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Chapter 1: Organization and Content of the U.S. Customs and Border Protection (CBP) Inspector's Field Manual (IFM) (Revised 2/10/06; CBP 17-06)

Welcome to the Customs and Border Protection Inspector's Field Manual (IFM). This manual is a comprehensive "how to" manual detailing official CBP policies and procedures for CBP's immigration mission. The IFM should be used in concert with several other references: the Immigration and Nationality Act ("INA" or "Act"); Title 8 of the Code of Federal Regulations (8 CFR), and official CBP directives, among others. The IFM is not intended to duplicate or replace any of them. Although initiated under the former Immigration and Naturalization Service, this manual is gradually being updated to address CBP's policies and practices.

The IFM, as well as the other volumes concerning immigration information, are included in the "I-LINK" (formerly INSERTS) CD-ROM reference library program as well as on the CBP intranet. I-LINK's volumes are electronically connected so that you can conveniently flip from one to the other (referred to as "hypertext" links) without having to close one volume and open the next. A search function allowing for the search of a particular topic is included in I-LINK.

The IFM is intended to be "user friendly." Please send your suggestions for improvements and ideas for new items you think should be included in the IFM through your chain of command to CBP HQ, Admissibility Requirements and Migration Control (ARMC).

IMPORTANT NOTICE:

Nothing in this manual shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

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Chapter 2: Mission and Conduct of Inspections Officers

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2.1 Mission Statement.

We are the guardians of our nation's borders. We are America's frontline.

We safeguard the American homeland at and beyond our borders.

We protect the American public against terrorists and the instruments of terror.

We steadfastly enforce the laws of the United States while fostering our nation's economic security through lawful international trade and travel.

We serve the American public with vigilance, integrity and professionalism.

CBP Core Values

Vigilance: Vigilance is how we ensure the safety of all Americans. We are continuously watchful and alert to deter, detect and prevent to our nation. We demonstrate courage and valor in the protection of our nation.

Service to Country: Service to country is embodied in the work we do. We are dedicated to defending and upholding the Constitution of the United States. The American people have entrusted us to protect the homeland and defend liberty.

Integrity: Integrity is our cornerstone. We are guided by the highest ethical and moral principles. Our actions bring honor to ourselves and our agency.

2.2 Authority. (Revised 2/10/06; CBP 17-06)

The United States, as a matter of sovereign right, exercises control over aliens seeking to enter, pass through, or remain in the national territory. The purpose of the controls is to protect the national interest and the continuing good order and well-being of the nation. Immigration inspection procedures are designed to simplify the examination and admission of United States citizens who can readily establish their identity, and to determine whether each alien meets the admission requirements of the Immigration and Nationality Act (INA).

The authority of CBP officers to conduct immigration inspection of arriving persons is contained in section **235** of the INA. Other authorities are contained in section **287** of the INA. The principal authorities relating to inspection of persons are:

- to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which it is believed aliens are being brought into the United States;
- to order detention and delivery of arriving aliens;
- to question, under oath any person seeking to enter the U.S. in order to determine admissibility;
- to take and consider evidence of or from any person touching the privilege of any alien to enter, reenter, transit through, or reside in, the United States;

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- to search, without warrant, the person and belongings of any applicant seeking admission, concerning whom the officer may have reasonable cause to suspect that grounds exist for denial of admission.

2.3 Reserved.

2.4 The CBP Officer and the Public. (Revised 2/10/06; CBP 17-06)

At a port-of-entry, you are customarily the first representative of our government the public meets. First impressions last, so it is important that you maintain a highly professional appearance and standard of conduct at all times, regardless of circumstances. It is your responsibility as an officer to carry out the duties and responsibilities of your position in accordance with law, regulation, and CBP policy. Remember, that you are both a law enforcement officer and service provider. You must constantly be aware of your "customers," the American public whose laws you have sworn to uphold and enforce and the traveling public who expect and deserve prompt, efficient, courteous, inspectional services.

It is important that the applicant for admission be left with the impression that you were honest, fair, courteous, and considerate. Bias or prejudice is not acceptable. Since officers may talk to hundreds of persons daily, a conscious effort must be made to remain patient. Your decisions concerning the people you inspect could seriously affect their lives.

2.5 Uniforms, Badges, and Identification.

(a) The CBP Officer Uniform. All officers are required to be properly attired in the appropriate uniform at all times when on duty.

Appendix 2-3 describes when and how the uniform is to be worn.

2.6 The Work Environment.

Our work environment at times can be difficult and challenging. CBP has many programs in place that help insure a safe and healthy work environment and to guarantee that you, as an employee, are treated equitably and professionally and given the tools necessary to succeed. Following is a brief description of many of the current programs designed to support you in your job. Each, in its own way, contributes to the success of our overall mission. (Introductory text revised 2/10/06; CBP 17-06)

(a) CBP Safety Program. The component elements of the CBP Occupational Safety and Health Program are set forth in the Occupational Safety and Health Handbook, **CIS HB 5200-08A** dated May 2003. It establishes CBP policies and procedures to assure a safe work environment, safe work practices, and conformance with statutory and regulatory requirements for Federal agency safety and occupational health programs. The CBP Occupational Safety and Health Program consists of the following core elements:

1. Safety Program Management

- The Designated Safety and Health Official (DSHO) for CBP is the Assistant Commissioner, Human Resources Management (HRM). The Assistant Commissioner, HRM oversees administration of the CBP Safety Program on behalf of the Commissioner.
- Director, HRM Employee Support, Safety and Health (SAFE) Division administers the CBP National Safety Program. The Headquarters safety staff is the Safety and Occupational Health Branch, located in Indianapolis, Indiana.
- Chief, HRM Safety and Occupational Health Branch is responsible for develop service-wide safety policy, establishes national program goals and objectives and the day-to-day management of the CBP Safety Program.
- HRM Area Safety and Occupational Health Managers (ASOHMs) serves as a technical and policy advisor to management and will serve all CBP organizations located within their assigned geographic areas to Office of Field Operations (OFO) Field Offices and Border Patrol Sectors.
- Collateral Duty Safety Officers (CDSO) are required in every CBP facility. Where deemed appropriate, CDSO's may service multiple facilities. CDSO's shall ensure that all program elements established by CBP policy and 29 CFR 1960 are implemented within their area of responsibility. Managers should recruit volunteers who have an interest in the safety program to serve as CDSOs.
- Headquarters Office Directors and Principal Field Office Managers are responsible for providing a safe and healthy work environment and for actively promoting the Safety and Occupational Health Program. Principal Field Office Managers include Directors, Field Operations, Port Directors, Chief Patrol Agents, Laboratory Directors, Strategic Trade Center Directors, and Training Center Directors.
- CBP Supervisors are the cornerstone of the CBP Safety Program and have specific responsibilities defined in the Occupational Safety and Health Handbook, CIS HB 5200-08A dated May 2003.

2. Primary CBP Safety Program Elements

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- Reporting, Investigation, Recording and Analyzing Incidents
- Reporting and Abating Hazards
- Safety and Health Committees
- Safety Training
- Hazard Analysis
- Personal Protective Equipment (PPE)
- Written Programs
- Program Evaluations
- Educational/Promotional and Motivational Programs
- Field Federal Safety and Health Councils

Any CBP employee wishing to report an unsafe condition (CBP Form 507), to inquire about any safety and occupational health issue, or to obtain updated information on the provisions of the Occupational Safety and Health Handbook, CIS HB 5200-08A dated May 2003 should first contact the Collateral Duty Safety Officer (CDSO) for their location. You may also contact the HRM Area Safety and Occupational Health Manager or the HRM Safety and Occupational Health Branch at (317) 614-4840 or (Detailed Contact Information).

(Paragraph (a) revised 2/10/06; CBP 17-06)

(b) Employee Assistance Program.

(1) General. The INS Employee Assistance Program (EAP) is designed to provide training and confidential short-term counseling, information, and referral and assistance in the areas listed below. For more information refer to **AM 1.3.203** or call [REDACTED] LCSW/ACSW, INS EAP Administrator at (202) 514-5763 or FAX (202) 514-5928 or pager (800) 796-7363 PIN # 101-4729.

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Assistance areas:

- Emotional/Stress
- Family/children/education
- Relationships/Marital
- Drug/Alcohol
- Trauma (shootings, etc.)
- Financial/Legal Referrals
- Day Care/Elder Care
- Special Education
- Work Performance Problems
- Interpersonal/work site issues

(2) Purpose. The purpose of the EAP is:

- to provide services for treating the mental health, alcohol, and other drug related problems of the workforce. Participation is *a/ways* voluntary;
- to assist employees with work performance problems and to provide support and guidance throughout the problem-solving period in a positive non adversarial manner; and
- to serve as a resource for management in providing guidance in working with employees whose personal problems have affected their job performance.

(3) Trauma Debriefings. Trauma debriefings are mandatory for any employee involved in an operational incident such as a shooting, accident, drowning, etc. Debriefings are conducted to minimize psychological injury to the employee. Debriefings are conducted by a licensed Police Psychologist or Social Worker. Supervisors of the affected employee must request the debriefings ASAP by calling 800-467-3277 or the PAGE number noted below.

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(4) Confidentiality. This program is authorized by laws which protect the privacy of the individual and confidentiality of records in accordance with the provisions of Pub. L. 93-282. An employee's job security will not be affected by requests for counseling or referral assistance. Information shared between the employee and the EAP counselor is considered confidential.

(5) Service Limits. Employees and their family members are entitled to meet with an EAP counselor, funding permitting. Administrative leave may be authorized to see an EAP counselor. There is no charge for EAP services. Information & Referral Services are provided on a broad range of interests for employee and family members. The EAP will do your "research" in finding necessary resources your family might need.

(c) Equal Employment Opportunity Program. See *Equal Employment Opportunity Handbook*.

(d) Incentive Awards Program. The Service actively encourages all employees to be innovative and to continually perform to the best of their abilities. Individual employee incentive awards available for innovative ideas and exceptional performance are discussed in **AM 1.3.202**.

(e) Employee Union Activities. Two unions represent different segments of INS bargaining unit employees. The National INS Council of the American Federation of Government Employees (AFGE) represents INS district employees. The National Border Patrol Council represents Border Patrol employees. The National INS Council, of which Inspectors are members, is comprised of various AFGE Locals organized throughout the INS districts. Officials of the Locals and the Council are elected by bargaining unit members.

A negotiated Agreement (often called the union Contract) regulates some of the interactions that take place between INS employees and management, and between union representatives and management. For example, an article of the Agreement (3B) states that discussions between a supervisor and an employee concerning counseling, evaluations, workload, or disciplinary action should be conducted to insure the employee's privacy. The Agreement is national in scope. Various AFGE Locals have negotiated supplemental agreements that pertain to the Local's area only. These agreements may cover a range of topics; often they state how Inspections overtime will be scheduled. [See *Agreement between INS and National Immigration and Naturalization Service Council, M-203* and *Agreement Between INS and National Border Patrol Council, M-422*.]

Sometimes port, district, or other managers overlook an obligation to contact an appropriate union representative before changing a policy or practice, or initiating a new procedure that changes working conditions for bargaining unit employees. Part of a manager's planning for these changes should include notification to appropriate union representatives. (See Article 9) If in doubt whether or not to contact a union representative over a specific matter, a manager may seek advice from the district administrative office, or the regional or Headquarters Office of Labor-Management Relations.

In keeping with the INS partnership with the National INS Council, an even better procedure to notifying the union of changes is for managers to invite appropriate union officials to participate in planning such changes. Union representatives can provide a complimentary perspective, valuable front-line experience, and ideas for carrying out procedures or solving attendant problems. For union participants, on the other hand, helping with such planning sessions gives better insight into constraints managers must work within, valuable experience in planning and implementing projects, and an opportunity to share ideas and contribute to improving the Inspections Program. Using a duly-designated union representative to help plan changes often relieves managers of the need to notify the union later of changes and bargain over their impact. When union input is incorporated into the planning process, the plan often meets the needs of both the employees and managers better. The Inspections Program strongly endorses the concept of the Partnership. Union representatives currently participate on many national and port committees and task forces.

(f) Training.

(1) General. All immigration officers will receive the necessary training to successfully perform the duties of their position. This is both a promise and a challenge. The job of the immigration inspector has undergone many changes in recent years, a result of technological improvements, legislation, and an effort by the Service to create a more professional officer corps.[see AM 1.2]

(2) Preacademy Training. When Inspectors first come on duty there may be some delay in going to the Academy. During this time, new officers should begin a locally-prepared preacademy training course. The first step in this program should be the preparation of a training file, to be maintained by the local training officer or supervisor. This file should contain the training agreement, signed certification of having read and discussed "The Officer's Handbook" (Form M-68), a list of instructional materials provided to and mastered by the trainee, evaluations (Form G-445), and other materials that will later be useful in determining the trainee's readiness for promotion. The training itself should include a combination of academic instruction and on-the-job training (OJT) assignments. Providing such instruction usually involves the cooperation of training officer and journeyman inspectors. Each step in the academic training and the OJT should be recorded. Special attention in the preacademy training should be given to those areas that are not covered thoroughly in the Academy and areas involving local policy covering situations commonly encountered at the trainee's duty station.

(3) Academy Training. New permanent full time inspectors generally enter the Service at the GS-5 level and go through a two year training period to reach the journeymen level of GS-9. Some inspectors enter through special programs at the GS-7 level. In both cases, the Inspector goes through a one year period of probation. During this time he or she is required to attend The Immigration Officers Basic Training Course (IOBTC) at the Immigration Officer Academy (IOA) in Glynco, Georgia and to complete a twenty-week Post Academy Course. A trainee will be detailed to the IOA within thirty days of entry on duty when administratively and operationally feasible.

The course at IOA consists of ten weeks of Immigration and law enforcement courses. Each attendee is also tested in Spanish. Those that are found to be adequate in the Spanish language return to their duty station on graduation from the basic course. Those who need more instruction are kept for a four week total immersion course in Spanish.

Other than permanent full time (OTP) inspectors are also hired at the GS-5 level with promotion potential to GS-7. They are required to attend and satisfactorily complete a special OTP basic training program. Phase I of this course is a four week course given at IOA. Phase II is completed at the Inspector's duty station. Phase II must be completed within 90 days of the completion of phase I. If the individual cannot pass the course, he or she will be given another opportunity to take and pass the course. If an individual cannot pass the course on the second attempt, district management will review the individual's case and consult with Regional Personnel.

Successful completion of the IOBTC is a requirement for any OTP immigration inspector who is converted to a full-time, permanent Officer Corps position.

(4) Post Academy Training. IOBTC and OTP basic are both followed by formal post academy training courses. Both courses are obtained from and administered by the Immigration Officer Academy. These courses cover most of the material needed by the immigration inspector. However, inspectors work in a complex, constantly changing work environment. There is a need for continuing informal post academy training that provides for the updating of knowledge and skills. Some of the needed information will come from supervisory briefings, some from formal classes given by training officers, special operations officers, intelligence officers, or senior inspectors, and some training material is provided by the Service in the form of video tapes.

One form of self-help instruction comes in the form of locally prepared "how to" manuals. They have copies of completed forms, sample A files, form letters or memoranda, instructions on the use of computer systems, sample copies of exclusion or prosecution cases, etc. These books provide easy references for

work in progress and study materials for both trainees and journeymen.

(5) Computer Training. Computers have played a part in the inspection process for quite some time. Each year more of our processes become automated. The inspector needs certain computer skills to do his or her job. On primary there is need to query vehicles and individuals. In secondary he or she must be able to run on-line queries on CIS, NIIS, STSC, NAILS, IBIS, NLETS/NCIC, and OASIS. Inspectors must be able to change their passwords in PICS and IBIS. Reports and memoranda are prepared on off-line systems such as Word Perfect, or on Service-developed systems such as the Performance Analysis System (PAS). Many offices have established a local area networks (LAN) that contain the software for word processing, spreadsheets, and databases. The Academy has provided for some orientation in the on-line systems but "hands-on" training in these systems as well as most off-line training is done locally. [See AM 1.2.301]

(g) Special Emphasis Programs (SEPs). Special Emphasis Programs are mechanisms used to assist in the implementation of the affirmative employment aspect of the EEO Program. Each Program is assigned a national and local (i.e. regional, district, sector, etc.) Special Emphasis Program Manager (SEPM) who emphasizes and initiates positive actions to attain appropriate representation of minorities, women and persons with disabilities within each organizational component, occupational category and grade level commensurate with the national and local civilian labor force. The national program managers, under the supervision of the Chief of Affirmative Employment and Director of EEO, develop and evaluate service-wide policies and procedures for the SEPs and provide program leadership, advice and guidance. Currently there are approximately 275 local office SEPMs serving on a collateral duty basis. SEPMs at the local level are selected through the application process. The positions are announced as any other vacancies and up to 20% of the employee's time may be devoted to performing duties. The Special Emphasis Programs are as follows:

- Asian/Pacific American
- Black Affairs
- Federal Women
- Hispanic Employment
- Native American
- Selective Placement (includes persons with disabilities and disabled veterans)

(Added IN00-18)

2.7 Reporting Significant Incidents.

With the recent merger, CBP has become the focal point for a much higher level of public interest than in the past. The Office of Field Operations program, since it is so highly visible, is an obvious target of those seeking publicity. You should anticipate national media attention and prepare yourself to act promptly and properly in emergency situations. For instance, strikes and demonstrations on either northern or southern borders are not uncommon, threats of terrorist activities are frequent at international airports, bomb threats at land ports are common, assaults upon officers, and natural disasters can occur anywhere. As a CBP Officer, you may be confronted with such situations. Local ports should insure all officers have access to and are familiar with guidelines for reporting and handling such situations through the chain of command.

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Further guidance regarding significant incident reporting can be obtained in CBP Directive No. 3340-025B, issued by the Commissioner, dated May 16, 2003.

2.8 Hostage Situations.

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2.9 Dealing with Attorneys and Other Representatives.

No applicant for admission, either during primary or secondary inspection has a right to be represented by an attorney - unless the applicant has become the focus of a criminal investigation and has been taken into custody. An attorney who attempts to impede in any way your inspection should be courteously advised of this regulation. This does not preclude you, as an inspecting officer, to permit a relative, friend, or representative access to the inspectional area to provide assistance when the situation warrants such action. A more comprehensive treatment of this topic is contained in the *Adjudicator's Field Manual*, Chapter 12, and 8 CFR 292.5(b).

2.10 Land Border Integrity Program (Added 6/23/99; IN99-22)

Office of Inspections has set forth policy and guidance in establishing uniform national practices for integrity standards at all land POEs. Field managers are responsible for implementing the standards and guidelines outlined below. These guidelines are not intended to prevent tests of new and special processing techniques, nor are these guidelines intended to impose unrealistic operating requirements on POEs.

Each port must choose one or more of the options outlined below regarding vehicle and pedestrian lane scheduling options and implement at a minimum once per shift. Primary lane changes on INS staff with Customs staff are desirable. Schedules and frequencies should be negotiated with Customs counterparts locally.

Vehicle and Pedestrian Lane Scheduling Options:

- (1) Agency pushes - Supervisory Immigration Inspector will randomly instruct officers to lane shift
- (2) Compex/INTEX hits - Any time there is a hit, there is an automatic lane assignment shift
- (3) Traffic manager will initiate random lane flip-flops - Primary lane changes of INS and Customs Staff
- (4) Computer Generated random lane assignments and shift.

To further enhance the integrity of the inspectional process, an automatic lane push or flip-flop will occur when the inspecting officer encounters a relative. The term relative includes, but is not limited to: immediate family, and extended family such as in-laws, cousins,

uncles, aunts, nephews, nieces, and significant others. This is not intended to impose unrealistic operating requirements on small POEs with minimum staffing levels. For example, if there is only one officer on duty , or it is realistically not possible to avoid inspecting a relative, the inspection should be done in a professional and thorough manner. In addition, ports are reminded to reinforce the policy of 100% inspection of all law enforcement personnel. Although INS respects and values its working relationship with other local and Federal law-enforcement agencies, officers of these agencies are not exempt of the inspection process and are, in fact, held to a higher standard.

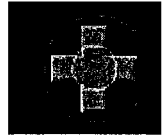
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INSERTS PLUS/Inspectors Field Manual/Chapter 3: The Organization of Inspections

Chapter 3: The Organization of Inspections

(Chapter removed and reserved 2/10/06; CBP 17-06)

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INSERTS PLUS/Inspectors Field Manual/Chapter 4: Conducting Research. (Revised 2/10/06; CBP 17-06)

Chapter 4: Conducting Research. (Revised 2/10/06; CBP 17-06)

- 4.1 General Considerations
- 4.2 Sources and Organization of Immigration Law
- 4.3 Basic Research Methods
- 4.4 Factual Research and Databases

4.1 General Considerations.

As a CBP officer, you will often encounter novel issues or factual situations. In the course of your duties, you will also be exposed to other areas of immigration law that may have a bearing on the action you take. The correct resolution of these issues, or whether they are relevant at all, will not always be apparent. Even when an outcome is clearly apparent, you should always provide a basis for an action grounded in legal authority. There will thus be occasions when you will need to perform research before you make a decision. This chapter will seek to familiarize you with some of the basic methods of legal research and with the general organization of the immigration law.

It is important to remember that you must take an active role as an officer. Not every situation will be the same, and not every situation will suggest an easy resolution. You must be on the lookout for issues and circumstances that can affect your decision. Creative thinking and a willingness to "dig" beneath the surface will make you a more effective officer. This manual, as well as CBP's Policy Online Document Search (PODS) [http://\[REDACTED\]](http://[REDACTED]) reflects CBP's commitment to improve availability of timely and complete policy information for its officers. Referring to the Act and the regulations are only the beginning of your duties as a CBP officer. Supplemental materials provide insight into the regulations and clarify your legal duties.

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4.2 Sources and Organization of Immigration Law.

The Immigration and Nationality Act (the Act, INA) is the major source of immigration law. Any lawful action by CBP or by any of its officers with respect to immigration processing must be traced back to and authorized by the provisions of the Act. Provisions of the Act are often referred to by their position within the Act. Thus "section 235" refers to that section of the Act. The Act itself, part of the larger U.S. Code system, is contained at 8 U.S.C. §§ 1-1574, and particular sections are frequently referred to by their U.S.C. citation rather than their INA citation (e.g. section 235 of the INA may also be referred to as 8 U.S.C. 1225.)

The other major source of authority in immigration law is the Code of Federal Regulations. When Congress passes a provision of law, it often delegates authority to implement the law to the agency, consistent with the terms of the statute. Congress may provide that a certain class of aliens may be eligible for a particular benefit, but it is not until the Department issues regulations concerning details such as application procedures, filing fees, etc. that the statutory provisions come to life. Regulations, though not issued by Congress, have the same force and effect as the statute. The Department's immigration regulations are contained in Title 8 of the Code of Federal Regulations (CFR). Generally, but not exclusively, the numbering of the regulations tracks the numbering of sections in the Act. Rules dealing with section 235 of the Act would thus be found at 8 CFR part 235. Other parts of the Code of Federal Regulations may have an effect on immigration issues. This is especially so with State Department regulations, which can be found at 22 CFR. Generally, whenever you see a statutory citation, the relevant CFR title will track the United States Code title, so that 7 U.S.C. will lead you to 7 CFR.

While the statute and regulations are the primary source of law, materials that interpret these are also an important source. The Board of Immigration Appeals (BIA) in Falls Church, Virginia is the major appellate body deciding immigration matters. Its decisions have the force of law and are binding upon DHS officers. Significant BIA decisions are published and indexed to make them readily accessible by DHS employees as well as the general public. These decisions may be accessed on the DOJ website at

http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html. Appeals are taken to the BIA from DHS decisions on adjudicative matters such as visa petitions and adjustment of status petitions, and are also taken from Immigration Court on matters such as removability and relief from removal. The Office of the Chief Administrative Hearing Officer (OCAHO) is similar, except it hears cases dealing only with fines and penalties. Internally, directives and policy memoranda are binding on CBP employees as are other policy issuances such as the materials contained in I-LINK. Many cases not appealable to the BIA are appealable to the Administrative Appeals Office (AAO), located in U.S. Citizenship and Immigration Services. Although less frequent, that office may also publish its decisions as precedent, in which case they are indexed and published in the same volumes as those of the BIA.

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4.3 Basic Research Methods.

Legal research is a search for authorities and standards to apply in resolving legal issues. As a beginning researcher, you need to know where to look for information, but in order to know where to look, you first need to know something about your subject. This problem reveals the fundamental principle of successful research: successful research is nothing more than a process of building upon what you already know. For example, you may have nothing more than a reference to a section of the Act. From that information, you can obtain the U.S. Code section. U.S. Code Annotated will often refer to judicial cases dealing with the particular section. The case will usually cite various relevant regulations, law review articles, and other interpretive materials. Those materials will in turn refer to other materials and issues. From a very small amount of information you are able to find a wealth of materials.

(a) Federal Regulations. The Code of Federal Regulations changes literally every day. Thus, although you may know the controlling regulations and your regulation may not be affected, you need to know how to find the latest version of a relevant regulation. While the changes you find may often be small, this is not always the case.

Federal regulations are published every day, chronologically, in the Federal Register. It is in the Federal Register that you will first see changes to the regulations. In addition to regulations, the Federal Register also publishes executive orders, presidential statements, and proposed changes to the regulations. When rules are published in the Federal Register, they almost always contain a preamble, which is a statement by the agency promulgating the rule both explaining the rule and the basis for issuance of the rule. By reading the preamble, you will often find guidance on how a specific provision of the regulations is meant to apply. Recent Federal Register notices relating to immigration matters can also be found in I-LINK, as well as through various websites. The USCIS website at www.USCIS.gov is a good source for Federal Register information relating to immigration matters. Another site for Federal Register information in general is www.gpoaccess.gov.

After initial publication in the Federal Register, the regulations are compiled annually by subject and issuing agency and published in the more familiar Code of Federal Regulations. Several items in the Federal Register will help you determine if your regulation has been affected. At the beginning of each issue of the Federal Register you will find a table of contents arranged by agency name. This is followed by a "list of CFR parts affected" by that day's issue. You can quickly scan this list to determine if you need to read further in that day's issue. At the end of each day's issue, you will find a cumulative list of parts affected listing all the parts affected for the current month. The Federal Register also publishes on a monthly basis a pamphlet entitled: LSA: List of CFR Sections Affected. This list is also cumulative and lists by Federal Register page number each section affected. By following this process, you will ensure that you are aware of the most current version of the regulations.

(b) Board of Immigration Appeals (BIA) Decisions. Not all decisions of the BIA are published. While you may on occasion have access to unpublished Board decisions, these do not have precedential value. When first published, BIA decisions are designated with an "interim decision" number. Periodically, interim decisions are collected and published chronologically. There are currently 23 volumes of published precedent decisions entitled Administrative Decisions Under the Immigration and Nationality Laws of the United States. Once published in this format, they may still be referred to by their interim decision number but are more likely to be referred to by volume and page number. For example, 19 I&N 234 is found in volume 19, beginning on page 234. The most recent volume contains a subject index covering cases contained in volume 16 forward. Volume 15 contains an index for cases published in volumes 1-15. You can thus find relevant cases by searching under a subject heading in the index. Because the most recent decisions have not been published in this format, you need to check the "index of interim decisions" periodically published by the BIA to make sure you have all the relevant case law.

It is equally important to be sure that the case law you are reading is still the law. Recent decisions often modify aspects of earlier ones, and occasionally overrule them completely. Checking the "index of interim decisions" mentioned above will give you some indication of whether the topic or case you are researching has been affected.

(c) Federal Court Decisions. DHS is often involved in litigation that affects its operations. Although not as common, judicial decisions not directly involving CBP can also affect operations. You need to understand these decisions and the authority of the Federal courts in order to know if they affect your duties. The federal court system is divided into three levels of authority. The district court is the trial body of the Federal court system; there are many district courts. Generally, district court decisions are only binding upon judges within that district. Thus, a statement of the law in the Northern District of California may not be the same as one in the District of Wisconsin. (In smaller states, there is only one district court, while larger states are divided into several districts). While the law in a District is binding only upon judges in that circuit and is merely advisory upon other judges in other circuits, a District Judge has authority to issue an order affecting the entire nation. Thus, injunctions or other orders requiring DHS to act in a certain way often issue from the District Courts.

Appeals from the District Court are taken to the Circuit Courts of Appeals. There are 13 circuits. Again, decisions of law are binding only upon judges within that circuit. From the Circuit level, appeals are heard by the Supreme Court of the United States. Decisions of the Supreme Court are binding upon any court in the United States.

It is important to be aware of the law in your district, circuit, and nationwide. Interpreter Releases, mentioned below, usually mentions recent judicial decisions affecting DHS. Internal CBP communications and transmittals will inform you of decisions affecting your duties. You should read these carefully when you receive them and store them for future reference.

(d) Supplemental Materials. There is a wealth of published materials to guide you through your immigration research. An excellent source of immigration information is the Department of State's Foreign Affairs Manual (FAM). This manual contains extensive procedural notes relating to the issuance of visas and other travel documents, as well as discussion of factors to consider in determining admissibility of visa applicants. 9 FAM 40 - 42 contains the most useful information for relating to visas and grounds of inadmissibility. The FAM can be accessed at <http://www.foia.state.gov/REGS/Search.asp>.

In addition to internal CBP and other government manuals, materials published for the private immigration bar are readily available and can provide significant help. The American Immigration Lawyers Association (AILA) publishes several useful items. AILA publishes regular mailings updating its readers on the latest developments in immigration law. Another significant source of current information relating to immigration issues is Interpreter Releases, published by West Publishing. This periodical is published weekly and provides its readers with the latest developments in immigration law. It also contains information about certain DHS policies and procedures and recent court cases that may affect your job.

There are several comprehensive sources of immigration law that are not as timely but cover much more material. Immigration Law and Procedure, more commonly referred to as "Gordon and Mailman", after the original authors, provides an overview of immigration law. Bender's Immigration Bulletin is another good source. Also useful is the State Department's Foreign Affairs Manual available at <http://www.foia.state.gov/REGS/Search.asp>. Volume 9 deals with visas.

There are many available materials containing current developments in the law. It is your responsibility to keep up to date on your job and the law by looking for these materials and reading them regularly. If you are unaware of changes in the law and policy applicable to your job, it is impossible for you to do your job correctly and professionally.

4.4 Factual Research and Databases.

You will often be confronted with factual issues in dealing with an application. Most often, facts will arise which will lead you to believe that the alien has had prior involvement with immigration matters which he is not disclosing or may not know how to describe. Occasionally, you may believe that an alien has a criminal or other record (public assistance, child support, etc.) that may be relevant to your decision, but that information is not immediately available. In these situations, you will need to conduct factual research.

DHS maintains numerous databases containing information on aliens' immigration histories. **Chapters 31 and 33** of this manual describe some of the internal and interagency systems and contain instructions on how to access them. You should familiarize yourself with user's manuals for each system available at your location. It is important to fully and creatively develop a case. You should attempt to use as many avenues to gain information as possible. "A" numbers, sound-alike searches, names of family members, aliases, misspellings, and cross-searching between different databases should all be used to ensure that you obtain all possible information on an individual. As you gain experience, you will become more familiar with the various databases and search systems. It is only by performing thorough research that you will be able to fully develop a case and thus fully perform your duties.

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Chapter 11: Persons Exempt Inspection.

- 11.1 Inspection and Examination
- 11.2 Members of the U.S. and NATO Armed Forces
- 11.3 American Indians Born in Canada

References:

INA: Sections 235, 284, 289.

Regulations: 8 CFR 235, 289; 22 CFR 41.

11.1 Inspection and Examination.

Section 235 of the Act provides for the examination of all persons seeking to enter the U.S. by an immigration officer. Once determined not to be a citizen, the applicant will be inspected as an alien. There are, however, certain classes of aliens who are specifically exempt inspection and may not be excluded from the United States.

11.2 Members of U.S. and NATO Armed Forces.

11.2 Members of U.S. and NATO Armed Forces.

(a) Members of U.S. Armed Forces. Alien members of the U.S. military forces entering under official orders are exempt from the controls of the INA, pursuant to 8 CFR 235.1(c), including the requirement to present a passport and visa. See section 284 of the Act. Such persons returning to the U.S. after a temporary trip are also eligible for this exemption without presenting any official orders. Upon request, such persons may be inspected and admitted pursuant to other provisions of the Act. However, if found inadmissible for any reason, the applicant will be so advised and permitted to enter without controls.

(b) Members of NATO Armed Forces. (1) Background. The Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces (commonly referred to as the Status of Forces Agreement, or SOFA) was signed by the United States on June 19, 1951 and entered into force on August 23, 1953. Under Article III of the SOFA, NATO military personnel are normally exempt from inspection and control procedures and, until recently, a Form I-94 was not issued. Such persons enter the United States upon presentation of military identification and official travel orders. Countries currently party to the SOFA are: Belgium, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, the United Kingdom of

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Great Britain and Northern Ireland, and the United States.

Section 235(a)(3) of the Act, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, requires the inspection of "all aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States." NATO aliens are not within the scope of this requirement. That is, NATO aliens continue to be exempt from inspection, but may be screened to confirm identity. (General Counsel opinion of April 7, 1999.)

(2) Inspection of NATO military personnel upon request. 8 CFR 235.1(c) provides that any alien who is a member of a force of a NATO country may, upon request, be inspected and his or her entry as an alien may be recorded.

NATO military personnel stationed in the United States for a significant period of time (over 6 months) need a Form I-94, Arrival/Departure Record, for "quality of life" reasons, such as to secure a social security number or a state-issued driver's license. To ensure that these persons routinely receive a Form I-94 at the time of inspection, the Department of State has recommended that NATO military personnel entering the United States for a significant period of time be issued a visa at a U.S. Embassy or Consulate abroad. Accordingly, although not required under the NATO SOFA, inspectors should anticipate that NATO military personnel stationed in the United States for a significant period may present a visa at the time of inspection so that a Form I-94 may be issued.

Service officers must be responsive to the requests of NATO military personnel for a Form I-94. A NATO military nonimmigrant who is an applicant for admission and intends to remain in the United States for a significant period of time and who does not have a visa may present a letter concerning the nature of the intended stay in the United States so that Service inspectors have a basis for issuing a Form I-94. Such a letter must include a specific and concrete explanation of the nature, location, and duration of the NATO member's stay in the United States, a request for a Form I-94 and the signature of the NATO country commander or designee in the United States where the alien is to reside for a significant period of time. The Form I-94 should be issued for the length of stay as specified in the individual's military orders. Form I-193 and fee are not required for such NATO military nonimmigrants. Individuals arriving in this manner would be classified NATO-2 through NATO-5. Should questions arise at the port-of-entry regarding proper classification, the inspector may wish to contact the Headquarters of the Supreme Allied Commander, Atlantic (SACLANT) at its number listed in paragraph (b)(9).

Note: NATO personnel already in the United States (i.e., not currently applying for admission) who will be here for six months or longer and are in need of a Form I-94 for such quality of life reasons may apply for one under the procedures set forth in paragraph (b)(8).

(3) NATO personnel not entitled to inspection and admission. Form I-94 issuance does not apply to short-term NATO stays, e.g., for routine military exercises or short-term training only (i.e., less than 6 months).

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(4) Issues regarding validity of NATO orders. If questions arise regarding the validity or authenticity of an alien's travel orders, contact SACLANT at the telephone number listed in paragraph (b)(9).

(5) Travel To Mexico and Canada by NATO personnel. Under the procedures set forth in paragraph (2), many NATO personnel in the United States for six months or longer should have a Form I-94. However, Service officers should be sensitive to the fact that a NATO military nonimmigrant who, for some reason, does not have a Form I-94 and is staying for a long term in the United States may need to enter the United States after a brief departure to Mexico or Canada, whether or not the trip was for pleasure or in conjunction with his or her duties. In order to receive a Form I-94, such a nonimmigrant must present his or her military identification, travel orders, and an appropriate letter, such as that described in paragraph (b)(2). In such cases, officers should feel free to verify the status of an applicant for admission directly with the NATO country commander or designee in the United States where the nonimmigrant is stationed or with SACLANT at the number listed in paragraph (b)(9). In these circumstances, Form I-94 should be issued only for the time period of the nonimmigrant's stay in the United States, as indicated by travel orders or the letter.

(6) Technical Experts. In discussions with the Department of State and the Service, the German Government has advised the Service that the number of military and civilian personnel arriving for long-term stays at Holloman Air Force Base in New Mexico will be doubling to over 6,000 during calendar years 1999 and 2000. The Department of State has determined that technical experts working for the German Government at Holloman will be provided with A-2 visas and issued Form I-94 through routine procedures.

(7) Partnership for Peace (PFP). The PFP was initiated in 1994 by the United States to enhance European security by establishing strong links between NATO, its new democratic partners in the former Soviet bloc, and some of Europe's traditionally neutral countries.

The PFP SOFA incorporated by reference most of the terms of the NATO SOFA, although PFP countries are not full NATO members. The number of nations that have ratified the PFP SOFA continues to grow. At this time, such countries are Albania, Austria, Bulgaria, Estonia, Finland, Georgia, Kazakhstan, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Romania, the Slovak Republic, Slovenia, Sweden, Uzbekistan, and on a provisional basis, the Ukraine. The Department of State has determined that PFP personnel are entitled to A-2 visa status.

In addition, PFP military personnel have been entering the United States for short-term military exercises and training since 1996. Under the PFP SOFA, the same exemptions are provided as under the NATO SOFA regarding passports, visas, inspection and control. Also, like NATO nonimmigrants, PFP personnel in the United States for short-term stays (e.g., military exercises) do not need to be inspected, and should not receive a Form I-94. (General Counsel opinion of April 7, 1999.)

Similarly, in a few instances, personnel from PFP countries have entered the United States

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pursuant to the PFP SOFA for significant periods of time to do business at SACLANT, or a subordinate headquarters, on their military travel orders and identification cards. If entering for a significant period of time, such persons may prefer to secure a Form I-94 for the same quality of life reasons that impact their NATO counterparts, either by presenting a visa or an appropriate letter with a request for a Form I-94, as discussed in this memorandum. Service inspectors should be responsive to requests for a Form I-94 where PFP personnel will remain in the United States for a significant period. Most individuals arriving in this manner would be classified as A-2. Should questions arise at the port-of-entry regarding proper classification, the inspector may wish to contact SACLANT at its number listed in paragraph (b)(9).

(8) Issuance of Form I-94 to NATO or PFP personnel currently in the United States. Form I-102 may be used by the small number of NATO or PFP personnel who are already residing in the United States for a significant period and who did not present a visa or otherwise secure a Form I-94 at the time of admission. Accordingly, NATO or PFP personnel remaining in the United States for a significant period who need a Form I-94 in order to obtain a social security number, a driver's license, or for other quality of life reasons, must submit their requests on a completed Form I-102, without fee, with a copy of their military identification and travel orders, and a letter from their unit commander, or designee, in the United States which contains: (1) arrival information (including where, when, and aboard what vehicle arrival occurred); (2) the reason for the request; and, (3) information regarding the intended length of stay. The complete request package should be mailed to USINS Nebraska Service Center, P.O. Box 87526, Lincoln, NE 68501-2521.

(9) Contact Telephone Number for SACLANT. Questions arising at the port-of-entry or elsewhere regarding the status of a nonimmigrant in NATO or a PFP official in A-2 classification may be referred to SACLANT directly at (757) 445-3640 or (757) 445-3783. SACLANT's after hours telephone contact number is (757) 445-3400.

(10) Contact Telephone Numbers for INS Headquarters. Operational questions about NATO matters may be directed to the Office of Inspections.

(Revised IN00-23)

11.3 American Indians Born in Canada. (Revised IN99-11)

11.3 American Indians Born in Canada.

(a) General. Under section 289 of the Act, American Indians born in Canada, with at least 50% American Indian blood, cannot be denied admission to the United States. The applicant bears the burden of proof in establishing eligibility. Usually, this is accomplished by presenting identification such as a tribal certification that is based on reliable tribal records, birth certificates, and other documents establishing the requisite percentage of Indian blood. The Canadian Certificate of Indian Status (Form IA-1395) issued by the Canadian Department of Indian Affairs in Ottawa specifies the tribal affiliation but does not indicate percentage of Indian

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blood. Membership in an Indian tribe in Canada does not necessarily require Indian blood. Once the claim to 50% Indian blood has been established, the applicant can freely enter the U.S., regardless of the purpose or duration of the trip, even if technically inadmissible or previously deported.

Note: See also Chapter 56 of the Adjudicator's Field Manual regarding persons who are already in the United States and are applying for evidence of status pursuant to section 289 of the Act.

(b) Creation of Record of Admission for Lawful Permanent Residence. If a person claiming such status seeks to enter to reside permanently in the U.S., complete the following steps to document the first entry:

(1) Review documentation submitted to support the claim, including birth records, tribal records, etc. Officers at locations which frequently encounter Indian tribal members should familiarize themselves with tribal documentation common to the area. Make photocopies of all documentation. Depending upon the facts and documentation presented, a sworn statement may also be required to clarify any issues in doubt.

(2) Complete a central index check and open an "A" file at the port of entry in accordance with local procedures.

(3) Conduct an Interagency Border Inspections System (IBIS) check on all applicants over the age of 14.

(4) If the documentation is acceptable and no adverse information develops from the central index query, complete Form I-181, Memorandum of Creation of Record of Admission for Lawful Permanent Residence. The words "Canadian born American Indian admitted for permanent residence" must be endorsed on the Form I-181. Under the box marked "Other Law" indicate section 289 of the INA.

(5) Complete Form I-89, Data Collection Card, including fingerprint, proper photograph, and other required data. The admission classification is **S13**. Forward the completed Form I-89 and a copy of the Form I-181 for card issuance, in the manner prescribed for immigrant visas. [See Appendix 15-8.]

(6) If the alien is 14 years of age or older, take a complete set of fingerprints on Form FD-258, in compliance with section 264 of the Act. These fingerprints need not be forwarded for clearance to the FBI, but should be retained in the file.

(7) Issue a temporary Form I-551 to facilitate travel until the actual Form I-551 is produced.

(8) Include copies of all supporting materials in the file, placing the Form I-181 on top. Forward the "A" file to the district file room.

(c) Denied Applications. In any instance where admission as a lawful permanent resident based

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on claimed American Indian status is denied, either because documentation is lacking, a claim to eligibility turns out to be false, or because the claimant does not possess the requisite percentum of American Indian blood, an A-file should be created. Place a memorandum in the file indicating that the application has been denied and the reasons therefore. Verbally advise the applicant of the decision.

There is no appeal from the decision, although the claimant may renew his or her request if and when he or she is able to overcome the basis of the decision. Depending on the circumstances, such an applicant may be permitted to withdraw or may be processed for expedited removal in accordance with the procedures described in Chapter 17.15.

Chapter 12: United States Citizens and Other Nationals.

- | | |
|-------|---------------------------------------|
| 12.1 | Inspection of U.S. Citizens |
| 12.2 | Evidence of Citizenship |
| 12.3 | Oral Testimony |
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INA: Sections 101(a)(22), (29), (38), 215, 235, 301 - 310.

Other laws: Pub. L. 94-241(Covenant for Commonwealth of the Northern Marianas Islands), 48 U.S.C. 1681; Pub. L. 98-213 (Act of December 8, 1983); Pub. L. 99-239 (Compact of Free Association Act of 1985), 48 U.S.C. 1901; and Pub. L. 99-658 (Compact of Free Association between the United States and the Government of Palau), 48 U.S.C. 1931.

Regulations: 8 CFR 212.1 (d), 235, 22 CFR 53.1-2.

12.1 Inspection of U.S. Citizens.

When you are convinced that an applicant for admission is a citizen of the United States, the examination is terminated. This is not to say that your role as an inspector is always completed at that time. Listing of the subject in a lookout system may dictate further action, such as notifying Customs or another agency of the person's entry.

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It must be emphasized that the grounds of inadmissibility contained in 212(a) of the INA are applicable only to aliens. Consequently, the examination of a person claiming to be a United States citizen is limited to matters required to establish present citizenship. Once you are satisfied the person being examined is a U.S. citizen and any required lookout query has been completed, the examination is over.

Temporary detention of a U.S. citizen for extensive questioning generally requires reasonable suspicion that the person is involved in illegal activity. Inspectors cross-designated to perform Customs inspections may, of course, continue questioning for Customs purposes. If probable cause to arrest the U.S. citizen cannot be developed within a reasonable period of time, the person must be released.

It is important to note that although the United States does not formally recognize "dual nationality"; many other countries do. It is not unusual to encounter a United States citizen (even native born) bearing evidence of both United States citizenship and foreign nationality. For example, a child born in the United States to a foreign national may, under the laws of that country, be entitled to its parent's citizenship and be included in the parent's passport. Under certain circumstances, that document may be used for identification and entry, if presented in conjunction with a birth certificate or other evidence of U.S. citizenship. Specific provisions relating to passport requirements for United States citizens are outlined in 22 CFR 53.1 and 2.

12.2 Evidence of Citizenship.

Any time documentary evidence of citizenship is required (e.g., when a passport is required of a U.S. citizen returning from outside of the Western Hemisphere) or whenever documentation is voluntarily presented by an applicant, you should make an effort to review the documents. If there is any question as to the subject's citizenship, close scrutiny is necessary to determine that the documents are unaltered, genuine, valid, and belong to the bearer. In the instance where documentation is volunteered by an applicant, you should make a cursory review of the document(s), even if your preliminary inquiries have allowed you to make a determination of the applicant's United States citizenship. A brief review should be made, if for no other reason, because the applicant may have gone to considerable effort to obtain a particular document and may feel the Service is failing in its responsibility if the document is considered unimportant.

12.3 Oral Testimony.

It must be emphasized that in many instances where a United States passport is not statutorily required of an arriving citizen applicant, a person may establish United States citizenship by oral statements.

12.4 United States Passports.

(a) General. A United States passport (even if expired) may be accepted as evidence of citizenship in the absence of information showing that the holder has expatriated. Service personnel performing inspections of returning United States citizens must be familiar with passport requirements and periodically review the *Passport Studies* manuals provided in each Service office. The three types of passports issued by the United States are described therein (with frequent revisions of format), and it is incumbent upon you to keep up to date on any changes.

Essentially, the ordinary passport is issued to a citizen of the United States who is going abroad for personal or business reasons. It is valid for a period of ten years from the date of issuance unless specifically restricted to a shorter time, in which case the document is usually a "duplicate" issued in replacement of one lost or stolen.

An official passport is issued to an officer or an employee of the United States Government proceeding abroad in an official capacity. Official passports are valid for five years or the duration of the official's duties abroad, not to exceed five years.

A diplomatic passport is issued to a foreign service officer, a person of the diplomatic corps, to a person having diplomatic status because of his or her foreign mission, or by reason of the office the bearer holds. There is no fixed time limit on the validity of a diplomatic passport other than the limit presupposed by the maintenance of the bearer's actual diplomatic status.

United States passports should be stamped on request of the bearer and in accordance with local policy.

(b) Travel Restrictions. Periodically, because of national emergencies, the Department of State will place restrictions on the use of a U.S. passport for travel to certain countries. If you encounter a citizen who is returning from travel to a restricted area, lift the passport and prepare a memorandum to the Department of State containing the basic passport data and facts surrounding the travel, and that the passport appears to be invalid pursuant to 22 CFR 51.73. Attach a separate sheet containing any details which may be of use to DOS in pursuing the matter. Provide the bearer with a copy of the memorandum, but not the separate detail sheet. Mail the passport, memorandum, and detail sheet, via certified mail, to:

Department of State
Passport/Legal (Room 300)
1425 K St., NW
Washington, DC 20522-1705

(c) Dependents on U.S. passports. A spouse, minor child, or minor unmarried sibling may

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be included on the passport of a U.S. citizen if such spouse, child, or sibling is also a U.S. citizen. In a situation where a passport is required for travel, a passport is valid for the reentry of the dependent only if accompanying the principal passport holder. A dependent may, however, present such a passport as evidence of citizenship when returning from a place where no U.S. passport is required.

12.5 United States Passport Waivers.

(a) General. Although primarily charged with the responsibility of determining citizenship, you are required to verify the validity of a United States passport when one is required by law. When an applicant fails to present a passport or presents an expired document, the immigration officer shall, if satisfied that the person is a United States citizen, advise the individual of the necessity of having a valid U.S. passport. Although technically you are waiving the passport requirement for the Department of State, no form need be completed. In addition, there is no fee collected by INS. (Paragraph (a) revised 10/21/98; IN99-02)

(b) Merchant Seamen. The passport office has determined that the fee for a passport waiver will not be charged in the case of a bona fide U.S. merchant seaman who has lost his or her documents while outside the U.S., provided the seaman's status is reflected in the ship's Articles and he or she is returning to the U.S. on board that vessel. Mark the DS-1423: "Mariner--No Fee" and forward it to the Department of State.

12.6 Other Documentary Evidence.

Other common documents that may help to establish United States citizenship include the following:

- (1) A Certificate of Naturalization,
- (2) A Certificate of Citizenship,
- (3) Citizen's identification cards (Service Forms I-179 or I-197),
- (4) State Department Certificates of Identity and Registration (Forms FS-225 and FS-225A) [See 22 CFR 50.9.],
- (5) The United States Coast Guard Mariner's Document indicating U.S. nationality (known as a Z-card, this document may also be issued to LPRs),
- (6) Birth Certificate showing a place of birth in the U.S. accompanied by good identification, and
- (7) Baptismal certificates or other forms of secondary evidence of U.S. citizenship.

Most documented false claims to United States citizenship will be carrying birth certificates,

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baptismal certificates, or both. These documents are most easily obtained, altered, or manufactured. A more detailed discussion of false claims to U.S. citizenship is contained in Chapter 17.

12.7 Loss of Citizenship.

There are various ways in which a citizen of the United States, whether naturalized or native-born, may lose citizenship. During the course of an inspection, you may have reason to question an applicant for admission regarding this topic. It is an extremely complex issue, and making such a determination must be carefully and thoroughly handled. Sections 349 through 357 of the INA specify the ways in which citizenship can be lost. Service regulations for the corresponding sections and Department of State regulations at 22 CFR 50 provide information and guidance on the subject. You may find endorsements in U.S. passports which lead to questions regarding possible loss of citizenship. For example, Great Britain inserts a *Certificate of Partiality* in a passport to show the holder enjoys the benefits accorded a British subject. Such a certificate, standing alone, does not establish an individual's loss of U.S. citizenship. Such evidence should, however, prompt further inquiry by the inspecting officer.

12.8 Non-Citizen Nationals.

There is a technical distinction between a citizen of the United States and a national of the United States. All citizens of the U.S. are nationals, but all nationals are not citizens. The term national of the United States is defined in section 101(a)(22) of the INA, and explained in detail in section 308 of the INA. At present, American Samoans (including Swains Islanders) are the only United States non-citizen nationals. They will generally present a Certificate of Identity showing United States nationality, a United States passport, or a birth certificate. Upon admission, stamp the travel document of any American Samoan or Swains Islander, since these individuals must establish three months residence in the U.S. for naturalization purposes.

Section 308 also provides for acquisition of nationality at birth outside the United States or American Samoa for a child born to a national of the United States. Prior to 1986 there was no provision for a child born to one national and one alien parent. Pub.L. 99-396 (Aug. 27, 1986) amended Section 308 by adding Section 308.4 which provides for acquisition at birth to those born outside of the U.S. or an outlying possession with one alien parent and one national parent. The amendment was unusual in that it made the change retroactive and provided that nationality to someone born before the amendment was only acquired when the applicant established to the satisfaction of the Secretary of State that the requirements of the statute were met. Therefore, any person born before August 27, 1986 who claims nationality through one parent must present a United States passport showing he or she is a "national."

