Act resulting from section 602 of IMMACT 90 was included in the supplementary information to the

interim rule. The Technical Amendments have since resulted in the addition of a new section 241(a)(1)(E)(ii), as well as redesignated of the former section 241(a)(1)(E)(ii) as section 241(a)(1)(E)(iii). Further, section 241(a)(21), added by section 544(b)(3) of IMMACT 90, and section 241(a)(3)(C), added by the Technical Amendments, both relate to the same deportation charge. A new table of citation changes is, therefore, included here for informational purposes. Not all current sections of law, however, are, in all respects, identical to the corresponding former sections.

Former citation	New citation (effective 3/1/91)
241(a)(1)	241(a)(1)(A).
241(a)(2)	241(a)(1)(B).
241(a)(3)	Repealed.
241(a)(4)	241(a)(2)(A) (i), (ii), (iii).
241(a)(5)	241(a)(3) (A), (B).
241(a)(6)	Repealed.
241(a)(7)	241(a)(4)(A).
241(a)(8)	241(a)(5).
241(a)(9)(A)	241(a)(1)(C)(i).
241(a)(9)(B)	241(a)(1)(D)(i).
241(a)(10)	Previously repealed.
241(a)(11)	241(a)(2)(B).
241(a)(12)	Repealed.
241(a)(13)	241(a)(1)(E)(i).
241(a)(14)	241(a)(2)(C).
241(a)(15)	Repealed.
241(a)(16)	Repealed.
241(a)(17)	241(a)(2)(D) (i), (ii), (iii).
241(a)(18)	241(a)(2)(D)(iv).
241(a)(19)	241(a)(4)(D).
241(a)(20)	241(a)(1)(F).
241(a)(21)	241(a)(3)(C).
241(b)(1)	241(a)(2)(A)(iv).
241(b)(2), (d)	Repealed.
241(c)(1)	241(a)(1)(G)(i).
241(c)(2)	241(a)(1)(G)(ii).
241(e)	241(b).
241(f)(1)	241(a)(1)(H).
241(f)(2)	Repealed.
241(g)	241(a)(1)(D)(ii).
None	241(a)(1)(C)(ii).
None	241(a)(1)(E)(ii).
None	241(a)(1)(E)(iii).
None	241(a)(4)(B).
None	241(a)(4)(C).
None	241(c).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because the rule merely replaces the obsolete statutory citations with the current ones.

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 has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulations adopted herein 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 Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

List of Subjects

8 CFR Part 210a

Administrative practice and procedure, Aliens, Migrant labor, 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 241

Aliens.

8 CFR Part 242

Administrative practice and procedure, Aliens, Apprehension, Crime, Custody, Detention.

Accordingly, the interim rule amending parts 210a, 214, 241, and 242 of chapter I of title 8 of the Code of Federal Regulations, which was published at 56 FR 38331 on August 13, 1991, is adopted as final with the following changes:

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

1. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

§ 242.8 [Amended]

2. In § 242.8, paragraph (a), the first sentence is amended by revising the reference to section "241(a)(1)(E)(ii)" of the Act to read "241(a)(1)(E)(iii)".

§ 242.17 [Amended]

3. Section 242.17, paragraph (d), is amended by revising the reference to

section "241(a)(1)(E)(ii)" of the Act in both the paragraph heading and in the regulatory text to read "241(a)(1)(E)(iii)".

§ 242.20 [Amended]

4. Section 242.20 is amended by revising the reference to section "3.37" to read "3.39".

Dated: May 11, 1994.

Janet Reno,

Attorney General.

[FR Doc. 94-12393 Filed 5-20-94; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. 93-032-2]

Importation of Certain Animal Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to prohibit the importation of animal semen from any country other than the country in which it was collected. This action is intended to prevent the introduction of exotic animal diseases into the United States.

EFFECTIVE DATE: June 22, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 765B, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-4325.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 98 (referred to below as the regulations) govern the importation of animal germ plasm so as to prevent the introduction of contagious diseases of livestock or poultry into the United States. Subparts A and B of part 98 apply to certain animal embryos and subpart C applies to certain animal semen.

On October 25, 1993, we published in the *Federal Register* (58 FR 55026-55027, Docket No. 93-032-1) a proposal to amend the regulations to prohibit the importation of animal semen from any country other than the country in which it was collected. We solicited comments concerning our proposal for a 60-day comment period ending December 27, 1993. During that period, we received three comments, one in support and two opposed. They were from a national

veterinary association, a foreign agricultural agency, and a national association of zoological parks and aquariums. The comments opposing the proposal are discussed below.

One commenter argues that this action would unreasonably restrict the trade of animal semen from certain European storage banks which stockpile animal semen collected in various other countries for export to the United States and elsewhere. The comment claims that because these banks are located in countries free of rinderpest, foot and mouth disease (FMD), and other diseases, and because all animal semen imported into the United States from these banks would have been collected in countries similarly free of disease, contaminated semen would only be imported into the United States if the semen were misidentified, commingled with contaminated semen, or otherwise contaminated while at the storage bank. Consequently, as an alternative to our proposal, the commenter suggests that we require veterinary guarantees attesting to the storage conditions of animal semen at regional storage banks after its import from the country of collection and before its export to the United States.

Though veterinary guarantees concerning storage of animal semen after its arrival at a regional bank would help to prevent importation of contaminated animal semen into the United States, such guarantees still would not provide us with the control over semen collection we believe necessary to ensure that contaminated semen is not introduced into the United States. Under the regulations, in order to import animal semen into the United States from countries free of rinderpest and FMD, an importer must supply the U.S. Department of Agriculture (USDA) with information regarding the health and origin of the donor animal and the location, date, and other details regarding the semen collection. When animal semen is imported into the United States from countries other than the country of its collection, the nature and quality of this required information is often deficient or incomplete, and, obtaining additional information can be difficult. We believe that such problems expose the United States to increased risk of animal disease being introduced inadvertently through the import of contaminated semen.

Similarly, the other comment in opposition claims that this action would hinder animal conservation programs which depend on the use of regional storage banks containing animal semen of endangered species, including ruminants, collected in various

countries. As an alternative to our proposal, the commenter suggests that we provide for the certification of foreign veterinary services with animal health standards equivalent to our own. After certification, these foreign veterinary services could regulate the export to the United States of animal semen collected in various countries and stored in their countries' regional banks.

Allowing for this sort of certification would not provide us with the control over semen collection we believe necessary to ensure that contaminated semen is not introduced into the United States. We also believe that it would be especially difficult to certify foreign veterinary services as having animal health standards equivalent to our own; varying biological and epidemiological factors in different countries and regions compel some veterinary services to test imported and exported animals for diseases and pests that other veterinary services might not.

Furthermore, there are and will continue to be available alternative conservation methods for endangered animals involving the importation of animal semen. For example, following the effective date of this action, animal semen still may be imported directly into the United States from the country of collection, even from FMD countries, if collected and transported in accordance with the regulations.

Therefore, based on the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

We anticipate that the provisions of this rule will have little or no economic effect. The prohibition against importing animal semen from a country other than the country in which it was collected will not affect significantly the cost of doing business for importers. This rule only requires importers to import animal semen directly from the country in which it was collected; no countries currently allowed to export animal semen under the various regulations will be excluded as a source of animal semen as a result of this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has