12.9 Northern Mariana Islanders.

The Commonwealth of the Northern Mariana Islands is a former Trust Territory that concluded an agreement with the United States. The agreement was concluded in 1976, but did not become effective until November 3, 1986. The agreement is titled a Covenant to Establish a

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Commonwealth of Northern Mariana Islands. Public Law 94-241 is the implementing statute and the Covenant.

The Commonwealth of the Northern Mariana Islands is composed of 14 islands with the majority of the population residing on Saipan, the capital, Rota, and Tinian. The other islands are: Uracas, Maug, Asuncion, Agrihan, Pagan, Alamagan, Guguan, Sarigan, Anatahan, Farallon de Medinilla, and Aguijan. Most of the second group are uninhabited except for Pagan due to volcanic activity, but many have been inhabited at one time or another.

During various periods between 1979 and implementation of the Covenant in 1986, citizens of the Commonwealth of Northern Mariana Islands were admitted as "though they were citizens of the United States."

On November 3, 1986 the Covenant became effective and under certain conditions Citizens of the Northern Mariana Islands became United States Citizens. All persons born in the Commonwealth after November 3, 1986 are citizens at birth under section 301 of the INA. The Covenant provides for three categories of persons who acquired citizenship upon implementation of the Covenant. It should be noted that each category required residence in the Commonwealth or the United States at the time of implementation and only one allowed residence outside the Commonwealth at the time of implementation. Under the terms of the Covenant a citizen of the Trust Territory born in the Northern Marianas but residing in the Marshalls, for example, did not acquire citizenship on November 3, 1986 because the Covenant requires residence in the Marianas or the United States. Even though not required many of those who became citizens on November 3, 1986 applied for and received U.S. Passports. In 1989 the Service had a program for two years that provided for issuance of a Northern Mariana Card which is evidence of U.S. citizenship [See 8 CFR 235.12.].

A person who claims birth in the Mariana's prior to 1986 and United States Citizenship and who does not present a passport or card should be questioned carefully to determine if they meet the conditions in the Covenant. The Immigration Offices in Honolulu and Agana, Guam and the United States Passport Office in Honolulu are excellent sources for assistance in resolving claims to citizenship.

12.10 Nationals of Former Trust Territories.

See Chapter 15.13.

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Chapter 13: Returning Residents.

- 13.1 Inspection of Returning Lawful Permanent Residents (LPRs)
- 13.2 Returning Residents Lacking Evidence of Alien Registration
- 13.3 Returning Military Dependents
- 13.4 Question of Meaningful Departure
- 13.5 Returning Residents with SB-1 Visas
- 13.6 Readmission of Temporary Residents
- 13.7 Conditional Residents

References:

INA: Sections 101(a)(13)(C), 211, 212, 215, 216, 216A, 223, 235.

Regulations: 8 CFR 210.1, 211, 212, 216, 245a.2

13.1 Inspection of Returning Lawful Permanent Residents (LPRs).

The primary inspector shall admit a resident alien returning to an unrelinquished domicile, if not otherwise inadmissible under section 212(a), upon presentation of an unexpired Permanent Resident Card (Form I-551), a reentry permit, refugee travel document (indicating lawful permanent residence), or temporary evidence of LPR status such as an Alien Documentation Identification and Telecommunication (ADIT) stamp. The question of whether or not a returning resident is seeking admission as defined in section 101(a)(13)(C) of the Act or has relinquished his or her domicile is a complex one, and is discussed in Chapter 13.4. Since all but the earliest version of Forms I-551 are machine readable, conduct an IBIS query, where available, to verify the card's continuing validity.

A returning resident alien is not required to present a valid passport for reentry into the U.S. (see 8 CFR 211.2), although most will have one since a passport is often required for entry into a foreign country. When presented, the passport should be stamped, endorsed "ARC" or "R/P," as appropriate, and, if not already written on the passport, the alien's "A" number should be written on the page with the admission stamp. Review reentry permits for restrictions and stamp them with your admission stamp upon admission. Remember that a reentry permit does not guarantee admissibility [See section 215(d) of the Act.]. Despite this fact, a reentry permit may be accepted by many foreign countries in lieu of a resident alien's national passport. Also, in some instances, a foreign country will refuse to place a visa in the passport of another country which it does not officially recognize, but it may place the visa in a reentry permit.

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Refugee travel documents may, in some instances, be issued to resident aliens. The class of admission will be included on the data page of the document. See Chapter 21.9 for special procedures relating to LPR "commuters."

In addition to considering the general grounds of inadmissibility applicable to returning residents, such as public charge, there are several things you should be aware of:

- An LPR who accepts a position that would qualify the LPR for status as an A, E or G nonimmigrant under section 101(a)(15)(A), (E) or (G) may be inadmissible as a permanent resident unless the LPR has waived or is willing to waive any special immunities to which the alien would be entitled because of the position that would qualify the LPR for status as an A, E or G nonimmigrant. See section 247(b) and 8 CFR 247.11.
- An LPR who has been outside the United States for more than one year (two, if presenting a reentry permit), may have abandoned residence. Other indicators of possible abandonment of residence are employment abroad, immediate family members who are not permanent residents, arrival on a charter flight where most passengers are non-residents with return passage, lack of a fixed address in the U.S., or frequent prolonged absences from the United States. In questionable cases, it is appropriate to ask for other documentation to substantiate residence, such as driver's licenses and employer identification cards. [Procedures for processing abandonment of residence cases are discussed in Chapter 17.10]; and
- An LPR who no longer has the qualifying marital or employment relationship upon which his or her immigration was originally based may be inadmissible based on fraud. The classification code on the Form I-551 will permit you to determine the basis for original admission in order to ask appropriate questions. A table of immigrant categories is included in Appendix 13-1 of this manual.

You must also carefully determine that the individual in front of you is the rightful holder of the Permanent Resident Card. The attempted use of legitimate Forms I-551 and reentry permits by look-alike imposters is a common occurrence. Likewise, DHS has uncovered applications for reentry permits submitted by look-alikes using valid Permanent Resident Cards for identity.

A thorough knowledge of the security features on the current Permanent Resident Card and reentry permits, and a knowledge of detection techniques for photo substitutions will help you detect counterfeit and altered cards. The DHS provides numerous aids, such as document alerts, to assist you in developing proficiency in this area [See discussion in Chapter 32.5.]. When you are faced with a possible fraudulent applicant, it may also be useful to question the applicant regarding the basis for his or her original immigration or adjustment of status. Codes and explanations of current and past

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immigrant classifications are included in Appendix 13-1. The nationality code included on each alien registration card can also be helpful in verifying if the bearer is the rightful holder [See Appendix 13-2].

In addition to expertise in security features and techniques for identifying counterfeit and altered immigration benefit documents, the CBP officer must also become well versed in navigating established immigration benefit computer systems. Prompt, accurate validation of LPR status can be achieved by cross checking the returning resident's evidence, i.e. ADIT Stamp, Re-entry permit, Form I-551 with the information found in the Image Storage and Retrieval System (ISRS), CIS and CLAIMS. [Procedures for validating LPR status using the noted computer systems can be found in Chapter 31.3]

13.2 Returning Residents Lacking Evidence of Alien Registration. (Revised 5/16/05; CBP 9-05)

Ports-of-entry (POEs) encountering returning lawful permanent residents (LPR) lacking evidence of alien registration because said evidence has been secured at home or in a safety deposit box may offer a visa waiver pursuant to section 211(b) of the Act, with fee, or defer the inspection. If the LPR claims the card has been lost or stolen, the POE may accept a Form I-90, Application to Replace Permanent Resident Card, with fee. These actions may be considered once the identity of the LPR has been confirmed, preferably by checking against the data contained in the Image Storage and Retrieval System (refer to Chapter 31.4) and the validity of the applicant's status has been verified in the Central Index (Central Index) System. Fine proceedings, discussed in Chapter 43, may also be appropriate. Any actions taken are to be recorded in the IO-95 Results Screens.

a. Visa Waiver. A LPR requesting a visa waiver is to be enrolled in ENFORCE through the creation of a Form I-193, Application for Waiver of Visa or Passport, if otherwise admissible. The applicant requesting the waiver is to review the information recorded on the printed form for accuracy and sign where indicated. Collect the required fee.

- If the waiver is approved, stamp the original Form I-193 and passport with an admission stamp and endorse both with "211(b)". Upon completion, the LPR is to be given a copy of the Form I-193 and be admitted as a returning resident. The original Form I-193 is to be forwarded to the Files Control Office (FCO) for inclusion in the A-File.
- If a waiver is denied under section 211(b) of the Act, the applicant may be placed in removal proceedings before an immigration judge.

b. Deferred Inspection. Deferred inspection should be limited to a LPR who:

- will be able to produce the requisite document within a few days; or,

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- claims to have lost or had the Form I-551 stolen, is unable to pay the Form I-90 fee at the time of initial inspection and has not been previously deferred for presentation of the Form I-551 document. The LPR will be required to file a Form I-90 with U.S. Citizenship and Immigration Services (USCIS) within the next 30-days.

The applicant is to be enrolled in ENFORCE and procedures set forth in Chapter 17.10 are to be followed. Advise the LPR that a Form I-90 may be filed electronically at <http://uscis.gov/graphics/formsfee/forms/efiling.htm>. Appointments for fingerprints and photographs may be made by accessing www.INFOPASS.USCIS.gov. When appearing for the deferred inspection, the LPR will be required to present evidence, generally a Form I-797 Receipt Notice, that the Form I-90 has been properly filed.

c. Form I-90 Application. Once identity and admissibility has been established, the LPR is to prepare a Form I-90 in duplicate. Collect the required fee. Endorse the reverse side of both copies with an admission stamp and the notation "Admitted 211(b), to file I-90". One copy is to be routed to the alien's A-file. The second form will be returned to the LPR in order to compete the filing of the application. Process the second form in the following manner:

- In the fee block notate "duplicate--fee previously collected".
- On the instruction page, legibly record the text "To schedule an appointment to complete the application process you should refer to <http://uscis.gov/graphics/formsfee/forms/efiling.htm>. Appointments for fingerprints and photographs may be made by accessing www.INFOPASS.uscis.gov ", if not preprinted on the form.
- Staple the receipt to the form.
- Give the form to the LPR, advising him/her to contact USCIS as noted on the form to obtain photographs and a fingerprint, and complete the filing of the application.

(d) Special Notes.

If at the time of the current application for admission existing records indicate that the LPR has been issued a Form I-90 or a deferred inspection had been scheduled to file a Form I-90 previously, the POE should take a Form I-193, with fee. Another Form I-90 should not be filed or deferred inspection should not be authorized. If the LPR requires a replacement Form I-551, refer the applicant to <http://uscis.gov/graphics/formsfee/forms/efiling.htm>. Appointments for fingerprints and photographs may be made by accessing www.INFOPASS.uscis.gov.

A resident alien who has turned 14 years of age and has not replaced his or her alien registration card should be advised of the registry requirements of section 264 of the Act. Central Index should be queried during any secondary inspection, prior to deciding what course of action is appropriate. Evidence of current status and the applicant's prior alien registration card history will be available in the Central Index.

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A LPR presenting an expired 10-year Form I-551 should be advised to file a Form I-90 with USCIS. No further action is to be taken.

13.3 Returning Military Dependents.

The spouse and children of a member of the U.S. Armed Forces, or a civilian employee of the U.S. Government (including those paid from non-appropriated funds such as *Stars and Stripes* or the Army and Air Force Exchange System) returning from a foreign assignment are exempt many normal requirements for returning residents pursuant to 8 CFR 211.1(a). If a dependent is a conditional resident, and the period of conditional residence has expired, the alien should be admitted and advised to file Form I-751 within 90 days.

13.4 Question of Meaningful Departure.

Prior to April 1, 1997, if a lawful permanent resident was believed to be inadmissible, you had to first make a determination whether his or her absence was "meaningfully interruptive" of permanent residence. This topic is the focus of a key court decision, *Rosenberg vs. Fleuti*, 374 U.S. 449 (1963), as well as *Matter of Kane*, 15 I&N Dec. 258 (BIA 1975) and *Matter of Montero*, 14 I&N Dec. 399 (BIA 1973). The IIRIRA amended section 101(a)(13) of the Act to codify into statute several of the issues addressed in *Fleuti* by defining the terms "admission" and "admitted". A lawful permanent resident is NOT considered to be seeking admission unless the alien:

- has abandoned or relinquished that status;
- has been absent continuously for more than 180 days;
- has engaged in illegal activity after departing the U.S.;
- has departed under legal process seeking removal;
- has committed certain criminal offenses;
- is attempting entry without inspection; or
- has entered the U.S. without authorization by an immigration officer.

If you believe a lawful permanent resident may be inadmissible or no longer entitled to lawful permanent resident status, you must first determine whether the alien is seeking admission within the meaning of section 101(a)(13)(C). If you determine the returning resident is seeking admission, you should refer the alien for removal proceedings under section 240 of the Act as an alien inadmissible under section 212(a) of the Act. If you determine that the alien is not seeking admission, but may be deportable under section 237 of the Act, you may initiate

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removal proceedings under section 240 of the Act, charging the alien as deportable. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. This subject, especially issues involving possible abandonment or relinquishment of status, is a complex one, and may be resolved by the immigration judge during removal proceedings.

Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in Chapters 17.6 and 17.10. Although the charging document, Form I-862, Notice to Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a port-of-entry are authorized to issue a Notice to Appear only to arriving aliens, as defined in 8 CFR 1.1(q). If a lawful permanent resident is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in 8 CFR 239.1, such as the ADDE or ADDI, in accordance with local policy.

The fact that a returning resident may not be considered to be seeking admission does not exempt the alien from having to present the required immigration documents to establish that he or she holds that status. [8 CFR 211.1 and 235.1(d)(1)]. See Chapter 17.15(e) for procedures for dealing with aliens who claim to have been admitted for lawful permanent residence. See also section 240A of the Act concerning authority of the Attorney General to cancel removal of LPR aliens with at least seven years continued residence. (Amended 3/9/98; IN98-10)

13.5 Returning Residents with SB-1 Visas. (Revised IN99-11)

A returning resident who has been abroad for more than one year may be issued an SB-1 visa by an American consular officer if the alien's stay abroad was not an abandonment of residence and the alien fully intended to return to the United States. The inspecting officer should review the facts surrounding the departure and reasons for the time spent abroad. If the officer is convinced the alien is indeed returning to his or her residence, the inspection should be concluded.

The immigrant visa packet (OF-155) is handled somewhat differently than a new immigrant visa.

If original I-551 is attached:

[REDACTED]

[REDACTED]

• [REDACTED]

[REDACTED]

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[REDACTED] and forward it, with the visa packet, a completed Form I-90, and Form I-89 to the recipient indicated in appendix 15-8. On Form I-89, complete the entire Transaction 1 side of the form and blocks B, D, and E of the reverse side, as appropriate. If the I-551 is returned to the alien, so note the OF-155.

If an original Form I-151 or no alien registration card is attached:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13.6 Readmission of Temporary Residents.

(a) Aliens already granted temporary resident status. A temporary resident under section 210 of the Act, Special Agricultural Worker Program (SAW), with an unexpired Form I-688 who has not relinquished residence may be readmitted after an absence of up to 1 year [See 8 CFR 210.4(b)(3) and 211.1.]. Temporary residents under section 245a of the Act, Legalization Program, must not have been absent more than 30 days, or an aggregate of 90 days since obtaining status, and be returning to an unrelinquished residence [See 8 CFR 245a.2(n)(3) and 211.1.]. Status information concerning pending cases may be found in CLAIMS or CIS. If otherwise admissible, admit the applicant, endorsing the I-94 with the appropriate classification code [For complete code listing, see *Adjudications Field Manual*, Appendix 24-1].

(b) Aliens who are applicants for temporary resident status. Except as described in subparagraph (c) below, holders of Form I-688A, applying under §245a must have an advance parole in order to travel [See 8 CFR 245a.2(n)(2).]. Such persons attempting reentry without an advance parole should be placed in removal proceedings. Holders of Forms I-688A, applying under §210 may travel without an advance parole using their unexpired I-688A, after an absence of up to 1 year, provided they are returning to an unrelinquished residence [See 8

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CFR 210.4(b)(2).].

(c) CSS/LULAC class members. Two large groups of legalization applicants have been included as plaintiffs in ongoing litigation against the Service's regulations administering the legalization program. Members of the first group are referred to as "CSS" (Catholic Social Services) cases; members of the second group are referred to as "LULAC" (League of United Latin American Citizens), recently renamed "Newman," cases. Although often referred to collectively, there are certain distinctions between the two classes. One major distinction concerns reentry after travel outside the United States. LULAC plaintiffs, identified in CIS as LU1, must obtain advance parole prior to departing the United States and can be properly placed in removal proceedings, including expedited removal, if they attempt to re-enter without having obtained advance parole.

On January 16, 1998, the Ninth Circuit Court of Appeals issued an amended opinion in CSS v. Reno. CSS class members are no longer entitled to employment authorization, stays of removal, or any other immigration benefit based on their claimed CSS class membership. If an alien is determined to be a CSS class member (COA=CS1, CS2, CS3, or CSS), the alien should be processed as any other applicant for admission and, if found to be inadmissible, may be placed in removal proceedings, including expedited removal, if appropriate. If, however, such an individual is in possession of a valid, unexpired Form I-512, Advance Parole Authorization, issued on the basis of his or her CSS class membership, and he or she is not otherwise admissible, he or she may only be placed in section 240 removal proceedings. (Paragraph (c) revised 3/9/98; IN98-10)

(d) Zambrano, Perales, SEVIS DS-2019, and Proyecto litigation. Class members for these ongoing cases must obtain an advance parole, Form I-512, prior to departing the U.S. and may be placed in removal proceedings if they attempt reentry without obtaining advance parole authorization.

13.7 Conditional Residents.

A conditional resident (CR-1, C5-1 etc.) is admissible if applying before the second anniversary of admission for conditional residence. The conditional resident may also be admissible if he or she has a boarding letter from a U.S. consulate, has been stationed abroad under government civilian military orders, or is the spouse or child of a person stationed abroad under government orders.

Otherwise, the applicant for admission as a conditional resident must have filed a joint petition or an application for waiver, Form I-751 (marriage-based cases) or Form I-829 (investment-based cases), in the U.S. within the 90 days before the second anniversary but not more than 6 months prior to the application for entry.

If none of those conditions exist, the inspector may defer the applicant to file Form I-751 or I-829 if there is reason to believe the Service will approve a petition or waiver.

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If the applicant is not admissible, place him or her in removal proceedings. See 8 CFR 235.11.

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Chapter 14: New Immigrants.

- 14.1 Inspecting New Immigrant Applicants
- 14.2 Passport Requirements
- 14.3 Inspection of Family Groups
- 14.4 Immigrant Admission Procedures
- 14.5 Admission of Certain Immigrant Children without Immigrant Visas
- 14.6 Conditional Residents
- 14.7 Immigrant Commuters

References:

INA: Sections 101(a)(27), 201, 203, 211, 212, 216, 216A, 235.

Regulations: 8 CFR 211, 216, 221; 22 CFR 42.

14.1 Inspecting New Immigrant Applicants.

The primary inspector processing a new immigrant must complete a variety of actions efficiently and accurately, since the actions taken are essential steps in creating a permanent record for the arriving alien. Examine the immigrant visa carefully to ensure it is valid and unaltered. Generally, an immigrant visa is valid for six months from the date of issuance. For immigrants who will lose eligibility because of age, the validity period may be shortened. For a child adopted by a U.S. citizen in U.S. Government service abroad, an immigrant visa may be issued for a validity of up to three years, until the citizen returns to the United States. Certain persons chargeable to Hong Kong may have visas valid until January 1, 2002. Although alteration and counterfeiting of immigrant visas is uncommon, such cases have been detected so you should carefully examine each visa presented.

You must verify eligibility for the visa classification indicated on the visa page. There are occasional misclassifications by the adjudicator or consular officer processing the visa. If you are unsure of requirements for the classification, refer to sections 101(a)(27), 201, or 203 of the INA for definitions and requirements. Department of State regulations at 22 CFR 42.73 detail procedures followed by consular officers issuing immigrant visas. Normally, you will need to insure that either a qualifying relationship or offer of employment continue to exist. In addition, you must assess whether immigrants specified in sections 216 or 216A of the Act are admissible for a two-year conditional period. A table of immigrant visa classification codes is included in Appendix 13-1 to assist you in determining the requirements of each immigrant category. If a "derivative" beneficiary, that is, an immigrant receiving his or her visa based on a visa issued to a spouse or parent, you must verify that the principal immigrant is either accompanying the dependent or has previously immigrated. A discussion of "accompanying" status is included below in Chapter 14.3.

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Verify that the personal data and address on the front of the visa are correct. This is critical to insure the information on the alien registration card is correct and that the new immigrant receives his or her card without delay.

If the immigrant holds or previously held a position which would entitle him or her to diplomatic immunity, verify that a waiver of rights and privileges, Form I-508, has been signed.

An I-94 is not required for a new immigrant.

A discussion of the medical examination requirements for arriving immigrants is contained in Chapter 17.9. A discussion of waivers available for technical problems involving immigrant visas is contained in Chapter 17.5.

14.2 Passport Requirements.

Most immigrants are not required to have a valid passport as a condition of admission, but as a practical matter the vast majority will have needed a passport for departure from their country of origin and will therefore present a passport with the immigrant visa packet. Passport requirements for arriving immigrants are specified in 8 CFR 211.2 and should also be indicated by the consular officer on the front of the visa.

14.3 Inspection of Family Groups.

When members of a family group arrive together and present themselves for inspection as immigrants, you should inspect them as a group. You should not admit any member until you are certain each member of the group is admissible. This is because an intending immigrant who derives preference status (family based, employment based, or special immigrant) as an accompanying spouse or child, or who is charged numerically to the foreign state limitation of another family member as specified in section 202(b) of the INA, is inadmissible if the principal alien or alien whose foreign state was charged numerically is not admitted.

The term "accompanying" as used in this context does not necessarily mean that the derivative alien is physically accompanying the principal alien. An "accompanying" alien may actually seek admission up to four months after the principal has been admitted. An "accompanying" alien may not, however seek admission based on his or her derivative status before the principal alien has been admitted [See *Matter of Khan*, 14 I & N Dec. 122 (BIA 1972)]. "Accompanying" is defined in 22 CFR 40.1(a), and generally includes any qualifying derivative alien issued an immigrant visa within four months of visa issuance, adjustment of status, or registry of the principal immigrant. Absent evidence of fraud or error, you should accept the consular official's finding that an alien has derived status as an accompanying alien.

Similar to "accompanying " aliens are those who are "following to join" a principal beneficiary. These aliens are permitted to obtain the status of the principal alien so long as the "following to

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join" alien possesses the required spousal or parental relationship with the principal. There is not necessarily any time limit involved so long as the required relationship still exists (See 9 FAM 40.1, N.7). The classic example involves the married child or child over age twenty-one seeking admission as the unmarried child of an immigrant or as the minor child of an immigrant. Because the qualifying relationship no longer exists, the alien cannot "follow to join." It is irrelevant that at the time the visa was issued the relationship did exist. Thus, in either the "accompanying" or "following to join" situation, you should be careful to verify that the relationship between the principal and dependent aliens existed at the time that the principal alien obtained his or her status and continues to exist at the time that the derivative alien seeks admission based on that relationship.

14.4 Immigrant Visa Admission Processing Procedures. (Revised by CBP 3-04)

(a) Processing at the Port-of-Entry (POE). After it has been determined that the immigrant is admissible to the United States, the Immigrant Visa (IV) Packet must be processed following the instructions set forth in paragraphs (1) through (8). The U.S. Department of State (DOS) issues a Machine Readable Immigrant Visa (MRIV) in the immigrant's passport. If a passport is unavailable, the DOS will issue the MRIV on a Form DS-232. Existing copies of the older version OF-232 are still valid. The Forensic Document Lab Alert 2004A-35 issued February 20, 2004 provides the details of the new MRIV. The traditional Standard Immigrant Visa (IV) Packet, Optional Form 155A may be issued by a U.S. Consulates or U.S. Embassy awaiting MRIV deployment.

On June 28, 2004, the DOS began incorporating the language of the Alien Documentation Identification and Telecommunication System (ADIT) Stamp, commonly referred to as the "Temporary I-551 Stamp", into the secure MRIV by electronically printing the following statement in the body of the MRIV directly above the machine-readable zone:

**"UPON ENDORSEMENT SERVES AS TEMPORARY I-551 EVIDENCING
PERMANENT RESIDENCE FOR 1 YEAR"**

In early September 2004, the DOS began issuing MRIVs with an "Immigrant Data Summary" sheet. The summary sheet includes a digitized photograph of the immigrant, an admission stamp block and the data necessary for the creation of the Form I-551. The MRIV packets issued between June 28, and early September 2004 do **not** include the immigrant data summary sheet, traditional IV Packet, Optional Forms 155A/155B cover page, or any other type of cover sheet. During that time, the DOS issued IV packages in a sealed envelope identified with the name of the immigrant. All IV packets contain the Form DS-230 Part 1, Application for Immigrant Visa and Alien Registration, supporting documentation and photographs.

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Effective August 2, 2004, the photograph requirement standard became full frontal face position, commonly known as passport style photographs. Both three-quarter and full color frontal photographs will both be accepted until **September 1, 2004**. After that date, only passport style photos will be accepted. Three-quarter photos attached to the old-style OF-155B forms in immigrant visa packets or included in the MRIV packets issued prior to September 1, 2004 by DOS will be accepted when processing an immigrant visa at the POE.

(1) Review the Immigrant Visa Packet: Confirm the applicant's identity by comparing the photograph on the MRIV or the photograph attached to the IV to the immigrant. Cross check the identity with the passport. If a passport is not required and unavailable, reference 8 CFR 211.2, compare the immigrant's appearance to government-issued identification containing the immigrant's name, date of birth and/or signature. Verify the immigrant's information listed on the data summary sheet, Form DS-230 or standard IV, particularly the gender, marital status and mailing address. The address field should reflect the most current and accurate mailing address for the immigrant. The phrase "In care of" should be used whenever appropriate to ensure proper delivery.

- MRIV with Data Summary Sheet. Any changes or updates to the MRIV packet should be made directly and clearly to the data summary sheet, validated with the officer's initials. If the officer corrects or modifies any data on the data summary sheet, he or she must attach and sign an explanatory memorandum.
- MRIV Lacking Cover Page. If the officer determines that any data on the Form DS-230 requires correction or modification, he or she must circle the item number on the application. Attach a signed explanatory memorandum identifying the item and requested correction. The officer should not make any data changes directly on the Form DS-230.
- Traditional IV. Any changes or updates to the traditional IV should be made directly and clearly to the IV, validated with the officer's initials. If the officer corrects or modifies any data on the IV, he or she must attach and sign an explanatory memorandum.

(2) Endorse the Immigrant Visa Packet. The DOS will provide the immigrant with a visa packet, to be processed in the following manner:

(A) Machine Readable IV with Data Summary Sheet:

- Stamp the "Admission Stamp" block with the admission stamp. Ensure that the stamp can be easily read and is not too light or smudged. The CBP officer's admission stamp serves as evidence of valid admission as a permanent resident and establishes the immigrant's date and place of admission. Both are required data elements for the creation of the Form

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- Legibly record the class of admission on the line provided on the admission stamp.

(B) Machine Readable IV, Without Data Summary Sheet: The Form DS-230 submitted to the DOS is usually printed on one-sided paper.

- Stamp the reverse (blank) side of the Form DS-230 with the admission stamp. Ensure the impression is clear and distinct. The inspector's admission stamp serves as evidence of lawful admission as a permanent resident and establishes the immigrant's date and place of admission. Both of these items are required data elements for creation of the Form I-551.
- Legibly record the class of admission on the line provided on the admission stamp.
- Legibly record the A-Number from the upper right corner of the MRIV below the admission stamp.
- Create a photocopy of the MRIV to be forwarded to the service center with the IV Packet.
- POEs are not required to endorse the Form DS-230 with the "Processed for I-551" stamp or record the manner of arrival i.e. flight, vessel data, train, bus, etc.

In the event that the MRIV packet contains a Form DS-230 that is printed on both sides of the paper (double sided):

- Stamp the upper left corner of the front side of the Form DS-230 near the eagle with the admission stamp. Ensure that the stamp can be easily read and is not too light or smudged. The CBP officer's admission stamp serves as evidence of valid admission as a permanent resident and establishes the immigrant's date and place of admission. Both of these items are required data elements for the creation of the Form I-551.
- On the line provided on the admission stamp, legibly record the class of admission.
- Across the center top of the Form DS-230, legibly record the registration number from the upper right corner of the MRIV.
- Create a photocopy of the MRIV to be forwarded to the service center with the IV Packet.
- POEs are not required to endorse the Form DS-230 with the "Processed for I-551" stamp or record the manner of arrival i.e. flight, vessel data, train, bus, etc.

(C) Standard Immigrant Visa (IV) Packet, Optional Forms 155A or 155B

- Stamp the "Action by Immigration Inspector" block with the admission stamp. Ensure that the stamp can be easily read and is not too light or

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smudged. The inspector's admission stamp serves as evidence of valid admission as a permanent resident and establishes the immigrant's date and place of admission. Both are required data elements for the creation of the Form I-551.

- Place a "Processed for I-551" stamp in the block labeled "USPHS" (located in the lower right corner) using security ink as specified in IFM 34.10. On the "Valid to" line, enter a date that is 12 months from the date of admission.
- Record the applicable flight or vessel data in the block "The Immigrant Named Above Arrived in the United States Via (Name of Vessel or Flight Number of Arrival)". If traveling across a land border, designate privately owned vehicle (POV), on foot, train, bus, etc.

(3) Issue Temporary Evidence of Permanent Residence Status. DHS must provide the immigrant with temporary evidence of permanent resident status while the permanent Form I-551 is being processed.

(A) MRIV with Temporary I-551 Language. MRIVs issued after June 28, 2004 should contain temporary I-551 language electronically printed in the body of the MRIV directly above the machine-readable zone. Upon the CBP officer's placement of an admission stamp on the MRIV, the alien is admitted to the United States as a permanent resident. The stamp should be placed on the upper portion of the MRIV so that part of it overlaps onto the adjoining page. Endorse the upper left corner if possible. Ensure that the stamp can be easily read and is not too light or smudged. When an MRIV bearing this statement and contained in an unexpired foreign passport is endorsed with an admission stamp it constitutes a temporary I-551, valid for one year from the date of endorsement on the admission stamp. This document is acceptable for travel and employment purposes.

Under limited circumstances, if a passport is unavailable, the DOS will issue the MRIV on a Form DS-232. Existing copies of the older version of the OF-232 are also still valid.

(B) MRIV Lacking Temporary I-551 Language or Standard IV. If the alien is in possession of a passport that does not contain a MRIV with temporary I-551 language (which for this purpose may be either valid or expired):

• [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

- (C) No Passport.** If the alien is not in possession of a passport or a MRIV with temporary I-551 language, an Arrival/Departure Record, Form I-94 can be used to create a temporary Form I-551. The creation of a Temporary I-551 should be limited to immigrants not in possession of a passport. The arrival portion of an Arrival/Departure Record, Form I-94 is used to create the document, in accordance with these instructions.

[illegible]

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hardship) each applicant, regardless of age, furnish two identical photographs, to be included with the IV.

Extras that may be available will be in an envelope stapled in the upper right corner of the IV below the supporting documents.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- The photograph should be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 to 1 3/8 inch;
- [REDACTED]
- The photograph must exhibit an acceptable level of contrast. The photograph will not scan properly if the person has a very fair complexion and the image is light in comparison to the background. If the person has a very dark complexion and there are a lot of shadows in the picture, it will not scan correctly;
- Hats and headgear are not authorized, unless worn daily for religious reasons; and,
- Digital photographs are acceptable on photo quality paper. An electronic copy is not acceptable.

(B) Record the A-number and alien's name in pencil, not a ballpoint pen, on the back of the photographs. Do not apply excessive pressure on the photo, as it may cause the A-number to appear on the photograph, making it unusable.

(C) Insert the photos in an envelope, glassine if available, and staple the envelope to the Form I-89 where the form indicates its placement. Officers should take care not to staple through the photograph(s), or transfer ink to the face of the picture from their pen, hands, or other documents.

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(7) Secure the original documents in the IV: Original documents such as birth certificates, adoption decrees, or marriage certificates, contained in the IV packet are considered part of the record and should not be disturbed, with the exception of the SB-1 visa classification explained above. The DHS will return original documents to the immigrant upon written request. In this instance, a copy of every document returned must be substituted for the original and marked "Exact copy of

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original", with the date and officer's initial.

(8) Conduct a final review: As a final step prior to allowing the immigrant to depart from the inspection area:

- Review the Form I-89 and IV for completeness and accuracy. Officers should exercise extreme care to ensure the placement of the admission stamp and other processing steps are completed prior to dismissing the immigrant from the inspection area and forwarding the IV packet to the service center. If the IV does not contain the inspector's admission stamp, the service center will not be able to create a Form I-551 subsequently requiring corrective action on the part of the service center and the POE.
- Remind the immigrant, if he/she is being admitted conditionally, that an application for removal of conditions must be filed within the 90-day period immediately PRIOR TO the second anniversary of the date of admission.
- Advise the immigrant that the Form I-551 will be mailed to the address on the immigrant visa. Instruct the immigrant that if he/she moves prior to the receipt of the card a forwarding address should be provided to the post office. The notification should include all family members to ensure everyone receives his/her Form I-551. If the address is incorrect or missing, the service center does not have a mechanism for contacting the immigrant; as a result card production is suspended until an inquiry about the status of the card is made. Generally, immigrants file an Inquiry About Status of I-551 Permanent Resident Card, Form G-731, with the appropriate service center to locate a missing card.
- Inform the immigrant to check with their USCIS district office if they have not received their card within 4 to 5 months. If the service center is notified promptly, there is a chance that a card that was returned as undeliverable can be re-sent before it is destroyed.

(b) Transmittal of Immigrant Visa Package to the Service Center. POEs shall observe the following steps to transmit the immigrant visa package to the Service center:

(1) POE Review of IVs: Prior to forwarding to the designated service center, conduct a quality control review of all IV's to ensure that the required data elements, biometrics and photographs meet Service standards.

(2) Separate out USPHS cases. Separate out visas requiring Public Health Service attention (following local SOPs) and forward such visas to the USPHS address indicated in Appendix 15-8).

(3) Log and prepare visas for mailing. Log the visa data on the Immigrant Visa Log. When packaging the visas, include a manifest indicating the POE, quantity of visas and date of entry.

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(4) Mailing Immigrant Visa. Within 24 hours of alien's admission to the United States, forward the entire immigrant visa packet with the completed Form I-89 to the appropriate Service Center at the address specified in Appendix 15-8

14.5 Admission of Certain Immigrant Children without Immigrant Visas. (Revised IN99-11) (Amended IN98-21) (Revised IN98-07)

Children may be admitted as new immigrants without presenting an immigrant visa under two circumstances:

A child born to an accompanying parent after issuance of an immigrant visa to the parent but prior to the parent's initial admission as an immigrant (XE3, XF3, XR3 or XN3); or

A child, under 2 years of age, born during a temporary absence of a lawful permanent resident mother if the child is accompanying the parent who is reentering the U.S. as a returning resident for the first time after the birth of the child (NA3).

You must establish the relationship between parent and child, generally by a birth certificate (with English translation) and, of course, the admissibility of the parent. There have been incidents of attempted fraud in such cases, so in doubtful cases, corroborating evidence such as medical records may be required. Verify the parent's LPR status using the Central Index System.

It is important that you properly record the admission of such new immigrants. If you are processing a child born subsequent to the issuance of an immigrant visa, use the following admission symbols:

- **XE3** Parent is an employment based immigrant;
- **XF3** Parent is a family based immigrant;
- **XR3** Parent is an immediate relative; or
- **XN3** Parent is none of the above.

A child admitted with a returning resident parent is admitted in class NA3.

Upon admission, stamp the passport (the parent's passport if the child has none) with the admission stamp and endorse it with the admission symbol above. Stamp the "temporary I-551" stamp in the passport. Complete Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence. Check the block marked "other

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law" and note the block 8 CFR 211.1(b)(1). Place an admission stamp on the right side of the block reserved for use by visa control office and endorse it with the appropriate visa symbol. Complete Transaction 1 of Form I-89, including a photograph, and forward the I-89, I-181, and copy of the birth certificate to the recipient indicated in appendix 15-8 for creation of the alien file and production of the child's alien registration card. Forward a copy of the I-181 to the file of the parent.

14.6 Conditional Residents.

Admission procedures for conditional immigrants (based on spouse or investment) are discussed in 8 CFR 235.11. Procedures are generally the same as for other immigrants, but in spouse cases, if the marriage upon which the visa is issued occurred more than 2 years prior to the date of admission, you must admit the alien unconditionally, regardless of the visa symbol on the immigrant visa. Conversely, if you encounter an immigrant visa classified as unconditional, where the qualifying marriage occurred less than 2 years before the date of admission, you must admit the immigrant conditionally.

14.7 Immigrant Commuters.

Refer to Chapter 21.9.

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Chapter 15: Nonimmigrants and Border Crossers.

- 15.1 General Considerations and Processing Instructions
- 15.2 Passports
- 15.3 Visas
- 15.4 Requirements and Procedures for Nonimmigrant Classes
 - (a) Foreign government officials
 - (b) Visitors
 - (c) Transits
 - (d) Crewmembers
 - (e) Traders and investors
 - (f) Students
 - (g) Representatives to, and employees of, international organizations
 - (h) Temporary workers
 - (i) Representatives of information media
 - (j) Exchange aliens
 - (k) Fiance(s) of U.S. Citizens and Nonimmigrant Spouses of U.S. Citizens
 - (l) Intracompany transferees
 - (m) Vocational students
 - (n) Certain special immigrant spouses and children
 - (o) Aliens of extraordinary ability
 - (p) Artists, athletes and entertainers
 - (q) International cultural exchange visitors
 - (r) Religious workers
 - (s) Confidential witnesses and informants
 - (t) NATO employees
- 15.5 NAFTA Admissions
- 15.6 Transit without Visa Admissions
- 15.7 Visa Waiver Program
- 15.8 Guam Visa Waiver Program
- 15.9 Border Crossing Card (BCC) Admissions
- 15.10 Entry of Nonimmigrant Workers during Labor Disputes
- 15.11 Special Interest Aliens
- 15.12 Correction of Erroneous Admissions
- 15.13 Nationals of Former Trust Territories
- 15.14 Hong Kong Travel Documents
- 15.15 Cancellation of nonimmigrant visas under section 222(g) of the Act.
- 15.16 Student and Exchange Visitor (SEVIS) Processing

References:

INA: Section 101(a)(15), 212, 214, 217, 231, 232, 233, 235.
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Other law: Pub. L. 99-396 (Omnibus Territories Act).

Regulations: 8 CFR 212, 214, 231, 232, 233, 235; 22 CFR 41.

15.1 General Considerations and Processing Instructions. (Revised 5/16/05; CBP 9-05)

(a) General. As a primary inspector, the majority of your workload will deal with nonimmigrant aliens. You must be thoroughly familiar with the requirements for admission of the many nonimmigrant classes you encounter in order to function effectively as an inspector. Familiarity with the requirements for various categories will increase your efficiency in detecting inadmissible aliens and will accelerate the admission process for those who meet the necessary requirements.

(b) Preparation of Forms I-94 and other INS documents.

General: You perform a vital role in creating an accurate record of admission, the basis for all further immigration-related activity that a nonimmigrant may engage in while in the United States. Your processing of the basic Form I-94, Arrival-Departure Record, and other documents you encounter during the inspection process is a critical part of the agencies' system of records. It is important that you properly record relevant notations such as file numbers, waivers, and any restrictions on admission in the appropriate places on agency forms. Precise adherence to standards for entries on these forms is critical to creating reliable databases. In turn, reliable databases are essential to the CBP law enforcement and intelligence missions.

The specific requirements for issuing Form I-94 are set forth in 8 CFR 235.1(f). The Form I-94 may be issued for a single entry, or, at land border ports-of-entry, it may be valid for multiple entries for frequent border crossers. See Chapter 21.7. A special edition of Form I-94 is required for Visa Waiver Program aliens (Form I-94W) and certain land border POEs generating the form electronically (Form I-94A).

Forms I-94A are issued at designated land border POEs. The Form I-94A is identical to the Form I-94; however, the biographical, visa, passport and U.S. destination data is electronically printed on the Form I-94A, Departure Record. This information is electronically captured in IBIS eliminating the need to produce a hardcopy of the Form I-94 Arrival Record for submission to the contractor for data entry. This system is also used to generate the Form I-94W.

(A) Airport/seaport Processing: As a CBP Officer, you must take such reasonable time as needed to ensure that all Forms I-94 presented to you during your inspection activities are filled out completely, are legible, and accurately reflect the nonimmigrant's passport or other appropriate travel document information.

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These sites were provided training in Business Process Reengineering, Performance Measurements, and Project Management. These fifteen locations account for more than 50% of the total traveling public.

The vehicle for implementation of the NPR recommendations was the Port Quality Improvement Committee (PQIC), a concept previously and successfully explored at the six Office of Management and Budget test locations established in 1993. The PQICs were instituted at each of the NPR POEs and are comprised of management and labor representatives from each of the FIS agencies as well as local stakeholders. Since their inception, together, USCS, INS, and APHIS have tested many recommendations for improvement or enhancement of the primary inspection process.

The PQIC concept will be expanded beginning in June 1997, starting with the original OMB sites and continuing on through the major land and air POEs throughout the United States. In the case of INS, the administration of the new PQICs will be the responsibility of the Regions but the testing of NPR recommendations to improve the primary process will continue.

In May 1996, the Unified Port Management initiative was tested at both Buffalo and Nogales POEs. The test was designed to test the viability of a single port manager with responsibility for all USCS and INS operations. In May 1997, the test was concluded and the PQIC concept was recommended as the proper vehicle for enhancing inter-agency communication and cooperation.

- (c) Primary Land Border Inspections. On February 5, 1999, INS established guidelines for an integrity policy for primary land border inspections. This policy provided four vehicles and pedestrian lane scheduling options. To further enhance the integrity of this policy, primary lane changes of INS staff with Customs staff is desirable. Schedules and frequencies should be negotiated with Customs counterparts locally. The integrity policy for primary land border inspections is discussed fully in Chapter 2.10. (Paragraph (c) added 6/23/99; IN99-22)

41.2 International Agreements and Border Liaison.

- (a) General. Canadian and Mexican government officials at land border ports play an important role in the success of INS' mission. Cooperation and regular liaison between local INS port officials and their Canadian and Mexican counterparts are necessary in order to improve law enforcement and intelligence efforts, to solve mutual facilities issues and for a variety of other reasons. Many ports-of-entry have regular liaison meetings and conclude local agreements to provide information and assistance which is mutually beneficial. Typically, local cross-border agreements provide for assistance in removing third-country nationals and provide a means for identifying fraudulent documents purported to be issued by the other's immigration or passport authorities.

A Statement of Mutual Understanding (SMU) on Information Sharing between Canada and the United States was signed in June of 1999. This document directs Canadian and United

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States immigration and consular officials to enhance cooperation in areas of mutual concern relating to migration. The SMU is the commitment that United States and Canadian immigration and consular authorities will cooperate in preventing unlawful immigration to the fullest extent permitted by our respective laws. Refer to Appendix 41.2.

- (b) Document Collection. Canadian officials have agreed to collect departure documents (Forms I-94) for INS when they encounter nonimmigrants entering Canada who will not be returning to the U.S.

41.3 Liaison with International Air and Sea Carriers and Foreign Governments.

- (a) General. Liaison with transportation carriers exists at two levels: mandatory regulatory requirements which carriers must abide by in order to bring passengers into the United States and voluntary programs established jointly between FIS agencies and the transportation industry in order to achieve mutually beneficial goals. The former have remained largely unchanged for many years; the latter have evolved rapidly in recent years to cope with mutual problems and to capitalize on opportunities arising from new technology. Crowded facilities, unstable political systems around the world, increasing incidence of fraudulent travel documents, Government downsizing, and technological breakthroughs have posed challenges and opportunities for the public and private sectors of the industry. INS has aggressively sought opportunities to work cooperatively with leaders in the transportation industry.
- (b) Mandatory Requirements and Local Initiatives. International carriers are required to provide advance information on arriving vessels and aircraft so that Federal inspectional agencies can provide adequate inspections resources [See Section 239 of the INA and 8 CFR 239.]. This information should be regularly provided to local port directors sufficiently in advance to provide necessary staffing. Supervisory personnel should regularly hold liaison sessions with common carriers operating at their ports in order to ensure that available scheduling information is delivered as early as possible, to discuss long term traffic estimates, to identify problems which carriers may have involving FIS activities and to jointly discuss other issues which involve the efficient operation of the port. [See also, Transportation Agreements, Chapter 42 of this manual.]
- (c) National Initiatives. A number of special programs involving INS and individual transportation lines or umbrella organizations such as the International Air Transport Association (IATA) or the Air Transport Association of America (ATA) are operational or in the developmental stage. The Advance Passenger Information System (APIS), discussed in Chapter 26.3, the Carrier Consultant Program (CCP) discussed in Chapter 26.4, INSPASS, discussed in Chapter 26.7, and expansion of preclearance are all examples of cooperation between government and industry to improve conditions in federal inspectional facilities, for the benefit of the traveling public.

INS is a regular participant in the IATA Control Authority Working Group (CAWG), a group of senior government and industry representatives who meet to discuss and resolve issues of

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mutual interest including standards for international travel documents, inspectional facilities issues, travel traffic forecasting, legislation and regulations affecting travelers and transportation companies, trends in international terrorism and alien smuggling, etc.

- (d) EDISON Project. The EDISON system was developed by the Centrale Recherche Informatiedienst, the Dutch equivalent of the Federal Bureau of Investigation, a law-enforcement agency of the Government of the Netherlands. The EDISON system stores and retrieves high-quality images of travel-related documents to enhance border control activities.

Presently, there are six countries who are members of the EDISON Steering Committee: United States, Netherlands, Canada, United Kingdom, Australia, and Germany. The Committee develops and establishes the policies and procedures under which EDISON is used in these countries, as well as in other countries that request to purchase the technology for border control activities within their own territories.

The EDISON system is a common database of genuine travel documents, such as samples of a country's passport versions, that will help in the detection of fraudulent travel documents purportedly issued by legitimate document-issuing authorities within individual countries. As of March 1996, EDISON contains 930 documents (images and descriptive text) from 184 countries. The INS Forensic Document Laboratory, in McLean, Virginia, uses the EDISON technology. The EDISON system is in use at the international airports in New York, Miami, Los Angeles and Atlanta. Development and distribution of the system continue.

41.4 Liaison with Other Federal Agencies.

Many agencies which are not FIS agencies have an interest in activities at ports-of-entry. Virtually all Intelligence agencies and law enforcement agencies at the federal, state, and local levels have a need to interact with managers at ports- of-entry. Frequently, there are requests to post local lookouts or to assist in other law enforcement functions. Similarly, INS is dependent on other agencies to assist in carrying out its mission. Providing this type of assistance whenever possible is a critical part of the inspector's job.

Possibly the most important and frequently relied upon liaison for INS inspectors is with overseas Department of State visa issuing posts. A complete list of DOS contacts, with their telephone and fax numbers is listed in Appendix 41-1.

41.5 Liaison with Port Authorities; Inspectional Facilities.

It is important that local port directors maintain close contact with officials in charge of facilities. At land border locations, such facilities may be owned by the Federal Government and operated by the General Services Administration, they may be privately owned and operated, or they may be owned and operated by local, quasi-public organizations. At most airports, the facilities are owned and operated by local port authorities.

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There are established standards for inspectional facilities, including security requirements, inspection booths and other physical requirements. These standards have evolved over the years and periodically change for various reasons. All new facilities and modifications to older ones must be approved by regional and Headquarters Facilities Management officials. It is critical that such officials be contacted during the earliest stages of planning for any new or modified facility [See discussion in AM 2.1.204 and Chapter 4.10 of the Facilities Management System Guidebook].

Chapter 42: Transportation Agreements (Added INS - TM2)

- 42.1 General Considerations
- 42.2 Transit Agreements
- 42.3 Visa Waiver Program Agreements
- 42.4 Guam Visa Waiver Agreements
- 42.5 Preinspection Agreements
- 42.6 Contiguous Territory Agreements
- 42.7 Landing Rights and Carrier Requirements
- 42.8 Progressive Clearance
- 42.9 Section 273(e) memorandum of Understanding (MOU) (Added IN99-34)

References:

INA: Sections 212(d)(4)(C), 217, 233, 234, 273.

Other law: Omnibus Territories Act, Pub. L. 99-396.

Regulations: 8 CFR 212.1, 214.2, 217, 233, 234, 273.

42.1 General Considerations.

Transportation companies involved in the carriage of passengers into the U.S. may incur obligations to the government in two ways: general statutory obligations, such as those found in §§ 231, 251, 271, and other sections of the Act and specific contractual obligations voluntarily undertaken by specific carriers in consideration for particular privileges. This chapter contains a discussion of both types of obligations. Penalties for violations of those obligations are discussed in Chapter 43.

The Service will evaluate a carrier's fines, liquidated damages, and user fee payment record before entering into any agreements with the carriers. Future agreements with carriers may be conditioned upon payment of overdue fines, liquidated damages, or user fees. The Service will also terminate existing agreements with carriers whose payments are outstanding for more than 30 days, unless the fines, liquidated damages, or user fee payments are under appeal by the carrier. Section 233 of the INA provides authority for these actions. All agreements are affected by this policy.

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42.2 Transit Agreements.

- (a) TWOV Agreement. The Attorney General has the authority under section 233 of the Act to enter into agreements with transportation lines to guarantee the passage of aliens without visas who are in transit through the United States to a foreign country. Requirements for TWOV admissions are discussed in Chapter 15.6. A carrier desiring to enter into a transit agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-426, Immediate and Continuous Transit Agreement, also known as the Transit Without Visa (TWOV) Agreement, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, and information as to the type and number of vessels or aircraft owned. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-426 to the carrier along with a notice of approval. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database an up-to-date list of all signatory carriers. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-1; however, carriers who have recently signed a TWOV agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract. (Revised IN 99-34)
- (b) In-Transit Lounge Agreement. A separate agreement, called an In-Transit Lounge (ITL) Agreement, is available to carriers who desire to transport passengers not in possession of a valid non-immigrant visa and not exempt presentation of one, whose transit passengers require only one stop in the U.S., and who desire to use specific airport transit lounges rather than presenting these transit passengers for primary FIS processing. Carriers are to obtain a copy of the ITL Agreement from the specific Port-of-Entry. Carriers must sign the ITL Agreements and then submit them, in duplicate, to Headquarters, Inspections, for approval. A list of carriers signatory to ITL Agreements at specific ports-of-entry is contained in Appendix 42.3. The Headquarters, Office of Inspections, will maintain an up-to-the-date list of all approved ITL carriers at the specific Ports-of-Entry. A separate ITL Agreement must be signed by the carrier and submitted to Headquarters, Inspections, for each Port-of-Entry where ITL privileges are requested. Only carriers with a valid TWOV Agreement with the Service are permitted to apply for ITL Agreements. See also Chapter 22.10 entitled "Inspection of International-to-International (ITI) Transit Passengers." (Revised IN99-04)

42.3 Visa Waiver Program (VWP) Agreements

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The Attorney General has the authority under section 233 of the Act to enter into agreements with transportation lines permitting certain nationalities to be transported to the United States without visas. Requirements for admission under the Visa Waiver Program (VWP) are outlined in Chapter 15.7, section 217 of the Act and 8 CFR 217. A carrier desiring to enter into a VWP agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-775, Visa Waiver Program Agreement, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, and information as to the type and number of vessels or aircraft owned. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-775 to the carrier along with a notice of approval. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database an up-to-date list of all signatory carriers. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-2; however, carriers who have recently signed a VWP agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract.

42.4 Guam Visa Waiver Program (GVWP) Agreements

The Attorney General has the authority under section 233 of the Act to enter into agreements with transportation lines permitting certain aliens without visas to be transported to Guam. Requirements for admission under the Guam Visa Waiver Program (GVWP) are outlined in Chapter 15.8, section 212(l) of the Act and 8 CFR 212.1(e). A carrier desiring to enter into a GVWP agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-760, Guam Visa Waiver Program Agreement, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, and information as to the type and number of vessels or aircraft owned. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-760 to the carrier along with a notice of approval. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database an up-to-date list of all signatory carriers. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-4; however, carriers who

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have recently signed a GVWP agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract.

42.5 Preinspection or Preclearance Agreements

Transportation lines seeking to have passengers preinspected or precleared abroad at any of the Service's preinspection or preclearance stations must enter into an agreement with the Service on Form I-425, Agreement for Preinspection Between Transportation Line and the United States. Each agreement is valid only for a specified preinspection or preclearance station. As part of the agreement, the carrier agrees to bear the costs of maintaining the inspection station abroad and agrees to board only those passengers who have been examined and found admissible to the United States. A carrier desiring to enter into a Preinspection/Preclearance agreement with the Service must be a commercial carrier regularly involved in the transportation of ticketed passengers. The prospective carrier may obtain a contract/information kit from the National Fines Office (NFO). The carrier must complete and sign Form I-425, providing two signed originals to the NFO along with the carrier's two-character airline designation code, complete mailing address and telephone number, information as to the type and number of vessels or aircraft owned, and a detailed schedule of service to the United States. Once the NFO has determined that the carrier is eligible for participation in this program and appears to be current in its payment of fines, liquidated damages, and user fees, the NFO Director will return a signed and dated copy of the I-425 to the carrier along with a general notice of approval stipulating that the preinspection of individual flights and times is subject to the approval of the Service port director at the preinspection or preclearance station specified on the I-425. In addition to maintaining a hard contract file for each signatory carrier, the NFO will maintain a local database and an up-to-date list of all signatory carriers for each preinspection site. On a monthly basis, the NFO will publish an updated list of signatory carriers on its electronic bulletin board. A list of signatory carriers is also contained in Appendix 42-5; however, carriers who have recently signed a Preinspection or Preclearance agreement may not yet be listed. Contact the NFO during business hours if there is a question regarding a current contract.

42.6 Foreign Territory or Adjacent Islands Agreements

Section 233(a) of the Act requires all transportation lines to enter into a contract with the Service for the inspection and admission of aliens coming to the United States from foreign territory or from adjacent islands. Form I-420 Agreement requires transportation lines to comply with the Immigration and Nationality Act and regulations, maintain suitable landing stations at the Port-of-Entry, and bear aliens' detention expenses and Service overtime expenses, when applicable. Supplementary agreements relating to accidents, mechanical difficulties, severe weather or other emergencies are on Form I- 420A. These agreements are submitted for approval to the appropriate regional director. The Service does not

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maintain a list of carriers with I-420 contracts. The I-420 agreement can be obtained from and must be submitted, in duplicate, to the National Fines Office (NFO) for approval. (Revised IN99-04)

42.7 Landing Rights and Carrier Requirements.

With certain exceptions specified in §§ 231 and 251 of the Act, international carriers must provide arrival and departure manifests, present passengers and crew when and where directed by the Service, and provide advance information concerning arrival, in order to permit orderly and timely inspection. Penalties for infractions of these requirements are explained in Chapter 43.

If a carrier repeatedly fails to present correct and legible manifests (Forms I-94), and a carrier representative is not immediately available to make corrections without unduly delaying the inspection process, consider fine proceedings. Before commencing fine proceedings, document efforts to obtain carrier compliance, using Form I-83, if appropriate, or a letter or memorandum. Notify the carrier, using Form I-80 of specific deficiencies prior to institution of actual fine proceedings. Specific manifest requirements and procedures for processing such manifests are discussed in Chapters 22 and 23.

Do not institute fine proceedings for failure to include data in the admission block of a departure I-94 which is submitted as a "dummy" replacement form when the original I-94 is not presented to the carrier by the departing nonimmigrant passenger.

42.8 Progressive Clearance.

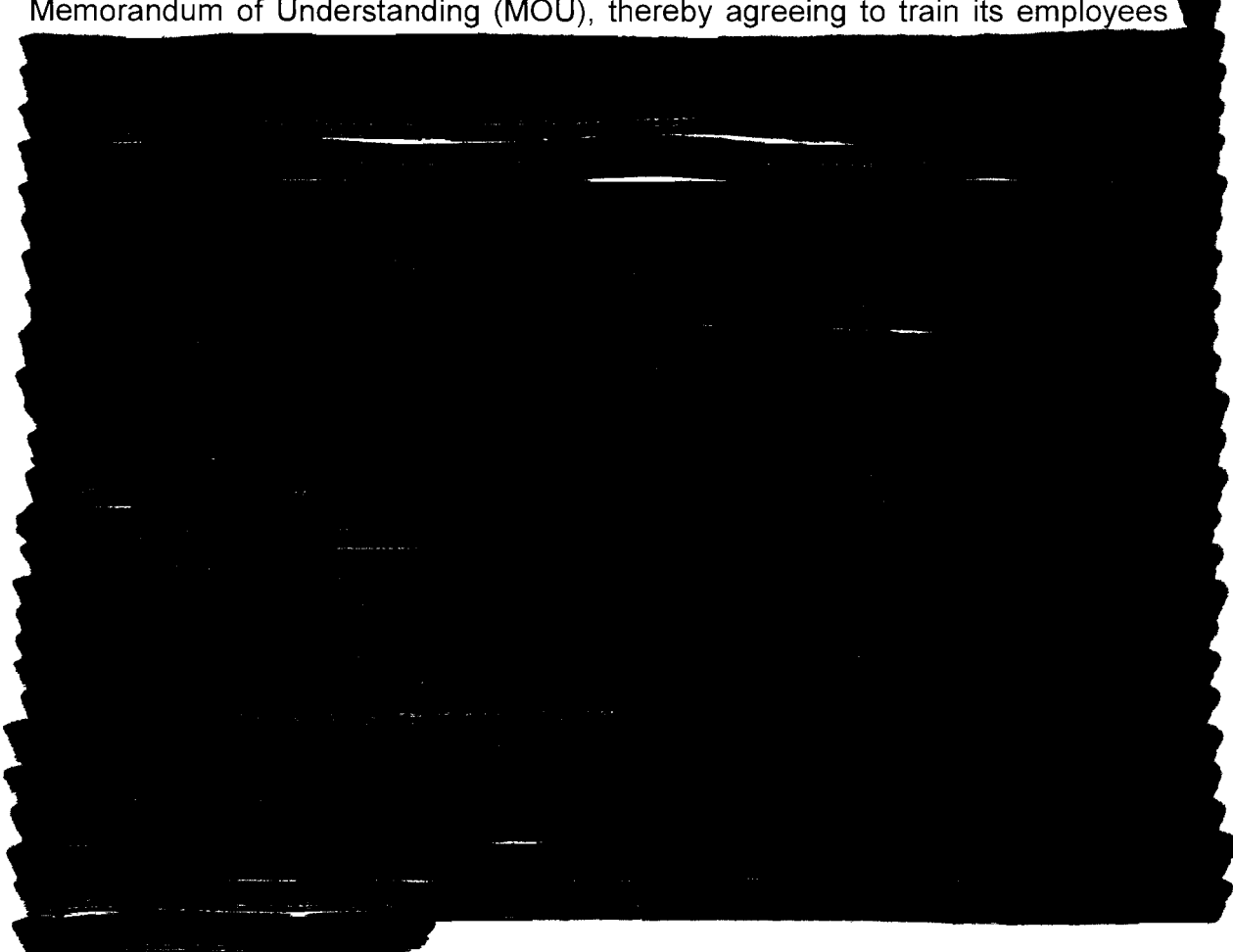
Carriers requesting progressive clearance, partial clearance of an arriving flight at the first port-of-entry with the remaining passengers cleared at an onward port, should be directed to contact theregional director with jurisdiction over the first port of arrival. If the onward port is in another region, that regional director is responsible for coordination with the onward office prior to approval. The regional director will evaluate a carrier's fines, liquidated damages, and user fee payment record before entering into any agreement with the carrier. Upon approval of any progressive inspection request which involves multiple flights, the regional director shall forward a copy of the approval agreement to Headquarters, Inspections.

42.9 Section 273(e) Memorandum of Understanding (MOU) (Added IN 99-34)

A carrier that brings an alien to the United States without a valid passport or visa is subject to a \$3,000 fine. Prior to December 25, 1994, this amount could be remitted or imposed in full but not mitigated to a lesser amount. Section 273(e) of the Act allows for the reduction of these fines provided that the carrier screens passengers in accordance with standards prescribed by the Attorney General and/or where

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case-specific circumstances exist which are determined to justify reduction. A carrier may be eligible for up-front reductions of 25% or 50% by entering into a Memorandum of Understanding (MOU), thereby agreeing to train its employees



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Chapter 43: Fines and Liquidated Damages (Added INS-TM2)

- 43.1 General
- 43.2 Administrative Fine Violations
- 43.3 Processing Administrative Fines at Ports-of-Entry
- 43.4 Passengers Arriving from Contiguous Territory
- 43.5 Processing Administrative Fines at the National Fines Office
- 43.6 Processing Liquidated Damages at Ports-of-Entry
- 43.7 Processing of Liquidated Damages by National Fines Office
- 43.8 Civil Document Fraud Penalties

References:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

- Carrier fails to submit Form I-94 Departure Record [Section 231(b)]; and
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- Carrier fails to submit properly completed Form I-94 Departure Record in a timely manner [Section 231(b)].
- (3) Section 251. A fine is imposed under Section 251 when a carrier fails to provide a complete, true, and correct list of alien crewmen, Form I-418, upon arrival or departure, or when a carrier fails to report cases of desertion or illegal landing of alien crewmen as required. A fine may also be imposed under Section 251 if an alien crewman performs certain types of longshore work not included in normal operations and service on board the vessel under Section 258.

Typical Violations of Section 251:

- Carrier fails to provide timely a complete arrival manifest for alien crew;
 - Carrier fails to provide timely an accurate departure manifest for alien crew; and
 - Carrier fails to report illegally landed crewman when discovered.
- (4) Section 254. A fine is imposed under Section 254 when a carrier fails to properly control alien crewmen.

Typical Violations of Section 254:

- Carrier fails to detain alien crewman on board vessel prior to inspection;
 - Carrier fails to detain alien crewman on board vessel after inspection, when ordered to do so; and
 - Carrier fails to deport (remove) an alien crewman as required.
- (5) Section 256. A fine is imposed under Section 256 when a carrier pays off or discharges a nonimmigrant alien crewman without first obtaining the consent of the Attorney General.

(b) Other Violations.

- (1) Section 234. Section 234 relates to the control of aircraft. A fine is imposed under this section when a nonscheduled carrier fails to provide advance notice to the government of intent to land in the United States or if an aircraft arrives at an undesignated port of entry.
- (2) Section 243. A fine is imposed under Section 243 when a carrier fails or refuses to detain, deliver, or deport an alien as required, or fails to pay the removal expenses

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of an alien who was brought to the United States by the carrier. Circumstances under which Section 243 fines can be imposed are outlined in Section 241. Section 243 applies to alien passengers and stowaways but not alien crewmen.

- (3) Section 255. A fine may be imposed under Section 255 when a carrier brings to the United States an alien employed on a passenger vessel who is afflicted with certain disabilities (feeble-mindedness, insanity, epilepsy, tuberculosis, leprosy, or any dangerous contagious disease).
- (4) Section 271. A fine is imposed under Section 271 for failure to prevent the unauthorized landing of an alien in the United States at any time or place other than as designated by the Service.

Typical Violations of Section 271:

- International passengers are disembarked into a domestic terminal, bypassing immigration inspection (The inspector should recommend a fine for all passengers on the flight, unless the carrier proves that a passenger is a United States citizen); and
 - Alien passengers arrive from foreign and land at a place other than as authorized by the United States government.
- (5) Section 272. A fine may be imposed under Section 272 when a carrier brings to the United States an alien subject to exclusion on a health-related ground [excludable under 212(a)(1)].

43.3 Processing Administrative Fines at Ports-of-Entry.

(a) Completing Form I-849 & Documenting a Case.

- (1) General. All administrative fine recommendations submitted to the NFO are to include a properly completed Form I-849, Report to the National Fines Office of Possible Violation of the INA (7/21/2000), which summarizes the circumstances of the incident. Form I-849 includes completion and documentation instructions and a summary table of fineable sections of the INA. As a Privacy Act concern, a completed Form I-849 should not make specific references to political asylum or credible fear issues. The completed form should include the signatures of both the recommending officer and a designated concurring officer. Whenever possible, a copy of Form I-849 should be provided to the carrier representative, and the carrier receipt area of the form should be appropriately endorsed to indicate the date and method of receipt. (Revised IN00-42)

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- (2) Local Tracking Numbers. The primary purpose of the local tracking number is to enable a port to retrieve and refer to a particular case whenever necessary. A local tracking number must be assigned to each administrative fine recommendation before submission to the NFO. The local tracking number is to be recorded in the space provided on the front of Form I-849. The recommended format for a local tracking number is as follows:

The letter 'X' + 3-letter port code + terminal name code (if applicable) + the 2-digit fiscal year indicator + the sequential number for this violation for the specified fiscal year. As an example, the first local tracking number assigned to a case by Los Angeles for a violation detected at the Tom Bradley Terminal (TB) in Fiscal Year 2001 would be:

XLOSTB010001.

If a terminal name code does not exist, a port may use "IA" (international arrivals terminal) or "AP" (airport) or "SP" (seaport).

- (3) Photographs of Alien Passengers. When recommending a fine in a case where an alien passenger arrives in the United States with no travel documents whatsoever, a passport-style photograph must be taken of the alien and attached to the photo box on the front of Form I-849.
- (4) Officer's Summary of Case Circumstances. The officer's summary on the reverse of Form I-849 should include all specific facts of the violation and explain how the violation and responsible carrier were determined. If the Officer's Summary block does not provide enough space, the officer should indicate in the block that a separate memorandum is attached. In summarizing the circumstances of a perceived violation, it is very important that all relevant information be provided. In cases where there is no physical evidence for the file showing that an alien arrived on the flight or vessel indicated, the completing officer must articulate how the named flight or vessel was determined. The completing officer should not make specific references to "political asylum" or "credible fear" on the form, even when a particular case involves such claims.
- (5) Supporting Documentation. It is important that each Form I-849 be accompanied by any and all available documentation to support the circumstances of the violation. Supporting documentation may include, but is not limited to: sworn statements by aliens and other parties involved in the incident; complete copies of documents used for travel (passports, visas, transportation letters, resident cards, employment authorization cards, identity documents, etc.); Forms I-94, Forms I-95, arrival and departure manifests; Customs declarations; memoranda describing case circumstances; photographs of alien passengers; used airline tickets; copies of flight

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logs; baggage claim checks; and Service forms related directly or indirectly to the incident. The recommending officer should anticipate all possible defense arguments that the carrier might later present to the NFO and ensure that all aspects of the incident in question have been documented as thoroughly as possible. A case that does not contain sufficient information or documentation may ultimately result in cancellation if the NFO is unable to adequately counter a carrier's defense arguments by referencing evidence contained in the case file.

(A) General Documentation for Passport/Visa Violations:

- Photocopies of passport pages showing expiration date(s); photocopies of passport extension pages (even if extension pages are blank).
- Photocopies of all U.S. visas, including expired or "used" single- entry visas. Photocopies of any relevant admission stamps.
- A statement from the inspecting officer as to why there was not a visa or why the visa was invalid.
- A statement from the alien explaining the reason for traveling on travel documents presented and what transpired at the time of check- in and boarding.

(B) Specific Documentation for Incidents Involving Passengers Ineligible for VWP:

- A statement by the inspecting officer explaining whether the alien is:
 - not in possession of a valid, unexpired passport issued by a participating country;
 - ineligible for the VWP because of nationality;
 - arriving on a nonsignatory carrier; or
 - statutorily ineligible for the VWP because of purpose or length of trip.
- The inspector is to include any remarks made by carrier personnel to the alien at the port of embarkation during check-in.
- A statement by the alien regarding his or her purpose of travel and intended length of stay in the United States.
- A photocopy of the alien's airline ticket showing port of embarkation, port of arrival, and port of departure.
- The inspector is to review United Kingdom passports for designations of right of

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abode in the United Kingdom and include copies of all relevant passport pages. In instances where a passport has a reference(s) to additional page(s), a copy of that page must be provided.

(C) Specific Documentation for Incidents Involving Document Destroyers or Fraudulent Documents:

- A photograph of the alien. In taking this photograph, the inspector is to use the same angle as used in the fraudulent document to enable comparison of the two photos.
- The inspector is to specifically establish whether the alien:
 - was observed or intercepted disembarking the aircraft;
 - was detected in the terminal intermingled with passengers from the same flight;
 - had baggage tags or was carrying items such as napkins from a particular airline; or
 - states arrival on a specific flight.
- Photocopies of supporting evidence. Examples are:
 - copies of identity documents;
 - any items the alien may possess that link the alien to the carrier (such as baggage tags with the name used for travel); or
 - any item bearing the carrier's logo.
- If the alien was intercepted at the gate, a statement to that effect by the officer(s) involved is to be included.
- If the alien claims to have traveled under his or her true name, the alien is to be questioned further concerning the details of how he or she boarded the aircraft. The alien may claim to have traveled under his or her true name but the true name does not appear on the carrier's arrival manifest. The inspector should pursue further questioning if it is suspected that the travel was under an assumed name.
- A statement from the officer describing what features show that a document is obviously altered or counterfeit. The officer should not describe the security checkpoints but only those features that should be obvious to non-INS personnel. Also, a color photograph or color photocopy is recommended.

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- Do not make specific references to political asylum or credible fear on Form I-849.

(D) Specific Documentation for Incidents Involving Passengers Ineligible to TWOV:

- A statement by the inspecting officer explaining whether the passenger is:
 - statutorily ineligible to TWOV due to his/her nationality;
 - statutorily restricted to TWOV unless on a continuous direct-through flight;
 - arriving on a nonsignatory carrier; or
 - attempting entry at a port not designated for the TWOV program.
- A copy of Form I-259, if served.
- A copy of the alien's passport, I-94T, airline tickets, and any other information relevant to his itinerary and intended admission as a TWOV passenger.

(E) Specific Documentation for Incidents Involving Absconded TWOV Passengers:

- A statement by the inspecting officer stating how the Service was made aware that the TWOV passenger absconded.
- The unused Form I-94T Departure Record. If unavailable, the inspector is to state why the form is unavailable.
- The Form I-94T Arrival Record, if available.

(F) Specific Documentation for Violations Involving Immigrants and Resident Aliens:

- Computer printout of relevant INS records checks.
- If available, photocopies of the documents which alien claims were presented to the carrier to board the aircraft.
- Photocopies of passport pages showing expired ADIT stamps; photocopies of any forms issued by the Service.
- A statement from the immigrant or resident alien parent of baby born outside the United States indicating why the baby does not meet the criteria of 8 CFR 211.1(a)(1) or 8 CFR 211.1(a)(2).
- A statement from lawful permanent resident (LPR) who claims to have lost an I-551

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or I-151. The inspecting officer should verify the location where the card was lost and whether it was lost before or after obtaining boarding pass.

- Statement from LPR who is not traveling with Alien Resident Card that solicits the following information. What was presented to the carrier? Did the carrier check documentation, at check in and prior to boarding? Why is the LPR not in possession of card?

(G) Specific Documentation for Incidents Involving Stowaways:

- A statement by the inspecting officer regarding:
 - how it was determined that the alien arrived on the vessel in question;
 - when the Form I-259 was issued;
 - when and under what circumstances the alien departed the vessel; and
 - the whereabouts of the stowaway when the vessel departed foreign.
- A sworn statement from the stowaway will strengthen cases in which a Form I-259 was not issued.

(H) Specific Documentation for Incidents Involving Vessels and Crewmen:

- Copies of Forms I-418, I-409, and I-410.
- Copy of Form I-259 establishing carrier liability under Section 254 for:
 - detained crewman who absconds after inspection; or
 - an alien crewman not removed.

(6) Questions Concerning Form I-849. Questions regarding any particular field on Form I-849 can be answered by calling the NFO.

(Revised IN00-20)

- #### **(7) Requests for Additional Information.** Upon review of a fine recommendation at the NFO, it may be determined that additional evidence, information, or clarification is required. In such instances, the NFO may issue a memorandum to the port requesting additional information or documentation. If the requested material is available, it should be forwarded to the NFO within thirty (30) days of the date of the memorandum.

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If the requested information or documentation is not available, the responding officer should provide a brief statement and/or explanation in the space provided on the NFO's memorandum and return the memorandum to the NFO within thirty (30) days of the date of the memorandum.

- (8) Submission of Fine Recommendations to NFO. A recommendation for an administrative fine must include a completed Form I-849, reviewed and signed by a supervisor, and all supporting documentation related to the incident. The recommendation package should be submitted in duplicate, via regular mail, to the Director of the NFO as soon as possible following an alleged violation. The address of the NFO is:

National Fines Office
1525 Wilson Boulevard, Suite 425
Arlington, VA 22209.

Multiple recommendations may be included in a single mailing; however, each separate incident should include (in duplicate) a separate Form I-849 with supporting documentation relevant to that case.

- (b) Special Requirements for Documenting Section 231 Fines.

43.4 Passengers Arriving from Contiguous Territory.

Regardless of documentary deficiencies, carriers are not liable for fines under Section 273 of the INA in instances where flights enter the United States directly from Canada or Mexico. However, contiguous territory is not a factor with violations occurring under sections of the INA other than Section 273. (Revised IN00-42)

43.5 Processing Administrative Fines at the National Fines Office.

- (a) Initial Processing.

- (1) File Creation, Coding, and Electronic Entry. Upon receipt at the NFO, a file is to be created for each fine recommendation. Where appropriate, a series of codes signifying the type of violation, passport and visa status, disposition of alien, etc., are to be assigned to the case in the course of an initial review. Case codes and data taken directly from the Form I-849 are to be entered into the NFO System [NFOS]. NFOS will assign a unique fine number to the case. (Revised IN00-42)
- (2) Fines Officer Review. Once a fine number has been assigned, each new case is to be reviewed by a fines officer for legal and documentary sufficiency. The reviewing officer must make one of three possible determinations:

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- that fine proceedings should be initiated;
 - that fine proceedings should not be initiated; or
 - that additional information and/or documentation is needed before fine proceedings can be initiated.
- (A) Sufficient Circumstance/Evidence for Fine. If the reviewing fines officer determines that the case, as submitted, is sufficient to initiate fine proceedings, the reviewing officer must sign the appropriate area of Form I- 849, recommending that a Form I-79, Notice of Intent to Fine, be issued to the appropriate carrier. This recommendation is to be forwarded to the Director of the NFO for concurrence.
- (B) Insufficient Circumstance for Fine. If the reviewing fines officer determines that fine proceedings are not warranted, the officer must note the reason(s) for his or her recommendation and forward the case to the Director of the NFO for concurrence. If the Director determines that fine proceedings are in fact warranted, the Director will order that a Notice of Intent to Fine be issued to the appropriate carrier; otherwise, the Director will approve the fines officer's recommendation for termination, the case shall be terminated in the NFO System, and no notice shall be sent to the carrier.
- (C) Request for Additional Information. If the reviewing fines officer determines that additional information or evidence is needed in order to strengthen the Service's case against the carrier, the reviewing officer is to issue a memorandum to the port requesting additional information or documentation. This memorandum must reference the local tracking number assigned to the case by the originating port and provide the port with thirty (30) days to respond. The NFO will refrain from issuing a Notice of Intent to Fine until the 30 days have elapsed or a response to the memorandum is received at the NFO. If no response is received within the 30-day period, the reviewing officer and the Director of the NFO shall decide either to initiate fine proceedings on the basis of the evidence which is available, or to terminate the proceedings.
- (b) Notice of Intent to Fine (Form I-79). When it is determined that fine proceedings should be initiated against a carrier, a Notice of Intent to Fine, Form I-79, is to be issued to the responsible carrier via certified mail. This notice informs the carrier of the Service's intention to impose a fine under a specified section of law and for a specified monetary amount. The carrier is provided with thirty (30) days to submit a written defense to the NFO stating the reasons why the proposed fine should not be imposed, or if imposed, why the fine should be mitigated or remitted. A copy of the Notice of Intent to Fine is to be filed with the appropriate case, pending further action.
- (c) "Decision to Impose Administrative Fine" Notice. If, after thirty (30) days, a carrier does not respond to a Notice of Intent to Fine, the NFO will issue to the carrier a "Decision to Impose Administrative Fine" notice. This notice allows the carrier an additional thirty (30) days to file a written defense to the proposed fine. The carrier is advised that failure to provide a

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written defense within this 30-day period will result in formal imposition of the fine and that all periods for filing a written defense will have expired. A copy of the Decision to Impose Administrative Fine is placed in the case file, pending further action.

- (d) Form G-261 (Bill) and "Final Decision" Notice. If a carrier fails to respond to both the Notice of Intent to Fine and the Decision to Impose Administrative Fine, the Director of the NFO shall order that the fine be formally imposed. A bill, Form G-261, shall be created and sent to the responsible carrier along with a "Final Decision" notice explaining that the fine is imposed in full and all periods provided for the filing of a written defense have expired. The Final Decision notice shall further instruct the carrier that payment should be made within thirty (30) days to the Administrative Center Finance Office specified on the accompanying G-261.
- (e) Receipt of Written Carrier Defense. A timely written defense submitted by a carrier (or on a carrier's behalf) to a Notice of Intent to Fine or a Decision to Impose Administrative Fine is to be placed in the appropriate case file, pending review and a decision by a fines officer. The NFO shall not issue a bill, Form G-261, to a carrier so long as a defense is pending.
- (f) Attorney Representation. Correspondence received at the NFO which references a specific carrier or a specific violation must be submitted by the responsible carrier unless accompanied by a properly completed Form G-28, Notice of Entry of Appearance as Attorney or Representative. The NFO shall not discuss cases nor accept defense materials with any entity other than the responsible carrier unless a Form G-28 has been filed.
- (g) Oral Interviews. If desired (and within the time frame allotted for filing a defense), a carrier representative may request an oral interview to defend a case with a fines officer. Oral interviews may be conducted telephonically or in person; if in person, the carrier representative must travel to the NFO. An oral interview is requested in conjunction with a written defense. Authority for conducting a personal interview is contained in 8 CFR 280.12. Procedures for conducting a personal appearance are contained in 8 CFR 280.13. [See Appendix 43-3 which contains the public notice concerning the oral interview requests.]

The NFO procedures for a request for a personal interview include the following:

- The request must be made in conjunction with the written defense and submitted within 30 days of service of the Notice of Intent to Fine, Form I-79. The immigration officer assigned to conduct the personal interview shall contact the representative of the carrier to set a date and time for the personal interview at the NFO, or a telephonic interview in lieu of a personal interview.
- If additional evidence is to be presented by the representative during a personal interview, the evidence must be submitted at the time of the personal interview. If a telephonic interview is to be conducted and additional will be presented, the representative must submit the documentation at least 24 hours before the start of the telephonic interview for consideration and inclusion in the file.

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- Once a date and time for the personal or telephonic interview have been established, the representative is obliged to appear in person for the personal interview or telephonically contact the NFO for the telephonic interview on the scheduled date and time. If the representative cannot appear for the personal interview or cannot call for the telephonic interview on the scheduled date and time, the representative must call the NFO at least 24 hours in advance to reschedule the interview. The immigration officer will reschedule one additional date on which the personal or telephonic interview is to be held. The rescheduled interview date will be set within thirty (30) days of the original interview date and must be conducted and completed within that time frame. If the representative fails to appear or telephonically contact the NFO on the date and time that has been rescheduled by the immigration officer, the representative will have forfeited his or her opportunity to discuss or present information regarding those determined cases. The immigration officer will make a decision on the case based upon the existing record.
 - The immigration officer assigned to conduct the personal interview may limit the discussion of a particular case to a reasonable time period at his or her discretion. The immigration officer may also limit the total time period allotted in a day for the scheduled personal or telephonic interview.
 - In the discretion of the immigration officer assigned to conduct the personal interview, the representative may also discuss another case assigned for personal interview to the same officer, provided that the written defense and any additional evidence relevant to that other case has been filed. The representative may not discuss any case for which no request for a personal interview has been made, nor any case assigned to another immigration officer.
 - The immigration officer will prepare a report of the personal or telephonic interview, summarizing the evidence and containing his or her findings and recommendation, and present it to the Director of the NFO.
- (h) Decisions to Carrier Defenses. All aspects of a timely defense (oral or written) and any accompanying documentation shall be considered by a fines officer. The fines officer shall determine whether the proposed fine should be imposed in full, terminated, or mitigated (in cases where mitigation is permitted).

If the reviewing fines officer determines that imposition of the fine (in full or in part) is warranted, the reviewing officer shall compose a formal order stating the facts of the case, the arguments presented by the carrier representative, the reason(s) why the fine should be imposed, and the monetary amount recommended for the imposition. This recommendation shall be endorsed by the reviewing officer and forwarded to the Director of the NFO for approval or denial. If the Director concurs with the fines officer's recommendation, the Director shall endorse the formal order and order that the fine be imposed. The formal order shall be sent along with a bill, Form G-261, along with instructions to the carrier regarding the filing of an appeal to the Board of Immigration Appeals [BIA].

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If the reviewing fines officer determines that imposition of the fine is not warranted, the reviewing officer shall note the reason(s) for his or her recommendation and forward the case to the Director of the NFO for approval or denial. If the Director concurs with the officer's recommendation for termination, the Director shall approve the fines officer's recommendation, the case will be canceled in the NFO System, and a notice shall be sent to the carrier stating that the fine has been terminated. The reviewing fines officer's recommendation, Director's concurrence, and a photocopy of the termination notice shall be placed in the appropriate case file.

- (i) Appeals to Board of Immigration Appeals (BIA). Within eighteen (18) days of issuance of a formal order by mail, a carrier may appeal the NFO's decision to the Board of Immigration Appeals [BIA], by submitting Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals, along with the required filing fee, to the NFO. The NFO shall deposit the filing fee into the Federal Reserve and forward the original file along with the appeal application to the Office of Appellate Review.
- (j) Motions to Reopen / Motions to Reconsider. Within 90 days of the formal imposition of a fine, a carrier may file a motion to reopen with the NFO. Within 30 days of the formal imposition of a fine, a carrier may file a motion to reconsider with the NFO. Both types of motions require a non-refundable filing fee. The Director of the NFO shall consider a Motion to Reopen provided that additional evidence and/or information is presented which was not available prior to the fine's imposition.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision [See 8 CFR 103.5].

A carrier may appeal the Director's decision to the BIA [See 8 CFR 3.1(b)].

43.6 Processing Liquidated Damages at Ports-of-Entry.

Under Section 233 of the INA, liquidated damages is the sum a carrier agrees to pay for a breach of the Immediate and Continuous Transit Agreement (Form I-426) when it appears that a transit-without-visa (TWOV) passenger failed to depart the United States or did not depart the United States by the scheduled departure date. Liquidated damages under Section 233 are always assessed against the carrier responsible for the passenger's arrival in the United States.

In instances where it is known at the port-of-entry that a TWOV passenger has absconded, the incident is to be reported to the NFO in the same manner as an administrative fine [See Chapter 15.6 and Chapter 43.3(a)(5)(E)]. In most instances, however, the process by which liquidated damages are initiated originates with the Service contractor and requires no special action on the part of the inspector. The inspector's primary role in the liquidated damages process is to ensure that all Forms I-94T are properly completed and forwarded to

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the Service contractor.

Inspectors are reminded that a TWOV applicant must meet the requirements under 8 CFR 212.1 and 8 CFR 214.2 for admission as a TWOV passenger. If an alien passenger does not meet the requirements of either of these sections, an administrative fine for a violation of Section 273 of the INA is to be recommended to the NFO [See Chapter 43.3.]

43.7 Processing of Liquidated Damages by National Fines Office.

- (a) Notice of Intent to Assess Liquidated Damages. Failure on the part of a carrier to submit a Departure Record, Form I-94T, showing departure within eight (8) hours of a TWOV's arrival (or the next available flight), results in no electronic "match-up" (of arrival versus departure information) in the Service contractor's database. When this occurs, the Service contractor issues a Notice of Intent to Assess Liquidated Damages to the carrier responsible for the alien passenger's arrival in the United States. This notice informs the arrival carrier that liquidated damages in the amount of \$500 will be assessed unless the carrier is able to provide evidence to the NFO showing that the passenger in question departed the United States in a timely manner. The carrier is given thirty (30) days to provide this evidence.

A copy of the Notice of Intent to Assess Liquidated Damages is simultaneously forwarded by the Service contractor to the NFO, where a case file is created.

- (b) Decision to Impose Liquidated Damage Assessment. If a carrier served with a Notice of Intent to Assess Liquidated Damages fails to respond to the notice within the 30-day period provided, the NFO shall issue a Decision to Impose Liquidated Damage Assessment informing the responsible carrier that an additional 30-day period is provided to submit evidence of the passenger's timely departure from the United States. This notice informs the responsible carrier that if the requested evidence is not received within this second 30-day period, the liquidated damages case will be imposed in full and there will be no further periods provided for the submission of departure evidence. A copy of the Decision to Impose Liquidated Damage Assessment shall be placed in the case file.
- (c) Imposition of Uncontested Cases. If a carrier served with a Notice of Intent to Assess Liquidated Damages and a Decision to Impose Liquidate Damage Assessment fails to respond to either notice within the total provided time frame, the liquidated damages case shall be assigned a fine number and imposed in full in the NFO System. The NFO shall then issue to the responsible carrier a Final Decision notice and a bill, Form G-261. The Final Decision notice in this instance shall inform the responsible carrier that the liquidated damages case is imposed in full due to the fact that the carrier failed to respond to the two previous notices. A copy of the Final Decision notice and bill shall be forwarded to the appropriate Administrative Finance Center, and a copy the Final Decision notice and bill shall be placed in the case file.
- (d) Adjudication of Contested Cases. If a carrier served with a Notice of Intent to Assess Liquidated Damages (or both a Notice of Intent to Assess Liquidated Damages **and** a

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Decision to Impose Liquidated Damage Assessment) submits a defense to the NFO within the time frame(s) provided, the NFO shall consider the evidence submitted and determine whether the case should be terminated or imposed.

- (1) Insufficient Proof of Departure (Imposition). If the information provided by the carrier in defense of a proposed liquidated damages assessment is reviewed by the NFO and determined to be insufficient evidence of a passenger's timely departure from the United States, the liquidated damages case shall be assigned a fine number in the NFO System and imposed in full. The NFO shall then issue to the responsible carrier a Final Decision notice and a bill, Form G-261. The Final Decision notice in this instance shall inform the responsible carrier that the liquidated damages case is imposed in full due to the fact that the evidence submitted by the carrier was insufficient to warrant termination of the case. A copy of the Final Decision notice and bill shall be forwarded to the appropriate Administrative Finance Center, and a copy the Final Decision notice and bill shall be placed in the case file.
- (2) Sufficient Proof of Departure (Termination). If the information provided by a carrier in defense of a proposed liquidated damages assessment is reviewed by the NFO and determined to be sufficient evidence of the passenger's timely departure from the United States, the case shall be terminated in the NFO System. The NFO shall issue a notice of termination to the carrier and place a copy of the termination notice in the case file.
- (e) Creation of Administrative Fines Under Section 231(b). If sufficient evidence of timely departure for a passenger is provided by an arrival carrier in reference to a liquidated damages case and the liquidated damages case is therefore terminated by the NFO, the NFO shall then initiate an administrative fine against the departure carrier for failure to provide to the Service a properly completed Departure Record, Form I-94T. [See Chapter 43.5.]

43.8 Civil Document Fraud Penalties.

On October 2, 1996, a federal district court in Seattle, Washington issued an injunction against the Service in *Walters v. Reno*, the lawsuit challenging the Service's implementation of the section 274C civil document fraud program. The injunction was effective immediately and the Service is required to comply with the injunction.

Until further notice the Service is barred from:

- issuing 274C Notices of Intent to Fine;
- issuing 274C Final Orders;
- deporting any person who is the subject of a section 274C final order if that person waived or failed to request a hearing, even if the deportation is based on other grounds;

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- initiating removal proceedings based on such a final order; and

attempting to rely on such a final order to oppose or deny any application for benefit.

It should be noted that this bar does not limit the Service's ability to rely on the facts of the underlying fraud in opposing or denying the application or benefit. Any questions regarding section 274C may be directed to the National Fines Office.

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Chapter 44. Conveyance Seizures (Added INS - TM2)

- 44.1 Background
- 44.2 Violations
- 44.3 Probable Cause
- 44.4 Seizure Justification
- 44.5 Procedure
- 44.6 Conveyance Appraisal
- 44.7 Custody and Storage
- 44.8 Notification
- 44.9 Personal Interview
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- 44.11 Procedure for Return
- 44.12 Judicial Forfeiture
- 44.13 Administrative Forfeiture
- 44.14 Disposal
- 44.15 Disposal by the United States Marshals Service

References:

INA: Section 274(b)

Regulations: 8 CFR 274.

Other: INS Conveyance Seizure Manual (AFO) M-397; M-397A, DOJ Policy; M-69, The Law of Arrest, Search & Seizure; 28 CFR 9

44.1 Background.

On November 2, 1978, Congress provided the Immigration and Naturalization Service with the authority to seize and forfeit conveyances used for the smuggling of aliens into or within the United States. The intent of the law is to permit the seizure of a vehicle, vessel, or aircraft in a situation where the owner is a consenting party or privy to the illegal act of smuggling aliens. Immigration and Naturalization Service officers seize and forfeit more conveyances than any other law enforcement agency.

- (a) Authority to Seize Conveyances. Pursuant to 8 CFR 274.2, any Immigration Officer is authorized to seize conveyances, provided the Officer has been delegated the authority by the Commissioner. Service officers vested with seizure authority include, but are not limited to:

Border Patrol Agents
Deportation Officers

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Immigration Examiners
Immigration Inspectors
Special Agents

- (b) Conveyances Which Can Be Seized. Any conveyance, including any vessel, vehicle or aircraft, which has been or is being used in the commission of a violation of Section 274(a) of the INA is subject to seizure. A conveyance is simply a mobile object, such as a vehicle, which can be used to transport a person from one location to another. A trailer is a vehicle if it is being towed or is readily capable of being towed [8 CFR 274.1]. Seizure is not mandatory. A conveyance need not be seized if a law enforcement purpose will not be served. The decision to seize is discretionary. Seizures should only be made where the primary emphasis is to deter smuggling or transporting illegal aliens.

44.2 Violations.

A violation of Section 274 of the INA is required before a conveyance can be seized and forfeited. Section 274(a) of the Act describes five separate criminal offenses including bringing to, bringing into, transporting within, harboring and encouraging entry of illegal aliens, and any attempts to commit these violations:

Section 274(a)(1)(A) prohibits bringing a person known to be an alien to the United States at a place other than a designated Port of Entry or place designated by the Commissioner.

Section 274(a)(1)(B) prohibits transportation within the United States of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States, where such transportation furthers the alien's illegally coming to, entering, or remaining in the United States.

Section 274(a)(1)(C) bars concealing, harboring or shielding of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States.

Section 274(a)(1)(D) proscribes encouraging or inducing an alien to come to, enter, or reside in the United States either knowingly or in reckless disregard of the fact that such coming to, entry, or residence is or will be unlawful.

Section 274(a)(2) makes it illegal to bring an alien to the United States either knowingly or in reckless disregard of the fact that the alien has not received prior official authorization to come to, enter, or reside in the United States.

44.3 Probable Cause.

- (a) General. A conveyance subject to seizure pursuant to Section 274 of the INA may be seized without warrant if there is probable cause to believe that the conveyance has been or is being used in violation of the aforementioned section and circumstances exist where a

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warrant is not constitutionally required. For example, where the conveyance is mobile and likely unavailable for later execution of a warrant. Generally, no warrant is required to seize a conveyance for a violation occurring at a port-of-entry.

Probable cause has been defined as the knowledge or trustworthy information of facts and circumstances which would lead a reasonably prudent person to believe that an offense has been committed or is being committed. Probable cause is more than mere suspicion. In the conveyance context, probable cause may be based on a number of factors.

(b) Sworn Statements from the Violators or Witnesses. Statements should be obtained from violators, informants, witnesses and Service officers and these statements may be used to support the probable cause for the violation. Sworn statements are preferable because they have greater evidentiary value than unsworn statements or narrative reports. In taking a statement, the seizing officer should attempt to obtain the following information:

- The identities and immigration status of the violators with details regarding any false claims presented;
- The relationship between the individuals participating in the violation;
- The stated destination and purpose of any attempted entry and the actual destination and purpose;
- The basis for the alien's inadmissibility or unlawful presence in the United States;
- Any history of problems at entry, warnings of seizure provisions, refusals or referrals to secondary inspection at ports-of-entry;
- Information concerning smuggling arrangements and payments; and,
- Knowledge of inadmissibility.

When the registered owner is not present at the time of the violation, the seizing officer should determine the operator's relationship to the registered owner, as well as the operator's right to use and control the conveyance. This information is useful in determining the beneficial owner of the seized conveyance. The Individual who has actual use of the conveyance will be considered to be beneficial owner. In most cases, the registered owner and the beneficial owner will be one and the same individual. However, in some cases, the actual user of the vehicle will not be the registered owner. When this occurs, the actual user of the vehicle may be considered a beneficial owner.

(c) Physical Evidence. A seized conveyance may contain physical evidence to support the probable cause for the violation. Physical evidence may include:

- Photocopies of documents used to assert immunity;

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- Evidence of documented false claims to citizenship or immigration status;
- Evidence of illegal status;
- Round trip airline tickets purchased in or originating in the United States;
- Maps or directions to unguarded ports-of-entry;
- Lists of information to be memorized to support a false claim; and/or,
- Other physical evidence (coins, papers, phone numbers, photographs, etc.).

Physical evidence should be secured as evidence and photographs taken for inclusion in the conveyance seizure file.

- (d) Investigative Reports. Probable cause to seize a conveyance may be developed during the course of any Service investigation, such as an employer sanctions investigation. It must be stressed that all information surrounding the probable cause and seizure must be reported in an investigative report.

Investigative reports may be in any of the following formats:

- Memorandum of Investigation, G-166C;
- Report of Investigation, I-44;
- Memorandum;
- Prosecution Report; or,
- Case Summary.

- (e) Information from Other Law Enforcement Agencies. Information provided by other agencies may be used to establish probable cause. The information must have been obtained as a result of a lawful investigation by an officer having the authority to conduct the investigation.

- (f) Record Checks. Record checks may be used to establish probable cause for the violation. Official records of the Service or the Department of State showing that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law, may be used to establish that the alien was illegal. [Section 274(b)(5)(B) of the INA]. In addition, record checks from the various computer systems showing license information or conveyance registration may prove to be valuable circumstantial evidence of unlawful

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residence in the United States. Record checks from foreign or domestic law enforcement agencies may be used to prove criminal record which renders the alien inadmissible.

44.4 Seizure Justification.

The officer's report should articulate facts to support each element of the particular criminal offense which forms the basis for the seizure. Each of the five separate criminal offenses of Section 274(a) of the Act requires knowledge of either alienage or illegal status on the part of someone other than the transported alien (conspiracy). The mere presence of an illegal alien in a conveyance does not by itself provide the necessary probable cause for a seizure. A commonly raised question is whether a conveyance can be forfeited under Section 274(a) of the Act when it has been driven by an illegal alien who is the sole occupant of the conveyance. It is generally recognized that an alien could not be prosecuted for smuggling or transporting himself into the United States. Therefore, unless it can be established that the conveyance is directly involved in a larger smuggling or transporting scheme, the conveyance would not be subject to forfeiture. Consultations and authorizations prior to seizure may be required depending upon established district procedures.

A key concept of seizure and forfeiture law is that the forfeiture of a conveyance is a civil action rather than a criminal prosecution. The action is against the conveyance and not against the persons who own or use the conveyance. It is not necessary to prosecute the owner criminally to sustain a forfeiture. If the owner is criminally prosecuted a forfeiture of the conveyance may occur, even if the prosecution results in a conviction, dismissal or even acquittal.

44.5 Procedure.

The following procedural steps must be taken after the decision to seize a conveyance has been made.

- (a) Determination of Property Interests. The Service shall attempt with due diligence to identify all ownership interests in the seized conveyance. [8 CFR 274.5(a)]. Department of Motor Vehicle (DMV) records should be checked to identify the registered owner. This record check should be completed within twenty-four (24) hours of the seizure. Record checks for lienholders must also be expeditiously completed.
- (b) Check for Stolen Conveyances. The Seizing Officer must check records to determine whether the conveyance has been reported as stolen. This check should be completed within twenty-four (24) hours of the seizure. A conveyance which is unlawfully in the possession of a person other than the owner at the time of the violation is statutorily exempt from forfeiture. [Section 274(b)(1)(B)].
- (c) Inventory. The following procedures should be followed by Service employees at the time of the seizure or as soon as possible thereafter. An inventory of the seized conveyance should be conducted by one Service Officer and witnessed by another officer. As much

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personal property as possible must be removed from the conveyance and returned to the owner at the time of the seizure. Generally, a list of all the property returned should be made in order to document this action. If possible, the owner should sign a receipt for the returned property. The owner's property may be given to the operator if there is no indication that the conveyance is stolen. Whatever the owner (or operator) takes at the time of seizure will not be subject to abandonment proceedings.

The owner (or the owner's agent) should be given a reasonable opportunity to make arrangements for the removal of any remaining property. Generally, the owner should be afforded seventy-two (72) hours to remove any remaining personal property. At the time of the inventory, the owner may elect to voluntarily abandon to the Government all interest in some or all of the personal property. A list of all personal property which the owner decides to voluntarily abandon should be made and the owner should sign this inventory list thereby granting consent to the voluntary abandonment of the listed personal property.

After the expiration of the seventy-two (72) hour period, most of the personal property should have been returned to the owner or voluntarily abandoned. If any personal property remains in Service custody, it should be listed on a separate inventory form and abandonment proceedings should be initiated. The owner must be given written notice that the remaining personal property is subject to abandonment proceedings (Refer to M- 397, Chapter 11). If the owner or operator does not receive the Personal Property Notice in person, the owner of the personal property must be sent the notice in the mail. The notice should be sent to the owner's address of record. This notice must inform the owner that all personal property not claimed within seven (7) days of receipt of the notice will be considered voluntarily abandoned to the United States.

All closed containers must be opened and their contents inventoried as part of the inventory, unless their content can be accurately ascertained by examination of the container.

At the time of the inventory, Service employees must be on the alert for evidence which would identify the person who regularly uses the conveyance. For example, insurance cards, gasoline credit card receipts and repair invoices may serve to identify the true user of the seized conveyance. Any items of special value must be individually identified and described. Expert appraisals of their value should be obtained, if necessary, by telephone. Every reasonable effort shall be made to return perishable products to the owner or his/her agent.

Attach the warning sticker, Form I-638 to the conveyance. Any damage or rust observed in or on the conveyance should be listed on a damage report. Any obvious repairs should also be listed on a damage report. Note whether basic equipment is missing and, if possible, attach photographs to the report. List all special equipment in the conveyance including CB radios, stereo cassettes, extra speakers, and handicap accessible features. The damage report form should be included in the seizure file.

(d) Documentation. The following documentation should be completed as soon as possible after the seizure. Information on the seizure should be entered into appropriate computer databases. A stolen conveyance check should be completed and a copy should be

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included in the seizure file. The seizure form should be completed. The case number should be included on the form. Either the Record of Seized Vehicle, Vessel, or Aircraft, Form I-620 or the Consolidated Asset Tracking System (CATS) Seizure Form will be used. All reports which set forth the probable cause for the violation should be completed. Investigative reports may be in memorandum form. Any relating reports including prosecution forms, exclusion forms, Officer memos and sworn statements should be included in the seizure file. The inventory forms, the damage report and the Personal Property Notice should be completed and included in the seizure file. A registration check should be completed and included in the seizure file. A copy of the notification letter must be maintained in the seizure file.

44.6 Conveyance Appraisal.

- (a) General. The term appraised value means the estimated price at the time and place of seizure if such or similar property were freely offered for sale [8 CFR 274.1(a), 28 CFR 9.2(a)]. The value of a seized conveyance must be supported by reference guides or the estimates of experts. The approved reference is the National Automobile Dealers Association (NADA) guide for the geographic area in which the conveyance is seized. The wholesale value (average trade-in value) is to be used. Additions or deductions will be made to the value for optional equipment, high/low mileage and condition. If the value of the conveyance is not included in the NADA guide, consult other reference guides or a local dealership and obtain a telephonic appraisal. Usually, the value of the conveyance is not relevant in the determination as to whether a conveyance is to be seized.

Generally, value declarations from the owner or operator, or comments concerning newly rebuilt engines or new tires should be disregarded. HQAFO should be contacted for assistance in obtaining reference guide values for unusual conveyances. That office maintains subscriptions to many reference guides.

- (b) Appurtenances. A conveyance includes all tools, appurtenances and accessories provided by the manufacturer. Consequently, not all tools, appurtenances and accessories of the conveyance are forfeitable. An appurtenance is something that is annexed to another thing which, generally, makes the thing more valuable. Whether an appurtenance is forfeitable depends on a number of factors relating to whether the item is permanently attached to the conveyance. Generally, if the item was installed after manufacture and was affixed with the intent to remain permanently with the conveyance, the object will be subject to forfeiture. Factors used to determine whether an object is permanently affixed are located in the Law Outline (M-397A).

44.7 Custody and Storage.

The USMS must be notified of the seizure as soon as possible after the seizure. Arrangements should then be made for the prompt transfer of custody to the USMS. The local USMS may have specific requirements for paperwork to support the custody transfer. The USMS may require some or all of the following:

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- Seizure Form (I-620 or CATS)
- Damage Report
- Seized Property and Evidence Control (USMS-102)
- Conveyance Registration; and
- Photographs of the Conveyance

The conveyance should be transferred to the USMS as soon as possible after the seizure. There may be exceptions for conveyance which present special problems. In certain instances, the USMS will designate the Service as the substitute custodian in which case the same duties and obligations imposed on the USMS as custodian will be transferred to the Service.

Conveyances that remain in Service custody while awaiting transfer to the USMS should be kept secure. Precautions should be taken to prevent the theft of stored conveyances, vandalism or theft of property from the conveyances. Conveyances should also be protected against owners returning to unlawfully retrieve their conveyances. Seized conveyances should not be operated by Service employees.

The USMS guidelines require the seizing agency to remove all property not subject to seizure from the conveyance prior to the transfer of custody. Personal belongings must be removed before releasing the conveyance to the USMS.

44.8 Notification.

(a) Notice Requirements. Individuals or entities having a property interest in the conveyance must receive timely notice of their rights and remedies. Official notification to any person with an ownership interest in the seized conveyance should begin as soon as possible following seizure. In most cases, this should be done on the day of the seizure (Refer to M-397, Chapter 14).

DOJ Policy states that notification letters shall be sent to all interested parties (including owners and lienholders) known at the time of seizure not later than sixty (60) days from the date of seizure. Refer to M-397A, DOJ Policy, Sixty-Day Notice Period in All Administrative Forfeiture Cases.

The notification letter should be provided to the owner at the time of seizure if that person is present. By regulation, 8 CFR 274.8, this notification letter must describe:

- The procedure to obtain a personal interview pursuant to 8 CFR 274.5;

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- The procedure to request judicial review of the seizure by filing a claim and posting a cost bond pursuant to 8 CFR 274.10; and
- The procedure for filing a petition for relief from forfeiture pursuant to 8 CFR 274.13-17.

In order to prepare the notification letter, the following information must be obtained:

- The appraised value of the conveyance;
- The case number from the automated system, and
- The name of the newspaper in which the Advertisement of Seized Conveyance will be published.

All notification letters to owners must be accompanied by copies of:

- 8 CFR Part 274, Seizure and Forfeiture of Conveyances;
- 8 CFR 103.7(c), Waiver of Fees;
- 28 CFR Part 9, Remission or Mitigation of Civil and Criminal Forfeitures;
- Section 274 of the INA, Bringing In and Harboring Certain Aliens, and
- The advertisement of seized conveyance.

- (b) Related Notification Information. The amount of the cost bond is calculated based on ten percent (10%) of the appraised value, with a minimum amount of \$250 and a maximum amount of \$5,000. The advertisement must be published once a week for three (3) successive weeks in a newspaper of general circulation in the federal judicial district in which the seizure occurred. The advertising order and the notification letter should be prepared to ensure that owners are afforded a twenty (20) day period from receipt of notification in which to file a claim and cost bond.

If the notification letter is given to the owner at the time of seizure, the seizure file must so indicate. The owner should sign for the receipt of the letter, but if the owner is unwilling to sign, the seizure file should reflect the refusal. If the owner is not present, serve the notification letter on the operator. When someone else claims ownership of the conveyance, serve him/her with the notification letter.

If there is reason to believe that any other individual is a beneficial owner, as defined in 28 CFR 9.2(c) and 8 CFR 274.1(b), a notification letter should be provided to that person. If the conveyance is registered in the name of a company, notification should be sent to the company's address. Leasing companies (even companies are treated as lienholders and must be sent to the notification letter for lienholders.

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If the owner is not present at the time of the seizure, or if a subsequent record check indicates another owner, or if there appears to be anyone else with an ownership interest, send these interested parties the notification letter by certified mail, return receipt requested.

Notification letters must be sent to any party with a property interest in the conveyance even if he/she has been arrested and incarcerated. In that instance, notification should be sent to the owner at the place of confinement as well as the last known address.

Particular care must be taken to ensure that notification is sent to the proper address. If the notice letter is returned as undeliverable or unclaimed, the returned letter should be kept in the seizure file to serve as proof of attempted service.

- (c) Lienholders. There is a specific notification letter for lienholders (Refer to M-397, Chapter 14). Lienholders must also be sent copies of the regulations, the statute and the proposed advertisement. In addition, lienholders must be sent the Financial Statement (Refer to M-397, Chapter 14, Document 4) to complete and return with their petition.

Leasing companies are also sent the lienholder notification letter. Leasing companies are those businesses engaged in long-term contracts with lessees and the lessee has the actual use of the conveyance.

- (d) Attorneys. Attorneys should file a Notice of Entry of Appearance as Attorney or Representative on Form G-28. Once the Notice of Entry of Appearance has been filed, the attorney must be sent copies of all notification letters, copies of previous correspondence from the client(s) and decision letters. The attorney is entitled to a copy of any sworn statement executed by his/her client. No other investigative material should be released. Attorneys may attend personal interviews with the clients but not in lieu of the clients.

- (e) Publication of Notice of Seized Conveyance. Publication of notice of seizure and intent to forfeit a conveyance is mandated when the appraised value of the seized conveyance is \$500,000 or less. The seizure of a conveyance whose appraised value is greater than \$500,000 need not be advertised by the Service.

Notice of the seizure and the potential forfeiture of the conveyance is provided to the general public by publication in the legal classified section of a newspaper.

Please note that the Advertisement of Seized Conveyance must accompany the notification letters to the owners and the lienholders. The requirements for this advertisement are set forth in 8 CFR 274.9. The advertisement must include:

- A description of the conveyance including vehicle identification number;
- The time and place of seizure;
- That the conveyance is subject to forfeiture;

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- That there are two exceptions from forfeiture, set forth at 8 CFR 274.5(b);
- That the Service is considering forfeiture and that the seized conveyance may be sold or disposed of otherwise if declared forfeited; and
- That any prospective petitioners for relief from forfeiture should submit petitions pursuant to 8 CFR 274.13 - 17 within thirty (30) days of the date of the first advertisement.

Although the regulations do not require that the Advertisement of Seized Conveyance inform the reader of the availability of judicial review, the policy of the Service is to include information on the filing of a claim and posting of a cost bond pursuant to 8 CFR 274.10.

44.9 Personal Interview.

The owner of a seized conveyance may request a personal interview in order to determine whether the Service will continue with the forfeiture proceedings. Any person or entity who appears to have an ownership interest in the conveyance should be provided notice of the opportunity for an interview. Beneficial owners and registered owners may request an interview. Note that lienholders (including companies who lease conveyances to customers in accordance with a long-term lease and the lessee has the actual use of the conveyance) are not generally afforded interviews. The Service may schedule personal interviews for more than one person or entity having an interest in the conveyance. The owner is advised of the opportunity for an interview in the notification letter. The interview should be held as promptly as possible after the date of seizure.

The interview should be conducted by an immigration officer. This officer should not necessarily be the seizing agent. The owner may request a personal interview with an immigration officer other than the officer who initially seized the conveyance pursuant to 8 CFR 274.5. Owners are entitled to representation by an attorney at the time of the interview. Attorneys may not attend the interview in lieu of the owner, but may accompany their clients. The owner may bring an interpreter to the interview.

If the person requesting an interview claims to be the owner of the conveyance even though he/she is not the registered owner, an interview should be scheduled. The claimant should produce proof of ownership interest in the conveyance at the interview.

The purpose of the interview is to provide the owner an opportunity to present evidence and arguments to support his/her position that the conveyance is not subject to seizure or forfeiture. The burden of proof is on the owner, not on the Service. There is no requirement that the interviewing officer justify the seizure, present evidence to establish the violation, or articulate the probable cause basis upon which the conveyance was seized. The owner is not required to answer questions posed by the interviewing officer.

The evidence and arguments presented by the owner may be oral or written. At the discretion of the interviewing officer, the interview itself may be held in person or via telephone. If an

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owner requesting a personal interview is inadmissible to the United States or the owner is incarcerated, reasonable accommodations should be made to conduct the interview.

The interviewing officer should write a brief summary of the interview to be included in the seizure file. A narrative of what was said and what, if any, evidence was presented should be included in this report.

The interview also provides an opportunity to further investigate the persons or entities with a property interest in the conveyance. Questions should be asked to determine beneficial ownership interest and the identity of secured lienholders. Names and addresses should be obtained. Photocopies of documents presented as proof of ownership, such as sales receipts, canceled checks, and lien payment books, should be made at that time.

The following questions will assist the interviewing officer in the determination of beneficial ownership:

- Who are the regular users of the conveyance?
- Do you need to obtain permission to use the conveyance?
- How many people have a set of keys?
- Who pays for the insurance?
- In whose name is the insurance listed?
- Are there any other names listed on the insurance plan?
- Who pays for the routine maintenance on the conveyance?
- Where is the conveyance primarily garaged?

If a decision is made not to return the conveyance to the owner based upon the interview, the owner should be advised either orally or in writing of the decision. If the decision is oral, the seizure file should be noted to reflect that decision.

In the event that a determination is made to return a conveyance pursuant to 8 CFR 274.5 and the case is subject to judicial forfeiture proceedings, these steps should be taken:

- Notify the United States Attorney that a determination has been made that the seized conveyance is to be returned to the owner; and
- Request that the judicial forfeiture proceedings be terminated if they have been commenced.

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44.10 Returns Prior to Forfeiture.

(a) General. Circumstances may arise which will warrant returns of seized conveyances prior to forfeiture, such as:

- No conveyance used as a common carrier in the transaction of business as a common carrier may be forfeited unless the owner or person in charge of the conveyance was a consenting party or privy to the illegal act.
- A conveyance may not be forfeited where the acts giving rise to the seizure were committed by a person unlawfully in possession of the conveyance in violation of the criminal laws of the United States or any state.

The burden of proof is on the owner, not the Service, to establish lack of knowledge of the unlawful use of the conveyance or in establishing that the conveyance is not subject to either seizure or forfeiture pursuant to 8 CFR 274.5(b) or (c). (Refer to M-397, Chapter 6).

(b) Conveyance Was Used in An Act to Which the Owner Was Not Privy, or Did Not Consent, and the Owner Took All Reasonable Steps to Prevent the Illegal Use of the Conveyance, [8 CFR 274.5(c)(3)]. The so-called innocent owner return, is the most frequently invoked and most frequently misinterpreted category of return. In order to qualify, the owner must establish not just lack of knowledge and lack of consent, but also that he/she took all reasonable steps to prevent the illegal use of the conveyance.

An owner who was not aware of the violation, but who took no affirmative steps to prevent the illegal use of the conveyance, is not eligible for an innocent owner return. For example, the following individuals would not qualify for an innocent owner return:

- The owner was convicted of a crime related to the smuggling attempt and was involved in the illegal use of the conveyance.
- The owner was not convicted of a crime related to the smuggling attempt but was present and involved in the illegal use of the conveyance.
- The owner was not involved in the illegal use of the conveyance but was aware of it.
- The owner was ignorant of the illegal use, but was negligent in lending his/her conveyance.
- The owner was not negligent but failed to do all he/she reasonably could to avoid having the conveyance put to an unlawful use.

The assertion of lack of knowledge of the operators intent does not establish that the owner took all reasonable steps to prevent the illegal use of the conveyance. Lack of knowledge of the intending use of the conveyance, lack of criminal intent, or lack of awareness of the alien's inadmissibility are all mitigating factors to the forfeiture action but are not sufficient

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arguments for an innocent owner return.

- (c) Conveyances Returned in the Best Interests of Justice. The Service may decide that it is in the best interests of justice not to pursue forfeiture and return a seized conveyance. This category of return is generally reserved for unique circumstances. It should be noted that this type of return may be made at any point in the proceedings. Evidence presented at the interview may lead to a determination of eligibility for return pursuant to 8 CFR 274.5(d).

44.11 Procedure for Return.

If a decision has been made to return a conveyance pursuant to 8 CFR 274.5, the owner must be informed of the conditions for return. The conveyance will be returned to the owner contingent upon execution of a Hold Harmless Agreement and payment of all costs and expenses of the seizure. (Refer to M-397, Chapter 14). Further, the owner must also be informed that he/she must take possession of the conveyance within twenty (20) days of receipt of written notice of availability for return and the consequences for failure to comply. The exception to this rule is where a determination is made that the conveyance was not subject to seizure, then pursuant to 8 CFR 274.5(e)(1), it is returned without any conditions.

If the owner fails to comply with the conditions of return and gain possession of the conveyance within twenty (20) days of receipt of written notice of availability for return, then the conveyance shall be considered voluntarily abandoned to the United States. In this case, the disposal of the conveyance would be conducted in accordance with procedures for the disposal of voluntarily abandoned property. [Refer to M-397, Chapter 11].

44.12 Judicial Forfeiture.

- (a) Although only a small percentage of conveyance seizure cases are litigated in U.S. District Courts, the seizing agent must be prepared for that possibility in every case. In addition to preparing a complete investigative file, the seizing agent will be expected to:

- Assist in the preparation of the civil forfeiture complaint;
- Ensure that any requests for additional investigation are promptly addressed;
- Locate witnesses for discovery and trial testimony; and
- Be prepared for rigorous cross-examination with respect to documents and reports contained in the case file.

- (b) Jurisdiction. There are two methods by which jurisdiction over a seizure case may be transferred to a United States Attorney's Office (USAO) for judicial forfeiture proceedings. (Refer to M-397, Chapter 7).

- If the appraised value of the conveyance is greater than \$500,000, the seizure case must

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be transmitted to the USAO in the federal judicial district having jurisdiction over the forfeiture action.

- If the appraised value of the seized conveyance does not exceed \$500,000 and the owner has filed a proper claim and cost bond (or has obtained a waiver of the cost bond requirement) within the established time frame, the case is subject to judicial forfeiture proceedings.

The procedures for requests and processing claims for judicial review may be found in Chapter 7 of M-397.

- (c) Offer to Compromise. Not all cases in which judicial forfeiture proceedings are requested will be transmitted to the USAO. Pursuant to Executive Order 12778 of October 23, 1991, the Determining Official should attempt to resolve a seizure case administratively whenever an evaluation of the merits of the case indicates an administrative settlement would be appropriate. (Refer to M-397A, DOJ Policy, Executive Order 12778, Civil Justice Reform, October 23, 1991). In addition, DOJ policy states that settlements should be pursued as a way to conserve resources where the ends of justice will be served. (Refer to M-397A, DOJ Policy, Policy Regarding Forfeiture by Settlement, October 31, 1991).

There are situations in which administrative relief from forfeiture may be appropriate when a claim and cost bond have been filed. (Refer to M-397, Chapter 7).

44.13 Administrative Forfeiture.

- (a) General. A conveyance having an appraised value not exceeding \$500,000 is administratively forfeited when no claim and cost bond (as well as no request for a waiver of the cost bond requirement) have been received within twenty (20) days of the first publication of the advertisement.

Once the conveyance has been administratively forfeited, a Declaration of Forfeiture, Form I-634, must be executed. (Refer to M-397, Chapter 14). This form is the title document which transfers the ownership interest in the conveyance to the United States [8 CFR 274.4(c)]. Any property interest in a conveyance is automatically terminated as of the date of the seizure, if the conveyance is later declared forfeited [8 CFR 274.4(b)].

In all cases in which a petition for relief from forfeiture has been filed, a Declaration of Forfeiture must be executed prior to the determination made on the petition [8 CFR 274.15(b) and 274.16(c)].

- (b) Definitions. The Attorney General, or his/her designee, has the authority to remit or mitigate a forfeiture. The procedure is initiated by a petition for remission or mitigation of forfeiture.

Remission ameliorates the effects of the forfeiture for those individuals who lacked involvement

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in, and knowledge of, the conduct that resulted in the forfeiture and who took reasonable steps to ensure that the conveyance would not be used contrary to law.

Mitigation takes the form of a money penalty imposed upon the petitioner in addition to any other sums that would be chargeable as a condition of remission .

- (c) Types of Petitioners. There are three (3) types of petitioners described as follows [**Note:** that DOJ regulations also provide for general creditor petitions (28 CFR 9.6(a))]:

Owner. A person who has a right to possess and use a conveyance to the exclusion of other persons;

Beneficial owner. A person with actual use of, as well as an interest in, the conveyance subject to forfeiture;

Lienholder. A creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular conveyance subject to forfeiture.

- (d) Types of Petitions. There are three (3) types of petitions available to request relief from forfeiture:

Petitions for remission of forfeiture. These petitions are seeking relief from forfeiture in the form of a non-penalty return of the conveyance. They are commonly filed by lienholders and are filed prior to the disposition of the conveyance;

Petitions for mitigation of forfeiture. These petitions are seeking relief in the form of a return of the conveyance after payment of a penalty. They are commonly filed by owners and are filed prior to the disposition of the conveyance.

Petitions for restoration of proceeds of sale if the forfeited conveyance has been sold; or petitions for the restoration of the appraised value of forfeited conveyance where the conveyance has been placed into official use or otherwise disposed. These petitions are filed after the disposition of the conveyance. For a discussion of restoration of proceeds, generally applicable to lienholders, refer to M-397, Chapter 9.

- (e) Processing Petitions. Petitions for remission or mitigation should be received within thirty (30) days of the date of first publication of advertisement. (8 CFR 274.14(a)). For the definition for filing, refer to 8 CFR 274.1(h). The Service must accept petitions up to the time of the disposal of the conveyance. A petition for remission or mitigation of forfeiture which arrives after the disposal may not be considered. Refer to M-397, Chapter 8, Pages 3 - 11, for granting of relief of forfeiture cases, denial and reconsideration requests of denial.

- (f) Release of Conveyance. Once a decision has been reached to grant relief from forfeiture, the conveyance should be released as soon as possible after compliance with the terms of

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the release.

If the conveyance is in Service custody, a Report of Property Shipped (G-504) should be executed to provide written documentation of the transfer of the conveyance. The conveyance should only be released to the owner. If the owner wishes to name another person as an agent to act on his/her behalf, the owner must provide written authorization.

If the conveyance is in the USMS custody, the petitioner should be provided with the name of the contact person at the USMS to arrange for the release. The USMS will also have a document for the transfer of the conveyance (Seized Property and Evidence Control, USMS-102). Any arrangements to authorize someone other than the owner to pick up the conveyance must be made with the USMS directly.

44.14 Disposal.

(a) Once the administrative processing of a case has been completed, the conveyance is ready for disposal action. Disposal action should be initiated only upon completion of each of the following steps:

- All petitions must have been adjudicated;
- Any claim and cost bond must have been withdrawn;
- The advertisement must have been completed;
- The thirty (30) day period following the first date of publication of the advertisement must have passed; and
- A Declaration of Forfeiture (1-634) must have been issued.

In addition, conveyances which have been declared forfeited to the United States by a court order are available for disposal action.

(b)

- (1) Official Use. Pursuant to 8 CFR 274(b)(4)(A) of the INA, a seized conveyance may be retained by the Service for official use after the Declaration of Forfeiture (1-634) has been issued. Any conveyance forfeited under an administrative proceeding or under a court order may be considered for official use.

The Attorney General's Guidelines on Seized and Forfeited Property (Refer to M-397, Appendix T) [See AM 4.1.203] set forth the procedures for requesting and approving forfeited conveyances for official use. Official use means utilization of a forfeited conveyance by a law enforcement agency in the direct performance of law enforcement activities. The intended use of the conveyance must be specifically detailed in the request for fleet

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placement.

- (2) Approval Process. The field office must forward a written request for a seized conveyance for official use specifying the type of conveyance needed (sedan, four wheel drive truck, or small boat). The request must detail the intended use for the conveyance and must identify by fleet number the fleet conveyance being replaced. If a fleet conveyance is not being replaced, justification must be given for an addition to the existing fleet. Further, a request must detail how the conveyance will be used in the direct performance of law enforcement activities. The USMS should be informed that the conveyance is under consideration for official use.

Requests for official use will be forwarded to the ROAFO for review and subsequent forwarding to HQAFO and HO Fleet Management. The seizing office will not necessarily be given first priority. In fact, the opposite may be true so as to avoid any inference of impropriety relative to the seizure action.

The conveyance is considered placed into official use as of the date a favorable decision memorandum is issued by HQ Fleet Management.

44.15 Disposal by the United States Marshals Service.

- (a) General. If the conveyance is not to be considered for official use, the USMS must be informed that the conveyance is available for disposal action. At that time, the USMS must be provided with a copy of the Declaration of Forfeiture, Form I-634, and a copy of the seizure form. Local USMS offices may require additional information.

Directions to proceed with disposal may be accomplished by transmittal of the Report of Property Shipped, G-504. These forms should be accompanied by a memorandum setting forth specific instructions as needed. The instructions to the USMS should:

- State that the Service is not interested in the conveyance for official use;
- State where the conveyance is located;
- State whether a local law enforcement agency has submitted an Application for Transfer of Federally Forfeited Property (DAG-71) requesting Equitable Sharing;
- State whether there is a need to distribute the proceeds of any sale to a lienholder or owner;
- If there are proceeds to be distributed, inform the USMS of the Service's costs (including any penalty) and the recognized net equity of a lienholder;
- State the name and address of the person to whom any proceeds will be distributed; and
- State whether or not the conveyance has been altered so as to facilitate the smuggling of

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aliens or contraband.

The USMS generally disposes of the conveyance in the following order:

- Placement of the conveyance into official use for the seizing agency. Before proceeding to any other disposal action, the USMS should request a deliniation of official use from the Service;
 - Transfer of the conveyance to a local law enforcement agency pursuant to an approved Equitable Sharing request;
 - Placement of the conveyance into official use by the USMS;
 - Transfer of the conveyance to the federal agency which has requested the conveyance;
 - Sale at public auction; or
 - Depending on the appraised value of the conveyance, sale to a salvage yard, sale by sealed bid or order for destruction.
- (b) Prohibition Against Purchase at Auction. Department of Justice employees are generally prohibited from purchasing property that has been forfeited to the United States and is being sold by the DOJ or its agents. [28 CFR 45.735-18]. This policy is intended to ensure that there is no actual or apparent use of inside information by employees wishing to purchase such property. The purpose of this policy is to protect the integrity of the asset forfeiture program. (Refer to M-397A, DOJ Policy, Forfeiture Policies, July 3, 1990).
- (c) Personal Possessions/License Plates. Prior to the final disposition action, any remaining personal possessions in the conveyance must be removed and disposed of in accordance with abandonment proceedings. (Refer to M-397, Chapter 11). In addition, the conveyance registration plates must be removed from the conveyance. The appropriate DMV should be notified that the conveyance was forfeited pursuant to Section 274(b) of the INA and sold at auction. Any original registration documents should be returned to the DMV.
- (d) Withdrawal from Disposal. If the Determining Official receives a petition for relief from forfeiture after the conveyance has been forwarded to the USMS for disposal, but before final disposition action has occurred, the petition must be accepted as timely filed. The Service should notify the USMS (by telephone and in writing) that all disposal proceedings must be halted until further notice.

While this is inconvenient to all involved, especially when the petition is received the day before a scheduled auction, the regulations do not permit the Service to reject the petition prior to final disposal action [8 CFR 274.14 and Chapter 8, Page 3 of M-397].

If after the adjudication of the petition, the conveyance is once again available for disposal, the

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USMS must be informed in writing that they may proceed with the disposal action.

- (e) Distribution of Proceeds to Petitioner. The USMS must be advised of the procedures set forth in 8 CFR 274.15 and 274.16 relative to the distribution of proceeds to a petitioner who has not complied with the terms of a grant of relief from forfeiture. The USMS should be provided a courtesy copy of the letter granting relief from forfeiture. If a petitioner fails to comply with the terms of the grant of relief, the conveyance may be put into official use, sold or disposed of otherwise.

If the conveyance is put into official use, the appraised value of the conveyance minus the costs of the seizure (including the penalty as an item of cost), forfeiture and disposal of the conveyance must be remitted to the petitioner.

If the conveyance is sold at public auction, the proceeds of the sale must be applied first to the costs of seizure (including the penalty as an item of cost), forfeiture and sale, and the balance, if any, is remitted to the petitioner.

In the case of a lienholder who has not complied with the terms of remission, the same procedure would apply except that the lienholder may not obtain an amount greater than their recognized net equity in the conveyance.

The USMS is responsible for issuing the check to cover any proceeds owing to the petitioners. If there are no proceeds available, a letter should be sent to the petitioner informing them of that fact.

- (f) Case Closure. The USMS will generally forward closing documents to the Service office when the conveyance is released to the claimant, placed into official use, or sold at auction. The Seized Property and Evidence Control (USMS-102) is generally used for this purpose [Refer to M-397, Appendix F]. Requests should be made on a regular basis to the local USMS office for closing documents.

For judicial cases, local Service offices should ensure that case closure information is updated on a quarterly basis, at a minimum. If the local USMS office has no information on the judicial case information requested, this fact should be noted in the case file and entered into the automated system.

- (g) Equitable Sharing. A state or local law enforcement agency may request the transfer of a forfeited conveyance which was seized pursuant to a joint investigation by the Service and a state or local law enforcement agency. (Refer to M-397A, Service Policy, Revised Forms DAG-71 and DAG-72, March 18, 1992). The state or local law enforcement agency should complete the Application for Transfer of Federally Forfeited Property (DAG-71) in accordance with the instructions contained on the form. (Refer to M-397, Appendix W). The state or local law enforcement agency should request a Substitute Custodial Agreement through the USMS. This will permit the state or local law enforcement agency to store the conveyance at no cost to the Government until the transfer is approved.

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If a Substitute Custodial Agreement is not obtained, then the state or local law enforcement agency may request the USMS to waive their costs.

In addition, the state or local law enforcement agency is held accountable for paying twenty percent (20%) of the net proceeds for the federal share of the seized conveyance. Again, the state or local law enforcement agency may request a waiver of the federal equitable share.

If there is a lien on the requested seized conveyance, the state or local law enforcement agency must state in its request that the lien will be satisfied prior to accepting transfer of the conveyance. There are no waivers for the payment of liens. State or local law enforcement agencies should also submit a request to the Service for a waiver of its administrative costs.

The following steps must be completed to process an Equitable Sharing request:

- Complete the Decision Form for Federally Forfeited Property (DAG-72) in accordance with the instructions contained on the form (M-397, Appendix S);
- Submit a copy of the state or local investigative report (in addition to the Service investigative report);
- Submit a Declaration of Forfeiture or Judicial Court Order of Forfeiture, and a Report of Expenses and Proceeds from Disposition of Seized Vehicles (G-746-C); and
- Submit all of the required memorandums, forms and waivers to the ROAFO with a copy to the USMS.

Chapter 45: Bonds

45.1 Posting, Cancellation and Breaching of Maintenance of Status Bonds.

(a) Authority. Section 214(a)(1) of the Act provides for the admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as may be prescribed including, when necessary, the posting of a bond to insure that such alien will depart from the United States in a timely manner without otherwise violating his or her status. This section authorizes the Service to require a maintenance of status and departure bond with regard to either an application for admission to the United States or an application for change of nonimmigrant status. (While the statute is silent about the posting of a bond in connection with an application for extension of stay, Service regulations at 8 CFR 214.1(a)(3) authorize the posting of a bond for this purpose, in addition to applications for admission and applications for change of status.) [See also 8 CFR 221.]

(b) Policy. It is important to remember that the posting of a bond cannot serve to make an alien who is inadmissible to the United States admissible; nor can it make an alien who is ineligible

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for a change of status eligible. A bond only serves to enhance an alien's ability to meet his or her burden of proof regarding his or her intention to maintain nonimmigrant status and depart as required by the terms of his or her admission (or change of status). On the other hand, you should be cautious of anyone who is "too eager" to post a bond, since an alien who intends to violate his or her status (e.g., by working in the U.S., or by committing an act of terrorism) may consider the posting of (and loss of) the bond to be nothing more than "the cost of doing business."

(c) Procedures. See 8 CFR 103.6(c)(2) and Chapter 12 of the Deportation Officer's Field Manual for procedural information on the posting, breaching and cancellation of bonds.

Chapter 46: Fees (Added INS - TM2)

- 46.1 General
- 46.2 Cash Collection at Ports-of-Entry

References:

INA: Section 286.

Regulations: 8 CFR 286.

46.1 General.

- (a) General. In recent years, the Service has moved from receiving virtually all of its funding from appropriated sources to a situation where revenues are received from a mix of appropriated and several separate "fee accounts." There are two very visible results at ports-of-entry which result from this change: an increase in resources available to accomplish the mission of the Service and an increased frequency of receiving remittances directly at the ports by Inspections personnel.

The accounts from which the Service now draws funding, besides appropriated moneys, include: the Immigration User Fee Account, established by Section 286(d) of the INA; the Examinations Fee Account, established by Section 286(m) of the INA; the Land Border Inspections Fee Account, established by Section 286(q) of the INA; and the Breached Bond/Detention Fund, established by Section 286(r) of the INA.

- (b) Sources of Revenue. Fees collected from each source must be separately maintained and deposited in the proper account. The two accounts for which Inspections personnel are most likely to receive funds are the User Fee Account and the Land Border Inspection Fee Account and the Examinations Fee Account. All money received for various applications and petitions, including visa waivers and NAFTA applications, is deposited into the Examinations Fee Account. Money received for issuance of Forms I-94, I-444 and various

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PORTPASS programs is deposited into the Land Border Fee Account.

Although not collected directly by port-of-entry personnel, fees for arriving air passengers and certain fines are deposited into the Immigration User Fee Account. The proceeds of bonds which are breached are deposited into the Breached Bond Account.

46.2 Cash Collection at Ports-of-Entry. (Revised IN00-01)

Cash management procedures, although largely unchanged, are increasing in importance as the volume of receipts continues to rise. Almost every port-of-entry now receives fees for applications or services of various descriptions. Cash management procedures described in AM 4.1.304 must be adhered to by all Service employees and supervisors responsible for collecting and depositing fees. On September 11, 1995, the Executive Associate Commissioner for Management issued a memorandum, *Land Border Port of Entry Fee Collection Procedures*, containing fee collection and cash management procedures. These procedures are contained in Appendix 46-1. Larger ports may have dedicated personnel handling receipts; smaller locations may have receipting handled by all employees engaged in inspectional activities.

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Chapter 47: Statistical Reporting for Ports-of-Entry (Added INS - TM2)

- 47.1 General
- 47.2 Required Reports
- 47.3 Workforce Analysis Model (WAM)
- 47.4 Port Office Management System (POMS)
- 47.5 Performance Analysis System (PAS)
- 47.6 Records of Inadmissible Passenger System (RIPS)

47.1 General.

Approximately 4,000 individuals participate in the facilitation and enforcement oriented activities embodied in the Inspections mission. The work you do is important! And so is the accurate and timely reporting of data pertaining to that work.

Workload statistics are important and are used for many purposes. For instance, when Congress considers new legislation, the Service is often asked to provide information to respond to questions concerning various aspects of the work we perform. Interest in land border operations, both within and outside the Service, has increased greatly. The country's continued attention on the war on drugs and the completion of the Free Trade Agreements have brought much attention to the land borders. The Service's lack of appropriated resources for land border operations has received more visibility in Congress. The need to collect meaningful, detailed workload data on land border operations (i.e. prosecutions and criminal aliens) complements the Service's efforts to secure additional personnel for the land border. Numerous decisions, such as those relating to strategic planning, involve knowledge of staffing levels. Budget decisions also hinge on workforce information.

You can refer to the following sources for statistics on the Inspection Program as well as all other Service Programs.

- (1) INS Fact Book (M-338) - Summary of Recent Immigration Data. Published periodically throughout the year. The fact book is a convenient pocket or purse size reference containing key statistics on INS programs. In addition, the fact book contains INS region and district boundary maps, the INS organization chart, employment and budget summaries by program, INS headquarters, region, district, border patrol office locations and contact list, INS detention facilities, asylum offices, a glossary, and a chronology of selected immigration and naturalization legislation.
- (2) Statistical Yearbook of the Immigration and Naturalization Service (M-367). The yearbook is an annual compilation of workload data on all INS programs. The yearbook provides

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immigration data for the year along with related historical information. The major areas covered include: immigrants admitted for permanent residence; refugees approved and admitted; nonimmigrant arrivals; aliens naturalized; aliens apprehended and expelled; and aliens inspected at ports-of-entry.

- (3) NIIS (Nonimmigrant Information System). NIIS contains arrival, departure, and ancillary information pertaining to certain nonimmigrant aliens entering the United States. It contains data on the individual's status, identifies individuals who may have overstayed, and provides statistical information to INS managers. NIIS also provides for queries based on biographical, classification, and citizenship data. Primarily, information for NIIS is collected from Forms I-94, Arrival/Departure Records. NIIS also interfaces with the Central Index System (CIS), Student and Schools System (STSC), Computer-Linked Adjudications Information Management System (CLAIMS), Naturalization Automated Casework System (NACS), Interagency Border Inspection System (IBIS), National Automated Immigration Lookout System II (NAILS), and the Federal Bureau of Investigation (FBI).

Further information on the INS Fact Book and Yearbook can be obtained by calling Headquarters Statistics at 202-376-3066.

47.2 Required Reports.

- (a) General. Regular and ad-hoc reports required by Inspections are listed below. Local managers should keep a calendar to insure these reports are submitted as scheduled. The following table contains a list of regular required Inspections Program reports. All other reports, such as the former CINSP series of reports, have been cancelled.

Report Symbol	Report Name	Frequency
I-577	Daily Airport Passenger Inspection Log	daily
G-105A	Prosecutions report	monthly (PAS)
G-623	Drug seizure report	monthly (PAS)
G-22/G-23	Inspections activity report	monthly (PAS)
---	TWOV/In-Transit Report to HQINS	as necessary
---	Unusual incidents/planned operations	as necessary

- (b) I-577. The daily passenger inspection log is maintained at each airport. A similar log, the I-577A is maintained at preclearance stations. A new log sheet is used daily and maintained chronologically at the port-of-entry for one year [See details for completing the log in Chapter 22.6].
- (c) G-22.1 and G-22.1F. The G-22/G-23 report system is the basic monthly activity report which collects statistical data for every agency program activity. General reporting requirements are described in AM 3.1.101. The report is collected by each employee and

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rolled into work-site and district composites, which are in-turn rolled into regional and national totals. The reports are entered locally into the Servicewide Performance Analysis System (PAS), which compiles the national statistics each month for every Service program area. The PAS system captures key workload data, as determined by Headquarters program managers. The reports are a basis for field office performance evaluations, resource allocations and a wide range of other analyses critical to the agency's mission. All reports monthly are due into the PAS system by the tenth working day of each month.

It is critical that data collection and entry into PAS be complete, timely and accurate. Detailed instructions for completing the G-22.1 are included in Statistical Handbook, G-23 AM Procedures. The G-22.1F is the individual officer's activity report used to collect data for the G-22.1.

The G-22.1 has eight sections: primary inspections operation report, secondary inspections operation report, conveyance summary report, inspections enforcement activity report, inspections processing activity report, inspections position status report, inspections activity analysis report, and inspections activity report - hours.

The primary inspections operation report features automatic calculation of citizen and alien counts and percentages, and specific categories for the Guam Visa Waiver and Visa Waiver Programs, and the Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS) Program.

The secondary inspections operation report features information on the disposition of those referred to secondary (e.g. paroled, referred, to the Immigration Judge etc.).

The conveyance summary report features specific categories for buses, trains, Dedicated Commuter Lane (DCL) vehicles, pedestrians, commercial flights - Accelerated Citizen Examination (ACE) and Advance Passenger Information System (APIS), private flights, in-transit lounge passengers, and passenger and cargo vessels.

The inspections enforcement activity report features activity relating to fraudulent documentation, narcotics and alien smuggling, false claims to other citizenship, entries into the lookout system, mitigated money realized from conveyance seizures, I-213s (Records of Deportable Alien), I-221s (Orders to Show Cause, Notices of Hearing), G-392 intelligence reports completed, prosecutions, assaults on immigration officers, fines, U.S. Customs Service secondary referrals, and criminal aliens.

The inspections processing activity report features workload data related to processing visas, waivers, asylum applicants, and certain permits and applications related to Inspections responsibilities.

The inspections position status report features workforce data.

The inspections activity analysis report features computed ratios and factors. Workload categories such as primary inspections are compare with the number of personnel on duty

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to yield ratios and factors that can be used to analyze certain aspects of the Inspections Program. This section makes use of data already reported, so there is no field office entry required. The information portrayed could identify workload increase/decrease trends as well as hint at developments at certain locations deserving further study and monitoring.

The inspections activity report - hours section features lines for reporting hours expended on intelligence, fraudulent documents, lookout system, narcotics smuggling, alien smuggling, inspections processing activity, administrative duties and reports, carrier liaison, details, AUO, departure control, and statutory and non- statutory overtime.

- (d) G-105A and G-623. These reports, on prosecutions and drug seizures, respectively, are contained in PAS and described in the Statistical Handbook G-23 AM Procedures.
- (e) TWOV/In-Transit Report to HQINS. Ports-of-entry are required to send, via facsimile, a report to HQINS within five days of a TWOV/In-Transit applicant's failure to depart (except those failing to depart timely). This information is necessary to identify areas of concern in the TWOV and In-Transit programs at various ports-of-entry. The required information and format for the report is included in Appendix 47-1. In-Transit applicants refer to those passengers not presented for inspection, who use the sterile in-transit lounges to continue their direct travel out of the United States. Reports are also required for in-transit deportees who are enroute to a third country, destined to the country of their nationality, but fail to depart.

The report is sent to HQINS, TWOV liaison officer at (202) 514-8345. Send only a copy of the report to HQINS; do not send supporting documentation, which is maintained at the port-of-entry for one year after the incident. Report any changes to the abscondee's status (exclusion, apprehension, parole, etc.) using the same report. If there are trends or unusual aspects involved in an incident, those should be reported in the "comments" section of the report.

- (f) Unusual incidents/Planned Operations. See Chapter 2.7 and Appendix 2-1.

47.3 Workforce Analysis Model (WAM).

The WAM data entry program is a menu-driven database application. WAM prompts users for data describing the user's facility and day-to-day operations. The data entry program collects and organizes information from air, land and sea POEs, and combination air/sea and land/sea operations. Data is entered in the WAM data entry program through worksheets using input obtained from historical records of workforce demands occurring at each POE during specific analysis periods. Data already input into POMS through the Trak programs can be imported into the WAM data entry module. To account for seasonal variances, data is collected for low-, medium-, and high-demand weeks. Data for an entire month is collected for sea ports-of-entry.

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The primary purpose of the WAM is to simulate the operations of individual POEs in order to analyze manpower utilization at Air, Land, and Sea POES. WAM provides for: evaluation of scheduled staff versus workload, estimated inspector overtime usage (based on actual rates), analysis of facility utilization based on current or predicted resources, evaluation of inspection methodology (operating procedures) and evaluation of new or revised airport terminal/inspection facilities. Data submission required on an annual basis for modeling to develop accurate estimates of Immigration Inspector staffing requirements based on current and projected workload, and current POE operating procedures. This information is used for annual budget requests for staffing. A WAM projected data set must be submitted for new POEs, POEs being remodeled or updated with changes to number of booths/lanes, POEs anticipating an increase in volume of traffic or passengers or requesting and increase in staffing. The WAM model run must be submitted to Field Operations to be included with the request for personnel.

Data submitted and verified on an annual basis includes but is not limited to current mailing and physical address, phone and fax numbers, staff authorized, schedules, facility configuration including number of booths/lanes, secondary positions, walk times from gates to FIS, queuing area, current local processing times in primary and secondary. This information must be reviewed and approved by the port director or acting port director prior to being submitted. Headquarters personnel and the contractor for the WAM project review the data received to validate and on a regular basis validate data submitted during visits to POEs. (IN99-25)

47.4 Port Office Management System (POMS).

The Port-of-Entry (POE) Office Management System (POMS) is an integrated computer program designed to manage and track resources at INS POEs. It is comprised of a set of administrative modules. Each module is created with a series of database files. Each POMS module contains a subset of data entry screens or worksheets.

POMS Flight Trak, Land Trak, and Sea Track functionality allows inspectors to track the primary and secondary workload factors. In primary inspections, it allows inspectors to enter the total number of people and conveyances inspected at their respective land, air, or seaports. In secondary inspections processing, it allows inspectors to register totals of people processed under various dispositions and other secondary activities. For example, a port will count the total number of person referred from primary inspections to secondary inspections. Additionally, a port will count the number of persons, for example, who are processed under secondary inspection categories such as Paroled, Credible Fear, or Deferred Inspections to name a few.

POMS includes a management tool for tracking and reporting for the G22. The G22

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provides statistical data on POE activities. POMS furnishes menu-driven screens for the input of POE activity data on a daily or monthly basis. Individual inspectors also input the number of hours they spend on each activity into POMS. Data that has been input into Flight Trak, Land Trak, and Sea Trak can also be imported into the G22 module. This data is used by POMS to generate the G22.1 Resource Activity Summary Report, which is required monthly at each POE.

POMS includes a staff scheduling and overtime tracking system. The Scheduling and Leave module allows authorized POE officials to create a POE schedule automatically for bi-weekly or monthly periods, overtime schedules for Sundays, and swap employees' schedules. Included in the scheduling management process is the ability to draw information on overtime, Alternate Work Schedules (AWS), schedule rotations, holidays, etc. Using POMS scheduling, employees can transfer from POEs or work at terminals or subports, and still be tracked as to the shift and hours assigned to a shift.

The Overtime and Budget menu allows the user to select among three options: Overtime, Wheel Management, and Administration. Overtime and Budget is an important tool that aids the user in maintaining the required annual overtime cap of \$30,000. This tool tracks each overtime bill (G-202) entered for each overtime assignment against the overtime wheel, the overtime cap and the overtime budget for the POE.

The WAM data entry program is a menu-driven database application comprised of many database files. WAM prompts users at the various POEs for data describing the user's facility and day-to-day operations. The data entry program collects and organizes information from air, land and sea POEs, and combination air/sea and land/sea operations. Data are entered in the WAM data entry program through worksheets using input obtained from historical records of workforce demands occurring at each POE during specific analysis periods. Data already input into POMS through the Trak programs can be imported into the WAM data entry module, so there is no duplicate data input within POMS. To account for seasonal variances, data is collected for low-, medium-, and high-demand weeks. Data for an entire month is collected for sea ports-of-entry. This data is submitted to HQ once a year where it is fed into the workforce analysis models, a separate series of simulation programs, to determine POE staffing requirements. (IN99-25)

47.5 Performance Analysis System (PAS).

The G-22.1 utilizes computerization to assist in data compilation and calculation with over 50 line and column entries automatically completed by the Performance Analysis System (PAS).

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The Performance Analysis System is an on-line data entry and retrieval system of workload information on the Service's various programs, including Enforcement, Examinations, and Management. The Performance Analysis System automatically manipulates data in seconds, that in the past would take hours of manual effort.

You can access workload information on your office and any other office, district, region, or for the entire Service through PAS. A PAS on-line tutorial is available to assist you in gaining access to this information.

47.6 Records of Inadmissible Passenger System (RIPS).

The RIPS database is maintained by HQ Inspections. **[reserved]**

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Chapter 48: Overtime Policy and Audits (Added INS - TM2)

- 48.1 Overtime Policy
- 48.2 Overtime Audits

References:

INA: Sections 283, 286.

Regulations: None

Other: Overtime Auditing Manual; AM 1.3.104.

48.1 Overtime Policy.

The Immigration and Naturalization Service policy is that overtime should be expended for the efficient inspection of persons presenting themselves for inspection and the accomplishment of the Service mission. This policy provides direction for the control of 1931 and 1945 Act overtime. A complete explanation of overtime is found in AM 1.3.104 titled, "Immigration Inspection Extra Compensations" and AM 1.3.106 titled, "General Overtime."

- For scheduling purposes, Saturday is part of the basic work week. Therefore, regular scheduling should encompass Monday through Saturday, including holidays.
- Scheduling should reflect the timing of the inspectional workload, particularly at air and seaports. Each port-of-entry shall review traffic arrival trends to ensure that scheduling is commensurate. It is the Service's goal to inspect the majority of the arriving traffic by inspectors on regular duty time with minimal use of overtime.
- The inspector to passenger ratios used for overtime assignments shall be the same as those used during the regularly scheduled work week. See Appendix 48-1, Part III, Policy, Paragraph 3..
- All overtime earnings are subject to the statutory overtime cap. It is the responsibility of each Officer and their first line supervisor to ensure that all overtime earnings are reported in a timely manner to the Overtime Control Officer. Administratively Uncontrollable Overtime (AUO), Law Enforcement Availability (LEA), Fair Labor Standards Act (FLSA), 1931 Act overtime, and 1945 Act overtime shall be included in all overtime computations.
- Employees who are eligible to work Inspectional overtime and do not wish to do so shall be identified. However these identified employees shall remain available for overtime assignments if a staffing emergency occurs.
- Overtime assignments should be equally distributed and tracked on a monetary basis.

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- No one above the grade of GS-14 shall participate in inspectional overtime. Port Director's at the GS-13 and 14 level shall only work 1931 Act overtime on an irregular basis and on random shifts. Time spent in 1931 Act activity shall only be spent in first line supervision of immigration inspectors engaged in inspecting applicants for entry into the United States.
- Each supervisory immigration inspector and all Service manager's will have a critical element in their Performance Work Plan which requires the responsible and efficient administration of overtime.
- Time spent traveling to or from an overtime assignment, regardless of the distance or time involved, is not to be compensated as hours worked. The statutory minimum payment of two hours of 45 Act overtime, and the two hour rollback provision for 31 Act overtime, whenever an employee is called out to work on an overtime basis, will compensate the employee for travel to the temporary duty site.
- A Form G-202 "Inspection Overtime Order, Report and Certification," shall be completed for each overtime assignment completed. Supervisors should review the G-202's daily and the district and regional Inspections Program managers should review them biweekly.
- Each district should use 30% or less of its overtime on discretionary overtime. Discretionary overtime, also known as non-statutory overtime, is weekday overtime excluding holidays. Discretionary overtime includes weekday 1931 Act and 1945 Act overtime. Non-discretionary or statutory overtime is the 1931 Act overtime worked on Sunday and holidays. Weekday overtime is considered discretionary because each manager has the ability to control its use.
- Officers-in-charge and supervisory immigration inspectors shall maintain strict control of overtime assignments and expenditures. Such officers shall conduct a continuing in depth review of all work schedules, staffing patterns, primary inspection activity reports, duty assignment sheets, secondary inspections logs, and schedules of arriving vessels and aircraft. Information obtained from such a review shall be used to ascertain where and when changes in scheduling and overtime assignments will result in more efficient and economical operations. These review efforts shall be regularly monitored at the district and regional levels.
- District and regional offices shall review biweekly all duty assignment sheets (G- 259a). Such a review shall ensure that Sunday and holiday assignments, for both primary and secondary, are held to a minimum. Such assignments shall be commensurate with actual workloads, established inspector to passenger ratios, and normal as well as seasonal traffic patterns. Primary and secondary staffing on all overtime assignments, including Sundays and holidays, shall not exceed weekday staffing, including supervisors, without valid justification and advance approval. Sunday and holiday staffing that exceeds weekday staffing for comparable passenger loads must be specifically authorized by the Regional Director.

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- Supervisors from other programs (such as Adjudications, Border Patrol, Detention and Deportation, Investigations) who participate in inspectional overtime duties shall do so as journeyman Immigration Inspectors, not as Supervisory Immigration Inspectors.

48.2 Overtime Audits.

The Inspections Overtime Auditing Manual sets forth the guidelines and procedures on conducting overtime audits. [See Appendix 48-1]

Audits will be conducted of ports-of-entry (POEs) in each district annually by designated District Overtime Control Officers as part of the National Inspections Program overtime management and control program. The National Overtime Control Officer will conduct independent audits of POEs and also review the reports prepared by the District Overtime Control Officers. These audits will assist the Service in management of overtime expenditures in the Inspections Program.

The purpose of the audits is to ensure that overtime funds are used appropriately and in accordance with Headquarters directives and guidance. The intent is to document the cost effectiveness and prudent administration of overtime expenditures. The audit teams will provide documentation showing how field units are complying with current policy and provide suggestions for improvement.

The audits will help the districts document their performance in this critical area and will provide Regional and Headquarters program personnel the opportunity to evaluate the Districts' performance and make suggestions as appropriate.

The Office of Inspections will conduct four audits each year. The selection of ports-of-entry for auditing will be based upon the following factors:

- Audit requested by a district.
- Any number of employees who project to reach or exceed the statutory overtime cap.
- Review of reports OT-736, OT-739, EMP-763, and HQINS-33.
- Usage of Non-statutory Overtime (discretionary Overtime) in excess of 30%.
- Increase in overtime expenditures of 10% over comparable period in previous years.
- Complaints from carriers concerning amounts of overtime being billed, audits by other agencies.
- Regional and Headquarters review of workload and scheduling that indicates a possible imbalance.

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- Previous audits which show a pattern of scheduling and overtime use that has not been in compliance with Headquarters policy. Review would be done to evaluate effectiveness of changes instituted.
- High usage of overtime by GS-13/14 Managers.

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You must ensure that each nonimmigrant alien presents the correct version of Form I-94. Aliens seeking admission with a nonimmigrant visa must never submit a green Form I-94W. Only nonimmigrant aliens seeking entry under the Visa Waiver Program (VWP) may use this version of Form I-94. Conversely, an alien seeking entry under the Visa Waiver Program must never submit a white Form I-94. You must not process an alien for admission if they present the incorrect version of Form I-94.

A valid B-1/B-2 visa takes precedence over any application for admission made under the VWP. Thus, if a national from a VWP country presents a Form I-94W but has a valid B-1/2 visa in his or her passport, the alien must be issued a regular Form I-94 and processed as a B-1/2 visitor.

In particular, it is critical that all arriving aliens that are required to be documented on Form I-94 or I-94W provide an adequate address in the United States. An adequate address is one at which any law enforcement official could locate the nonimmigrant alien without undue delay. Nonimmigrant aliens who claim to be touring (e.g. by bicycle or car) must still provide an adequate address for their first night's lodging. In some situations, the address provided might be that of another person who will know the actual whereabouts or itinerary of the named nonimmigrant alien. Nearly all travelers know where they are going - how else are they going to give a taxi driver directions? Many carry printed itineraries from travel agents, or receipts from Internet web sites. They also usually know a relative or sponsor's phone number or address.

You must not process an alien until and unless they provide full and correct information on Form I-94 or I-94W. If you encounter an alien with an incomplete or improperly completed Form I-94, as the situation warrants and depending on local operating conditions, you should first refer these aliens to carrier personnel for assistance in completing the arrival and departure information properly. If this does not result in an acceptable Form I-94, you may refer nonimmigrants that are unwilling to provide complete arrival and departure Form I-94 information, including an adequate address, for secondary processing so they do not delay primary inspection processing.

(B) Land Border Processing: During the primary inspection, determine if additional documentation is required. If so, refer the alien to secondary inspection for further review and processing. Aliens seeking entry under the Visa Waiver Program must be documented on a green Form I-94W. You must document those aliens seeking admission with a nonimmigrant visa, and aliens applying for nonimmigrant classification other than a visitor status and exempt nonimmigrant visas on a white Form I-94. Generally, the inspector will complete the Form I-94, Form I-94W or I-94A, where available. However, there are no restrictions preventing the alien or a third party from filling out the form (except for the Form I-94A). Review the data to ensure that it is complete, legible, and accurately reflects the nonimmigrant's passport or other appropriate travel document information. It is critical that all arriving aliens who are required to be documented on Form I-94, Form I-94W or Form I-94A provide an adequate address in the United States. An adequate address is one at which any law enforcement official could locate the nonimmigrant alien without undue delay.

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Nonimmigrant aliens who claim to be touring (e.g. by bicycle or car) must still provide an adequate address for their first night's lodging, unless the alien is making a short day trip to visit or shop.

(2) Securing Form I-94: Once you complete your primary inspection and separate the departure and arrival portions of Form I-94, you must staple the departure portion of the Form I-94 to the nonimmigrant alien's passport at the bottom edge of the form, at or next to the words "STAPLE HERE." The departure Form I-94 contains this perforated tab specifically for stapling. Do not staple the departure portion of Form I-94 in any other manner. Advise the alien of the requirement to surrender the Form I-94 upon departure, as instructed on the reverse side of the form. When the alien departs the United States, carrier personnel can easily remove the departure card from the alien's passport by tearing along the perforation, without damaging the important information on the departure card.

(3) Special Endorsements: The reverse of Form I-94 contains a series of blocks that must be completed by the inspecting officer in certain instances. Specific requirements are included below, in the discussion of each nonimmigrant category – see Chapter 15.4. This information is entered into CBP automated records. CBP uses these records for a variety of reports to Congress and others. Thus, accurate entry of data into these fields is very important. Item 18 on Form I-94 is of particular Congressional interest and is required for a variety of international agreements. The following table explains the usage of each block on the reverse of Form I-94.

#	Block Title	Usage
1	Occupation	Complete for principal H, J, L, O, P, Q, R, and NAFTA
1	Waivers	Insert section of law for any type of waiver granted
2	INS file	Insert any known "A" number relating to this alien
2	INS FCO	Insert files control office (FCO) when known
2	Petition Number	Complete for H, L, O, P, and Q principals. For F, J, and M record the 10 digit SEVIS ID number.
2	Program Number	Complete for J-1
2	Bond	Check block if bond posted
2	Prospective Student	Check block if prospective student status was indicated by the alien or the U.S. consulate

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2 Itinerary/Comments	Various (see notes for each nonimmigrant class)
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(4) Exemptions to Form I-94 Requirements: A Form I-94 is not required for the following classes of nonimmigrants:

(A) A Canadian national or other nonimmigrant described in 8 CFR 212.1(a) or 22 CFR 41.33 admitted as a visitor for pleasure or business or in transit through the U.S.;

(B) A nonimmigrant alien residing in the British Virgin Islands admitted solely to the U.S. Virgin Islands for business or pleasure under 8 CFR 212.1(b);

(C) A Mexican national seeking admission for business or pleasure, within 25 miles of the Mexican border, for less than 72 hours, holding a valid Mexican Border Crossing Card (any form) or valid Mexican passport and multiple entry B-1 or B-2 visa;

(D) A Mexican national seeking admission for business or pleasure through the Arizona land border ports-of-entry at Naco, Sasabe, Nogales, Mariposa, and Douglas, traveling within 75 miles of the Mexican border, for less than 72 hours, who holds either a valid Mexican Border Crossing Card (any form) or valid Mexican passport and multiple entry B-1 or B-2 visa;

(E) A Mexican national, holder of a diplomatic or official passport, as described in 8 CFR 212.1(c)(1); or

(F) Certain NATO nonimmigrant aliens described at 8 CFR 214.2, who are exempt from the control provision of the Act (refer to 8 CFR 235.1(c)).

You will handle other Department of Homeland Security (DHS) documents that are used as primary data entry documents, notably for employment authorization and alien registration. In any situation where you are required to enter data on such forms or capture a signature specimen, fingerprint, or photograph, review the materials carefully to insure full compliance with the specifications for the form. Historically, the ports-of-entry have had a high rejection rate for such forms, resulting in extra work for the agency and serious inconvenience for travelers. Take the time to review data collection forms before the applicant leaves the area. Periodically review local data collection and quality control procedures to insure full compliance with set standards.

(5) Departure Form I-94 in Passport of Arriving Nonimmigrant Alien: If a nonimmigrant alien arrives with an unexpired Form I-94 that will not be replaced during the course of the inspection due to automatic revalidation provisions as discussed in Chapter 15.3(b), you may readmit for the time remaining after you are satisfied that the alien is admissible.

Special Note for Students: You must issue a new Form I-94 to:

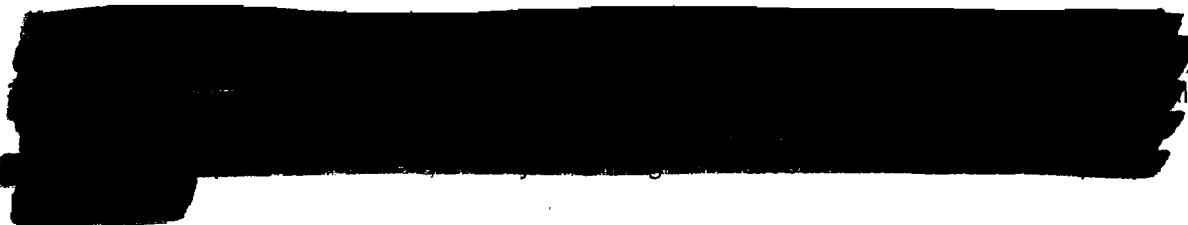
- Academic students (F-1) and their dependents (F-2) in possession of a properly

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endorsed SEVIS Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, who are returning from other than contiguous territory or adjacent islands, or who are returning from contiguous territory or adjacent islands from a departure of more than 30 days, unless the alien is continuing as a student returning from a single break between classes/semesters and has not departed beyond those contiguous territories or adjacent islands during the break.

- Vocational students (M-1) and their dependents (M-2) in possession of a properly endorsed SEVIS Form I-20 who are returning from other than contiguous territory, or who are returning from contiguous territory from a departure of more than 30 days. You must not use the initial or previously issued Form I-94 and former admission number upon readmission. Endorse the new Form I-94 in the manner described below.



(6) Signifying departure on Form I-94 with a CBP Admission Stamp: In the routine course of operations, you will receive departure portions of Form I-94, Form I-94W or Form I-94A. This may occur when individual aliens seek to report their departure, or carriers and border management officials return departure Forms I-94 under a local operating agreement.

Regardless of the method you received the departure Form I-94

if this date is entered as the departure date during the data entry process, the system may determine that the alien overstayed his or her earlier authorized period of admission. This error could have serious implications for the nonimmigrant for future travel to the United States. However, in some circumstances, at some locations, border control officials from Canada or Mexico may apply their admission stamp to the reverse of a departure Form I-94. If the date on a Canadian or Mexican admission stamp reflects a current departure from the U.S. and entry to contiguous foreign territory, this is acceptable as evidence of departure from the U.S. Forward these Form I-94s for data entry.

(c) Procedures for Processing Form I-94s: All arrival Forms I-94 collected by CBP officers and departure Forms I-94 collected by carrier personnel (or, at land borders directly by CBP) must be promptly routed for data entry to the CBP contractor. See handling procedures in Chapters

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21.8 (land), 22.7 (airport), and 23.4 (seaport).

In addition, remove all staples, paper clips, or other foreign materials from any Form I-94 prepared for sending to data entry before bundling with other Forms I-94. The only exceptions are that Form I-94 should remain stapled to Form I-736, Guam Visa Waiver Information. The properly annotated, sorted, and bundled arrival and departure Forms I-94 and I-94W for all nonimmigrant aliens must be shipped daily, but not later than the following business day, via overnight express package delivery services, or fastest available surface mail service to the CBP data entry contractor at the address contained at Appendix 15-8.

(d) Miscellaneous Procedures for Handling Certain Form I-94s: In addition to Forms I-94 encountered at the ports-of-entry during routine primary inspection processing, you may frequently encounter situations which cause serious complications if arrival and departure records are not corrected or properly recorded to the IBIS. These situations and procedures for addressing them include:

(1) Departure Form I-94 not immediately available: When a nonimmigrant visitor asks how to return a departure Form I-94 that a carrier failed to collect on departure, you should advise the nonimmigrant alien that, if he/she returned home with the Form I-94/Form I-94A (white) or Form I-94W (green) in their passport, he/she must correct CBP records. He/she must provide CBP sufficient information to enable us to connect their claimed departure to their original arrival into the United States, so we can close the prior record. Provide the alien(s) the material contained at **IFM** Appendix 15-10.

(2) Correcting "Confirmed" Overstay Lookouts: When a previously recorded, but allegedly erroneous, Form I-94 arrival or departure date causes an automatic lookout entry because the system determined a confirmed overstay condition existed, CBP must try to determine the correct arrival and departure date sequence. Once the arrival or departure date is entered to the IBIS, only the CBP Lookout Unit can change these dates. There are internal procedures to accommodate this. These situations frequently occur as written complaints from aliens, Congressional inquiries, or letters from attorneys or employers.

To address these alleged mistakes, officers handling complaints or inquiries must advise the alien or their representative to submit the information referenced in (d)(1) above to the local port-of-entry or local CBP office, not directly to the CBP contractor, specified at Appendix 15-10. When the alien or their representative return the supporting information, personnel at the local port-of-entry or field office must forward the information, with an explanation of the issue, the current facts contained in IBIS, and a formal request to the CBP Lookout Unit to request the Lookout Unit to modify the dates shown in the IBIS database.

Under no circumstances are CBP personnel to advise aliens or members of the public to communicate with or write to the Lookout Unit directly.

15.2 Passports.

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Except where specifically exempted, each arriving nonimmigrant must present a valid passport. Generally, a passport (defined in section 101(a)(30) of the Act) must be valid for 6 months beyond the period of initial admission [See section 212(a)(7)(B) of the Act and 8 CFR 214.1(a)(3)]. There are a number of countries with which the Department of State has concluded agreements providing for return of the holder to his or her country of origin up to 6 months beyond the nominal expiration date of the passport. If a country is listed on this "6-month" list, his or her passport needs to be valid only until the date to which the alien is being admitted. The "6-month" list is contained in Appendix 15.2. General passport requirements and exceptions are discussed in 8 CFR 212.1 and 22 CFR 41.1.

In addition to determining the validity of each passport presented, you must inspect the document to determine if it has been altered through data eradication, photo substitution, page substitution, or counterfeiting. You also must compare the photograph to the person presenting the passport, to ensure it is not an imposter. The Service makes available various passport studies to assist you in this process. These should be available at Ports-of-Entry for your reference. Instances of passport fraud often occur in batches. [REDACTED]

[REDACTED] Use local port intelligence for trends to assist you in focusing on documents with a high probability of fraud.

Ordinarily, Service officers may endorse the passport of a nonimmigrant applicant for admission only with the admission stamp and specifically authorized notations such as those specified in Chapter 15.3(d), or notations which cancel a visa, when INS officers are specifically empowered to do so. Additional unauthorized passport notations must be avoided.

During the primary inspection at Sea and Air POEs, the inspecting officer shall ensure that the passport number for each applicant for admission who presents a passport (with the exception of a returning resident alien in possession of an I-551 or temporary evidence of such, Re-Entry Permit or Refugee Travel Document) is queried in IBIS/APIS as part of the primary query.

In cases where no APIS record relating to the applicant has been transmitted, the primary IBIS query shall consist of the Applicant's Last Name(s), First Name(s), Date of Birth, and passport number, or A-number (entered into the document # field). In cases where an APIS record relating to the applicant has been transmitted, but the record does not contain document number information, the APIS record must be modified to include the applicant's correct passport number, or A-number (entered in the document # field after the record is selected for modification).

Regardless of whether an APIS record relating to the applicant has been transmitted, when either the biographical page of a machine readable passport or a machine readable nonimmigrant visa is scanned on primary, the system automatically incorporates the passport number into the primary query, and modifies the corresponding APIS record, if necessary. When an I-551 or temporary evidence of such, Re-Entry Permit or a Refugee Travel Document is scanned, the system automatically incorporates the A-number into the primary query, and modifies the corresponding APIS record, if necessary.

When manually entering the passport number on primary, if the passport has a perforated

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number, inspectors shall enter this number into the document # field on primary. If the document does not have a perforated number, the individual booklet number that is preprinted at time of production (as opposed to the number added at the time of issuance) shall be entered. If the document has neither a perforated number nor a pre-printed booklet number, the inspecting officer shall enter the number found in the passport/document number field on the biographical/photograph page of the passport.

(Revised IN99-27)

15.3 Visas.

(a) General. With certain exceptions, each arriving nonimmigrant must present a valid visa. The exceptions are specified in 8 CFR 212.1 and 22 CFR 41.1 and discussed below. As with passports, you must examine each visa for alteration, photo substitution, or page substitution. The Machine-Readable Visa (MRV) has replaced the previously issued red, green, and blue "Burroughs-style" visas. Visas issued by most consular posts indicate "bearer(s)" while those at high fraud posts will specify the name of the person to whom the visa was issued. DHS periodically releases document alerts to help identify genuine visas as well as recently encountered counterfeit and altered visas. These should be readily available at ports-of-entry for reference. Appendix 15-6 includes a list of consular posts and the dates on which they converted to the MRV format.

(b) Automatic revalidation. Specific requirements and restrictions outlined in 8 CFR 214.1 and 22 CFR 41.112 provide for the automatic revalidation of expired nonimmigrant visas of aliens who have been out of the United States for 30 days or less in contiguous territory and have a Form I-94, Arrival-Departure Record, showing the DHS authorization of an unexpired period of admission. Such aliens may apply for readmission in the same classification or in a new classification authorized by DHS prior to their departure. In the latter case, the revalidation includes a conversion to the new classification. In the case of a qualified F-1 student or J-1 exchange visitor who has a remaining period of authorized stay, the absence may have been in either contiguous territory or adjacent islands other than Cuba. Automatic revalidation is applicable only in the case of a nonimmigrant alien who is (Revised by CBP 3-04):

- In possession of a Form I-94, Arrival-Departure Record, endorsed by DHS to show an unexpired period of initial admission or extension of stay; or,
 - A qualified F-1 student or the accompanying spouse or child of such an alien, in possession of a current SEVIS Form I-20AB, Certificate of Eligibility for Non-immigrant (F-1) Student Status – For Academic and Language Students, issued by a school authorized by DHS for attendance by foreign students, and endorsed by the issuing school official to indicate the period of initial admission or extension of stay authorized by the DHS; or,

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- A qualified J-1 exchange visitor or the accompanying spouse or child of such an alien in possession of a valid SEVIS-generated Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status issued by a Department of State designated program sponsor indicating the period of initial admission or extension of stay authorized by DHS.
- Is applying for readmission after an absence not exceeding 30 days solely in contiguous territory (Canada or Mexico), or, in the case of an F-1 student or J-1 exchange visitor or accompanying spouse or child meeting the stipulations above, after an absence not exceeding 30 days in contiguous territory or adjacent islands other than Cuba;

Note: An M-1 student must be applying for readmission after an absence solely in contiguous territory and must present their original Form I-94 and a properly endorsed SEVIS Form I-20MN, Certificate of Eligibility for Nonimmigrant (M-1) Student Status – For Vocational Students.

- Has maintained and intends to resume nonimmigrant status;
- Is applying for readmission within the authorized period of initial admission or extension of stay;
- Is in possession of a valid passport, unless exempt presentation of a passport;
- Does not require a discretionary waiver of inadmissibility under INA 212(d)(3);
- Has not applied for a new visa while abroad as annotated "Application Received at specific post on date" on the last page of the passport by the Consulate or Embassy abroad; and

[REDACTED]

Automatic revalidation does not apply to the Visa Waiver Program. Readmission after departure to contiguous territory or adjacent islands for Visa Waiver Program applicants is covered under 8 CFR 217.3(b).

The Director, Field Operations may parole into the United States or grant a waiver of any documentary requirements only on a case-by-case basis. Pursuant to the memorandum "Exercise of Discretion – Additional Guidance" issued July 20, 2004, this authority has been delegated to the port director, assistant port or chief inspector at the GS-13 level or above. [REDACTED]

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[REDACTED]

[REDACTED]

(c) Valid visa in expired passport. An applicant for admission may use a valid visa in an expired passport, provided he or she also presents a valid passport. The new, valid travel document need not be issued by the same authority which issued the document containing the valid visa. For example, an alien may present an expired Hong Kong Certificate of Identity with a valid nonimmigrant visa plus a valid Hong Kong Special Administrative Region passport. See 22 CFR 41.112.

(d) Admission procedures. Nonimmigrant visas may be issued for single entry, a specified number of entries or multiple entries during the period of validity. Upon admission of single or specially limited entry visas, place your admission stamp on the visa page or the adjacent page to indicate its use. [REDACTED]

[REDACTED]

[REDACTED] This will complicate any attempted alteration. No other endorsement of the admission stamp is authorized except the file number for a "K" alien, the I-94 number for an "F" and "M" alien, and, where the admission stamp is placed in a new passport and the visa is in an expired passport, the admission class and a notation indicating the original visa number, consulate, and date of issuance.

(e) Visa notations.

(1) General. Some nonimmigrant visas will bear a notation from a consular official. The notations are intended to provide you with additional information upon which to base your inspection. You are not bound by conditions set forth in these informal notations, but they may well influence your decision. Common notations include proposed destinations within the U.S., port-of-entry restrictions, and duration of stay. Specific notations relating to certain visa categories are discussed below, in the sections relating to each nonimmigrant category.

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[REDACTED]

(3) PR/VI limitations. An alien who is admitted solely to Puerto Rico or the Virgin Islands, based on a notation on his or her nonimmigrant visa, may be permitted to travel to other parts of the U.S. upon bonafide request. The inspecting officer should note this authorization on the reverse of the I-94.

(4) Restrictions for certain United Nations visitors. Certain nonimmigrants inadmissible pursuant to provisions of section 212(a)(3) may have restricted visas permitting travel only to the immediate area of the United Nations (within 25 mile radius of Columbus Circle, NY). Deviations from this itinerary are permitted in connection with confirmed departure reservations and if the alien has any required visa for entry into the country to which he or she is destined. The Director, Field Operations, New York City, may relax such restrictions in an individual case, upon consultation with the Visa Office of the Department of State. Such aliens are issued Form ER-142.

(f) Revocation or Cancellation by DHS officers. (1) Revocation. In specific instances, DHS officers are delegated authority to revoke valid nonimmigrant visas issued by the Department of State. These are specified in 22 CFR 41.122 and discussed further in Chapter 17.

(2) Cancellation of old indefinite visas. The Department of State has revoked all indefinite "Burroughs-style" nonimmigrant visas that are more than 10 years old. Refer to secondary the holder of such visa, other than a border crossing stamp. These visas are being phased out and replaced with the Machine-Readable Visas (MRV) and are to be canceled upon the admission of the holder. When a visa is canceled in this manner, give the alien a copy of the Department of State's announcement concerning the program. Endorse the passport, next to the canceled visa, "Revoked pursuant to section 221(i) of the INA--Canceled without Prejudice." [REDACTED]

[REDACTED] Until further notice, readmit, without application or fee, persons whose visas were previously canceled under this program. A list of countries whose nationals may, prior to May 5, 1997, have been issued indefinite visas, is included in Appendix 15-2.

(3) Cancellation of visas voided pursuant to section 222(g). For guidance on the

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cancellation of nonimmigrant visas under section 222(g) of the Act, refer to Chapter 15.15. (Paragraph (f)(3) added IN99-08)

(g) Citizens of Canada or Bermuda. The waiver of passport and visa requirements provided by 8 CFR 212.1(a) is applicable only to citizens of Canada or the British Overseas Territory of Bermuda. The waiver is not available to the bearer of a Certificate of Identity or other "stateless person's" document issued by the governments of the above countries as such person is not considered a national of the country that issued the document. Effective March 17, 2003, the waiver of passport and nonimmigrant visa is no longer available to landed immigrants of Canada or residents of Bermuda having common nationality.

(h) Adjacent Islands. This term is defined in section 101(b)(5) of the Act. Cuba is excluded only when the specific reference so states. For purposes of 8 CFR 212 only, the term includes both Surinam and French Guiana.

15.4 Requirements and Procedures for Nonimmigrant Classes.

Each nonimmigrant class has specific restrictions and requirements. Below is a summary of the specific requirements for each. Specific definitions for nonimmigrant classes are included in section 101(a)(15) of the Act, and limited by sections 212(m) and (n) and 214 of the Act.

(a) Foreign government officials.

(1) Classification: **A-1** Ambassador, public minister, career diplomatic or consular officer, and members of the immediate family. See also section 102 of the Act.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (A-1).

Qualifications: Must be an individual listed in the general description. Inadmissible only under section 212(a)(3)(A), (B), or (C) of the Act. See section 102 of the Act.

Terms of admission: Admit A-1 for Duration of Status.

Notations on I-94: A-1, D/S

Special notes:

(A) Presumption of eligibility. Presentation of an A-1 visa is *prima facie* evidence that the alien is entitled to that status.

(B) Dependents. For A-1 nonimmigrants, dependents are entitled to the same

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classification as the principal. "Dependents" include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21. Dependent employment may be authorized under 8 CFR 274a.12(c) and 214.2(a).

(C) Temporary assignments. "TDY" noted on the NIV after "A-1" means the alien is on temporary assignment of 90 days or less - admit D/S. Note "TDY" in block 26 on the reverse of the I-94.

(2) Classification: **A-2** Other foreign government official or employee, and members of the immediate family.

Documents required: Passport valid only to the date of application for admission. Nonimmigrant visa (A-2).

Qualifications: Must be an individual listed in the general description. Inadmissible only under section 212(a)(3)(A), (B), or (C). See section 102 of the Act.

Terms of admission: Admit A-2 for duration of status.

Notations on I-94: A-2, D/S

Special notes:

(A) Presumption of eligibility. Presentation of an A-2 visa is prima facie evidence that the alien is entitled to that status.

(B) Canadian military personnel. A-2 category may include Canadian military personnel on temporary assignment in the U.S. and not traveling on NATO orders.

(C) Dependents. For A-2 nonimmigrants, dependents are entitled to the same classification. "Dependents" include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21. Dependent employment may be authorized under 8 CFR 274a.12(c) and 214.2(a).

(D) Temporary assignments. "TDY" noted on the visa after "A-2" means the alien is on temporary assignment of 90 days or less - admit D/S. Note "TDY" in block 26 on the reverse of the I-94.

(3) Classification: **A-3** Attendant, servant, or personal employee of A-1 and A-2 nonimmigrants, and members of their immediate family.

Documents required: Passport must be valid for 6 months beyond authorized admission. Nonimmigrant visa (A-3).

Qualifications: Subject to all grounds of inadmissibility applicable to nonimmigrants.

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Terms of admission: Admit as A-3 for a period not in excess of three years.

Notations on I-94: A-3, (date to which admitted). Note employer's name in block 26, on the reverse of the I-94.

Special notes:

(A) Presumption of eligibility. Presentation of an A-3 visa is prima facie evidence that the alien is entitled to that status.

(B) Dependents. For A-3 nonimmigrants, dependents entitled to the same classification include more than just the spouse and children. "Immediate family" is defined in 22 CFR 41.21.

(C) Attendants and personal servants defined. The terms "attendants" and "personal employees" are defined in 22 CFR 41.21.

(b) Visitors.

(1) Classification: **B-1** Visitor for business.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission unless otherwise provided for or waived. Nonimmigrant B-1 visa unless waived.

Qualifications: Alien has a residence in a foreign country which he or she does not intend to abandon. Subject to all nonimmigrant grounds of inadmissibility. Alien intends to enter the U.S. for a temporary visit to engage in legitimate activities relating to business. Applicant has made financial arrangements to carry out the purpose of the visit and depart the United States.

Terms of admission: Maximum admission is 1 year. A B-1 will be admitted for a period of time which is fair and reasonable for completion of the purpose of the visit. Extensions are permitted in increments of 6 months (1 year for missionaries).

Notations on I-94: B-1 (date to which admitted). If seaman joining vessel, enter vessel name on reverse.

Special notes:

(A) Restricted admission period. Arbitrarily small admission periods needlessly increase the volume of extension applications and should be avoided. Ordinarily, B-1 admission should be granted for the time requested or longer, in order to reduce needless extension requests.

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(B) Determining eligibility. Consider the source of remuneration and also the actual place of accrual of profits for services rendered by an alien in determining whether an alien is classifiable as a B-1 (See Chapter 15.5 for special NAFTA B-1 instructions). Each of the following has been determined to be permissible B-1 activity if the alien is to receive no salary or other remuneration from a U.S. source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay):

- (1) An alien coming to the U.S. to: engage in commercial transactions (i.e., buying or selling) which do not involve gainful employment in the US; negotiate contracts; consult with business associates, including attending meetings of the Board of Directors of a U.S. corporation; litigate; participate in scientific, educational, professional, or business conventions, conferences, or seminars; or undertake independent research;
- (2) An alien coming to engage in activities that would be classifiable under H-3 except that there is no U.S. employer involved, and is either studying at a foreign medical school and is seeking to enter the U.S. temporarily to take an "elective clerkship" (practical experience and instruction in the various disciplines of the practice of medicine under the supervision and direction of faculty physicians) at a U.S. medical school's hospital without remuneration from that hospital or undertaking training at the behest of a foreign employer by whom the alien is already employed abroad and from whom the alien will continue to receive his or her salary while in training in the United States;
- (3) An alien coming to install, service, or repair commercial or industrial equipment or machinery purchased from a company outside the U.S. or to train U.S. workers to perform such services. (However, in such cases the contract of sale must specifically require the seller to provide such services or training, and the alien must possess specialized knowledge essential to the seller's contractual obligation to perform the services or training and must receive no remuneration from a U.S. source. These provisions do not apply to an alien seeking to perform building or construction work, whether on-site or in-plant except for an alien who is applying as a B-1 for the purpose of supervising or training other workers engaged in building or construction work, but not actually performing any such building or construction work);
- (4) A professional athlete, such as a golfer or tennis player, who receives no salary or payment other than prize money for his or her participation in a tournament or sporting event;
- (5) An athlete or team member who seeks to enter the U.S. as a member of a foreign-based team in order to compete with another sports team (provided: the foreign athlete and the foreign sports team have their principal place of business or activity in a foreign country; the income of the foreign based team and the salary of its players are principally accrued in a foreign country; and the foreign based sports team is a member of an international sports league or the sporting activities involved

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have an international dimension);

(6) An amateur team sports player who is asked to join a professional team during the course of the regular professional season or playoffs for brief try-outs (The teams may provide only for such expenses as round-trip fare, hotel room, meals, and other try-out transportation costs);

(7) A professional entertainer coming to: (i) participate only in a cultural program sponsored by the sending country; who will be performing before a nonpaying audience; and all of whose expenses, including per diem, will be paid by the member's government; or (ii) participate in a competition for which there is no remuneration other than a prize (monetary or otherwise) and expenses;

(8) Crewman of a private yacht, regardless of the nationality of the private yacht, provided the yacht will be sailing out of a foreign home port and cruising in U.S. waters;

(9) An alien coming to perform his or her responsibilities as a "coasting officer" (A coasting officer is used when an officer of a foreign vessel is granted home leave while the vessel is in U.S. ports. The vessel does not remain in U.S. waters for more than 29 days, and the original officer returns in time to depart with the vessel. The coasting officer may then repeat the process with another vessel of the same foreign line);

(10) An alien seeking investment in the U.S. which would qualify him or her for E-2 status (Such alien is precluded from performing productive labor or from actively participating in the management of the business prior to being granted E-2 status);

(11) An alien performing services pursuant to the Outer Continental Shelf Lands Act Amendments of 1978 (The consular officer will annotate "OCS" on the B-1 visa). Alien construction workers who are entering to work from a derrick barge to construct an oil platform on the outer continental shelf are considered to man and crew the barge, not the platform. Foreign-owned barges are exempt from the requirements of 43 U.S.C. 1356(a)(3) which requires that any vessel, rig, platform, or structure used in regulated operations on the outer continental shelf be manned or crewed by U.S. citizens or lawful permanent residents. The Immigration and Nationality Act does not apply to aliens who are manning or crewing foreign-owned derrick barges on the outer continental shelf. Such aliens passing through the U.S. enroute to the outer continental shelf must have an appropriate visa, usually a B-1 visa. (In 1997, the Supreme Court denied certification of a D.C. circuit court decision on this issue);

(12) A personal or domestic servant who is accompanying or following to join a U.S. citizen employer who has a permanent home or is stationed in a foreign country, and who is visiting the U.S. temporarily, provided the employer-employee relationship existed prior to the commencement of the employer's visit to the United States;

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- (13) A personal or domestic servant who is accompanying or following to join a U.S. citizen employer temporarily assigned to the United States (The consular officer will annotate "personal or domestic servant of U.S. citizen (employer's name)" on the B-1 visa);
- (14) A personal or domestic servant who is accompanying or following to join a foreign employer who seeks admission into or is already in the U.S. in B, E, F, H, I, J, L, M, O, P, or R nonimmigrant status (The consular officer will annotate "personal or domestic servant of nonimmigrant alien (employer's name)" on the B-1 visa);
- (15) An alien seeking to enter the U.S. for employment with a foreign airline engaged in international transportation of passengers and freight in an executive, supervisory, or highly technical capacity who meets the requirements for E visa classification but is precluded from entitlement to E classification solely because there is no treaty of friendship, commerce, and navigation in effect between the U.S. and the country of the alien's nationality or because he or she is not a national of the airline's country of nationality;
- (16) An alien coming to perform services on behalf of a foreign based employer as a jockey, sulky driver, trainer, or groom (Such alien is not allowed to work for any other employer);
- (17) An alien coming to open or be employed in a new branch, subsidiary, or affiliate of the foreign employer, if the alien will become eligible for status as an L-1 upon securing proof of acquisition of physical premises;
- (18) An employee of a foreign airline coming to pick-up aircraft if he or she is not transiting the U.S. and is not admissible as a crewman (The alien must present a letter from the foreign airline verifying the employment and official capacity of the applicant in the United States);
- (19) An alien coming exclusively to observe the conduct of business or other professional or vocational activity, provided the alien pays for his or her own expenses;
- (20) An alien coming to participate in any program of furnishing technical information and assistance under section 635(f) of the Foreign Assistance Act of 1961 (75 Stat. 424);
- (21) An alien coming to participate in the training of Peace Corps volunteers or coming under contract pursuant to sections 9 and 10(a)(4) of the Peace Corps Act (75 Stat. 612), unless the alien qualifies for "A" classification;
- (22) An alien coming to participate in the United Nations Institute for Training and Research (UNITAR) internship program, who is not an employee of a foreign

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government;

(23) An alien coming to plan, construct, dismantle, maintain, or be employed in connection with exhibits at international fairs or expositions if he or she is an employee of a foreign exhibitor and is not a foreign government representative and does not qualify for "A" classification; and

(24) An alien coming to participate in a voluntary service program benefiting U.S. local communities, who establishes that he or she is a member of and has a commitment to a particular recognized religious or nonprofit charitable organization and that no salary or remuneration will be paid from a U.S. source, other than an allowance or other reimbursement for expenses incidental to the volunteer's stay in the United States. (The alien must present to the officer a written statement indicating his or her name, date and place of birth, the foreign permanent residence address, the name and address of initial U.S. destination, and anticipated duration of assignment).

(25) An alien employee of an international bridge commission coming to plan, construct, maintain or operate bridge facilities at a port of entry within the immediate confines of the bridge area. (Added 9/15/97; IN97-02)

(26) An alien employee of the International Boundary Commission coming during the field season to maintain a demarcated boundary line between the United States and Canada by clearing brush, cutting trees, etc., including both supervisors for field crews and temporary employees comprising the crew. Employees of the IBC are eligible to cross the border without formal inspection. If encountered at ports of entry, alien employees are classifiable as B-1 business visitors, if otherwise admissible.

(C) Representative from the Vatican. It was formerly the case that the representative to the United States from the Holy See was known as an Apostolic Delegate, since the United States and the Holy See did not have formal diplomatic relations. Members of the Apostolic Delegation were issued B-1 visas, and admitted B-1 D/S. Since the United States and the Holy See now do have formal diplomatic relations, the Mission of the Holy See is now a Nunciature, which is the equivalent to an Embassy. Aliens who are assigned to the Nunciature in positions that qualify for an A nonimmigrant status should be admitted as provided in the discussion of A nonimmigrant admissions.

(2) Classification: **B-2** Visitor for pleasure.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (B-2) unless waived.

Qualifications: Has a residence in a foreign country which the alien does not intend to

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abandon. Subject to all nonimmigrant grounds of inadmissibility. Intends to enter the U.S. for a temporary visit. Will engage in legitimate activities relating to pleasure. Has made financial arrangements to carry out the purpose of the visit to, and departure from, the United States.

Terms of admission: Maximum admission is 1 year. If admissible, a B-2 is generally admitted for 6 months.

Notations on I-94: B-2, (date to which admitted).

Special notes:

(A) Minimum admission period. Unless specifically authorized by a supervisory inspector, the admission period shall be no less than 6 months.

(B) Determining eligibility. If otherwise admissible, admit the following as B-2:

(1) An alien coming for purposes of tourism or to make social visits to relatives or friends;

(2) An alien coming for health purposes;

(3) An alien coming to participate in conventions, conferences, or convocations of fraternal, social or service organizations;

(4) An alien coming primarily for tourism who also incidentally will engage in a short course of study;

(5) An amateur coming to engage in an amateur entertainment or athletic activity, even if the incidental expenses associated with the visit are reimbursed;

(6) A dependent of an alien member of any branch of the U.S. Armed Forces temporarily assigned to duty in the United States;

(7) A dependent of a category "D" visa crewman who is coming to the U.S. solely for the purpose of accompanying the principal alien;

(8) An alien spouse or child, including an adopted alien child, of a U.S. citizen or resident alien, if the purpose of the visit is to accompany or follow to join the spouse or parent for a temporary visit;

(9) A dependent of a nonimmigrant who is not entitled to derivative status, such as in the case of an elderly parent of an E-1 alien, or a domestic partner (Revised by CBP 3-04);

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(10) An alien coming to marry a U.S. citizen or lawful permanent resident with the intent to return to a residence abroad soon after the marriage;

(11) An alien coming to meet the alien's fiancé(e)'s family (to become engaged; to make arrangements for a wedding; or to renew a relationship with the prospective spouse);

(12) A spouse married by proxy to an alien in the U.S. in a nonimmigrant status who will apply for a change of status after consummation of the marriage;

(13) An alien who is entitled to the benefits of section 329 of the Act (Naturalization) and who seeks to take advantage of such benefits irrespective of the foreign residence abroad requirement of section 101(a)(15)(B);

(14) A dependent of an alien member of the U.S. Armed Forces who qualifies for naturalization under section 328 of the Act and whose primary intent is to accompany the spouse or parent on the service member's assignment to the United States;

(15) An alien destined to attend courses for recreational purposes; or

(16) An alien seeking to enter the U.S. in emergent circumstances, when he or she is otherwise entitled to lawful permanent resident status. For example: a permanent resident alien employed by a U.S. corporation is temporarily assigned abroad but has necessarily remained more than 1 year and may not use Form I-551 in order to travel to the U.S. for an emergency and then return abroad. The alien has never relinquished permanent residence, has continued to pay U.S. income taxes, and perhaps even maintains a home in the United States. The alien may be issued a nonimmigrant visa for this purpose and Form I-551 need not be surrendered.

(C) Prospective students. You may encounter an applicant for admission with a B-2 visa noted "prospective student." Such a visa is issued to an alien who is otherwise eligible for F-1 status but who has not selected a school and obtained an SEVIS Form I-20. If otherwise admissible, admit the alien for 6 months and note the I-94 "prospective student." Advise the alien to apply for a change of status on Form I-539 as soon as the SEVIS Form I-20 is obtained.

Occasionally, you may encounter an applicant who, in good faith, presents a B-2 visa but intends to attend school. Before denying admission, consider all circumstances surrounding the case, such as the reasons for not getting a student visa abroad, financial ability, and any possibly fraudulent activity on the part of the alien. If you are satisfied the alien is otherwise *bona fide*, defer inspection to allow the applicant to obtain a SEVIS Form I-20 and any other required documentation and apply for a visa waiver.

(D) "VISAS 93" notation. See Chapter 16.2 for special admission procedures.

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(c) Transits.

(1) **C-1** Aliens in transit through the United States.

Documents required: Passport valid for 6 months beyond the date to which admitted, unless exempt. Nonimmigrant visa (C-1), unless exempt.

Qualifications: Alien must be coming for transit through the United States. All nonimmigrant grounds of inadmissibility apply. Must have sufficient funds, ticket or other means for travel, and permission to enter foreign country.

Terms of admission: Admit C-1 up to a maximum of 29 days.

Notations on I-94: C-1, (date to which admitted).

Special notes:

(A) Limitations: Not eligible for extension of stay. Not eligible for change of status; and

(B) Crewmembers in Transit. If C-1 visa is issued to a crewmember joining a vessel, review letter from shipping line to insure the validity of the request. Admit such crewmembers for 29 days, since many vessels do not leave U.S. territory immediately.

(2) Classification: **C-2** Alien in transit to the United Nations Headquarters District.

Documents required: Passport valid only until the date of admission. Nonimmigrant visa (C-2).

Qualifications: Must be coming to the U.S. to proceed directly to the immediate vicinity of the United Nations Headquarters District. Inadmissible only on 212(a)(3)(A), (B), and (C), and 212(a)(7)(B).

Terms of admission: Admit C-2 for duration of status at the United Nations.

Notations on I-94: C-2, D/S at U.N.

Special notes: Travel limited to a 25 mile radius of Columbus Circle, New York City, New York. See 8 CFR 214.2(c)(2) for more information and Chapter 15.3(e)(4).

(3) Classification: **C-3** Foreign government official, members of immediate family, attendant, servant, or other personal employee of official in transit through the United States.

Documents required: Passport valid for at least 30 days from date of admission. Nonimmigrant visa (C-3).

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Qualifications: Must meet the classification description above. Inadmissible only on 212(a)(3)(A),(B), and (C), and 212(a)(7)(B).

Terms of admission: Admit C-3 up to a maximum of 29 days.

Notations on I-94: C-3, (date to which admitted).

(d) Crewmembers See Chapters 22.2 and 23.

(e) Traders and Investors.

(1) Classification: E-1 Treaty trader, spouse, and children entering the U.S. under provisions of a treaty of friendship, commerce and navigation (i.e., involving trade, commerce and service) to which the U.S. and the alien's country are signatory.

Documents required: Passport valid for 6 months beyond the date to which admitted, unless exempt. Nonimmigrant visa (E-1) (including Canadians).

Qualifications: The company must be majority owned by nationals of the treaty country and the alien must be a national of that country. For a list of treaty countries, see Appendix 32.1 of the Adjudicator's Field Manual. Alien must engage in duties of an executive or supervisory character, or if employed in a lesser capacity have special qualifications that make the alien's service essential to the efficient operation of the enterprise. All nonimmigrant grounds of inadmissibility apply. See qualifications in 8 CFR 214.2(e) and 22 CFR 41.51.

Terms of admission: Admit E-1 for up to 2 years; unless E-1, TECRO, then admit D/S (see special notes section).

Notations on I-94: Front: E-1, (date to which admitted); unless the alien is a TECRO then use "E-1, D/S TRA 4(a)". Reverse: Annotate the remarks section of the dependent's I-94 with the dependent's specific relationship to the principal and the principal's name (e.g., "Spouse of John Jones" or "Child of John Jones").

Special notes:

(A) Dependents. Admit spouse and children as E-1. Their period of admission is up to 2 years or to coincide with the stay of the principal alien. The spouse and children may accompany or follow to join but may not precede the principal alien. Spouse and children may attend school without changing status. The spouse of an E-1 may apply for and be issued an employment authorization document, but the child(ren) of an E-1 (other than "TECRO" cases) may not engage in employment.

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(B) TECRO. The Taipei Economic and Cultural Representative Office (TECRO) represents Taiwan in the United States in the absence of diplomatic relations. Persons possessing a Taiwan passport who are assigned for more than 90 days to the TECRO offices in the United States and their dependents are issued E-1 visas annotated "Employee [or Dependent] of TECRO accorded courtesies and Duration of Status (D/S) per TRA4(a)". (The term "TRA 4(a)" indicates section 4(a) of the Taiwan Relations Act.)

Unmarried dependent sons and daughters of TECRO employees over the age of 21 may be issued E visas so long as they continue to meet the definition of "immediate family"; unmarried sons and daughters, whether by blood or adoption, who are not members of other households, and who will reside regularly in the household of the principle alien.

Other immediate family members (e.g., parents, parent-in-law, etc.) who are members of the same household may be issued B-2 visas. Personal employees of TECRO personnel may be issued B-1 visas.

(2) Classification: E-2 Treaty investor, spouse, and children entering the U.S. under provisions of a treaty between the U.S. and the alien's country of nationality to develop and direct an enterprise in which the alien has invested or is actively in the process of investing a substantial amount of money.

Documents required: Passport valid for 6 months beyond the date to which admitted, unless exempt. Nonimmigrant visa (E-2), (including Canadians).

Qualifications: Must be national of the treaty country, within the general description above. May be investor or qualifying employee of investor. All nonimmigrant grounds of inadmissibility apply. See list of treaty countries in Appendix 31-2 of the Adjudicator's Field Manual. Specific requirements for E-2 investors are contained in 8 CFR 214.2(e) and 22 CFR 41.51.

Terms of admission: Admit E-2 for up to 2 years.

Notations on I-94: Front: E-2, (date to which admitted). Reverse: Annotate the remarks section of the dependent's I-94 with the dependent's specific relationship to the principal and the principal's name (e.g., "Spouse of John Jones" or "Child of John Jones").

Special notes:

(A) Dependents. Admit spouse and children as E-2. Their period of admission is up to 2 years or to coincide with the stay of the principal alien. The spouse and children may accompany or follow to join but may not precede the principal alien. Spouse and children may attend school without changing status. The spouse of an E-2 may apply for and be issued an employment authorization document, but the child(ren) of an E-2 may not engage in employment. Nationality of the spouse and children is not material.

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(B) Employee E-2s. If the alien is an employee of an E-2, he or she must be of the same nationality as the investor and must engage in duties of an executive or supervisory character, or if employed in a lesser capacity have special qualifications that make the alien's service essential to the efficient operation of the enterprise.

(Paragraph (e) revised IN 02-12)

(f) Students. (Amended by CBP 4-04)

(1) Classification: **F-1** Students are those who seek to enter the United States to pursue a full course of study at one of the following types of academic institutions which is approved by the Department of Homeland Security for attendance by foreign students:

- Established college or university;
- Seminary or conservatory;
- Academic high school or elementary school;
- Other academic institution; or,
- Language training program. [See restrictions in section 214(m) of the Act, added by IIRIRA].

Documents required: Passport valid for 6 months, unless exempt. Nonimmigrant visa (F-1), unless exempt. SEVIS Form I-20AB. Presentation or submission of a SEVIS Form I-20 indicates that the alien has been accepted to a school that has been authorized by the DHS to participate in the SEVIS program.

[REDACTED] The form may be a single page document printed front/back or two-page document printed on one side only. Documentary evidence of financial support.

Students making an initial entry into the United States may be admitted for a period up to 30-days before the indicated report date or program start date listed on the SEVIS Form I-20AB. Discretion can be used in those instances where in coming flights are limited and the student is arriving a few days early. There are no restrictions on how early a returning student may enter the United States. This includes continuing students that are transferring to a new school and are re-entering the United States in order to start the program at the transfer-in school.

Initial entry foreign students exempt visa requirements issued a SEVIS Form generated on or after **September 1, 2004** should present either Form I-797, Receipt Notice or Internet Receipt Notice confirming payment of the SEVIS fee. Refer to Special Notes G for details.

Qualifications: Alien must be coming to pursue a full course of study at an approved school as identified in Special Note B, unless qualified for a reduced course load as a commuter student as identified in Special Note D or to resume authorized employment for practical

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training after a temporary absence as identified in Special Note F. All nonimmigrant grounds of inadmissibility apply. See requirements in 8 CFR 214.2(f) and 22 CFR 41.61.

Terms of admission: Admit F-1 for duration of status, except for part-time border commuter students refer to Special Note D. A student making an initial entry may be admitted for a period up to 30 days before the indicated report date or program start date listed on the SEVIS Form I-20AB. There is no restriction on a returning student.

Form I-94: Front: F-1, D/S. Reverse: Record the SEVIS Identification number as it appears on the SEVIS Form I-20. Note in box 22 "N " and the 10-digit SEVIS number. DO NOT WRITE SEVIS. Record the same number on the "Record of Changes" lines provided on the reverse portion of the Form I-94, Departure Record.

Processing initial entry students. Upon initial admission, an F-1 should present a SEVIS Form I-20AB. Review the form for completeness and accuracy. Ensure that both the Designated School Official (DSO) and student have signed and dated the form. If the student is admissible:

Endorse the SEVIS Form I-20AB in the following manner:

- Stamp the "For Immigration Official Use " block with the admission stamp.
- Record the appropriate class of admission and period of authorized stay "F-1 D/S".
- Neatly and legibly record the admission number from the Form I-94 in the space provided.

On the Non-immigrant visa (NIV):

- Endorse with the admission stamp in a manner that will include a portion of the stamp overlapping the NIV.
- Record the SEVIS ID Number on the visa page, if not already annotated.

Upon completion, affix the Form I-94, Departure Record to the student's passport, if not exempt. The SEVIS Form I-20AB and the passport containing the Form I-94 are to be given to the student.

Readmission. Upon subsequent entries, a student with a SEVIS Form I-20AB may have a separate page issued by the DSO authorizing travel or for providing certification or recommendation for practical training. The DSO is required to endorse the SEVIS Form I-20AB confirming that the student is enrolled and attending the school. The SEVIS computer record will be updated by the DSO each term or session to reflect that the student is still registered at the institution and maintaining status. Therefore, if a student travels outside the United States during an ongoing semester, the POE can refer to SEVIS to confirm a student's enrollment status. Alternatively, the POE should refer to the travel

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authorization mentioned above to verify the status of the student. To process the returning student, review the SEVIS Form I-20AB for completeness and for the signatures of both the DSO and the student:

- The CBP officer is not required to place an additional admission stamp on the SEVIS Form I-20AB.
- Endorse the NIV with the admission stamp near the NIV and record the SEVIS ID Number on the visa page, if not already annotated.
- Complete the Form I-94 as noted above.
- The SEVIS Form I-20AB is to be returned to the student.

A student re-entering to begin another program level at the same institution or transferring to another school is not held to the 30-day prior to admission restriction. The SEVIS Form I-20AB should indicate "initial" and the NIV should indicate previous entry. SEVIS should have two records: the first record from the previous program, the second for the new program.

Recording Admission. The admission of the F-1 student making an initial entry to the United States with a SEVIS issued form that has been not been endorsed with an admission stamp is to be entered into SEVIS. Refer to Chapter 15.16 Student and Exchange Visitor Processing.

- Air/sea POEs: The SEVIS record will be updated by entering specific information in the COA screens for all admission.
- Land POEs: The secondary officer will record the student's initial entry directly into SEVIS. Properly documented returning students may be released on primary, if otherwise admissible.

Special notes: [For general information for F-1 students see 8 CFR 214.2(f).]

(A) Certain Students with Expired Visas. F-1 students and dependents with expired visas who have been outside the U.S. for less than 30 days solely to contiguous territory or adjacent islands may be readmitted if they have their original Form I-94, Departure Record or a valid SEVIS Form I-20AB. [See 8 CFR 214.1(b)(1) and 22 CFR 41.112]. This provision does not apply to:

- [REDACTED]

(B). Full Course of Study. A full course of study is generally defined as 12 credit hours or 18-22 weekly clock hours per term or session. Definition varies by program type. Additional information is available in 8CFR214.2(f)(6). Successful completion of a study

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must lead to the attainment of a specific educational or professional objective. A full course of study may be any of the following:

- Postgraduate study or postdoctoral study at a college or university;
- Undergraduate or postgraduate study at a conservatory or religious seminary;
- Full-time undergraduate study at a college or university (i.e., at least 12 semester or quarter hours of instruction per academic term or equivalent);
- Study at a postsecondary language, liberal arts, fine arts, or other non-vocational program at a school that confers associate or other degrees or whose credits are accepted by accredited institutions of higher learning.

(C) Limitation on Public School Attendance. Section 214(m) of the Act prohibits attendance by F-1 nonimmigrant students at public elementary schools and public adult education programs. Attendance at public secondary education programs is limited to 12 months and requires the student to pay the full-unsubsidized cost of such education.

(D) Reduced Course Load-Commuter Students from Canada & Mexico. Canadian or Mexican nationals who are enrolled, or will enroll, in a course of study are eligible for admission to pursue part-time study provided the alien meets all other F-1 requirements, with the following accommodations. The alien must maintain actual residence and place of abode in the country of nationality, must apply for admission at a land POE, and must be enrolled in a United States school within 75 miles of the international border. After paying the prescribed fee, the alien will be issued a multiple-entry Form I-94 with an admission period that reflects the current semester or term of study, as noted in the alien's SEVIS Form I-20. The DSO will issue all reduced course load students a new SEVIS Form I-20 for each new semester or term that the student is enrolled at the school. A new multiple-entry Form I-94 is required for each new semester or term, with fee.

(E) Lacking SEVIS Form I-20AB. Whenever possible, POEs should attempt to obtain the proper SEVIS documentation (faxed copy is acceptable) in order to admit the student rather than issue a Form I-515A, Notice to Student or Exchange Visitor or defer the inspection. However, a Form I-515A may be issued to a student not in possession of a valid SEVIS form, if the individual presents a valid visa (if required) and the status can be verified in SEVIS. Refer to Chapter 15.16 for Form I-515A processing guidelines.

(F) Employment

(i) On Campus Employment: On-campus employment is employment performed on the school's premises (including on- location commercial firms which provide student services on campus, such as a school cafeteria), or an off-campus location which is educationally affiliated with the school (like some school bookstores).

- Any F-1 student in good standing can work on campus incident to status, full time when school is not in session and during annual breaks, and part time while school is in session.

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- Because this employment is authorized incident to the F-1 student status, the student does not need specific authorization from either DHS or a DSO to engage in such employment.
- DHS does not require the DSO to collect this information from students. However, on-campus employment information is not a reportable field in SEVIS.
- Some schools may choose to have the F students notify the DSO prior to engaging in on-campus employment, but this is not a DHS requirement.

See 8 CFR 214.2(f)(9)(i)

(ii) Off-Campus Employment: A student in good standing can apply to USCIS for authorization to work off-campus with a firm that is unassociated with the school if:

- The student has been continuously enrolled as an F-1 student for at least one full academic year (approximately 9 months).
- There is no on-campus employment available.
- The student faces severe economic hardship without such authorization to work.
- To obtain off-campus employment:
 1. The DSO makes the recommendation for employment in the SEVIS system, specifying any known information about the employment in a free-text field.
 2. The student then files a Form-I-796 with the SEVIS Form I-20AB to the USCIS Service Center.
 3. If approved, the USCIS Service Center will issue the student an Employment Authorization Document (EAD) that specifies the dates for which the employment is approved (usually 1-year intervals). This EAD will not specify the name/place of the employer.
 4. SEVIS is updated by the Service Center's system to show that the employment was approved.

(iii) Curricular Practical Training (CPT): CPT is employment that is a required part of a student's specified curriculum. In most cases, CPT involves internships and similar work experience specifically required by the student's program. See 214.2(f)(10)(i).

- F-1 students (other than those enrolled in an English language program) that have been enrolled full time in an approved school for at least 9 consecutive months can be authorized for CPT.
- The DSO can authorize CPT; DHS authorization is not required.
- The DSO must authorize CPT before the student begins work. The DSO authorizes CPT in SEVIS as an update to the student's record. Authorized CPT information, which can be seen on both the student information screen in SEVIS, and on page three of the printed SEVIS Form I-20, identifies the employer, employment dates, and whether the employment is full or part time.

(iv) Optional Practical Training (OPT): OPT is employment that is related to a student's specified curriculum, but not required by it.

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- OPT must be recommended by the DSO and authorized by USCIS before the student begins work. See 8 CFR 214.2(f)(10)(ii)
- Students in English language programs are not eligible for OPT.
- Eligible F-1 students get up to 12 months of full-time OPT at each program level. Part-time OPT can be approved while a student is in school. Full-time OPT can be approved in the period following completion of the student's program. However, such "post-completion" OPT must be completed within 14 months of the program end date.
- The DSO recommends OPT in SEVIS as an update to the student's record. The OPT recommendation, which will appear on the student information screen and on page 3 of the student's printed SEVIS Form I-20, includes the employment dates and whether the employment is full- or part-time. (It may also identify an employer, if known.)
- The student may remain in the U.S. (and re-enter the U.S.) while the OPT is pending adjudication, and once it has been approved. This is true both for pre-completion and post-completion OPT.
- Once approved, the USCIS Service Center will issue the student an EAD that specifies the dates of employment (but not the type or place of employment) and SEVIS is updated to show that the employment has been approved.

(G) SEVIS FEE Initial entry foreign students exempt visa requirements issued a SEVIS Form generated on or after **September 1, 2004** should present either Form I-797, Receipt Notice or an Internet Receipt Notice confirming payment of the SEVIS fee. If unavailable, the POE should refer to the student's SEVIS record to verify fee payment. The receipt information in SEVIS is located on the Student information page. There is a block entitled "I-901 Fee Payment Information". There is a lapse between the time the student pays the fee and when the confirmation appears in SEVIS, which allows ICE to process the payment (approximately 10-days). The receipt is not required if payment can be verified in SEVIS. If payment status indicates, "cancelled", the POE should still accept this as proof of payment. (Added by CBP 4-04)

(2) Classification: **F-2** Spouse and children of F-1 student.

Documents required: Passport valid for 6 months, unless exempt. Nonimmigrant visa (F-2), unless exempt. SEVIS Form I-20AB. SEVIS will generate a separate Form I-20 for each F-2, which can be identified by [REDACTED] and will include the dependent's and the principal's biographical information. When processing F-2 dependents, endorse the SEVIS Form I-20AB and return it to the alien.

The eligible spouse and minor children of a student or exchange visitor with a valid SEVIS Form must individually present an original SEVIS Form issued in the name of each dependent issued by a SEVIS authorized school.

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Qualifications: Must be an individual listed in general description. All nonimmigrant grounds of inadmissibility apply. Must be accompanying or following to join the F-1.

Terms of admission: Admit F-2 for duration of status. Except for dependent of part-time border students as referenced in Special Note D.

Notations on Form I-94: F-2, D/S. Same as F-1 principal. However in box 18 (occupation) identify dependent as spouse or child, as appropriate.

Special notes: See notes on F-1 above.

Dependent employment: Dependents may not engage in employment.

Study: The F-2 spouse of an F-1 student may not engage in full time study, and the F-2 child may only engage in full time study if the study is an elementary or secondary school (kindergarten through twelfth grade). The F-2 spouse and child may engage in study that is avocational or recreational in nature.

(g) Representatives to, and employees of, international organizations.

(1) Classification: **G-1** Designated principal **resident** representative of a foreign government to an international organization, staff, and members of the immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (G-1).

Qualifications: Must be an international organization recognized by the President or State Department. Inadmissible only under 212(a)(3)(A), (B), or (C). See §102 of the Act.

Terms of admission: Admit G-1 for Duration of Status.

Notations on I-94: G-1, D/S. If visa is marked "TDY" include that notation in block 26 on the reverse of the I-94.

Special notes:

(A) Presumption of eligibility. Presentation of an G-1 visa is prima facie evidence that the alien is entitled to that status.

(B) Dependents. For G-1 nonimmigrants, dependents are entitled to the same classification as the principal. "Dependents" include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21.

(C) Restricted admission periods. Occasionally, a "G" nonimmigrant visa will be noted

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by a consular official: "authorized stay limited to 45 (or some other specified number) days". Do not admit such nonimmigrants for D/S; limit the admission as specified on the visa.

(2) Classification: **G-2** Temporary representatives of recognized foreign member governments to an international organization and members of the immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (G-2).

Qualifications: Must be an international organization recognized by the President or State Department and foreign government must be a member of the international organization. Inadmissible only under 212(a)(3)(A), (B), or (C). See section 102 of the Act.

Terms of admission: Admit G-2 for Duration of Status.

Notations on I-94: G-2, D/S. If visa is marked "TDY" include that notation in block 26 on the reverse of the I-94.

Special notes:

(A) Presumption of eligibility. Presentation of an G-2 visa is prima facie evidence that the alien is entitled to that status.

(B) Dependents. For G-2 nonimmigrants, dependents are entitled to the same classification as the principal. "Dependents" include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21.

(C) Restricted admission periods. Occasionally, a "G" nonimmigrant visa will be noted by a consular official: "authorized stay limited to 45 (or some other specified number) days". Do not admit such nonimmigrants for D/S; limit the admission as specified on the visa.

(3) Classification: **G-3** Representatives of non-recognized or nonmember governments to an international organization and members of the immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (G-3).

Qualifications: Must be an international organization recognized by the President or State Department and foreign government is a non-member of the international organization or non-recognized by the United States. Inadmissible only under 212(a)(3)(A), (B), or (C) [See section 102 of the Act.].

Terms of admission: Admit G-3 for Duration of Status.

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Notations on I-94: G-3, D/S. If visa is marked "TDY" include that notation in block 26 on the reverse of the I-94.

Special notes:

(A) Presumption of eligibility. Presentation of an G-3 visa is prima facie evidence that the alien is entitled to that status.

(B) Dependents. For G-3 nonimmigrants, dependents are entitled to the same classification as the principal. "Dependents include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21.

(C) Restricted admission periods. Occasionally, a "G" nonimmigrant visa will be noted by a consular official: "authorized stay limited to 45 (or some other specified number) days". Do not admit such nonimmigrants for D/S; limit the admission as specified on the visa.

(4) Classification: **G-4** Officers or employees of a recognized international organization and members of the immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (G-4).

Qualifications: Must be an employee of an international organization (not a member state) recognized by the President or State Department. Alien is employee of the organization, not an employee of a member state. Inadmissible only under 212(a)(3)(A), (B), or (C). See section 102 of the Act.

Terms of admission: Admit G-4 for Duration of Status.

Notations on I-94: G-4, D/S. If visa is marked "TDY" include that notation in block 26 on the reverse of the I-94.

Special notes:

(A) Presumption of eligibility. Presentation of a G-4 visa is prima facie evidence that the alien is entitled to that status.

(B) Dependents. For G-4 nonimmigrants, dependents are entitled to the same classification as the principal. "Dependents" include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21.

(C) United Nations travel documents. A G-4 visa may be placed in a United Nations Laissez-Passer if the alien is traveling on official U.N. business.

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(D) Restricted admission periods. Occasionally, a "G" nonimmigrant visa will be noted by a consular official: "authorized stay limited to 45 (or some other specified number) days". Do not admit such nonimmigrants for D/S; limit the admission as specified on the visa.

(5) Classification: G-5 Attendants, servants, or personal employees of G-1 through G-4 and members of their immediate family.

Documents required: Passport valid for 6 months beyond the date to which admitted. Nonimmigrant visa (G-5).

Qualifications: Must be attendant, servant, or employee of G-1 through G-4. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit G-5, up to 3 years.

Notations on I-94: G-5, (date to which admitted). Include the employer's name in block 26 on the reverse of the I-94.

Special notes:

(A) Presumption of eligibility. Presentation of a G-5 visa is prima facie evidence that the alien is entitled to that status.

(B) Dependents. For G-5 nonimmigrants, dependents are entitled to the same classification as the principal. "Dependents include more than just the spouse and children. See definition of "Immediate family" in 22 CFR 41.21.

(C) Attendants and personal servants defined. The terms "attendants" and "personal employees" are defined in 22 CFR 41.21.

(h) Temporary workers.

(1) Classification: **H-1B**. Specialty occupations (professional), Department of Defense project employees, and fashion models.

Documents required: Passport valid for 6 months beyond admission date, unless exempt. Nonimmigrant visa (H-1B), unless exempt. Approved I-129 petition. May present Form I-797, Notice of Action, or the visa may be annotated with approval information by the consular officer. An amended H-1B petition shall not be required where the petitioning employer is involved in a corporate restructuring, including but not limited to, a merger, acquisition, or consolidation, where a new corporate structure entity succeeds to the immigration-related interests and obligations of the

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original H-1B petitioning employer and where the terms and conditions of the beneficiary's employment remain the same but for the identity of the petitioner.

An H-1B applicant for admission who no longer works for the original H-1B petitioner, and who now works for a new corporate entity claiming exemption from the requirement to file an amended petition, may be admitted at the port-of-entry if the alien:

- (a) is otherwise admissible;
- (b) is in possession of a passport valid for 6 months beyond the admission date, unless exempt, and a valid nonimmigrant visa; and,
- (c) presents a letter from the new corporate entity stating that:
 - (i) the new corporate entity has succeeded to the immigration-related interests and obligations of the original H-1B petitioning employer; and
 - (ii) the terms and conditions of the H-1B nonimmigrant's employment have remained the same.

Note: An amended I-797 reflecting the new corporate entity's name is not required. (Revised IN01-19)

Qualifications: Alien must be qualified for and coming to be employed in a specialty occupation as defined in section 214(i)(1) of the Act, be a fashion model, or be employed in a Department of Defense cooperative research and development project. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit H-1B for validity of petition plus a maximum of 10 days prior to the validity date of the petition and up to 10 days after the expiration date [8 CFR 214.2(h)(13)].

Notations on I-94: **Front:** H-1B, (date to which admitted). **Reverse:** petition number and occupation from the list in Appendix 31-1 of the *Adjudicator's Field Manual*.

Special notes:

(A) Foreign residence requirement. H-1B does not have to establish foreign residency.

(B) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first POE of the

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beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 3 years (DOD projects, 5 years), and may be extended for up to 6 years (DOD projects, 10 years).

(C) Dependents. Dependents are admitted as H-4. Dependents may not work but may attend school without changing status.

(D) Refusal for fraud. If the alien beneficiary of an H-1B petition is refused admission due to fraud, there are certain additional steps that must be taken at the POE. Please refer to Chapter 17.3 of this manual for further instructions on the procedures required to revoke an H-1B visa obtained through fraud.

(Redesignated IN02-05)

(E) Certification of Health Care Workers. If the alien beneficiary is seeking admission for the primary purpose of performing labor in a covered health care occupation, the alien must present, at time of issuance of the visa and upon each application for admission at a port of entry, a certificate or certified statement from an approved credentialing organization listed in 8 CFR 212.15(e) or (h). The covered health care occupations requiring valid certification include nurses (licensed practical nurses, licensed vocational nurses, and registered nurses), occupational therapists, physical therapists, speech language pathologists and audiologists, medical technologists (clinical laboratory scientists), medical technicians (clinical laboratory technicians), and physician assistants. This requirement does not apply to aliens admitted to perform services in a non-clinical health care occupation in which the alien is not required to perform direct or indirect patient care (e.g., teachers, researchers, or managers of health care facilities), aliens coming to receive training in health care worker occupations (e.g., F-1s, H-3s, or J-1s), or to spouses and dependent children. [See 8 CFR 212.15 and AFM Ch. 30.12] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health care workers, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit health care workers and approve applications for extension of stay and/or change of status subject to the following conditions (Added by CBP 3-04):

- (1) The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- (2) The alien must obtain the requisite health care worker certification within 1

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year of the date of admission, or the date of the decision to extend the alien's stay or change status; and

- (3) Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(2) Classification: **H-1B1**. Includes Free Trade Professionals from Chile and Singapore. Free Trade Agreements with Chile and Singapore became effective on January 1, 2004.

Documents required: Valid passport. Both Chile and Singapore are members of the six-month club and may be admitted until the expiration date of the applicant's passport (NTE 1 year). A nonimmigrant visa (H-1B1) is required. There are no petition requirements on behalf of Chileans or Singaporeans desiring H-1B1 status.

Qualifications: For purposes of the two trade agreements, a "professional" is defined as:

"a national of (Chile or Singapore) who is engaged in a specialty occupation requiring (a) theoretical and practical application of a body of specialized knowledge; and (b) attainment of a post-secondary degree in the specialty requiring four or more years of study (or the equivalent of such a degree) as a minimum for entry into the occupation."

Terms of admission: Admit H-1B1 initially for a maximum of one year.

Notations on I-94: **Front**: H-1B1, (date to which admitted). **Reverse**: Occupation and employer.

Special notes:

(A) Foreign residence requirement: H-1B1 does not have to establish foreign residency. H-1B1 professionals may be admitted initially for a maximum of one year, and may extend stay in one-year increments indefinitely, as long as they continue to demonstrate that they do not intend to remain permanently. There is no "dual intent" provision.

(B) Petitions: There is no petition requirement. An individual not in the United States applies directly to an American Consulate for a nonimmigrant visa. The Nebraska Service Center will adjudicate requests for change or extension of

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H-1B1 status. CLAIMS 3 will track Chilean and Singaporean H-1B1s as "HSC" until CLAIMS 3 is modified to track the H-1B1 nonimmigrant code. Approval notices for requests for change and extension of status will show an "HSC" code, until CLAIMS 3 is modified to reflect the H-1B1 code.

(C) Dependents. Dependents are admitted as H-4. Dependents may not work but may attend school without changing status.

(D) License Requirements: The H-1B1 category does not require possession of a relevant professional license as a condition to admission. H-1B1 professionals will be expected to comply with all applicable state and federal licensure requirements for engaging in their professions following their admission.

(E) Certification of Health Care Workers. Aliens performing labor in the United States as a registered nurse must present, at time of issuance of the visa and upon each application for admission at a port of entry, a certificate or certified statement from a credentialing organization described in 8 CFR 212.5(e) or (h). [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican nurses, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit registered nurses and approve applications for extension of stay and/or change of status subject to the following conditions (Added by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(3) Classification: **H-1C**. Includes registered nurses entering the U.S. to perform nursing services at a facility which provides health care.

Documents required: Passport valid for 6 months beyond admission date, unless

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exempt. Nonimmigrant visa (H-1C), unless exempt. Approved I-129 petition. May present Form I-797 or the NIV may be annotated with approval information by the consular officer.

Qualifications: Must be a registered nurse and meet licensure requirements in section D below. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit H-1C for validity of petition plus a maximum of 7 days prior to the validity date of the petition and up to 10 days after the expiration date [8 CFR 214.2(h)(13)(ii)].

Notations on I-94: **Front:** H-1C, (date to which admitted). **Reverse:** petition number and occupation "registered nurse." See general requirements in 8 CFR 214.2(h).

Special notes:

(A) Foreign residence requirement. H-1C does not have to establish he or she has a foreign residence.

(B) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first POE of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid for up to 3 years. Once the H-1C has reached the 3-year maximum period, he or she is no longer eligible for admission.

(C) Dependents. Dependents are admitted as H-4. Dependents may not work but may attend school without changing status.

(D) License Requirements. Any alien granted H-1C classification must be fully qualified to work as a registered nurse in the state of intended employment. If the alien does not already possess a full and unrestricted license to practice professional nursing in the state of intended employment, the alien must, upon admission to the United States, be able to obtain temporary license or other temporary authorization to practice as a registered nurse in the state of intended employment.

(Added IN 02-05)

(E) Certification of Health Care Workers. Aliens performing labor in the United States as a registered nurse must present, at time of issuance of the visa and upon each application for admission at a port of entry, a certificate or certified statement from a credentialing organization described in 8 CFR 212.15(e) or (h). [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security

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will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2004. Until that date, DHS will admit registered nurses and approve applications for extension of stay and/or change of status subject to the following conditions:

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(4) Classification: **H-2A**. Temporary agricultural workers.

Documents required: Passport valid for 6 months beyond admission date, unless exempt. Nonimmigrant visa (H-2A), unless exempt. Approved I-129 petition. May present Form I-797, Notice of Action, or the visa may be noted with approval information by the consular officer.

Qualifications: Coming **temporarily** to perform **temporary** services for which workers are not available in the United States. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit H-2A for validity of petition plus 10 days prior to validity date and up to 10 days after the expiration date [See 8 CFR 214.2(h)(13).].

Notations on I-94: **Front**: H-2A, (date to which admitted). **Reverse**: Petition number and occupation "agricultural."

Special notes:

(A) Dual temporary issue. Unlike H-1 nonimmigrants, who do not have to show a foreign residence and who may be coming temporarily to fill positions which are permanent by nature, the H-2 must have a foreign residence and must be coming only to fill a position which is itself temporary or seasonal [See definitions in 8 CFR 214.2(h)(2).].

(B) Petitions. The approved petition is forwarded by the service center to the visa

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issuing post or, when no visa is required, to the proposed first port of entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid for up to 3 years. Petition and visa validity generally coincide.

(C) Multiple beneficiaries. H-2A petitions may be issued for multiple unnamed beneficiaries working in the same occupation. Because of the need to control the number of entries on multiple beneficiary petitions, local ports-of-entry should have specific procedures in place.

(D) Liquidated damages. Employers are frequently required to enter into a liquidated damages agreement to insure maintenance of status and departure of agricultural workers. Arrival and departure of agricultural workers must be closely monitored for accuracy to insure compliance with and enforcement of these agreements.

(E) Dependents. Dependents are admitted as H-4. Dependents may not work but may attend school without changing status.

(5) Classification: H-2B. Non-agricultural workers coming **temporarily** to perform services of a **temporary** nature.

Documents required: Passport valid for 6 months beyond admission date, unless exempt. Nonimmigrant visa (H-2B), unless exempt. May present Form I-797, Notice of Action, or the visa may be notated with approval information by the consular officer.

Qualifications: Must be coming temporarily to provide services of a temporary nature for which qualified U.S. workers are not available. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit H-2B for validity of petition plus a maximum of 7 days prior to the validity date of the petition and up to 10 days after the expiration date [8CFR 214.2(h)(5)(viii)(B)]. [Revised IN00-35]

Notations on I-94: **Front**: H-2B, (date to which admitted). **Reverse**: Petition number and occupation from the list in Appendix 31-1 of the Adjudicator's Field Manual.

Special notes:

(A) Dual temporary issue. Unlike H-1 nonimmigrants, who do not have to show a foreign residence and who may be coming temporarily to fill positions which are permanent by nature, the H-2B must have a foreign residence and must be

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coming only to fill a position which is itself temporary or seasonal. See definitions in 8 CFR 214.2(h)(2).

(B) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port of entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid for up to 3 years. Petition and visa validity generally coincide.

(C) Multiple beneficiaries. H-2B petitions may be issued for multiple unnamed beneficiaries working in the same occupation. Because of the need to control the number of entries on multiple beneficiary petitions, local ports-of-entry should have specific procedures in place.

(D) Dependents. Dependents are admitted as H-4. Dependents may not work but may attend school without changing status.

(E) Canadian loggers. See Chapter 21.8 for special control procedures.

(6) Classification: H-3. Aliens entering for the purpose of receiving instruction in any field of endeavor, other than graduate medical education or training.

Documents required: Passport valid for 6 months beyond admission date, unless exempt. Nonimmigrant visa (H-3), unless exempt. Approved I-129 petition. May present Form I-797, Notice of Approval, or the visa may be noted with approval information by the consular officer.

Qualifications: Must be coming temporarily for training unavailable in home country. Must have foreign residence. Productive employment may be only incidental to the training. Other specific limitations discussed in 8 CFR 214.2(h)(7). All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit H-3 for validity of petition plus 10 days prior to validity date and up to 10 days after the expiration date [See 8 CFR 214.2(h)(13).].

Notations on I-94: **Front**: H-3, (date to which admitted). **Reverse**: petition number and occupation from the list in Appendix 31-1 of the Adjudicator's Field Manual.

Special notes:

(A) Special training in education of disabled children. Section 223 of Pub L. 101-649, the Immigration Act of 1990, provides for the admission of trainees for the purpose of receiving training in the education of children with physical,

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mental, or emotional disabilities. These trainees are limited to an 18-month admission, but do not have many of the same restrictions as other H-3 nonimmigrants. See 8 CFR 214.2(h)(7) for specific distinctions.

(B) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port of entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid for up to 18 months. Petition and visa validity generally coincide.

(C) Multiple beneficiaries. H-3 petitions may be issued for multiple unnamed beneficiaries receiving the same training.

(D) Dependents. Dependents are admitted as H-4. Dependents may not work but may attend school without changing status.

(7) Classification: **H-4**. Includes spouse and children of aliens classified H-1 through H-3.

Documents required: Passport valid for 6 months beyond admission date, unless exempt. Nonimmigrant visa (H-4), unless exempt.

Qualifications: Must be accompanying or following to join a principal alien and have qualifying relationship (spouse or minor unmarried child). All nonimmigrant exclusion grounds apply.

Terms of admission: Admit H-4 for same period as principal.

Notations on I-94: H-4, (date to which admitted).

Special notes: See notes on "dependents" for H-1 through H-3, above.

(i) Representatives of information media.

Classification: I [Representative of foreign information media, and immediate family].

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (I) unless exempt.

Qualifications: Representative of foreign press, radio, film, television, or other information media. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit I for Duration of Status.

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Notations on I-94: I, D/S. Enter the employer's name in block 26 on the reverse of the I-94.

Special notes:

(A) Defining the Term "Representatives of Foreign Press, Radio, Film, or Other Information Media." For classification under section 101(a)(15)(I) of the Act, the term "representatives of foreign press, radio, film or other foreign information media" includes aliens whose activities are essential to the foreign information media function (for example, media reporters, media film crews, video tape editors, and persons in similar occupations). Others associated with, but not directly involved in, such activities (a proofreader, for example) may qualify for admission under another classification, such as under section 101(a)(15)(H) of the Act.

(B) Dependent Spouse and Children. Admit the spouse and children of the principal alien as "I" nonimmigrants. Dependents may attend school without changing status but may not engage in employment.

(C) Prohibition on Commercial Film Crews. Camera crews producing films for commercial entertainment or advertising must qualify under section 101(a)(15)(O) or section 101(a)(15)(P) [or in some cases, section 101(a)(15)(H- 2B)] of the Act even though they will receive no remuneration from a U.S. source and the film is produced solely for foreign distribution.

(D) Informational or Educational Film/Video Distinguished From Entertainment Material. A nonimmigrant alien may be classified under section 101(a)(15)(I) of the Act only when engaged in the production or distribution of film/video of informational or educational films or video tapes. An alien intending to work on entertainment-oriented materials must be classified under sections 101(a)(15)(H)(2), 101(a)(15)(O) or 101(a)(15)(P) of the Act.

(E) Employee of Independent Production Company ("Independents"). "I" classification may be accorded to an employee of an independent production company if such employee holds a credential issued by a professional journalistic association, the film will be used to disseminate news or information, and the film will not be used primarily for commercial entertainment or advertising purposes.

(F) Employee of Foreign Government Tourist Bureau. A duly accredited representative of a tourist bureau controlled, operated, or subsidized in whole or in part by a foreign government, who engages primarily in disseminating factual tourist information about that country, is entitled to classification under section 101(a)(15)(I) of the Act.

(G) Member of Foreign Government Trade Promotion Mission. Since an employee or accredited representative in the United States of a trade promotional mission of a foreign government is engaged primarily in commercial/economic activities, "I" classification would not be appropriate. Both groups described in this note might include some foreign government officials. [See 22 CFR 41.22(b)]

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(H) Employee of Organization Which Disseminates Technical Industrial Information. "I" classification may be given to an employee in the United States offices of an organization which distributes technical industrial information.

(I) Free Lance Media Worker. Aliens holding a credential issued by a professional journalistic organization, if working under contract on a product to be used abroad by an information or cultural medium to disseminate information or news not primarily intended for commercial entertainment or advertising, are classifiable under section 101(a)(15)(I) of the Act. However, an alien holding an "I" visa should possess a valid contract of employment.
(Revised IN01-08)

(j) Exchange visitor. (Amended by CBP 4-04)

(1) Classification: **J-1** Foreign nationals who have been selected by a Department of State (DOS) authorized program sponsor to participate in an exchange visitor program in the United States. The program is designed to promote mutual understanding between the U.S. and another countries through the interchange of persons, knowledge, and skills in the fields of education, art and science. Participants include students (secondary and post-secondary), trainees, teachers, professors, and research scholars. The Exchange Visitor Program includes international visitor, alien physician, government visitor, short-term scholar, specialists, camp counselors, au pairs, and summer work/travel.

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (J-1) unless exempt. Student Exchange Visitor Information System (SEVIS)-generated Form DS-2019. The SEVIS-generated Form DS-2019 contains a two-dimensional bar code on the top right side of the form and the word "J-1" or "J-2" printed above the bar code. The SEVIS-generated Form DS-2019 is a single page document, rather than the previous multi-color carbonless Form DS-2019. The form may be a single-page document printed front/back or a two-page document printed on one side only.

The program sponsor must endorse the SEVIS-generated Form DS-2019. The signature is to easily identify an original form from a fax or photocopy.

Exchange participants making an initial entry into the United States may be admitted for a period up to 30-days before the report date or start of the approved program listed on the SEVIS-generated Form DS-2019. Discretion can be used in those instances where incoming flights are limited and the exchange visitor is arriving a few days early. There are no restrictions on how early a returning exchange participant may enter the United States. CBP officers may consult SEVIS to verify the correct program start date.

Initial entry exchange visitors visa exempt issued a SEVIS DS-2019 generated after **September 1, 2004** should present Form I-797, Receipt Notice or an Internet Receipt Notice confirming payment of the SEVIS fee. See Special Note G for details.

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Qualifications: The exchange participant must have a program sponsor authorized by the DOS as indicated on the SEVIS-generated Form DS-2019 and be entering for the purpose specified on the SEVIS-generated Form DS-2019. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit J-1 for Duration of Status (D/S).

Notations on Form I-94: Front: J-1, D/S. Reverse: In box 18 (occupation), record the exchange visitor category as shown in block 4 on the SEVIS-generated DS-2019. Record the SEVIS Identification number as it appears on the SEVIS-generated Form DS-2019. In box 22, note "N" and the 10-digit SEVIS number. DO NOT WRITE SEVIS. Record the same number on the "Record of Changes" line provided on the reverse portion of the Form I-94, Departure Record. In box 23, record the Program Number listed in block 2 on the SEVIS-generated Form DS-2019.

Under no circumstances should an admission number be crossed out and replaced with a previously issued admission number.

Processing SEVIS-generated Forms DS-2019 Upon Initial Entry. Upon initial admission, a J-1 should present a SEVIS-generated Form DS-2019. Review the form for completeness and the signatures of both the program sponsor and the exchange visitor.

(i) If the exchange participant is admissible endorse the SEVIS-generated Form DS-2019 in the following manner:

- Place an admission stamp in Box 6 entitled "U.S. Department of State/INS Use or Certification by Responsible Officer That A Notification Copy Of This Form Has Been Provided To The U.S. Department of State (Include Date)".
- Record the class of admission and period of authorized stay "J-1 D/S".
- If not already completed by the consular official at the time of visa issuance, execute the "Preliminary Endorsement" block in the lower right corner above consulate adjudication.

(ii) On the Non-immigrant visa (NIV):

- Endorse the NIV with the admission stamp in a manner that will include a portion of the stamp overlapping the NIV.
- Record the SEVIS ID Number on the visa page, if not already annotated.

(iii) Upon completion, affix the Form I-94, Departure Record to the exchange visitor's passport, if not exempt. The SEVIS-generated Form DS-2019 and the passport containing the Form I-94 are to be given to the exchange visitor.

Processing returning exchange visitors: Review the SEVIS-generated Form DS-2019 for completeness and for the signatures of both the program sponsor and the exchange visitor. The program sponsor is required to endorse the SEVIS-generated DS-2019 in BLUE ink.

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- The CBP officer is not required to place an additional admission stamp on the form.
- Endorse the NIV with the admission stamp near the NIV and record the SEVIS ID Number on the visa page, if not already annotated.
- Complete the Form I-94 as noted above.

Recording Admission. The admission of the J-1 exchange visitor making an initial entry to the United States with a SEVIS issued form that has not been endorsed with an admission stamp is to be entered into SEVIS. Refer to Chapter 15.16 Student and Exchange Visitor Processing.

- Air/sea POEs: The SEVIS record will be updated by entering specific information in the COA screens for all admission.
- Land POEs: The secondary officer will record the exchange visitor's initial entry directly into SEVIS. Properly documented returning exchange visitors may be released on primary, if otherwise admissible.

Special notes:

(A) Certain exchange visitors with expired visas. J-1 exchange visitors and dependents with expired visas who have been outside the U.S. for less than 30 days solely to contiguous territory or adjacent islands may be readmitted if they have a valid SEVIS-generated Form DS-2019 or Form I-94 showing the unexpired period of the alien's stay. [See 8 CFR 214.1(b)(1) and 22 CFR 41.112.]. This provision does not apply to:

- [REDACTED]
- [REDACTED]
- [REDACTED]

(B) Employment authorization. J nonimmigrants may work in several circumstances. J-1 employment under the terms of the exchange program, at the sponsor's work site, does not require issuance of an employment authorization document (EAD). See 8 CFR 274a.12(a). J-1 aliens entitled to academic training and those whose programs provide for "open market" employment, and dependent J-2 aliens seeking employment under 8 CFR 214.2(j)(1)(v) may be issued an EAD. [See 8 CFR 274a.12(c)]. Note: only J-2s are required to apply for an EAD; SEVIS-generated Form DS-2019 is all the work authorization normally required for J-1.

(C) Two-Year Foreign Residence Requirement. Form DS-2019 includes a block, which is endorsed by the consular official issuing the visa or by the inspecting officer, containing a determination whether the exchange visitor is subject to the 2-year foreign residence requirement of section 212(e) of the INA. An alien may be subject to the foreign residence requirement for any of four reasons:

- if the exchange program is financed by the U.S. government;

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- if the exchange program is financed by the foreign government;
- if the alien's occupation is on the "Skills List" for his or her country of nationality or last residence; or,
- if the purpose of the trip is to receive graduate medical education or training.

In most instances the consular official who issued the visa will have made the determination whether the individual is subject. If there is no endorsement on the SEVIS-generated Form DS-2019 regarding this matter, then the POE must make the determination at the time of inspection. The list of governmentally financed programs and the "Skills List" needed in order to make this determination are contained in Appendix 15-1. This procedure is most critical when inspecting J aliens who are visa exempt. Such persons will not have had the foreign residence requirement explained by a consular official and, therefore, may be entirely unaware of the potential consequences of entry as an exchange visitor.

(D) Lacking SEVIS-generated Form DS-2019. Whenever possible, POEs should attempt to obtain the proper SEVIS documentation in order to admit the exchange participant rather than issue a Form I-515A, Notice to Student or Exchange Visitor or defer the inspection. However, a Form I-515A may be issued to an exchange participant not in possession of a valid SEVIS-generated Form, if the individual presents a valid visa (if required) and the status can be verified in SEVIS. Refer to Chapter 15.16 for Form I-515A guidelines.

(E) Summer Work/Travel programs do not always require that a student have a job prior to entering the United States.

(F) Special Exchange Notations. Exchange visitors from the People's Republic of China and former Soviet bloc countries may have their J-1 visas noted "CHINEX" or "SILEX". This notation must be placed on the Form I-94, in block 26 on the reverse. Program participants with these notations are specially controlled by the DoS.

(G) SEVIS FEE Initial entry exchange visitors visa exempt issued a SEVIS DS-2019 generated after September 1, 2004 should present Form I-797, Receipt Notice or an Internet Receipt Notice confirming payment of the SEVIS fee. If unavailable, the POE should refer to the exchange visitors SEVIS record to verify fee payment. The receipt information in SEVIS is located on the Exchange Visitor information page. There is a block entitled "I-901 Fee Payment Information". There is a lapse between the time the exchange visitor pays the fee and when the confirmation appears in SEVIS which allows ICE to process the payment (approximately 10-days). The paper receipt is not required if payment can be verified in SEVIS. If payment status indicates, "cancelled", the POE should still accept this as proof of payment. (Added by CBP 4-04)

(H) Certification of Health Care Workers. If the alien beneficiary is seeking admission for the primary purpose of performing labor in a covered health care

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occupation, the alien must present, at time of issuance of the visa and upon each application for admission at a port of entry, a certificate or certified statement from an approved credentialing organization listed in 8 CFR 212.15(e) or (h). The covered health care occupations requiring valid certification include licensed practical nurses, licensed vocational nurses, registered nurses, occupational therapists, physical therapists, speech language pathologists and audiologists, medical technologists (clinical laboratory scientists), medical technicians (clinical laboratory technicians), and physician assistants. This requirement does not apply to aliens admitted to perform services in a non-clinical health care occupation in which the alien is not required to perform direct or indirect patient care (e.g., teachers, researchers, or managers of health care facilities), aliens coming to receive training in health care worker occupations (e.g., F-1s, H-3s, or J-1s), or to spouses and dependent children. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health care workers, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit health care workers and approve applications for extension of stay and/or change of status subject to the following conditions (Added by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(2) Classification: **J-2** Spouse and children of aliens classified J-1. (Revised 5/16/05; CBP 9-05)

Qualifications: Must have the necessary relationship to the principal exchange participants (J-1) provided by 22CFR 62.2. All nonimmigrant grounds of inadmissibility apply.

- Terms of admission: Admit J-2 for duration of status (D/S), unless the principal alien's stay as been limited. The dependent's status is derived from the principal alien.

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Documents required: Passport valid for 6 months beyond the date of admission, unless exempt; non-immigrant visa (J-2), unless exempt.

The eligible spouse and minor children of an exchange visitor must individually present an original SEVIS-generated Form DS-2019 issued by a SEVIS authorized program sponsor in the name of each dependent. The form will contain the biographical information of both the principal and the dependent.

Upon initial admission, review the form for completeness and the signatures of both the program sponsor (blue ink) and the dependent of the exchange visitor.

(i) If the dependent of the exchange participant is admissible, endorse the SEVIS-generated Form DS-2019 in the following manner:

- Place an admission stamp in Box 6 entitled "U.S. Department of State/INS Use or Certification by Responsible Officer That A Notification Copy Of This Form Has Been Provided To The U.S. Department of State (Include Date)".
- Record the class of admission and period of authorized stay "J-2 D/S", unless the principal alien's stay as been limited to a specific date. The dependent's status is derived from the principal alien.

(ii) On the non-immigrant visa (NIV):

- Endorse the NIV with the admission stamp in a manner that will include a portion of the stamp overlapping the NIV.
- Record the SEVIS ID Number on the visa page, if not already annotated.

(iii) Notations on Form I-94: J-2, D/S, unless stay is limited to a specific date. Same as J-1 principal. However in box 18 (occupation) identify dependent as spouse or child, as appropriate.

(iv) Upon completion, affix the Form I-94, Departure Record to the exchange visitor's passport, if not exempt. The SEVIS-generated Form DS-2019 and the passport containing the Form I-94 are to be given to J-2 nonimmigrant.

Special notes:

(A) May accompany or follow to join J-1. If the J-1 has not been admitted to the United States, the dependent is not eligible for J-2 status. SEVIS may be searched to determine the principal's J-1 status.

(B) Dependent J-2 aliens seeking employment under 8 CFR 214.2(j)(1)(v) may apply for an Employment Authorization Document (EAD) with U.S. Citizenship and Immigration Services (USCIS). [See 8 CFR 274a.12(c)].

(k) Fiancé(s) of U.S. Citizens and Nonimmigrant Spouses of U.S. Citizens.

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(1) **Classification:** **K-1** Fiancees and fiances of U.S. citizens.

Documents required: Valid passport. Nonimmigrant visa (K-1) (**including** Canadians and others who would otherwise be exempt a visa). Valid petition (Form I-129F).

Qualifications: Alien must be coming to conclude a valid marriage to the citizen petitioner within 90 days. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit K-1 for 90 days.

Notations on I-94: **Front:** K-1, date 90 days from day of admission. **Reverse:** "A" number and FCO code.

Special notes:

(A) **Employment Authorization.** All K aliens, including dependents, may be issued an EAD under 8 CFR 274a.12(a) for a period of 90 days.

(B) **Handling the K-1 petition.** Verify the complete address of the intended place of residence as shown on the face of the I-129F. Stamp the back of the petition to reflect the admission of the beneficiary and any accompanying children. If there are accompanying K-2 children, circle their names in item #11 of the petition and note beneath the admission stamp the following: "includes children whose names are circled." Forward the petition and supporting documents to the files control office having jurisdiction over the K-1's intended place of residence.

(C) **Visa cables.** When the American consul has issued a K visa on the basis of receipt of a cable prior to the receipt of the approved visa petition, the American consul will place a copy of the wire into the sealed envelope in lieu of the petition. The admitting officer must verify the address, place the admission stamp on the cable with the above mentioned endorsements and forward the entire packet to the appropriate files control office.

(2) **Classification:** **K-2** Children of alien fiancees and fiances of U.S. citizens.

Documents required: Valid passport. Nonimmigrant visa (K-2) (including Canadians). Valid petition (Form I-129F).

Qualifications: Must be accompanying or following to join the K-1 parent. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit K-2 for 90 days.

Notations on I-94: K-2, date 90 days from day of admission.

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Special notes:

(A) General. See notes above for admission and employment authorization

(B) Petition handling procedures. In the case of a following-to-join K-2 child, lift the sealed envelope furnished the child by the American consul, affix the medical report contained therein with the admission stamp showing the K-2 classification and the date until admitted. Ascertain the name and address of the K-1 alien parent to whom the child is destined, and the date on which such K-1 parent was admitted to the U.S. to the best of the child's knowledge. Prepare a memorandum which includes this information and forward it, together with the lifted report of the K-2 child's medical examination (and any other papers contained in the sealed envelope) to the files control office having jurisdiction over the child's destination.

(C) Delayed arrivals. With the concurrence of the Service, the Department of State has authorized consular officers to issue K-2 visas to the following-to-join children of a K-1 alien up to 1 year after the issuance of the K-1 visa to the principal alien. Issuance of the K-2 visa within that period (and admission as a K-2 nonimmigrant during the validity of that visa, if otherwise admissible) is authorized, even though the K-1 principal may have already married the U.S. citizen petitioner and acquired lawful permanent residence under section 214(d) of the Act.

(3) Classification: **K-3**: Spouse of a U.S. citizen who is the principal beneficiary of a Form I-130, Petition for Alien Relative.

Documents required: Valid, unexpired K visa issued by a consular officer and the K-3/K-4 visa packet. The normal passport validity requirements of section 212(a)(7)(B) of the INA apply. The State Department will issue 10-year, multiple entry K-3/K-4 visas, and will give the applicant a K-3/K-4 visa packet, similar to the K-1/K-2 visa packet except that the Form I-129F will be a scanned copy. Inspectors should forward the scanned copy of the Form I-129F, along with the supporting documentation, to the FCO identified in CIS. The original Form I-129F will be stored at the Nonimmigrant Visa Center in Portsmouth, New Hampshire.

Qualifications: To be eligible for the K-3 nonimmigrant classification, three requirements must be satisfied:

- (1) the alien must be the spouse of a U.S. citizen;
- (2) the alien must be the beneficiary of a Form I-130; and,
- (3) the alien must be seeking to enter the United States to await the approval of such petition and the availability of an immigrant visa.

Terms of Admission: Admit K-3 for 2 years.

Special Notes:

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(A) Multiple NIVs in Passport. Although an alien may only be admitted to the United States in one nonimmigrant status at any one time, nothing precludes an alien from possessing more than one nonimmigrant visa. Therefore, when admitting an alien in the K-3 classification, there is no requirement to lift or cancel a "laser" visa or any other nonimmigrant visa held by a K nonimmigrant. Such visas may only be cancelled in accordance with 22 CFR 41.122(h).

(B) Change of Status. There is no provision in the law to allow a nonimmigrant to change status to that of a K-3.

(C) Unlawful Presence: Aliens who have been unlawfully present in the United States for more than 180 days and depart trigger section 212(a)(9)(B) of the INA, the ground of inadmissibility relating to unlawful presence. K-3 aliens are not exempt from section 212(a)(9)(B) of the INA.

(D) Terms and conditions of "K" nonimmigrant status: Aliens in the United States in K nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the INA. Aliens admitted to the United States as K-3 nonimmigrants may reside in the United States during their period of admission. Nonimmigrant K-3 aliens are authorized to remain in the United States until their authorized period of admission expires, or until 30 days after the date one of the following is denied or revoked, whichever comes first:

- (i) the Form I-130 filed on the principal alien's behalf;
- (ii) the alien's application for adjustment of status; or
- (iii) the alien's application for an immigrant visa.

If the principal alien's status is terminated for any of these reasons, the status of any derivative child shall also be simultaneously terminated.

(E) Terminated or Revoked I-130. An alien will also no longer be eligible for K-3 status if the qualifying marriage that is the basis for the Form I-130 is terminated. In addition, if the Form I-130 is revoked under section 205 of the INA, the alien is then no longer eligible for classification as a K-3 nonimmigrant.

(F) Employment Authorization. An alien admitted to the United States in K-3 nonimmigrant status may obtain employment authorization in 2-year increments on the basis of that status under 8 CFR 274a.12(a)(9). The Form I-94 shall **not** be annotated "employment authorized." An Employment Authorization Document (EAD) issued under the (a)(9) code is required and is valid for the entire period of K-3 admission unless the Form I-130 is denied or revoked, or the application for adjustment of status or an immigrant visa is denied. An EAD may only be requested subsequent to K-3 admission by filing an INS Form I-765, Application for Employment Authorization, with the currently prescribed application fee.

(G) Travel Requirements: An alien in K-3 nonimmigrant status may travel abroad and be

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readmitted to the United States for the duration of the original 2-year admission period if he or she possesses a valid and unexpired K-3 nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. Once a K-3 nonimmigrant has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), he or she is not required to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States. Inspectors should refer to the initial admission stamp and admit the alien only to the date of the initial authorized stay, which should be 2 years from the date of initial admission. The alien should **not** be given an additional 2-year period of admission upon reentry into the United States. If the date of the initial authorized stay has passed, the inspection of the K-3 should be deferred to the INS office having jurisdiction over his or her current place of residence for a final determination in the case.

(4) Classification: **K-4**: Child accompanying or following to join the principal alien.

Documents required: Valid, unexpired K visa issued by a consular officer and the K-4 visa packet. The normal passport validity requirements of section 212(a)(7)(B) of the INA apply. The State Department will issue 10-year, multiple entry K-4 visas, and will give the applicant a K-4 visa packet, similar to the K-2 visa packet except that the Form I-129F will be a scanned copy. Inspectors should forward the scanned copy of the Form I-129F, along with the supporting documentation, to the FCO identified in CIS. The original Form I-129F will be stored at the Nonimmigrant Visa Center in Portsmouth, New Hampshire.

Qualifications: To be eligible for the K-4 nonimmigrant classification, an alien must be the unmarried child of a K-3 alien who is accompanying or following to join him or her. A K-4 nonimmigrant visa may only be issued to a derivative dependent of a K-3 nonimmigrant. Section 101(a)(15)(K) of the Immigration and Nationality Act (INA) does not require a pending Form I-130 for K-4 nonimmigrants to follow to join a K-3 nonimmigrant. However, in order to adjust status to LPR, a K-4 must have an approved Form I-130 filed on his or her behalf.

Terms of Admission: Admit K-4 for 2 years, unless "aging out."

Terms of Admission of Aging Out K-4: If alien is 19 years of age or older and applies for admission to the United States as a K-4 nonimmigrant, he or she shall be given an admission period ending on the day before the alien's twenty-first birthday.

Special Notes:

(A) Other Nonimmigrant Visa(s) in Passport. Although an alien may only be admitted to the United States in one nonimmigrant status at any one time, nothing precludes an alien from possessing more than one nonimmigrant visa. Therefore, when admitting an alien in the K-4 classification, there is no requirement to lift or cancel a "laser" visa or any other nonimmigrant visa held by a K nonimmigrant. Such visas may only be cancelled in accordance with 22 CFR 41.122(h).

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(B) Change of Status: There is no provision in the law to allow a nonimmigrant to change status to that of a K-4.

(C) Unlawful Presence: Aliens who have been unlawfully present in the United States for more than 180 days and depart trigger section 212(a)(9)(B) of the INA, the ground of inadmissibility relating to unlawful presence. K-4 aliens are not exempt from section 212(a)(9)(B) of the INA.

(D) Terms and conditions of "K" nonimmigrant status: Aliens in the United States in K nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the INA. Aliens admitted to the United States as K-4 nonimmigrants may reside in the United States during their period of admission. Nonimmigrant K-4 aliens are authorized to remain in the United States until their authorized period of admission expires, or until 30 days after the date one of the following is denied or revoked, whichever comes first:

- (i) the Form I-130 filed on the principal alien's behalf;
- (ii) the alien's application for adjustment of status; or
- (iii) the alien's application for an immigrant visa.

If the principal alien's status is terminated for any of these reasons, the status of any derivative child shall also be simultaneously terminated.

(E) Pending I-130 Not Required for Dependent. While section 101(a)(15)(K) of the INA does not require a pending Form I-130 for K-4 nonimmigrants to follow to join a K-3 alien, a Form I-130 must be filed on behalf of the K-4 nonimmigrant for adjustment purposes. It should be noted, however, that an alien will also no longer be eligible for K-4 status if the qualifying marriage that is the basis for the Form I-130 is terminated or the child who accompanied or followed to join a principal beneficiary either reaches the age of 21 or marries. In addition, if the Form I-130 is revoked under section 205 of the INA, the alien is then no longer eligible for classification as a K-4 nonimmigrant.

(F) Employment Authorization. An alien admitted to the United States in K-4 nonimmigrant status may obtain employment authorization in 2-year increments on the basis of that status under 8 CFR 274a.12(a)(9). The Form I-94 shall **not** be annotated "employment authorized." An Employment Authorization Document (EAD) issued under the (a)(9) code is required and is valid for the entire period of K-4 admission unless the Form I-130 is denied or revoked, or the application for adjustment of status or an immigrant visa is denied. An EAD may only be requested subsequent to K-4 admission by filing an INS Form I-765, Application for Employment Authorization, with the currently prescribed application fee.

(G) Travel Requirements: An alien in K-4 nonimmigrant status may travel abroad and be readmitted to the United States for the duration of the original 2-year admission period if he or she possesses a valid and unexpired K-4 nonimmigrant visa or otherwise qualifies

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for automatic revalidation pursuant to 22 CFR 41.112. Once a K-4 nonimmigrant has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), he or she is not required to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States. Inspectors should refer to the initial admission stamp and admit the alien only to the date of the initial authorized stay, which should be 2 years from the date of initial admission. The alien should **not** be given an additional 2-year period of admission upon reentry into the United States. If the date of the initial authorized stay has passed, the inspection of the K-4 should be deferred to the INS office having jurisdiction over his or her current place of residence for a final determination in the case.

(I) Intracompany Transferees.

(1) Classification: **L-1** Includes aliens entering to render services to a branch, parent, subsidiary, or affiliate of the company of previous employment outside the United States.
(Revised IN01-06)

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (L-1) unless exempt. Must have evidence of approved I-129 petition in the form of a notation on the nonimmigrant visa indicating the petition number and employer's name, or a Notice of Action, Form I-797, indicating approval, unless the applicant is a Canadian citizen. In that case, the alien may file the I-129 at a Canadian pre-flight station or Canadian land border port-of-entry at the time he or she applies for admission. If arriving at an airport without having been inspected preflight, a Canadian applicant must have evidence of petition approval, Form I-797.

Qualifications: Must be in a managerial, executive, or specialized knowledge capacity but may be transferred from any one of the capacities to another (e.g. from managerial to executive). All nonimmigrant grounds of inadmissibility apply. Must have worked for the company (branch, parent, subsidiary, or affiliate) outside the U.S. for at least 1 continuous year within the preceding 3 years [See 8 CFR 214.2(l) and 22 CFR 41.54.].

(A) Blanket Petition. Aliens may qualify for L visas after having worked for the company (branch, parent, subsidiary, or affiliate), outside the United States, for 6 months within the preceding 3 years if the company has filed a blanket L petition and has met the blanket petitions' requirements.
(Revised IN 02-12)

Terms of admission: If the alien is otherwise admissible as an individual L-1, admit for validity of petition (up to 3 years initially). If the alien is otherwise admissible as a Blanket L-1, initially admit for 3 years, regardless of the expiration date of the petition, provided the petition is valid at the time of the initial admission. If the alien is seeking readmission as a Blanket L-1, the Blanket Petition is still valid, and the alien is otherwise admissible, admit for an additional three years regardless of the balance of the time left on the original admission.(IN01-06)

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Notations on I-94: **Front:** L-1, (date to which admitted). **Reverse:** Petition number and occupation from list in Adjudicator's Field Manual Appendix 31-1.

Special notes:

(A) Dependents. Admit the spouse and children as L-2.

(B) Petition limitations. Petition may be approved for up to 3 years, except start-up companies which are limited initially to 1 year. Expiration date of visa will usually be the same as the validity of the petition. The maximum stay in the U.S. for an L-1 specialized knowledge employee is 5 years. The maximum stay in the U.S. for an L-1, executive or manager is 7 years.

(C) Blanket petitions. Some L aliens may be admitted on blanket petitions, which are petitions approved for large companies where corporate requirements are not readjudicated with each individual L alien. A blanket L-1 alien may apply for admission or readmission to the United States as long as the blanket petition is valid at the time of admission. A blanket L-1 should be admitted for 3 years, unless that period of time will exceed the statutory limitations on the L-1 alien's stay in the United States. An L-1 alien who has spent either seven years in the United States in a managerial or executive capacity or five years in a specialized knowledge capacity may not be readmitted to the United States as an L-1 unless the alien has resided and been physically present outside the United States for the immediate previous year. Blanket petition applicants will have Form I-129S, Certificate of Eligibility for Intracompany Transferee Under a Blanket Petition, in their possession.

Aliens may qualify for L visas after having worked for the company (branch, parent, subsidiary, or affiliate), outside the United States, for 6 months within the preceding 3 years if the company has filed a blanket L petition and has met the blanket petitions' requirements. (Prior to Pub. L. 107-125 of January 16, 2002, the law required that a beneficiary of a Blanket L petition, within three years preceding the time of his application for admission into the United States, had to have been employed abroad continuously for one-year by the petitioning company.)

(Revised IN 02-12)

(D) NAFTA L aliens. Under the North American Free Trade Agreement (NAFTA), a Canadian citizen may file an I-129 for an L-1 classification in conjunction with his/her application for admission at certain land border ports-of-entry and preflight inspection stations. Because of this, officers must be completely familiar with the adjudication process of an I-129 petition for L-1 benefits. The following procedure may serve as a guideline:

- (1) Determine applicant to be a Canadian citizen and otherwise eligible for admission;

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- (2) Be sure the I-129 is completed in duplicate and signed;
- (3) Determine qualifying relationship between the U.S. and Canadian entities. Very often a great volume of material is not necessary;
- (4) Verify that the applicant was employed abroad by the Canadian entity in a qualifying capacity for a period of 1 year during the prior 3 years immediately preceding the date of application for admission;
- (5) The job offer by the U.S. entity must place the applicant in a qualifying managerial, executive or specialized knowledge capacity. Examine supporting documentation. Form M-332, Instructions for Filing I-129 Petition for Intracompany Transferee, is a good source of information concerning acceptable supporting documentation;
- (6) Collect fee, place fee stamp, approval stamp, and officer signature in proper places on the I-129;
- (7) Prepare I-94 multiple entry for 1 year if the alien is coming to a new office, (i.e. in business for less than 1 year) 3 years if other than new office;
- (8) Make sure alien receives the I-94, a receipt for the fee paid, Form I-9 and M-279 for initial admission. Advise the alien that he or she will receive an I-797, Notice of Action, from the service center; and
- (9) Attach arrival copy of I-94 to "record of proceedings," (original I-129 with supporting documents) and forward to the Service Center that has jurisdiction over your port-of-entry.

(2) Classification: L-2 Includes spouse and children of L-1.

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (L-2) unless exempt.

Qualifications: Must have the required family relationship with the principal alien. Must be accompanying or following to join the principal L-1. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit L-2, same period as principal.

Notations on I-94: Front: L-2, (date to which admitted). Reverse: Annotate the remarks section of the dependent's I-94 with the dependent's specific relationship to the principal and the principal's name (e.g., "Spouse of John Jones" or "Child of John Jones").

Special notes:

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(A) Employment authorization: Spouse and children may attend school without changing status. The spouse may apply for and be issued an employment authorization document, but the child(ren) may not work as L-2.

(B) NAFTA L dependents. Under the North American Free Trade Agreement, only the principal applicant need be a Canadian/Mexican citizen.

(Paragraph (l)(2) revised IN 02-12)

(m) Vocational students. (Amended by CBP 4-04)

(1) Classification: **M-1** students who seek to enter the United States to pursue a full course of study at one of the following types of nonacademic institutions (other than language training programs) which is approved by the Department of Homeland Security (DHS) for attendance by foreign students:

- A community college or junior college which provides vocational or technical training and which awards recognized associate degrees;
- A vocational or other nonacademic high school;
- A post-secondary vocational or business school;
- A school which provides vocational or nonacademic training other than language training; or,
- A school that offers both vocational and academic courses provided the student's primary intent is to study vocational courses.

Language training qualifies only when taken at the same school for the purpose of enabling the student to understand the vocational or technical course of study.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (M-1), unless exempt. SEVIS-Form I-20MN. Presentation or submission of a SEVIS Form I-20MN issued from SEVIS indicates that the individual has been accepted to a school that has been authorized by the DHS to participate in the SEVIS program. Any Form I-20 issued by SEVIS will contain a two-dimensional bar code on the right side of the form and the word "SEVIS" printed above the bar code. The SEVIS Form I-20 is a single page student document rather than the previous carbon Form I-20MN with a separate student and school page. The form may be a single page document printed front/back or two-page document printed on one side only. Evidence of financial support.

Students making an initial entry into the United States may be admitted for a period up to 30-days before the report date or start date of the course of study listed on the SEVIS Form I-20MN. Discretion can be used in those instances where in coming flights are limited and the exchange visitor is arriving a few days early.

There are no restrictions on how early a returning student may enter the United States.

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Returning students who have transferred to another school or are pursuing a higher level degree are not required to obtain a new NIV.

Initial entry foreign students exempt visa requirements issued a SEVIS Form generated on or after **September 1, 2004** should present either Form I-797, Receipt Notice or Internet Receipt Notice confirming payment of the SEVIS fee. See Special Notes G for details.

Qualifications: Must be coming to pursue full course of study at an approved "M" school, unless qualified for a reduced course load as a commuter student as identified in Special Note B below. Must have sufficient financial resources. All nonimmigrant grounds of inadmissibility apply.

Terms of Admission: Admit as M-1 to the end date of the course, as specified on the SEVIS Form I-20MN plus 30-days, not to exceed one year; or to the validity date of the passport, less six months, if not exempt. A student making an initial entry may be admitted for a period up to 30 days before the indicated report date or program start date listed on the SEVIS Form I-20MN. There is no restriction on a returning student.

Notations on Form I-94: Front:: M-1, ending date of course plus 30 days not to exceed 1 year, except for part-time border commuters see Special Note B. Reverse: Record the SEVIS Identification number as it appears on the SEVIS Form I-20MN. Note in box 22 "N" and the 10-digit SEVIS number. DO NOT WRITE SEVIS. Record the same number on the "Record of Changes" lines provided on the reverse portion of the Form I-94, Departure Record.

Under no circumstances should 

Processing initial entry students. Upon initial admission, an M-1 should present a SEVIS Form I-20MN. Review the form for completeness and accuracy. Ensure that both the Designated School Official (DSO) and student have signed and dated the form. If the student is admissible:

Endorse the SEVIS Form I-20MN in the following manner:

- Stamp the "For Immigration Official Use" block with the admission stamp.
- Record the appropriate class of admission and period of authorized stay "M-1 Date Certain".
- Neatly and legibly record the admission number from the Form I-94 in the space provided.

On the Non-immigrant visa (NIV):

- Endorse with the admission stamp in a manner that will include a portion of the stamp overlapping the NIV.
- Record the SEVIS ID Number on the visa page, if not already annotated.

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Upon completion, affix the Form I-94, Departure Record to the student's passport, if not exempt. The SEVIS Form I-20MN and the passport containing the Form I-94 are to be given to the student.

Readmission. Upon subsequent entries, a student with a SEVIS Form I-20MN may have a separate page issued by the DSO authorizing travel or for providing certification or recommendation for practical training. The DSO is required to endorse the SEVIS Form I-20MN confirming that the student is enrolled and attending the school. Endorsements are valid for 6 months. Therefore, the DSO must endorse the SEVIS Form I-20MN twice a year to confirm that the student is maintaining status. In addition, the SEVIS computer record will be updated by the DSO each term or session to reflect that the student is still registered at the institution and maintaining status. Therefore, if a student travels outside the United States during an ongoing semester, the POE can refer to the SEVIS to confirm a student's enrollment status. To process the returning student, review the SEVIS Form I-20MN for completeness and for the signatures of both the DSO and the student:

- The CBP officer is not required to place an additional admission stamp on the form.
- Endorse the NIV with the admission stamp near the NIV and record the SEVIS ID Number on the visa page, if not already annotated.
- Complete the Form I-94 as noted above.
- The SEVIS Form I-20MN is to be returned to the student.

Recording Admission. The admission of the M-1 student making an initial entry to the United States with a SEVIS issued form that has been not been endorsed with an admission stamp is to be entered into SEVIS. Refer to Chapter 15.16 Student and Exchange Visitor Processing.

- Air/sea POEs: The SEVIS record will be updated by entering specific information in the COA screens for all admission.
- Land POEs: The secondary officer will record the student's initial entry directly into SEVIS. Properly documented returning students may be released on primary, if otherwise admissible.

Special notes:

(A) Certain students with expired visas. M-1 students and dependents with expired visas who have been outside the U.S. for less than 30 days solely to contiguous territory may be readmitted if they have their original Form I-94 and a valid Form I-20MN [See 8 CFR 214.1(b)(1) and 22 CFR 41.112]. The "adjacent island" exemption, available to F and J nonimmigrants, does not apply to M students.

This provision does not apply to:

- citizens of countries identified by the U.S. Department of State as sponsors of terrorism, refer to Appendix 15.11; or,

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- individuals that have applied for a new visa while abroad as annotated "Application Received at specific post on date" on the last page of the passport by the Consulate or Embassy abroad.

(B) Reduced Course Load-Commuter Students from Canada & Mexico. Canadian or Mexican nationals who are enrolled, or will enroll, in a course of study are eligible for admission to pursue part-time study provided the alien meets all other M-1 requirements, with the following accommodations. The alien must maintain actual residence and place of abode in the country of nationality, must apply for admission at a land POE, and must be enrolled in a United States school within 75 miles of the international border. After paying the prescribed fee, the alien will be issued a multiple-entry Form I-94 with an admission period that reflects the current semester or term of study, as noted in the alien's SEVIS Form I-20MN. The DSO will issue all reduced course load students a new SEVIS Form I-20MN for each new semester or term that the student is enrolled at the school. A new multiple-entry Form I-94 is required for each new semester or term, with fee.

(C) Full Course of Study: Full course of study is generally defined as 12 credit hours or 18-22 weekly clock hours per term or session.

(D) Lacking SEVIS Form I-20MN. Whenever possible, POEs should attempt to obtain the proper SEVIS documentation (faxed copy is acceptable) in order to admit the student rather than issue a Form I-515, Notice to Student or Exchange Visitor or defer the inspection. However, a Form I-515 may be issued to a student not in possession of a valid SEVIS form, if the individual presents a valid visa (if required) and the status can be verified in the SEVIS. Refer to Chapter 15.16 for Form I-515 processing guidelines.

(E) Employment. Optional Practical Training (OPT) is the only form of authorized employment available to an M-1 student, and is limited to a 6 month period following the successful completion of the completion of the M-1 program.

- OPT is employment that is related to a student's specified curriculum, but not required by it.
- OPT must be recommended by the DSO and authorized by USCIS before the student begins work.
- In SEVIS, the DSO recommends OPT as an update to the student's record. The OPT recommendation appears on the student information screen and on page three of the student's printed SEVIS Form I-20MN. The recommendation does not include a name and address of an employer, if known.
- Temporary absence of M -1 student granted practical training. An M - 1 student who has been granted permission to accept employment for OPT and who temporarily

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departs from the United States, may be readmitted for the remainder of the authorized period indicated on the student's SEVIS Form I-20MN. The student must be returning to the United States to perform the authorized practical training.

- A student may not be readmitted to begin practical training, which was not authorized prior to the student's departure from the United States.

(F) Completion of M-1 Program that has a duration of more than one-year:

- Student may file for an extension; or,
- Student may depart the United States and be readmitted with a new SEVIS Form I-20MN, if otherwise admissible.

(G) SEVIS Fee Initial entry foreign students exempt visa requirements issued a SEVIS Form generated on or after **September 1, 2004** should present either Form I-797, Receipt Notice or an Internet Receipt Notice confirming payment of the SEVIS fee. If unavailable, the POE should refer to the student's SEVIS record to verify fee payment. The receipt information in SEVIS is located on the Student information page. There is a block entitled "I-901 Fee Payment Information". There is a lapse between the time the student pays the fee and when the confirmation appears in SEVIS, which allows ICE to process the payment (approximately 10-days). The receipt is not required if payment can be verified in SEVIS. If payment status indicates, "cancelled", the POE should still accept this as proof of payment. (Added by CBP 4-04)

(2) Classification: M-2 Spouse and children of M-1 vocational student.

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (M-1) unless exempt. SEVIS Form I-20MN, student copy. The SEVIS will generate a separate Form I-20MN for each M-2 identified by "dependent copy" over the bar code and SEVIS ID. The dependent's SEVIS Form I-20MN will include both the dependent's and the principal's biographical information. When processing M-2 dependents, endorse the SEVIS Form I-20MN and return it to the alien.

Qualifications: Must be an individual listed in the general description, accompanying or following to join a principal M-1 student. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit M-2 to same date as M-1.

Notations on Form I-94: Front: M-2, same date to which admitted as M-1. Reverse: In box 18 (occupation), identify dependent as spouse or child, as appropriate. Record the SEVIS Identification number as it appears on the SEVIS Form I-20MN. Note in box 22 "N " and the 10-digit SEVIS number. DO NOT WRITE SEVIS. Record the same number on the "Record of Changes" lines provided on the reverse portion of the Form I-94, Departure Record.

Study: The M-2 spouse of an M-1 student may not engage in full-time study, and the M-2

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child many only engage in full-time study if the study is an elementary or secondary school (kindergarten through twelfth grade). The M-2 spouse and child may engage in study that is avocational or recreational in nature.

Recording the Admission:

Special notes: See notes on M-1 above.

(n) Certain special immigrant spouses and children.

(1) Classification: **N-8** Includes parent of "child" accorded special immigrant status (SK-3).

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (N-8) unless exempt.

Qualifications: Must be the parent of a child classified as an SK-3 nonimmigrant. See section 101(a)(27)(I) of the INA. The parent is eligible only while the SK-3 immigrant remains a child. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit N-8 for up to 3 years.

Notations on I-94: N-8, admit for 3 years or to 21st birthday of child.

Special notes:

(A) Employment authorization. N-8 aliens are authorized employment pursuant to 8 CFR 274a.12(a) and may be issued an EAD.

(2) Classification: **N-9** Includes the child of an N-8 or child of an alien accorded an SK-1, SK-2, or SK-4 special immigrant visa.

Documents required: Passport valid for 6 months at time of entry unless exempt. Nonimmigrant visa (N-9), unless exempt.

Qualifications: Must be a child of either an N-8 described above or of an SK special immigrant. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit N-9 for 3 years or to 21st birthday.

Notations on I-94: N-9, Same date as N-8 (if child of N-8) or the lesser of 3 years or 21st birthday (if child of SK).

Special notes:

(A) Qualifying relationships. A N-9 nonimmigrant may be either the child of a former

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G-4 who acquired SK permanent resident status (when the child does not qualify for corresponding resident status), or the child of an N-8 parent who is temporarily remaining with an SK-3. See definitions for SK immigrants in §101(a)(27)(I).

(B) Employment authorization. Employment is authorized, issue EAD.

(o) Aliens of extraordinary ability.

(1) Classification: **O-1** Alien with extraordinary ability in the sciences, arts, education, business, or athletics; or who has attained extraordinary achievements in the motion picture or television industry.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (O-1) unless exempt. Must have evidence of approved I-129 petition in the form of a notation on the nonimmigrant visa indicating the petition number and employer's name, or a Notice of Action, Form I-797, indicating approval.

Qualifications: Individual (not group or team) must fall within general description of classification above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit O-1 for the validity period of the petition, plus up to 10 days before the beginning of the petition period or 10 days after its expiration. Do not exceed 3 years total [See 8 CFR 214.2(o)(6)(iii)(A), 8 CFR 214.2(o)(10).].

Notations on I-94: **Front**: O-1 and expiration date of authorized stay (expiration date of petition validity plus 10 days). **Reverse**: Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port-of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 3 years and may be extended. The beneficiary may also have a copy of the approval notice, Form I-797, which is readily verifiable.

(B) Dependents. Dependents are admitted as O-3. Dependents may not work but may attend school without changing status.

(C) Certification of Health Care Workers. If the alien beneficiary is seeking admission for the primary purpose of performing labor in a covered health care occupation, the alien must present, at time of issuance of the visa and upon each application for admission at a port of entry, a certificate or certified statement from an approved credentialing organization listed in 8 CFR 212.15(e)

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or (h). The covered health care occupations requiring valid certification include licensed practical nurses, licensed vocational nurses, registered nurses, occupational therapists, physical therapists, speech language pathologists and audiologists, medical technologists (clinical laboratory scientists), medical technicians (clinical laboratory technicians), and physician assistants. This requirement does not apply to aliens admitted to perform services in a non-clinical health care occupation in which the alien is not required to perform direct or indirect patient care (e.g., teachers, researchers, or managers of health care facilities), aliens coming to receive training in health care worker occupations (e.g., F-1s, H-3s, or J-1s), or to spouses and dependent children. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health care workers, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit health care workers and approve applications for extension of stay and/or change of status subject to the following conditions (Added by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;
- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(2) Classification: **O-2** Alien accompanying or assisting an O-1 artist or athlete.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or exempt. Nonimmigrant visa (O-2) unless exempt. Evidence of an approved I-129 petition to work a specific event or performance, either in the form of a consular notation on the visa or an approval notice on Form I-797.

Qualifications: Must possess critical skills and at least 1 year of experience with the principal O-1. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit (O-2) for the validity period of the petition (which cannot exceed 3 years), plus a period of up to 10 days before the validity period begins and 10 days after

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the validity period ends [See 8 CFR 214.2(o)(6)(iii)(B), 8 CFR 214.2(o)(10).].

Notations on I-94: **Front:** O-2 and expiration date of authorized stay (expiration date of petition validity plus 10 days).

Reverse: occupation, petition number, and employer's name and address.

Special notes:

(A) Arrival prior to O-1. An O-2 may precede the O-1 to the U.S. to prepare for the event.

(B) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port-of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 3 years and may be extended. The beneficiary may also have a copy of the approval notice, Form I-797, which is readily verifiable.

(C) Dependents. Dependents are admitted as O-3. Dependents may not work but may attend school without changing status.

(3) Classification: **O-3** Spouse or child of an O-1 or O-2.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (O-3) unless exempt.

Qualifications: Must be spouse or child of O-1 or O-2. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit O-3 for the same time period as the principal O-1 or O-2.

Notations on I-94: O-3 and same expiration date of authorized stay as principal. Enter the name of the principal alien on the reverse, in block 26.

Special notes: Dependent employment. Dependent O aliens may not work but may attend school without changing status.

(p) Artists, athletes, and entertainers.

(1) Classification: **P-1** Internationally recognized athlete or entertainment group or essential support personnel.

Documents required: Passport valid for a minimum of 6 months beyond the period of

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admission, unless otherwise provided for or waived. Nonimmigrant visa (P-1) unless exempt. Evidence of an approved I-129 petition, either a notation on the nonimmigrant visa or a copy of the approval notice on Form I-797.

Qualifications: Must be an individual or team member, qualified as above, entering to engage in such activities. Essential support personnel (except for circus employment) must have one year of experience with the principal P-1 individual or group. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit P-1 for validity of petition, plus 10 days prior to validity date and up to 10 days after the expiration date, not to exceed 1 year for group members or 5 years for individual athletes [See 8 CFR 214.2(p)(8)(iii)(A), 8 CFR 214.2(p)(12).].

Notations on I-94: **Front:** P-1 and expiration date of authorized stay. **Reverse:** Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port of entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 5 years for individual athletes and may be extended, not to exceed 10 years. Other P-1 petitions are valid for up to 1 year and may be extended in increments of 1 year. The beneficiary may have a copy of the approval notice, Form I-797, which is readily verifiable.

(B) Dependents. Dependents are admitted as P-4. Dependents may not work but may attend school without changing status.

(C) Essential support personnel. P-1 individuals and groups may include essential support personnel. Generally, group members and support personnel must have 1 year of experience with the group. There is a 25% exception to the 1-year requirement for group membership. This 1-year experience requirement does not apply to circus personnel.

(2) Classification: **P-2** Artist or entertainer or essential support personnel in a reciprocal exchange program between an organization in the U.S. and an organization in one or more foreign countries.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (P-2) unless exempt. Evidence of an approved I-129 petition, either a consular notation on the nonimmigrant visa or a copy of the petition approval notice, Form I-797.

Qualifications: Individual or group meeting qualifications of the category as stated above.

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All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit P-2 for validity of petition plus 10 days prior to validity date and up to 10 days after the expiration date.

Notations on I-94: Front: P-2 and expiration date of authorized stay (expiration date of petition validity plus 10 days.) Reverse: Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port- of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 1 year and may not be extended beyond a total admission period of 1 year. Beneficiary may have a copy of the petition approval notice, Form I-797, which is readily verifiable.

(B) Limitation on readmission. A P-2 who has completed a year in that status ordinarily may not reenter the U.S. on a new P-2 petition for 3 months. A waiver is available as part of the petition process.

(C) Dependents. Dependents are admitted as P-4. Dependents may not work but may attend school without changing status.

(3) Classification: **P-3** Artist or entertainer coming to perform, teach, or coach under a commercial or noncommercial program that is culturally unique.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (P-3) unless exempt. Evidence of an approved I-129 petition, either a consular notation in the nonimmigrant visa or an approval notice on Form I-797.

Qualifications: Must be an individual or group member coming to perform in a program which meets the definition above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit P-3 for validity of petition plus 10 days prior to validity date and up to 10 days after the expiration date.

Notation on I-94: Front: P-3 and expiration date of authorized stay (expiration date of petition validity plus 10 days.) Reverse: Occupation and petition number.

Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa

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issuing post or, when no visa is required, to the proposed first port- of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 1 year and may not be extended beyond a total admission period of 1 year. Beneficiary may have a copy of the approval notice, Form I-797, which is readily verifiable.

(B) Dependents. Dependents are admitted as P-4. Dependents may not work but may attend school without changing status.

(4) Classification: **P-4** Spouse or child of a P-1, P-2, or P-3.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (P-4), unless exempt. May have a copy of approval notice of petition for principal alien.

Qualifications: Must be accompanying or following to join a principal P-1, P-2, or P-3. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit (P-4), same as principal.

Notation on I-94: P-4 and same expiration date of authorized stay as principal. Note the reverse, in block 26 with the name of the principal alien.

Special notes: See notes on dependents above.

(q) Cultural Visitors.

(1) Classification: **Q-1** includes aliens coming to take part in an international cultural exchange program approved by the Attorney General for the purpose of providing practical training, employment, and the sharing of the history, culture, and traditions of the alien's country.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (Q-1), unless exempt. Evidence of an approved I-129 petition, either a consular notation on the visa or a copy of the approval notice, Form I-797.

Qualifications: Must be at least 18 years of age, coming to perform services described above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit as Q to the petition validity but not to exceed 15 months.

Notation on I-94: Front: Q-1, (date to which admitted). Reverse: Petition number and occupation.

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Special notes:

(A) Petitions. The approved petition is forwarded by the service center to the visa issuing post or, when no visa is required, to the proposed first port- of-entry of the beneficiary. Petition approval may also be sent via facsimile or cable. Information on petition approval may be verified by checking the CLAIMS database. Petitions may be valid initially for up to 15 months and may not be extended.

(B) Limitation on readmission. An alien who has completed a 15 month Q-1 program must remain outside the U.S. for 1 year before being readmitted as a Q-1 nonimmigrant.

(C) Dependents. There is no dependent provision for spouse or child of a Q-1 but they may be otherwise admissible as a visitor.

(2) Classification: Q-2 includes principal participants in the Irish Peace Process Cultural and Training Program (IPPCTP) coming temporarily to the United States for employment and/or training. (Revised 12/12/05; CBP 16-06)

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless exempt. Nonimmigrant Q-2 visa and original Certification Letter from the Department of State's (DOS) Program Administrator documenting that individual is a participant in the IPPCTP and specifies the employer/trainer to whom participant is destined.

Qualifications: The program participant must: **1)** be between the ages of 18 and 35 at the time of initial departure for the United States, and coming to participate in the IPPCTP; **2)** be a citizen of the United Kingdom or the Republic of Ireland and have been a resident of Northern Ireland or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland for at least 18 months prior to departure for the United States (Periods spent away from a permanent address, but still within the UK or Ireland while pursuing training or educational opportunities, should be disregarded.); **3)** not be in possession of, or currently studying for, a degree from a university or an institute of higher education; and **4)** have been unemployed for at least 12 out of the last 15 months at the time of scheduled departure to the United States.

Terms of admission on initial entry: Admit as Q-2 for 2 years, unless Certification Letter specifies shorter program period.

Notation on I-94: Front: "Q-2 (date to which admitted)" not to exceed 2 years from the initial date of entry. Reverse: Certification Letter number at block 22. At block 26, enter "IPPCTP", and name of employer/or trainer.

Special notes:

(A) Port of initial entry: Q-2s and eligible dependents (Q-3) must be inspected at CBP

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Pre-Flight Dublin or Shannon, where they will be issued a Form I-94.

(B) Readmission after temporary absence: Total period of stay cannot exceed a total of 3 years from the initial date of admission of a principal alien admitted prior to December 10, 2004, and 2 years from the date of initial admission of a principal alien admitted on or after December 10, 2004. Form I-94 should be annotated at block 22 with the Certification Letter number and at block 26 with "IPPCTP", then name of employer/or trainer. (Q-2/Q-3s should retain their Form I-94s when they visit contiguous territory or adjacent islands, if such a visit will not exceed 30 days. See 8 CFR 214.1(b)(4)).

Principal participants or accompanying or following-to-join spouses or children of the principal who are in possession of valid passports, Q-2 or Q-3 visas, and original certification letters from the DOS' Program Administrator may be readmitted for the remainder of time authorized on their certification letters provided they have not been outside the United States in excess of 3 consecutive months. Such periods of time will not be added to the end of stay. Principal participants and dependents who remain outside the United States in excess of 3 consecutive months will not be readmitted on their initial Q-2 or Q-3 visa. Instead, any principal participant and eligible dependents wishing to rejoin the program will be required to reapply to the program and be in receipt of a new Q-2 or Q-3 visa and original certification letter issued by the DOS' Program Administrator, prior to any subsequent admission to the United States.

(D) Certification Letter: Principal must possess original at initial entry and any subsequent reentries. Please note that the machine-readable visa will list the Certification Letter Number in the annotation area.

(E) Employment: The principal participant is permitted to work only for the DOS-approved employer listed on the certification letter issued by DOS' Program Administrator. Q-3 dependents may not work.

(F) Unemployment: Short periods of work totaling no more than 13 weeks in the past 15 months may be waived.

(G) Foreign Residence Requirement: No participant in the IPPCTP shall be eligible to apply for nonimmigrant status, an immigrant visa, or permanent residence until that person has resided and been physically present in the person's country of nationality or last residence for an aggregate of at least 2 years following departure from the United States. This requirement is limited to aliens who are issued Q-2 visas after December 10, 2004.

A former Q-2 alien may apply for a waiver of the foreign residency requirement (on Form I-928). If the waiver is granted, the alien will receive an approval notice on a Form I-797. If a former Q-2 alien arrives in the United States without the I-797 and states that the foreign residency requirement has been waived, the CBP field officer should try to verify that the alien is eligible for admission into the United States. If the foreign residency requirement has been waived for a former Q-2, a nonimmigrant visa issued to that alien will include a notation that s/he is not subject to the foreign residency requirement.

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(3) Classification: Q-3 includes dependents of Q-2 aliens. (Revised 12/12/05; CBP 16-06)

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless exempt. Nonimmigrant Q-3 visa and original Certification Letter indicating the principal's program information.

Terms of Admission: Admit as Q-3 for duration period of principal's program.

Notation on I-94: On back of I-94: Principal's Certification Letter number at block 22, then at block 26 "Employment not authorized". Some spouses may also be principals and be classified as Q-2 and therefore authorized employment. Dependents may attend school without changing status.

(r) Religious workers.

(1) Classification: **R-1** Member of a religious denomination having a bona fide nonprofit religious organization in the U.S., coming to carry on the vocation of minister or religious professional, or to work in a religious vocation or occupation.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa (R-1) unless exempt. Letter of invitation describing duties of position in the United States.

Qualifications: Membership in a religious denomination for at least 2 years immediately preceding entry. If working in a professional capacity, the applicant must have a minimum of a bachelor's degree in a related field, or its equivalent. All nonimmigrant grounds of inadmissibility apply. If working in a non-professional capacity, the applicant must be working for a tax exempt organization.

Terms of admission: Admit R-1 for a maximum of 3 years. Extensions are permitted for up to a total of 5 years.

Notations on I-94: **Front**: R-1 and expiration date of authorized stay. **Reverse**: Occupation and employer's name and address.

Special notes: **Limitation on readmission**. Do not readmit an R who has spent 5 years in the U.S. as an R unless he or she has resided and been physically present outside the U.S. for the immediate prior year, except for brief visits for business or pleasure.

(2) Classification: **R-2** Spouse or child of R-1.

Documents required: Passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. Nonimmigrant visa unless exempt.

Qualifications: Must be accompanying or following to join an R-1 alien. All nonimmigrant

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grounds of inadmissibility apply.

Terms of admission: Admit (R-2), same as principal.

Notation on I-94: R-2 and same expiration date of authorized stay as principal. Name of principal alien in block 26, on reverse of I-94.

Special notes: **Dependents:** May not work, but may attend school without changing status.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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(t) Reserved

(u) Reserved

(v) Spouse and Dependent Children of a Lawful Permanent Resident (LPR) Authorized to Reside and Work in the United States While Waiting to Obtain Immigrant Status.

(1) Classification: **V-1:** Spouse of a LPR who is the principal beneficiary of a Form I-130, Petition for Alien Relative.

Documents required: Every alien seeking admission under section 101(a)(15)(V) of the Act is required to present a valid, unexpired V visa issued by a consular officer abroad, and a passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. The alien will not be issued any type of visa packet. If an applicant for admission presents a visa packet to the inspector, the inspector may review the information contained in the packet, but should return the packet to the alien.

Qualifications: To be eligible for the V-1 nonimmigrant classification, three requirements must be satisfied:

- The alien must be the spouse of a LPR;
- He or she must also be the principal beneficiary of a Form I-130, that was filed on or before December 21, 2000, under the F2A preference category; and,
- That petition must have been:
 - pending with the Immigration and Naturalization Service (INS) for at least 3 years; or,
 - approved and 3 years have passed since the filing date and a 2nd preference visa number is not yet available or the alien's application for an immigrant visa or adjustment of status is pending.

Terms of Admission: Admit V-1 for a maximum period of 2 years or up to the validity of the passport if less than 2 years. This time period is the maximum admission period and shall be used in most instances. However, under individual circumstances, a shorter period of admission may be authorized for good cause and upon the specific approval of the district

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director. (See also Special Note (E) regarding readmission.)

Notations on I-94: V-1, date 2 years from date of admission.

Special notes:

(A) Evidence of pending Form I-485. Except as discussed below, if the Form I-130 has been approved and the alien's priority date is current, a V-1 nonimmigrant alien must have filed a Form I-485, Application to Register Permanent Residence or Adjust Status with the Immigration and Naturalization Service or an application for an immigrant visa with Department of State (DOS) in order to remain eligible for admission as a V-1 nonimmigrant. Acceptable evidence that a Form I-485 has been properly filed with the INS prior to departure from the United States includes, but is not limited to, the INS Form I-797, Notice of Action or other documents issued by the INS (or the cancelled check endorsed by the INS). An example of acceptable evidence of an alien having applied abroad for an immigrant visa is an Official Form 233 (OF 233), Consular Cash Receipt and Record of Fees, or similar forms also issued by the DOS. Note: The DOS considers an application for immigrant visas to be "pending" only in rare instances.

(B) Ineligibility. The alien is no longer entitled to the V-1 classification:

- If the alien no longer qualifies for the F2A immigrant visa category;
- If the marriage has terminated in the case of a V-1;
- When the Form I-130 has been revoked or denied; or
- When the Form I-485 or the immigrant visa application has been denied.

Like any nonimmigrant, a V-1 nonimmigrant must be otherwise admissible to the United States, except that section 212(a)(9)(B) of the Act, relating to unlawful presence, does not apply to aliens seeking admission as a V nonimmigrant. A V-1 nonimmigrant determined to be inadmissible may be subject to removal proceedings under section 235(b)(1) or section 240 of the Act, or may be permitted to withdraw his or her application for admission, depending on the reasons and circumstances regarding the inadmissibility. Unless there is fraud or other serious violations involved in the alien's application for a visa, application for admission, or application for adjustment of status, an alien who is no longer eligible for V-1 status should generally be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

Where an alien appears inadmissible for health-related grounds under section 212(a)(1) of the Act, and where a section 212(g) waiver has either not been obtained or is not applicable, the alien shall be processed for a definitive medical determination of admissibility or inadmissibility. In all such cases, the procedures contained in section 232 of the Act and 8 CFR 232.3 shall be followed. Additional guidance concerning medical referrals is available in Chapter 17.9 of this field manual. See also Chapter 41.3 of the Adjudicator's Field Manual regarding medical waivers.

(C) Terms and conditions of V-1 nonimmigrant status. An alien in the United States in

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V-1 nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the Act. An alien admitted to the United States as a V-1 nonimmigrant may reside in the United States while waiting for his or her:

- Form I-130 (immigrant visa petition) to be adjudicated;
- Priority date to be reached in order to apply for adjustment of status (in the United States) or for an immigrant visa (abroad); or
- Application for adjustment of status to be adjudicated.

A nonimmigrant V-1 alien is authorized to remain in the United States until:

- His or her authorized period of admission expires; or,
- 30 days after the date one of the following is denied or revoked, whichever comes first:
 - The Form I-130 filed on the alien's behalf;
 - The alien's application for adjustment of status; or,
 - The alien's application for an immigrant visa.

If the principal alien's status is terminated for any of these reasons, the status of any derivative child shall also simultaneously be terminated.

(D) Employment Authorization. An alien admitted to the United States in V-1 nonimmigrant status, or who has his or her status changed to V-1 while in the United States, may obtain employment authorization on the basis of that status. Employment authorization may only be requested subsequent to V-1 admission or change of status by filing a Form I-765, Application for Employment Authorization, with the currently prescribed application fee to:

US INS
P.O. Box 7216
Chicago, IL 60680-7216

(E) Readmission. An alien in V-1 nonimmigrant status may travel abroad and be readmitted to the United States if he or she possesses a valid and unexpired V-1 nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. The passport must be valid for a minimum of 6 months beyond the period of admission.

Unlike other pending adjustment of status cases, a V-1 nonimmigrant, once he or she has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), does **not** need to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States.

An alien who has both an approved Form I-130 and a current priority date shall not be

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denied admission simply because he or she had not filed either a Form I-485 or an immigrant visa application. If otherwise admissible, the alien shall be admitted for a period of 6 months in order to file for adjustment. This is a 1-time only admission for a 6-month period to file the appropriate application.

If the applicant does file the appropriate application, he or she may apply for an extension of status from within the United States. If the applicant files the appropriate application (immigrant visa overseas or Form I-485) within the 6 months and applies for admission at a port-of-entry (POE), with evidence of filing Form I-797 the applicant will be treated as a regular V-1 nonimmigrant applicant for admission and will be eligible for the maximum period of admission (2 years). Advance parole is not required (dual intent).

(F) Unlawful Presence. An alien who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an alien applying for admission to the U.S. as an immigrant for 3 or 10 years, section 214(o)(2) of the Act exempts an alien applying for admission as a V-1 nonimmigrant from this ground of inadmissibility.

(2) Classification: **V-2** An eligible child of an LPR who is the principal beneficiary of a Form I-130.

Documents required: Every alien seeking admission under section 101(a)(15)(V) of the Act is required to present a valid, unexpired V visa issued by a consular officer abroad, and a passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. The alien will not be issued any type of visa packet. If an applicant for admission presents a visa packet to the inspector, the inspector may review the information contained in the packet, but should return the packet to the alien.

Qualifications: To be eligible for the V-2 nonimmigrant classification, three requirements must be satisfied:

- The alien must be the unmarried child of a LPR;
- He or she must also be the principal beneficiary of a Form I-130, that was filed on or before December 21, 2000, under the F2A preference category; and,
- That petition must have been:
 - pending with the INS for at least 3 years; or,
 - approved and 3 years have passed since the filing date and a 2nd preference visa number is not yet available or the alien's application for an immigrant visa or adjustment of status is pending.

Terms of Admission: Admit for 2 years if less than 19 years of age or until the date 45 days after the alien's 21st birthday, whichever is sooner. This time period is the maximum admission period and shall be used in most instances unless the validity of the passport if

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less than 2 years. However, under individual circumstances, a shorter period of admission may be authorized for good cause and upon the specific approval of the district director. (See also Special Note (E) regarding admission of an aging out V-2 and Special Note (F) regarding readmission.)

Notations on Form I-94: V-2, date 2 years from date of admission or 45 days after alien's 21st birthday, whichever is earlier.

Special Notes:

(A) Evidence of pending Form I-485. Except as discussed below, if the Form I-130 has been approved and the alien's priority date is current, a V-2 nonimmigrant alien must have filed a Form I-485 or an application for an immigrant visa (with DOS) in order to remain eligible for admission as a V-2 nonimmigrant. Acceptable evidence that a Form I-485 has been properly filed with the INS prior to departure includes, but is not limited to, the INS Form I-797 or other documents issued by the INS (or the cancelled check endorsed by the INS). An example of acceptable evidence of an alien having applied abroad for an immigrant visa is an OF 233, Consular Cash Receipt and Record of Fees, or similar forms also issued by the DOS. Note: The DOS considers an application for immigrant visas to be "pending" only in rare instances.

(B) Ineligibility. The alien is no longer entitled to the classification:

- If the alien no longer qualifies for the F2A immigrant visa category;
- If the alien has married or has reached 21 years and 45 days of age;
- In the case of a step-relationship, the alien's parent's marriage has terminated and the petitioner and alien have no legal relationship;
- When the Form I-130 has been revoked or denied; or
- When the Form I-485 or the immigrant visa application has been denied.

Like any nonimmigrant, a V-2 nonimmigrant must be otherwise admissible to the United States, except that section 212(a)(9)(B) of the Act, relating to unlawful presence, does not apply to aliens applying for admission as a V nonimmigrant. A V-2 nonimmigrant determined to be inadmissible may be subject to removal proceedings under section 235(b)(1) or section 240 of the Act, or may be permitted to withdraw his or her application for admission, depending on the reasons and circumstances regarding the inadmissibility. Unless there is fraud or there are other serious violations involved in the alien's application for a visa, application for admission, or application for adjustment of status, an alien who is no longer eligible for V-2 status should generally be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

Where an alien appears inadmissible for health-related grounds under section 212(a)(1) of the Act, and where a section 212(g) waiver has either not been obtained or is not applicable, the alien shall be processed for a definitive medical determination of admissibility or inadmissibility. In all such cases, the procedures contained in section 232 of the Act and 8 CFR 232.3 shall be followed. Additional guidance concerning medical referrals is available in Chapter 17.9 of this field manual. See also Chapter 41.3

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of the Adjudicator's Field Manual regarding medical waivers.

(C) Terms and conditions of V-2 nonimmigrant status. An alien in the United States in V-2 nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the Act. An alien admitted to the United States as a V-2 nonimmigrant may reside in the United States while waiting for his or her:

- Form I-130 (immigrant visa petition) to be adjudicated;
- Priority date to be reached in order to apply for adjustment of status (in the United States) or for an immigrant visa (abroad); or
- Application for adjustment of status to be adjudicated.

A nonimmigrant V-2 alien is authorized to remain in the United States until:

- His or her authorized period of admission expires; or,
- 30 days after the date one of the following is denied or revoked, whichever comes first:
 - The Form I-130 filed on the alien's behalf;
 - The alien's application for adjustment of status; or,
 - The alien's application for an immigrant visa.

If the principal alien's status is terminated for any of these reasons, the status of any derivative child shall (V-3) also be simultaneously terminated.

(D) Employment Authorization. An alien admitted to the United States in V-2 nonimmigrant status, or who has his or her status changed to V-2 while in the United States, may obtain employment authorization on the basis of that status. Employment authorization may only be requested subsequent to V-2 admission or change of status by filing a Form I-765 with the currently prescribed application fee with the Chicago "Lock-box" address for the Missouri Service Center referenced above.

(E) Admission for Aging Out V-2s. If an alien is 19 years of age or older and applies for admission to the United States as a V-2 nonimmigrant, he or she shall be given an admission period ending 45 days after the alien's 21st birthday. As the beneficiaries of visa petitions filed prior to September 11, 2001, all V-2 nonimmigrant aliens, if otherwise eligible, qualify for 45 days of "age-out protection" under section 424 paragraph (2) of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.

Special attention shall be paid to any child (as defined in section 101(b)(1) of the Act) arriving at a POE within months or days of reaching his or her 21st birthday with little or no possibility of the alien's priority date becoming current before age 21. If otherwise admissible, such an alien shall be admitted up to 45 days after his or her 21st birthday.

(F) Readmission: An alien in V-2 nonimmigrant status may travel abroad and be readmitted to the United States if he or she possesses a valid and unexpired V-2

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nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. The passport must be valid for a minimum of 6 months beyond the period of admission.

Unlike other pending adjustment of status cases, a V-2 nonimmigrant, once he or she has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), does **not** need to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States.

An alien who has both an approved Form I-130 and a current priority date shall not be denied admission simply because he or she had not filed either a Form I-485 or an immigrant visa application. If otherwise admissible, the alien shall be admitted for a period of 6 months in order to file for adjustment. This is a 1-time only admission for a 6-month period to file the appropriate application.

If the applicant does file the appropriate application, he or she may apply for an extension of status from within the United States. If the applicant files the appropriate application (immigrant visa overseas or Form I-485) within the 6 months and applies for admission at a POE, with evidence of filing Form I-797 the applicant will be treated as a regular V-2 nonimmigrant applicant for admission and will be eligible for the maximum period of admission (2 years or 45 days after his or her 21st birthday, whichever is earlier). Advance parole is not required (dual intent).

(G) Unlawful Presence. A alien who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an alien applying for admission to the U.S. as an immigrant for 3 or 10 years, section 214(o)(2) of the Act exempts an alien applying for admission as a V-2 nonimmigrant from this ground of inadmissibility.

(3) Classification: **V-3**: The accompanying or following to join child of a V-1 or V-2.

Documents required: Every alien seeking admission under section 101(a)(15)(V) of the Act is required to present a valid, unexpired V visa issued by a consular officer abroad, and a passport valid for a minimum of 6 months beyond the period of admission, unless otherwise provided for or waived. The alien will not be issued any type of visa packet. If an applicant for admission presents a visa packet to the inspector, the inspector may review the information contained in the packet, but should return the packet to the alien.

Qualifications: To be eligible for the V-3 nonimmigrant classification, he or she must be:

- The unmarried child of a qualifying V-1 or V-2 nonimmigrant; and,
- Accompanying or following to join such nonimmigrant (i.e., not the principal beneficiary of an F2A petition).

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Terms of Admission: Admit for 2 years if less than 19 years of age. This time period is the maximum admission period and shall be used in most instances unless the passport is valid for less than 2 years. However, under individual circumstances, a shorter period of admission may be authorized for good cause and upon the specific approval of the district director. (See Special Note (E) regarding readmission and Special Note (F) regarding age-outs.)

Notations on I-94: V-3, date 2 years from date of admission or 45 days after alien's 21st birthday, whichever is earlier.

Special Notes:

(A) Evidence of pending Form I-485. Except as discussed below, if the Form I-130 has been approved and the alien's priority date is current, a V-3 nonimmigrant alien must have filed a Form I-485 or an application for an immigrant visa (with DOS) in order to remain eligible for admission as a V-3 nonimmigrant. Acceptable evidence that a Form I-485 has been properly filed with the INS prior to departure includes, but is not limited to, the INS Form I-797 or other documents issued by the INS (or the cancelled check endorsed by the INS). An example of acceptable evidence of an alien having applied abroad for an immigrant visa is an OF 233, Consular Cash Receipt and Record of Fees, or similar forms also issued by the DOS. Note: The DOS considers an application for immigrant visas to be "pending" only in rare instances.

(B) Ineligibility. The alien is no longer entitled to the V-3 classification:

- If he or she no longer qualifies for the F2A category;
- If the marriage of his or her V-1 parent has terminated;
- If he or she has married or has reached 21 years and 45 days of age;
- When the Form I-130 filed for his or her V-1 or V-2 parent has been revoked or denied; or
- When his or her Form I-485 or immigrant visa application has been denied.

Like any nonimmigrant, a V-3 nonimmigrant must be otherwise admissible to the United States, except that section 212(a)(9)(B) of the Act, relating to unlawful presence, does not apply to aliens applying for admission as a V nonimmigrant. A V-3 nonimmigrant determined to be inadmissible may be subject to removal proceedings under section 235(b)(1) or section 240 of the Act, or may be permitted to withdraw his or her application for admission, depending on the reasons and circumstances regarding the inadmissibility. Unless there is fraud or there are other serious violations involved in the alien's application for a visa, application for admission, or application for adjustment of status, an alien who is no longer eligible for V-3 status should generally be permitted to withdraw his or her application for admission in lieu of formal removal proceedings.

Where an alien appears inadmissible for health-related grounds under section 212(a)(1) of the Act, and where a section 212(g) waiver has either not been obtained or is not applicable, the alien shall be processed for a definitive medical determination of

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admissibility or inadmissibility. In all such cases, the procedures contained in section 232 of the Act and 8 CFR 232.3 shall be followed. Additional guidance concerning medical referrals is available in Chapter 17.9 of this field manual. See also Chapter 41.3 of the Adjudicator's Field Manual regarding medical waivers.

(C) Terms and conditions of V-3 nonimmigrant status. An alien in the United States in V-3 nonimmigrant status must comply with the terms and conditions of that status as set forth in section 214 of the Act. An alien admitted to the United States as a V-3 nonimmigrant may reside in the United States while waiting for his or her:

- V-1 or V-2 parent's Form I-130 (immigrant visa petition) to be adjudicated;
- Priority date to be reached in order to apply for adjustment of status (in the United States) or for an immigrant visa (abroad); or
- application for adjustment of status to be adjudicated.

A nonimmigrant V-3 alien is authorized to remain in the United States until:

- His or her authorized period of admission expires; or
- 30 days after the date one of the following is denied or revoked, whichever comes first:
 - The Form I-130 filed on the principal alien's behalf;
 - The alien's application for adjustment of status; or,
 - The alien's application for an immigrant visa.

If the status of the V-3 alien's V-1 or V-2 parent is terminated for any of these reasons, the status of the V-3 alien shall also be simultaneously terminated.

(D) Employment Authorization. An alien admitted to the United States in V-3 nonimmigrant status, or who has his or her status changed to V-3 while in the United States, may obtain employment authorization on the basis of that status. Employment authorization may only be requested subsequent to V-3 admission or change of status by filing a Form I-765, with the currently prescribed application fee with the Chicago "Lock-box" address for the Missouri Service Center referenced above.

(E) Readmission. An alien in V-3 nonimmigrant status may travel abroad and be readmitted to the United States if he or she possesses a valid and unexpired V-3 nonimmigrant visa or otherwise qualifies for automatic revalidation pursuant to 22 CFR 41.112. The passport must be valid for a minimum of 6 months beyond the period of admission.

Unlike other pending adjustment of status cases, a V-3 nonimmigrant, once he or she has properly filed an application for adjustment of status (based on the approval of the qualifying Form I-130), does **not** need to obtain advance parole in order to preserve the adjustment application upon departure and to permit the alien to return to the United States.

An alien who has both an approved Form I-130 and a current priority date shall not be

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denied admission simply because he or she had not filed either a Form I-485 or an immigrant visa application. If otherwise admissible, the alien shall be admitted for a period of 6 months in order to file for adjustment. This is a 1-time only admission for a 6-month period to file the appropriate application.

If the applicant does file the appropriate application, he or she may apply for an extension of status from within the United States. If the applicant files the appropriate application (immigrant visa overseas or Form I-485) within the 6 months and applies for admission at a POE, with evidence of filing Form I-797 the applicant will be treated as a regular V-3 nonimmigrant applicant for admission and will be eligible for the maximum period of admission (2 years). Advance parole is not required (dual intent).

(F) Admission for Aging Out V-3. If an alien is 19 years of age or older and applies for admission to the United States as a V-3 nonimmigrant, he or she shall be given an admission period ending 45 days after the alien's 21st birthday. As the beneficiaries of visa petitions filed prior to September 11, 2001, all V-3 nonimmigrant aliens, if otherwise eligible, qualify for 45 days of "age-out protection" under section 424 paragraph (2) of the USA PATRIOT Act of 2001.

Special attention shall be paid to any child (as defined in section 101(b)(1) of the Act) arriving at a POE within months or days of reaching his or her 21st birthday with little or no possibility of the alien's priority date becoming current before age 21. If otherwise admissible, such an alien shall be admitted up to 45 days after his or her 21st birthday.

(G) Unlawful Presence. An alien who has been unlawfully present in the United States for more than 180 days and departs triggers section 212(a)(9)(B) of the Act, the ground of inadmissibility relating to unlawful presence. Although this section will bar an alien applying for admission to the U.S. as an immigrant for 3 to 10 years, the section 214(o) of the Act exempts an alien applying for admission as a V-3 nonimmigrant from this ground of inadmissibility.

(w) Reserved

(x) Reserved

(y) Reserved

(z) NATO employees.

(1) Classification: **NATO-1** This classification is for the principal permanent representative of a member state of NATO resident in the U.S. and resident members of his/her official staff and members of their immediate families.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-1).

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Qualifications: Must be an alien described above. Inadmissible under 212(a)(3)(B)(i)(I) and (C) only.

Terms of admission: Admit NATO-1 for Duration of Status.

Notations on I-94: NATO-1, D/S

Special notes:

(A) Nonmilitary NATO. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(2) Classification: **NATO-2** Includes other representatives of member states to NATO and their immediate family members. Also includes NATO military members and their families.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa unless exempt.

Qualifications: Must be a person described above. Inadmissible only under 212(a)(3)(A)(i), (ii) and (iii) and 212(a)(3)(B)(i)(I) and (ii).

Terms of admission: Admit for Duration of Status. Military NATO-2 are exempt inspection.

Notations on I-94: NATO-2, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

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(3) **Classification:** **NATO-3** Includes the official clerical staff accompanying a representative of member state to NATO and members of their immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-3).

Qualifications: Must be an alien described above. Inadmissible only under 212(a)(3)(A)(i), (ii), (iii) and 212(a)(3)(B)(i)(I) and (ii) of the Act.

Terms of admission: Admit NATO-3 for Duration of Status.

Notations on I-94: NATO-3, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(4) **Classification:** **NATO-4** Includes officials of NATO, other than those classified under NATO-1, and members of their immediate family.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-4).

Qualifications: Must be an alien described above. Excludable only under 212(a)(3)(A)(i), (ii), (iii) and 212(a)(3)(B)(i)(I), and (ii) of the Act.

Terms of admission: Admit NATO-4 for Duration of Status.

Notations on I-94: NATO-4, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt

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inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(5) Classification: **NATO-5** Includes experts employed on missions on behalf of NATO, and their dependents.

Documents required: Passport must be valid for 6 months beyond the date to which admitted. Nonimmigrant visa (NATO-5).

Qualifications: Must be alien described above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit NATO-5 for Duration of Status.

Notations on I-94: NATO-5, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(6) Classification: **NATO-6** Includes civilian employees of NATO military and their dependents.

Documents required: Passport valid only to date of application for admission. Nonimmigrant visa (NATO-6).

Qualifications: Must be an individual described above. Excludable under 212(a)(3)(A)(i), (ii), (iii) and 212(a)(3)(B)(i)(I), and (ii) of the Act only. See §102 of the Act.

Terms of admission: Admit NATO-6 for duration of status.

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Notations on I-94: NATO-6, D/S

Special notes:

(A) Distinction between NATO officials and NATO members of Armed Forces. Nonmilitary NATO nonimmigrants should not be confused with members of NATO Forces entering under official orders with proper identification who are exempt inspection and therefore, exempt normal passport and nonimmigrant visa requirements.

(B) NATO countries. See list in Chapter 11.2.

(C) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

(7) Classification: **NATO-7** Includes attendants, servants, or personal employees of NATO-1 through NATO-6, and members of their immediate family.

Documents required: Passport must be valid for 6 months beyond the date to which the alien desires to be admitted. Nonimmigrant visa (NATO-7).

Qualifications: Must be alien described above. All nonimmigrant grounds of inadmissibility apply.

Terms of admission: Admit NATO-7 for three (3) years. [Amended IN02-24]

Notations on I-94: NATO-7, three years from date of admission. Enter name of employer in block 26, on reverse of I-94. [Amended IN02-24]

Special notes:

(A) NATO countries. See list in Chapter 11.2

(B) Dependents: Admit dependents in same category as principal. Dependents may attend school without changing status and may be granted employment authorization under 8 CFR 274a.12(c).

15.5 NAFTA Admissions.

- (a) General. The North American Free Trade Agreement (NAFTA) between the United States, Canada, and Mexico entered into force on January 1, 1994. Chapter 16 of NAFTA pertains to Canadian and Mexican citizens seeking classification as one of four types of business persons:

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- **B-1** temporary visitors for business under section 101(a)(15)(B) of the Act;
- **E-1 or E-2** treaty traders and treaty investors under section 101(a)(15)(E) of the Act;
- **L-1** intracompany transferees under section 101(a)(15)(L) of the Act; and
- **TN** professional level employees under section 214(e) of the Act.

The NAFTA is an historic accord governing the largest trilateral trade relationship in the world and covers trade in goods, services, and investments. NAFTA facilitates the movement of U.S., Canadian, and Mexican business persons across each country's border through streamlined procedures. The NAFTA maintains the provisions of existing laws that ensure border security and protect indigenous labor and permanent employment. Further, NAFTA fully protects the ability of state governments to require that Canadians and Mexicans practicing a profession in the United States are fully licensed under state law to do so. Current U.S. law and practice relating to exclusion and deportation of aliens applies unchanged to all business persons seeking temporary entry under the provisions of Chapter 16 of the NAFTA.

The immigration-related provisions of NAFTA are similar to those contained in the United States-Canada Free-Trade Agreement (CFTA), which was suspended with the entry into force of NAFTA. The NAFTA is an international agreement subject to scrutiny by the public, the media, other governments and the Temporary Entry Working Group. INS inspectors must maintain the highest standards of objectivity, courtesy and professionalism when processing applicants for admission.

(Revised IN99-28)

(b) Definitions.

(1) A **business person** as defined in NAFTA means a citizen of Canada or Mexico who is engaged in the trade of goods, the provision of services, or the conduct of investment activities.

(2) **Business activities at a professional level** means those undertakings which require that, for successful completion, the individual has at least a baccalaureate degree or appropriate credentials demonstrating status as a professional.

(3) **Temporary entry** as used in NAFTA means entry without the intent to establish permanent residence.

(4) To **engage in business activities at a professional level** means the performance of prearranged business activities for a U.S. entity, including an individual. It does not allow for entry in TN status of those business persons who are seeking entry to engage in

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self-employment.

(c) B-1 Classification: Business Visitor.

(1) Qualifications. A NAFTA B-1 must meet the same eligibility requirements, described in Chapter 15.4, as any other B-1. All persons seeking admission into the United States under this category, whether they engage in the activities listed in Appendix 1603.A.1 to Annex 1603 of the NAFTA or other legitimate business activities, must meet all the general standards described above. These standards have been written to be flexible and to accommodate normal legitimate business activities [See Appendix 15-3 of this manual.].

Appendix 1603.A.1 to Annex 1603 of the NAFTA is a list of business activities representative of a complete business cycle in which a B-1 business visitor seeking entry under the NAFTA may engage. Appendix 1603.A.1 is not an exhaustive list. Nothing precludes a citizen of Mexico or Canada from seeking entry to engage in traditional B-1 activities which are not included within Appendix 1603.A.1, provided they meet all requirements for entry in such states, including restrictions on sources of remuneration.

The activities contained in Appendix 1603.A.1 include:

(A) Research and design. Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of another Party.

(B) Growth, manufacture and production. Harvester-owner supervising a harvesting crew admitted under applicable law. Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of another party.

(C) Marketing. Market researchers and analysts conducting independent research or analysis for an enterprise located in the territory of another Party. Trade fair and promotional personnel attending a trade convention.

(D) Sales. Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of another Party but not delivering goods or providing services.

(E) Distribution. Transportation operations transporting goods or passengers to the territory of a Party from the territory of another Party or loading and transporting goods or passengers from the territory of a Party, with no unloading in that territory, to the territory of another Party. With respect to temporary entry into the territory of the United States, Canadian customs brokers performing brokerage duties relating to the export of goods from the territory of the United States to or through the territory of Canada. With respect to temporary entry into the territory of Canada, United States customs brokers performing brokerage duties relating to the export of goods from the territory of Canada to or through the territory of the United States. (It should be noted that, during the

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course of negotiations relating to NAFTA immigration provisions, Mexico decided not to be a Party to the language involving temporary entry of customs brokers into the signatory countries. Therefore, Mexican citizen customs brokers are not referenced in Appendix 1603.A.1. A citizen of Mexico is not precluded, however, from seeking entry into the United States in B-1 status to perform the functions of a customs broker provided he or she meets all existing requirements for B-1 classification.) Customs brokers providing consulting services regarding the facilitation of the import or export of goods.

(F) After-sales services. Installers, repair and maintenance personnel, and supervisors, possessing specialized knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement. The language concerning the life of a renewable service contract must have been included in clear and definitive terms in the original contract at the point of sale. Nothing under NAFTA precludes third party contracts for after-sales service providing the third party agreement was contracted at the time of sale.

(G) General service. Professionals engaging in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, but receiving no salary or other remuneration from a U.S. source (other than an expense allowance or other reimbursement for expenses incidental to the temporary stay). Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of another Party. Financial services personnel (insurers, bankers or investment brokers) engaging in commercial transactions for an enterprise located in the territory of another Party. Public relations and advertising personnel consulting with business associates, or attending or participating in conventions. Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of another Party. The tour may begin in the United States, but must terminate in foreign territory, and a significant portion of the tour must be conducted in foreign territory. In such cases, an operator may enter the United States with an empty conveyance and a tour guide may enter on his or her own and join the conveyance. Tour bus operators entering the territory of another Party with a group of passengers on a bus tour that has begun in, will return to, the territory of another Party to meet a group of passengers on a bus tour that will end, and the predominant portion of which will take place, in the territory of another Party or with a group of passengers on a bus tour to be unloaded in the territory of the Party into which temporary entry is sought, and returning with no passengers or reloading with the group for transportation to the territory of another Party. Translators or interpreters performing services as employees of an enterprise located in the territory of another Party.

(2) Terms of Admission. A citizen of Canada need not apply for a B-1 nonimmigrant visa, but is not precluded from doing so. A citizen of Mexico must apply for a B-1 visa at a U.S.

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embassy or consulate abroad. A citizen of Canada or Mexico will be admitted into the United States at the discretion of the inspecting officer for the period necessary to engage in the intended activities, not to exceed 1 year. The alien may apply to extend his or her stay by filing an Application to Extend/Change Status on Form I-539 with the appropriate Service office. Extensions of stay are granted in increments of not more than 6 months.

There is a \$6.00 fee at all land border ports-of-entry to process a Form I-94 for an applicant's admission into the United States.

(3) Spouses and Children. The spouse and children of a business person may accompany or follow to join the B-1 business visitor in B-2 classification if they otherwise meet the general requirements for temporary entry of visitors for pleasure. Such dependents may not work in the U.S. without obtaining a change of status, but may attend school, if incident to status.

(d) E Classification as a Treaty Trader or Treaty Investor.

(1) Qualifications. Section B of Annex 1603 of the NAFTA provides for the temporary entry of Canadian and Mexican citizens as treaty traders and treaty investors. This section required no changes to existing law and practice under section 101(a)(15)(E) of the Act, other than to authorize citizens of Canada and Mexico to apply for treaty trader (E-1) or treaty investor (E-2) status pursuant to the NAFTA.

A treaty trader is a business person who is coming to the U.S. solely to carry on substantial trade, principally between the U.S. and Canada, if the trader is a citizen of Canada, or between the U.S. and Mexico, if the trader is a citizen of Mexico.

A treaty investor is a business person who is coming to the United States solely to develop and direct the operations of an enterprise in which he or she has invested, or of an enterprise in which he or she is actively in the process of investing, a substantial amount of capital.

Immigration officers must familiarize themselves with the definition of the E classification in §101(a)(15)(E) of the Act and the regulations at 8 CFR 214.2(e) and 22 CFR 41.51.

(A) Treaty Traders. NAFTA business persons applying for the E-1 visa as a Treaty Trader must meet the following requirements.

- Citizenship. The trader, individual or entity, must possess citizenship of Canada or Mexico. In the case of an entity, at least 50% of that business must be owned by Canadian citizens or Mexican citizens.
- Trade. There must be an international exchange of a good or service, including title to that trade item, for consideration between the United States and either Canada or Mexico.

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- Substantial Trade. The volume of trade must constitute a continuous flow of trade items involving numerous transactions between the United States and Canada or Mexico.
- Trade Linked to Citizenship. Trade is principally between the U.S. and Canada, if the trader possesses Canadian citizenship, or between the U.S. and Mexico, if the trader possesses Mexican citizenship. At least 50% of the international trade (as contrasted to domestic trade) of the trading entity must be conducted between the U.S. and Canada, if the trader possesses Canadian citizenship, or between the U.S. and Mexico, if the trader possesses Mexican citizenship.

(B) Treaty Investors. NAFTA business persons applying for the E-2 visa as a Treaty Investor must meet the following requirements.

- Citizenship. The investor, individual or entity, must possess citizenship of Canada or Mexico. In the case of an entity, at least 50% of that business must be owned either by Canadian citizens or by Mexican citizens.
- Investment Must Occur or Be in Process. The investor has invested or is actively in the process of investing. The investor may invest in an established business or create a business. Being in the process of investing requires the irrevocable commitment of funds.
- The Investment Must Be Real. The enterprise is a real and operating commercial enterprise. A dormant or paper enterprise does not qualify.
- The Investment Must Be Substantial. A substantial amount of capital constitutes that amount that is substantial in the proportional sense pursuant to a proportionality test, that is, an inverted sliding scale in which the lower the total cost of the enterprise, the higher, proportionally, the investment must be. The overall cost of the enterprise is compared with the amount of personal funds and assets invested by the investor. Only loans guaranteed by personal assets qualify as actual investment by the treaty investor.

The business shall not be marginal, solely for the purpose of earning a living. A marginal enterprise is an enterprise that does not have the present or future capacity to generate more than enough income to provide a living for the treaty investor and his or her family.

- The Investor Must Be Developing and Directing the Enterprise. An investor develops and directs the business by owning at least 50% of the enterprise or by a combination involving ownership and possession of management responsibility, by controlling stock by proxy, etc.

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(C) Qualifying Employees for E-1 or E-2 Visa Classification. Employees of Treaty Traders and Treaty Investors also may apply for an E-1 or E-2, if they meet the following requirements.

- Citizenship. The employee must possess the same citizenship as the trader or investor employer.
- Position. The employee is destined to an executive/supervisory position, possessing the authority and responsibility to make decisions which will set the direction of the enterprise; or the employee, if employed in a minor capacity, has special qualifications that make the services to be rendered essential to the successful or efficient operation of the enterprise. The essential employee must possess special skills including skills which are unique to operations in the U.S. Such employees are highly and specially skilled.
- Temporary. All persons must indicate the intent to depart the U.S. upon termination of status, ceasing business operations or sale of business, etc.

(2) Terms of Admission. An alien seeking admission as a treaty trader or treaty investor under the NAFTA as an E-1 or E-2 must be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien under section 101(a)(15)(E) of the Act. Both Canadian and Mexican citizens must apply at a U.S. embassy or consulate for the issuance of an "E" nonimmigrant visa and pay any visa fee. A supplemental Form OF-156E must be submitted with pertinent documentation to the consular officer. Upon admission, issue both Canadian and Mexican treaty traders and treaty investors and their dependents a Form I-94, endorsed in the same manner as other E-1 and E-2 nonimmigrants. The classification code E-1 or E-2 will be marked clearly on the I-94. The I-94 with the E-1 or E-2 notation is the employment authorization documentation for the treaty trader or treaty investor. The Form I-94 is presented to the Social Security Administration for purposes of applying for a social security number. Periods of initial admission and extension are the same as for other E-1 and E-2 nonimmigrants.

(3) Spouse and Dependent Children. The spouse and children of a treaty trader or treaty investor may accompany or follow to join the E-1 or E-2 business person if they otherwise meet the general requirements for temporary entry. There is no requirement that the spouse and children be Canadian or Mexican citizens. Such dependents may not work in the U.S. without obtaining a change of status, but may attend school, if incident to status. As with other E-1 and E-2 nonimmigrant dependents, their I-94 visa symbol is the same as the principal's; endorsements are the same as for other E dependents.

(e) L Classification as an Intracompany Transferee.

(1) Qualifications. The designated nonimmigrant classification for the intracompany transferee who enters the U.S. under the NAFTA is L-1. The L-1 classification has been part of the Act since the 1970's through section 101(a)(15)(L). The U.S. has committed to allow citizens of Canada and Mexico who meet the qualifications of the current L-1

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classification to enter the U.S. as intracompany transferees while the NAFTA is in force. Immigration officers must familiarize themselves with definition of the L classification at section 101(a)(15)(L) of the Act and regulations at 8 CFR 214.2(l). See L-1 notes in Chapter 15.4 and *Adjudicator's Field Manual*, Chapter 32.

The NAFTA intracompany transferee must qualify under the existing requirements for L classification, including:

- Citizenship. To qualify for the NAFTA intracompany transferee classification, the applicant must establish Canadian or Mexican citizenship.
- Qualifying Capacity. The applicant must qualify in a capacity that is managerial, executive, or one involving specialized knowledge.
- Qualifying Entity. The applicant must be seeking entry to work for an entity in the U.S. which is the parent, branch, affiliate, or subsidiary of the entity in the foreign country.
- Qualifying Past Employment. The applicant must have been employed continuously for 1 year in the previous past 3 years with the qualifying entity abroad in a qualifying capacity.

(2) Terms of Admission. A petition must be filed in the applicant's behalf to accord the alien classification as an L-1. The petition must be submitted by the qualifying entity to the Service on Form I-129, Petition for Temporary Worker, in accordance with the instructions for that form. The Service will provide the NAFTA intracompany transferee and dependents with Forms I-94 at the time of admission, endorsed in the same manner as other class L admissions. The I-94 is the employment authorization document for the L-1 and may be presented to the Social Security Administration for the purpose of applying for a social security number. Periods of admission and extension for NAFTA L aliens are the same as for other L nonimmigrants. (Revised IN99-28)

(A) Citizens of Canada. A citizen of Canada is not required to, but may, obtain a nonimmigrant visa. The applicant must establish Canadian citizenship. The I-129 petition may be filed (in duplicate) by the U.S. or foreign employer in advance of entry or in conjunction with an application for admission. If the alien wishes to file in advance, the petition must be submitted to the appropriate Service Center and should be submitted at least 30 days in advance of the expected date of entry. The applicant must present evidence of the approved petition (Form I-797, Notice of Approval) at the time of application for admission. If the petition is filed in conjunction with an application for admission, such filing must be made in person with an immigration officer at a Class A port-of-entry located on the US-Canada land border or at an U.S. pre-clearance/ pre-flight station in Canada. Petitions may not be submitted to a port-of-entry in advance.

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The petitioning employer need not appear, but the Form I-129 must bear the authorized signature of the petitioner and all documentation and the appropriate filing fee must accompany the petition. The port of entry may accept appointments but the use of appointments may not preclude an applicant who did not make an appointment from being processed at the time of his/her application for admission. The I-129 petition is complex and requires sufficient time for review by the processing officer. The burden of processing time rests with the applicant not with the Service. Applicants for admission filing I-129 petitions at pre-flight locations in Canada must allow sufficient time prior to the departure of their flight for processing. (Revised IN99-28)

(B) Citizens of Mexico. A citizen of Mexico must apply for an L visa at an American consulate. At the port-of-entry, the applicant must present a valid Mexican passport with their L-1 visa.

(3) Spouses and Dependent Children. Spouses and dependent children of intracompany transferees may accompany or follow to join the L-1 principal if they otherwise meet the general immigration requirements for temporary entry. L-2 is the designated classification for both spouse and dependent children of intracompany transferees. There is no requirement that the spouse and dependent children be citizens of Canada or Mexico. L-2 dependents who are citizens of Canada are not required to obtain an L-2 visa but may seek visa issuance if desired. L-2 dependents who are citizens of Mexico or other countries generally are required to seek visa issuance. L-2's may not work in the United States. L-2's may attend school while in the United States incident to their temporary stay.

(f) TN Classification as a Professional.

(1) General.

(A) Background. The NAFTA professional is unique to the North American Free Trade Agreement (the NAFTA). The classification is not found in general immigration provisions in section 101(a)(15) of the INA; rather, it is included in section 214(e) of the INA. Under NAFTA, a Canadian or Mexican citizen who seeks temporary entry into the U.S. as a professional may be admitted to the U.S. under the provisions of the NAFTA as a TN (for Trade NAFTA). The TN is limited to Canadian or Mexican professionals employed on a professional level. A professional is defined as a business person seeking entry to engage in a business activity at a professional level in a profession set forth in Appendix 1603.D.1 to Annex 1603, if the business person otherwise qualifies under existing, general immigration requirements for temporary entry into the U.S. [See Appendix 15-4 of this manual for Annex 1603, Appendix 1603.D.1.] [For regulations relating to NAFTA TN classification, refer to 8 CFR 214.6.].

The NAFTA professional is modeled on the professional category in the

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predecessor trade pact, the United States-Canada Free-Trade Agreement (CFTA), which was in effect from January 1, 1989 until the entry into force of the NAFTA on January 1, 1994. The provisions differ only slightly for Canadian citizen applicants and Mexican citizen applicants. Following implementation of the NAFTA, there was an annual numerical limitation of 5,500 on the number of Mexican citizens entering the U.S. as TN professionals. In order to administer the cap, a Form I-129 petition and a labor condition application were required. The numerical limitation and petition requirement were eliminated effective January 1, 2004.

As with the CFTA, admission as a TN under section 214(e) of the INA does not imply that the citizen of Canada or Mexico would otherwise qualify as a professional under section 101(a)(15)(H)(i)(b) or section 203(b)(3) of the INA. Note too that Section D of Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed. Section D of Annex 1603 is limited to the entry of a citizen of a Party country seeking to render professional-level services for an entity in another Party country.

Self-employment also clearly conflicts with the intent of the NAFTA Implementation Act and its accompanying Statement of Administrative Action, which states, at page 178, "Section D of Annex 1603 does not authorize a professional to establish a business or practice in the U.S. in which the professional will be self-employed." In this regard, Section B of Annex 1603, which deals with "traders and investors," establishes the appropriate category of temporary entry for a citizen of a Party country seeking to develop and direct investment operations in another Party country. Canadian or Mexican citizens seeking to engage in self-employment in trade or investment activities in the U.S., therefore, must seek classification under section 101(a)(15)(E) of the INA.

Although the issue of self-employment was never specifically addressed under the regulations promulgated by the INS pursuant to the CFTA Implementation Act, the bar on establishment of a business or practice in which the professional will be self-employed is consistent with the intent of the U.S. and Canada in entering into the CFTA. Since entry into NAFTA was not intended to substantively change the treatment of professionals, this explicit bar merely clarifies existing law.

Note that the bar on establishment of a business or practice in which the Canadian or Mexican citizen will be self-employed is in no way intended to preclude a Canadian or Mexican citizen who is self-employed abroad from seeking entry to the U.S. pursuant to a pre-arranged agreement with an enterprise owned by a person or entity other than him/herself located in the U.S.

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On the other hand, a Canadian or Mexican citizen is precluded from entering this country in TN classification for the purpose of rendering pre-arranged services for a U.S. corporation or entity of which he or she is the sole or controlling shareholder or owner or over which he or she holds de facto control.

(B) Pre-arranged Professional Services. In order to obtain "TN" classification, a business person, including one who is self-employed, must be seeking entry to render pre-arranged professional services to an individual or an enterprise. If the business activities are to be rendered to an individual or an enterprise, the enterprise must be substantively separate from the business person seeking entry. Moreover, the business activities must not include establishment of a business or practice or any other type of activity in which the business person will be self-employed in the United States.

As used above, to constitute pre-arranged professional services, there must exist a formal arrangement to render professional service to an individual or an enterprise in the United States. The formal arrangement may be through an employee-employer relationship or through a signed contract between the business person or the business person's employer and an individual or an enterprise in the United States.

(C) Enterprise for Which the Professional Activities are to be Performed in the United States. The enterprise in the United States for which the business activities are to be performed can take any legal form (as defined in Article 201 of the NAFTA), that is, "any entity entirely constituted or organized under applicable law, whether or not for profit, and whether privately- owned or government-owned, including any corporation, trust partnership, sole proprietorship, joint venture or other association."

(D) Substantively Separate from the Business Person Seeking Entry as NAFTA Professional. A business person is ineligible for classification as a NAFTA Professional if the enterprise in the United States offering a contract or employment to the business person seeking entry is a sole proprietorship operated by that business person. Moreover, even if the receiving enterprise is legally distinct from the business person, such as a corporation having a separate legal existence, entry as a NAFTA Professional must be refused if the receiving enterprise is substantially controlled by that business person.

(E) Substantial Control. Whether the business person "substantially controls" the U.S. enterprise will depend on the specific facts of each case. The following factors, among others, are relevant in determining what constitutes substantial control:

- whether the applicant has established the receiving enterprise;
- whether, as a matter of fact, the applicant has sole or primary control of the U.S. enterprise (regardless of the applicant's actual percentage of share ownership);
- whether the applicant is the sole or primary owner of the business; or

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- whether the applicant is the sole or primary recipient of income of the business.

(F) Establishment of a Business in Which the Professional Will be Self-Employed in the United States. The following factors, among others are relevant in determining whether the business person will be self-employed in the United States:

- incorporation of a company in which the business person will be self-employed;
- initiation of communications (e.g., by direct mail or by advertising) for the purpose of obtaining employment or entering into contracts for an enterprise in the United States; or
- responding to advertisements for the purpose of obtaining employment or entering into contracts.

On the other hand, the following activities do not constitute the establishment of a business in which the business person will be self-employed in the United States:

- responding to unsolicited inquiries about service(s) which the professional may be able to perform; or
- establishing business premises from which to deliver pre-arranged service to clients.

(Paragraph (f)(1) revised IN98-06)

(2) Appendix 1603.D.1 to Annex 1603 of the NAFTA. Under NAFTA, an applicant seeking classification as a TN must demonstrate business activity at a professional level in one of the professions or occupations listed in Appendix 1603.D.1 to Annex 1603. Appendix 1603.D.1 (which replaces Schedule 2 to Annex 1502.1 of the CFTA) is set forth at 8 CFR 214.6(c). A Baccalaureate (bachelor's) or Licenciatura degree is the minimum requirement for these professions unless an alternative credential is otherwise specified. In the case of a Canadian or Mexican citizen whose occupation does not appear on Appendix 1603.D.1 or who does not meet the transparent criteria specified, nothing precludes the filing of a petition for classification under another existing nonimmigrant classification.

A footnote to Appendix 1603.D.1 allows for temporary entry to perform training functions relating to any of the cited occupations or profession, including conducting seminars. However, these training functions must be conducted in the manner of prearranged activities performed for a U.S. entity and the subject matter to be proffered must be at a professional level. The training function does not allow for the entry of a business person to conduct seminars which do not constitute the performance of prearranged activities for a U.S. entity.

The terms "state/provincial license" and "state/provincial/federal license" means any

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document issued by a state, provincial, or federal government, as the case may be, or under its authority, but not by a local government, that permits a person to engage in a regulated activity or profession.

A "**Post Secondary Diploma**" means a credential issued, on completion of two or more years of post secondary education, by an accredited academic institution in Canada or the United States. A "**Post Secondary Certificate**" means a certificate issued, on completion of two or more years of post secondary education at an academic institution, by the federal government of Mexico or a state government in Mexico, an academic institution recognized by the federal government or a state government, or an academic institution created by federal or state law.

The following notes relate to NAFTA TN admissions in specific occupations:

(A) A business person in the category of "**Scientific Technician/Technologist**" must possess: (a) theoretical knowledge of any of the following disciplines: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology or physics, and (b) the ability to solve practical problems in any of those disciplines, or the ability to apply principles of any of those disciplines to basic or applied research. A scientific technician/technologist does not generally have a baccalaureate degree. The following principles will be used to evaluate the admissibility of scientific technician/technologist applicants.

(i) Individuals for whom scientific technicians/ technologists wish to provide direct support must qualify as a professional in their own right in one of the following fields: agricultural sciences, astronomy, biology, chemistry, engineering, forestry, geology, geophysics, meteorology, or physics.

(ii) A general offer of employment by such a professional is not sufficient, by itself, to qualify for admission as a Scientific Technician or Technologist (ST/T). The offer must demonstrate that the work of the ST/T will be *inter-related with* that of the supervisory professional. That is, the work of the ST/T must be managed, coordinated and reviewed by the professional supervisor, and must also provide input to the supervisory professional's own work.

(iii) The ST/T's theoretical knowledge should generally have been acquired through the *successful completion of at least two years of training in a relevant* educational program. Such training may be documented by presentation of a diploma, a certificate, *or a transcript accompanied by evidence of relevant work experience.*

(iv) U.S. authorities will rely on the Department of Labor's Occupational Outlook Handbook to establish whether proposed job functions are consistent

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with those of a scientific or engineering technician or technologist. ST/Ts should not be admitted to perform job functions that are primarily associated with other job titles.

(v) Not admissible as ST/Ts are persons intending to do work that is normally done by the construction trades (welders, boiler makers, carpenters, electricians, etc.), even where these trades are specialized to a particular industry (e.g., aircraft, power distribution, etc.)

(B) A business person in the category of "**Medical Laboratory Technologist** (Canada) **Medical Technologist** (Mexico and the United States)" must be seeking temporary entry to perform in a laboratory chemical, biological, hematological, immunologic, microscopic or bacteriological tests and analyses for diagnosis, treatment, or prevention of diseases.

(C) Foreign medical school graduates seeking temporary entry in the category of "**Physician (teaching or research only)**" may not engage in direct patient care. Patient care that is incidental teaching and/or research is permissible. Patient care is incidental when it is casually incurred in conjunction with the physician's teaching or research. To determine if the patient care will be incidental, factors such as the amount of time spent in patient care relative to teaching and/or research, whether the physician receives compensation for such services, whether the salary offer is so substantial in teaching and/or research that direct patient care is unlikely, or whether the physician will have a regular patient load, should be considered by the officer.

(D) **Registered Nurses**. Registered nurses must demonstrate eligibility by providing a provincial or state license or Licenciatura degree. However, in order to be admitted, the registered nurse must present a permanent state license, a temporary state license, or other temporary authorization to work as a registered nurse, issued by the state nursing board in the state of intended employment. Admission of nurses should not be limited to the expiration date of either document. In addition, registered nurses must present a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent credentialing organization. [See 8 CFR 212.15 and AFM Ch. 30.12.] The Secretary of Homeland Security will continue to exercise his discretion to waive the certificate requirement up to and including July 25, 2005, for Canadian and Mexican health nurses, who, before September 23, 2003, were employed as "trade NAFTA" (TN) or "trade Canada" (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. Until that date, DHS will admit registered nurses and approve applications for extension of stay and/or change of status subject to the following conditions (Revised by CBP 3-04):

- The admission, extension of stay, or change of status may not be for a period longer than 1 year, even if the relevant provision of 8 CFR 214.2 would

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ordinarily permit the alien's admission for a longer period;

- The alien must obtain the requisite health care worker certification within 1 year of the date of admission, or the date of the decision to extend the alien's stay or change status; and
- Any subsequent petition or application to extend the period of authorized stay or change the alien's status must include proof that the alien has obtained the health care worker certification if the extension of stay or change of status is sought for the primary purpose of the alien performing labor in an affected health care occupation.

(E) **Sylviculturists and foresters** plan and supervise the growing, protection, and harvesting of trees. **Range managers** manage, improve, and protect rangelands to maximize their use without damaging the environment. A baccalaureate or Licenciatura degree in forestry or a related field or a state/provincial license is the minimum entry requirement for these occupations.

(F) **Disaster relief insurance claims adjusters** must submit documentation that there is a declared disaster event by the President of the United States, or a state statute, or a local ordinance, or an event at a site which has been assigned a catastrophe serial number by the Property Claims Service of the American Insurance Services Group, or, if property damage exceeds \$5 million and represents a significant number of claims, by an association of insurance companies representing at least 15 percent of the property casualty market in the U.S.

(G) **Management consultants** provide services which are directed toward improving the managerial, operating, and economic performance of public and private entities by analyzing and resolving strategic and operating problems and thereby improving the entity's goals, objectives, policies, strategies, administration, organization, and operation. Management consultants are usually independent contractors or employees of consulting firms under contracts to U.S. entities. They may be salaried employees of the U.S. entities to which they are providing services only when they are not assuming existing positions or filling newly created positions. As a salaried employee of such a U.S. entity, they may only fill supernumerary temporary positions. On the other hand, if the employer is a U.S. management consulting firm, the employee may be coming temporarily to fill a permanent position. Canadian or Mexican citizens may qualify as management consultants by holding a Baccalaureate or Licenciatura degree or by having five years of experience in a specialty related to the consulting agreement.

(H) The **computer systems analyst** category does not include programmers. A systems analyst is an information specialist who analyzes how data processing can be applied to the specific needs of users and who designs and implements computer-based processing systems. Systems analysts study the organization itself to identify its information needs and design computer systems which meet those needs. Although the systems analyst will do some programming, the TN category has not been expanded to include programmers.

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(I) **Hotel Managers** must possess a Baccalaureate or Licenciatura degree in hotel/restaurant management. A post secondary diploma in hotel/restaurant management plus 3 years of experience in the field will also qualify.

(J) **Animal and Plant Breeders** breed animals and plants to improve their economic and aesthetic characteristics. Both occupations require a Baccalaureate or Licenciatura degree.

(3) **Qualifications**. The NAFTA professional must meet the following general criteria:

- Be a citizen of a NAFTA country (Canada or Mexico).
- Be engaged in professional-level activities for an entity in the United States. Only those professional-level activities listed in Appendix 1603.D.1 to Annex 1603 are covered under the NAFTA. The applicant must establish that the professional-level services will be rendered for an entity in the United States. The NAFTA professional category is not appropriate for Canadian or Mexican citizens seeking to set up a business in the United States in which he or she will be self-employed.
- Be qualified as a professional. The applicant must establish qualifications to engage in one of the activities listed in Appendix 1603.D.1. The Minimum Education Requirements and Alternative Credentials are listed in the Appendix for each professional-level activity. The regulation requires that degrees, diplomas, or certificates received by the TN applicant from an educational institution outside of the United States, Canada, or Mexico must be accompanied by an evaluation by a reliable credentials evaluation service that specializes in such evaluations. Experiential evidence should be in the form of letters from former employers. If the applicant was formerly self-employed, business records should be submitted attesting to that self-employment.
- Meet applicable license requirements. To practice a licensed profession, Canadian and Mexican entrants must meet all applicable requirements of the state in which they intend to practice.

Note: In certain circumstances, although a profession may generally require licensing, there may be duties within the occupation that do not require licensing. For example, an architect must be licensed to sign architectural plans, etc. but not all professional-level duties of an architect require licensure (an architect can work on development of plans but be precluded from signing the plans).

Similarly, a dentist requires a license in the U.S. to practice dentistry but if a Canadian citizen is coming to the U.S. as a TN to give a seminar on dentistry, no U.S. license would be necessary. The Canadian may establish qualifications as a dentist by showing a provincial license or a D.D.S., D.M.D., Doctor en Odontologia en Cirugia

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Dental.

This is analogous to the lawyer who seeks admission as a TN to offer professional-level legal advice about Canadian law but who is not going to practice before any state bar in the U.S.-- this Canadian citizen would need only to establish qualification as a lawyer-- a J.D. or provincial bar membership could suffice.

- Be in the United States temporarily. The NAFTA professional must establish that the intent of entry is not for permanent residence.

(Revised IN99-28)

(4) Application Process.

(A) Citizens of Canada. A citizen of Canada may apply for entry to the U.S. as a NAFTA professional at U.S. Class A ports-of-entry, airports handling international flights, or at pre-clearance/pre-flight stations in Canada. The applicant must submit documentary proof that he or she is a citizen of Canada. Such proof may consist of a Canadian passport, citizenship card, or birth certificate together with photo identification. No visa is required for entry, but the applicant may seek visa issuance if desired.

An application for entry as a TN professional is an application for admission. It must be made, in person, to an immigration officer at the same time the individual is applying for admission to the U.S. There is no written application for entry as a TN professional. No prior petition, labor certification, or prior approval may be required for Canadian citizens applying for admission to the U.S. in TN status. Advance adjudication of a TN applicant prior to the actual application for admission is not appropriate. Prior approval procedures are not permissible under Annex 1603.D.2(a) of the NAFTA. The applicant must be interviewed regarding his or her qualifications for the profession. Documentation from the prospective employer in the U.S., or from the foreign employer, must include the following:

- A statement (in the form of a letter or contract) of the professional-level activity listed in Appendix 1603.D.1, in which the applicant will be engaging and a full description of the nature of the job duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration; and
- Evidence that the applicant meets the educational qualifications or alternative credentials for the activity listed in Appendix 1603.D.1.

(B) Citizens of Mexico. A citizen of Mexico may apply for entry to the U.S. as a
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NAFTA professional at U.S. Class A land border ports-of-entry, airports handling international flights, or at a pre-clearance/pre-flight station in Canada. However, a citizen of Mexico must be in possession of a TN nonimmigrant visa issued by an U.S. consulate and present a valid Mexican passport.

Upon application for a visa at a U.S. consulate or embassy, a citizen of Mexico must present the following:

- Evidence of Mexican citizenship;
- Evidence of an offer of employment to include a statement of the activity listed in Appendix 1603.D.1 in which the applicant will be engaging, a full description of the nature of the duties the applicant will be performing, the anticipated length of stay, and the arrangements for remuneration; and
- Evidence that the applicant meets the educational and/or alternative credentials for the activity listed in Appendix 1603.D.1.

(5) Terms of Initial Admission.

(A) Canadians. A Canadian citizen who qualifies for admission under the NAFTA in the TN classification must remit the fee prescribed in 8 CFR 103.7 (presently \$50.00 U.S.) upon admission. Issue the applicant a fee receipt (Form G-211, Form G-711, or Form I-797) and a multiple entry Form I-94 showing admission in the classification TN for the period requested not to exceed 1 year. Annotate the occupation in block #18 on the back of the arrival portion of the I-94.

(B) Mexicans. A Mexican citizen seeking admission in TN classification is required to present a valid TN visa issued by a U.S. consulate. Admit a Mexican TN for the period requested, not to exceed 1 year, and issue a multiple entry Form I-94 showing admission classification as TN. Annotate the occupation in block #18 on the back of the arrival portion of the I-94. (Note: Only citizens of Canada pay the TN fee at the port-of-entry. This fee is not charged to Mexican citizens when applying for TN classification at the port-of-entry because fees are charged for issuance of the TN nonimmigrant visa.)

At the time of application for admission, the citizen of Canada or Mexico will be subject to inspection to determine the applicability of section 214(b) of the Act (presumption of immigrant intent) to the applicant.

(6) Procedures for Readmission. A citizen of Canada or Mexico who is eligible for TN classification may be readmitted to the U.S. for the remainder of the period authorized on his or her Form I-94, without presentation of the letter or supporting

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documentation described above, provided that the original intended business activities and employer(s) have not changed. If the applicant is no longer in possession of a valid, unexpired Form I-94, a citizen of Canada must present substantiating evidence. Substantiating evidence may be in the form of a fee receipt for admission as a TN, a previously issued TN admission stamp in a passport, and a confirming letter from the U.S. employer(s). A Mexican citizen may be readmitted upon presentation of a valid TN visa and evidence of prior admission, which may include, but is not limited to, an INS fee receipt from a prior entry or an admission stamp in the applicant's passport. Upon readmission, issue a new multiple entry Form I-94.

(7) Extension of Stay.

(A) Form I-129 Application Process. A citizen of Canada or Mexico admitted pursuant to NAFTA may seek an extension of stay as a TN through the filing of a Form I-129 by the U.S. employer or U.S. entity (in the case of a TN who has a foreign employer) with the Nebraska Service Center. No Department of Labor certification requirements apply to an alien in TN status who is seeking to extend that status as the Form I-129 is considered an application for extension of stay rather than a petition in this case. The applicant must be in the U.S. at the time of filing the extension request. Provision is made for port-of-entry or consular notification should the applicant depart the U.S. during the pendency of the application. An extension may be granted for up to 1 year.

(B) Departure and Return. A citizen of Canada or Mexico is not precluded from departing the U.S. and applying for admission with documentation from a U.S. employer (or foreign employer, in the case of an alien who is seeking to provide prearranged services at a professional level to a U.S. entity) which specifies that the applicant will be employed in the U.S. for an additional period of time. The evidentiary requirements outlined above in paragraph (f)(4) must be met by the applicant and, in the case of a Canadian citizen, the prescribed fee must be remitted upon admission. In the case of a Mexican citizen, the passport and visa requirements also apply.

(C) Limitations. At the present time, there is no specified upper limit on the number of years a citizen of Canada or Mexico may remain in the U.S. in TN classification, as there is with most of the other nonimmigrant classifications. However, section 214(b) of the Act is applicable to citizens of Canada or Mexico who seek an extension of stay in TN status and applications for extension or readmission must be examined in light of this statutory provision.

Except as limited by section 248 of the Act, a citizen of Canada or Mexico who is currently in the U.S. in another valid classification is not precluded from

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requesting a change of status to TN. If such applicant is in the U.S. as an H-1 or L-1, he or she may be changed to TN status if otherwise eligible, without regard to the maximum time limits for those classifications. A Canadian J nonimmigrant who is subject to the 2-year foreign residence requirement may not change to TN classification, but may leave the U.S. and seek readmission as a TN.

(8) Request for Change/Additions of U.S. Employers. A Canadian or Mexican citizen may change or add employers while in the U.S. through the filing of Form I-129 at the Nebraska Service Center. All documentary requirements pertaining to a citizen of Canada or a citizen of Mexico outlined above must be met. Employment with a different or with an additional employer is not authorized prior to approval of the application.

Alternatively, the Canadian citizen may depart the U.S. and apply for reentry for the purpose of obtaining additional employment authorization with a new or additional employer. Documentary requirements outlined above in paragraph (f)(4)(A) must be met and the prescribed fee must be remitted upon readmission.

No action is required by a Canadian or Mexican citizen who is transferred to another location by the U.S. employer to perform the same services. An example of such an acceptable transfer would be to a branch or office of the employer. If the transfer is to a separately incorporated subsidiary or affiliate, Form I-129 must be filed.

(9) Spouse and Unmarried Minor Children. The spouse and unmarried minor children, who are accompanying or following to join a TN professional, if otherwise admissible, are to be accorded TD (Trade Dependent) classification. These aliens are required to present a valid, unexpired nonimmigrant visa unless otherwise visa-exempt under 8 CFR 212.1. There is no requirement that the TD dependent be a citizen of Canada or Mexico.

No fee is required for admission of dependents in TD status (except the fee for the Form I-94) and they are to be issued multiple entry Forms I-94.

A TD spouse or child is not authorized to accept employment while in the U.S. in such status. Dependents in TD status may attend school in the U.S. on a full-time basis as such attendance is deemed incidental to status.

(10) Denial. In the event a Canadian citizen applying for admission pursuant to NAFTA cannot demonstrate to the admitting officer that he or she satisfies the requirements for admission pursuant to the NAFTA, Appendix 1603.D.1, he/she should normally be offered the opportunity to withdraw his/her application for admission. If the inspector believes that the alien is inadmissible under section 212(a)(7)(A) (intending immigrant) or section 212(a)(6)(C) of the Act (seeking

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admission by fraud or willful and material misrepresentation) and the alien does not wish to withdraw his/her application for admission, the inspector should place the alien into an expedited removal proceeding.

(Revised IN03-40)

15.6 Transit without Visa (TWOV) Admissions.

(a) General description. An alien in immediate and continuous transit through the U.S. without a visa may be admitted under certain restrictions. Admission procedures are significantly different than for other nonimmigrants. Only a carrier signatory to a TWOV agreement may bring a TWOV applicant to the U.S., and only to specific ports-of-entry. TWOV agreements are provided for by section 233 of the Act and discussed in Chapter 42. Ports-of-entry for TWOV passengers are listed in 8 CFR 214.2(c). The list of carriers with TWOV agreements is contained in Appendix 42.1. Aliens of certain nationalities are only eligible for limited TWOV privileges as specified in 8 CFR 212.1(f)(2). Citizens, or in some instances residents, of certain countries are barred from TWOV privileges entirely, as specified in 8 CFR 212.1(f)(3). TWOV carriers are liable for "liquidated damages" whenever an arriving TWOV passenger fails to depart as scheduled. Liquidated damages procedures are discussed in Chapter 43.

(b) Documents required. TWOV applicants are exempt passport and visa valid for entry into the U.S., but must be in possession of a travel document or documents establishing his/her identity and nationality and ability (including any required visa) to enter the country to which destined, other than the U.S. [See 8 CFR 212.1(f)(1).]. Each TWOV passenger must have a confirmed transportation ticket to depart from the U.S. within 8 hours or on the first available transportation. A maximum of two stopovers en route is permitted.

(c) Processing procedures. Each arriving TWOV passenger should present a blue I-94T along with other required documents stated above. Enter the appropriate carrier arrival and departure information including the departure ticket number [REDACTED] in the shaded blocks on the lower front of the arrival portion of I-94T. It is critical that all information on the I-94T be complete, correct and legible, since the form is the basis on which the Service can assess damages in the event the passenger fails to depart. Staple the departure I-94 to the outbound ticket coupon and retain the arrival I-94 at the port. Stamp the passport with the admission stamp and endorse it "TWOV". Once the admission process is complete, turn the passenger and documents over to the arrival carrier, in accordance with local port procedures.

(d) Processing Ineligible and Mala Fide TWOV Applicants; TWOV Abscondee. If you determine a TWOV applicant is technically ineligible for that classification or is not a bona-fide transit passenger, first determine if the alien will be permitted to leave on his or her own recognizance, or remain in custody until departure. Contact the airline to arrange for a departure flight. If the alien is to be released, prepare Form I-160 and a regular I-94, endorsed with the parole stamp and departure information. Complete Form I-259 and serve it on the carrier. Institute fine proceedings, if the alien was statutorily ineligible for TWOV status.

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If the alien is found to be a mala-fide TWOV applicant or will not be released, prepare an I-160 and I-94 and endorse the admission block of the I-94; "I-259 served on (airline) to remove alien to (port) via (flight number) on (flight date)". Endorse the reverse of the I-94: "Ineligible TWOV." Prepare and serve an I-259 on the carrier to effect removal.

If a TWOV abscondee is reported, follow the procedures described in Chapter 43.6. If a TWOV applicant absconds after service of an I-259, report a violation of section 241(d) of the Act, using Form I-849 [See Chapters 43.3(a)(5)(E) and 43.6.].

(e) Special notes.

(1) Crew members. An alien crewmember coming to join a vessel admitted as TWOV must have a D visa and a letter from the shipping company or agent responsible for the vessel.

(2) Delayed departure. If a TWOV passenger cannot depart as scheduled due to circumstances beyond his or her control, such as aircraft mechanical problems or weather, the inspector must locate the arrival I-94T, destroy both portions and execute a new I-94T with the revised departure data. [REDACTED]

(3) Deportees. An alien being deported from another country, through the U.S., should not be processed as a TWOV. Use parole procedures.

(4) TWOV to Canada. Since a large segment of TWOV passengers are destined to Canada, the list of countries whose nationals must have a visa to enter Canada is included in Appendix 15-5. Except for TWOV applicants who are joining a vessel in Canada as a crewmember or who are leaving the U.S. as a crewmember on a vessel destined to Canada, nationals of countries on this list must have a Canadian visa in order to be admitted as TWOV passengers.

(5) Missed departure. If an TWOV applicant has already missed his or her scheduled departure at the time of application for admission, or if the departure is scheduled via a different mode of transportation, refer the applicant to secondary for confirmation of departure arrangements.

(6) Entry of TWOV passengers at ports not designated for TWOV admissions. There is one exception to the requirement that all TWOV passengers enter only at designated TWOV ports. An alien in transit from one part of contiguous territory to another part of the same contiguous territory may be admitted as TWOV if the applicant is otherwise admissible and satisfies all other TWOV requirements [See 8 CFR 214.2(c)(1).].

(7) Unescorted TWOV passengers. Although carriers are required to ensure the passage of TWOV passengers in accordance with the terms of TWOV admission, it is not Service policy to impose a fine under section 243 of the Act simply because a TWOV passenger

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appears for inspection unescorted. If a carrier repeatedly fails to take adequate safeguards with TWOV passengers, report the matter to Headquarters, Inspections.

(8) Hong Kong residents. TWOV restrictions applicable to PRC nationals pursuant to 8 CFR 212.1(f)(2) do not apply to holders of HKSAR passports.

15.7 Visa Waiver Program (VWP). (Revised IN01-04)

(a) General Description. In 1986, the Immigration Reform and Control Act (IRCA) incorporated the Visa Waiver Program into the Immigration and Nationality Act (Act). The pilot program became effective on July 1, 1988. On October 30, 2000, the Visa Waiver Permanent Program Act made the pilot program permanent. The Visa Waiver Program (VWP) permits nationals from designated countries (listed in 8 CFR 217.2(a)) to apply for admission to the United States for ninety (90) days or less as nonimmigrant visitors for business or pleasure without first obtaining a U.S. nonimmigrant visa (USNIV). In exchange, VWP applicants waive rights to proceedings before an Immigration Judge (IJ), unless they make an asylum application. Only carriers who have entered into an agreement with the Immigration and Naturalization Service (INS) on the Visa Waiver Program Carrier Agreement, Form I-775, may transport VWP applicants making their initial admission at air or sea ports-of-entry (POEs). The adjudication process for VWP carrier agreements is discussed in Chapter 42.3, and new regulations will be developed to incorporate legislative revisions to the definition of "carrier." A list of carriers signatory to the VWP is included on the National Fines Office (NFO) Bulletin Board (contained in cc: mail). The NFO provides monthly updates to the signatory carrier list on the NFO Bulletin Board. An updated signatory carrier list may also be obtained from the NFO by calling (202) 305-7018.

(b) VWP Applicants for Admission

(1) Documentary Requirements. A VWP applicant must have a passport valid for 6 months beyond the period of intended stay, or essentially 9 months (90 days + 6 months). If the country is on the Department of State's (DOS) 6-month list extending the validity of certain foreign passports, then the extra 6-month validity is assumed, although not all VWP countries are on the list. Refer to Appendix 15-2 for the list of countries from DOS's Foreign Affairs Manual, which is updated periodically. Additionally, a round-trip ticket or the equivalent as defined in 8 CFR 217.2(a) and a completed Arrival/Departure Form I-94W are required. An alien with an expired passport is ineligible for VWP admission. In the event a waiver is granted to overcome inadmissibility, the waiver should include both the passport and appropriate nonimmigrant visa grounds in section 212(a)(7)(B)(I) and (II) of the Act.

(2) Nonimmigrant Visa vs. VWP. Applicants presenting themselves for admission

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under the VWP, but who have valid, unexpired B-1/B-2 visas in their passports, are not to be considered for admission as VWP applicants, regardless of whether they present completed Form I-94Ws or not. The VWP is intended for applicants without USNIVs. The B-1/B-2 visas take precedence over any application made under the VWP.

(3) No Expedited Removal for VWP Applicants. See *In Re Suseenthera Kanagasundram*, Interim Dec. 3407 (BIA 1999); 8 CFR § 235.3(b)(1).

(c) Air and Sea POE Arrivals.

(1) General. Applicants for initial admission under the VWP must arrive on commercial aircraft or vessels signatory to the VWP. Failure to do so will result in ineligibility for the applicants under the VWP and the imposition of fines for the carrier in accordance with section 273 of the Act and described further in Chapter 43.2, Administrative Fine Violations. These requirements do not apply in cases of readmission, which is discussed further in Chapter 15.7(i), Readmission after Departure to Contiguous Territory or Adjacent Islands.

(2) Processing Procedures.

- No alien shall be admitted (or readmitted after departure to contiguous territory or an adjacent island) under the VWP unless his or her identity (i.e., name, date of birth, and passport number) has been checked using an automated electronic database containing information about the inadmissibility of aliens, and no such ground of inadmissibility has been found.
- An applicant for admission shall not be admitted under the VWP unless the alien convinces the examining immigration officer that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212 of the Act.
- The conditions for admission are specified in section 217 of the Act and 8 CFR 217. All VWP admissions are for 90 days unless the applicant's passport is valid for a lesser period, in which case the period of admission would be until the expiration date of the passport for those countries on the 6-month list. In the cases of those countries not on the 6-month list, the applicants would not meet the documentary requirements in Chapter 15.7(b), Documentary Requirements, and would be inadmissible under the VWP.
- Verify that the carrier is signatory to the VWP. Inspection of the round-trip ticket or equivalent by the primary officer is not ordinarily required, but could be considered in part of the overall determination of admissibility.

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- Each applicant under the VWP shall have been issued, by the carrier prior to arrival, a Form I-94W to be completed and which must be signed by the applicant, or responsible adult if the applicant is a minor. Review the Form I-94W presented by the applicant to ensure it is complete and legible, that all questions have been answered and that the form has been signed.
- Business visitors applying under this program are admitted "WB" and visitors for pleasure are admitted "WT." Stamp the Form I-94W with the admission stamp, notate "WB" or "WT" as appropriate, and the date to which admitted (90 days from the admission date). Stamp the passport with the admission stamp, and enter the admission class. Staple the endorsed departure portion of the Form I-94W in the passport.

(3) Adverse Actions. Refer to Chapter 15.7(g), Inadmissibility and Deportability.

(d) Land Border POE Arrivals.

(1) General. The VWP now permits arrivals at land border POEs, although it permitted arrivals only at air and sea POEs at its inception.

(2) Processing Procedures.

- No alien shall be admitted (or readmitted after departure to contiguous territory or an adjacent island) under the VWP unless his or her identity (i.e., name, date of birth, and passport number) has been checked using an automated electronic database containing information about the inadmissibility of aliens, and no such ground of inadmissibility has been found.
- An applicant for admission shall not be admitted under the VWP unless the alien convinces the examining immigration officer that he or she is clearly and beyond doubt entitled to be admitted and is not inadmissible under section 212 of the Act.
- The conditions for admission are specified in section 217 of the Act and 8 CFR 217. All VWP admissions are for 90 days unless the applicant's passport is valid for a lesser period, in which case the period of admission would be until the expiration date of the passport for those countries on the 6-month list. In the cases of those countries not on the 6-month list, the applicants would not meet the documentary requirements in Chapter 15.7(b), Documentary Requirements, and would be inadmissible under the VWP.
- The requirements for round-trip tickets and signatory carriers are not relevant, as

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there are no carriers involved. However, VWP applicants must satisfy the inspecting officer that they have the economic means to support themselves during the duration of their stay and the means to depart the U.S.

- The applicant must complete and sign the Form I-94W issued at the land border POE, usually in secondary inspection, and pay the land border fee as prescribed in 8 CFR 103.7(b)(1). Form I-94Ws issued at a land border POEs are normally issued for multiple entries, unless otherwise noted.
- Business visitors applying under this program are admitted "WB" and visitors for pleasure are admitted "WT." Stamp the Form I-94W with the admission stamp, notate "WB" or "WT" as appropriate, and the date to which admitted (90 days from the admission date). Stamp the passport with the admission stamp, and enter the admission class. Staple the endorsed departure portion of the Form I-94W in the passport.

(3) Adverse Actions. Refer to Chapter 15.7(g), Inadmissibility and Deportability.

(e) Alternative Inspections Systems.

(1) General. Port Passenger Accelerated Service System (PORTPASS), encompasses the following programs: Automated Permit Port (APP), Canadian Border Boat Landing Permit (I-68), Outlying Area Reporting Station (OARS), Remote Video Inspection Service (RVIS) and Videophone. Although not part of the INS' PORTPASS, applicants entering under the U.S. Customs Service's General Aviation Telephonic Entry (GATE) program would follow the same procedures for INS purposes.

(2) Processing Procedures.

- PORTPASS applicants must *first* apply for initial admission at a designated 24-hour staffed Class A POE, in order to comply with any enrollment processes and be issued a Form I-94W. (Alternative Inspections Systems are considered Class B POEs, and as such, do not have the capability to issue the requisite forms, among other requirements). Applicants attempting to make an *initial* entry via an Alternative Inspection System (Class B POE) are not eligible under the VWP. Only those applicants with the endorsed departure portion of the Form I-94W in their possession, obtained from a Class A POE, are eligible for *readmission* under the VWP at an Alternative Inspection System, Class B POE.
- Signatory carrier requirements do not apply for readmission under the VWP, in accordance with 8 CFR 217.3(b). It is imperative that VWP PORTPASS applicants maintain their status and have all the required documents in their

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possession when applying for admission via an Alternative Inspection System. Failure to do so will result in a refusal of admission under the VWP.

(3) Other Than VWP Applicants. Refer to Chapter 21.9 of the Inspectors Field Manual (IFM) for further information on Alternative Inspection Systems and inspections procedures for other applicants.

(f) Other Arrivals.

(1) Transit. An alien in transit through the U.S. is eligible to apply for admission as a "WT" under the VWP in accordance with 8 CFR 217.2(d). Follow procedures set forth in Chapter 15.7(c), Air and Sea POE Arrivals, and Chapter 15.7(d), Land Border POE Arrivals.

(2) Crewmembers in Transit. Alien crewmembers traveling as "deadheading crew", and crewmembers with letters indicating they are joining a vessel docked in the U.S. are eligible for VWP admission as business visitors, "WB."

(3) Ferries. The INS, as well as other agencies in the maritime arena, considers ferries to fall in two categories, due to the unique nature of ferry operations:

(A) The first category is those ferries whose primary purpose is the transportation of passengers and/or vehicles providing a continuation of the highway from one side of the water to the other and which is offered as a service normally attributed to a bridge or tunnel. These ferry trips are typically quite short in duration. The INS considers these ferry operations an extension of land border inspections, and the signatory carrier requirements are not applicable. Applicants under the VWP who arrive on these ferries are subject to the issuance of Form I-94Ws and the collection of land border fees. Inspecting officers should follow the procedures described in Chapter 15.7(d), Land Border POE Arrivals.

(B) The second category is those ferries whose operations go beyond a quick trip normally attributed to a bridge or tunnel extending the highway from one side of the water to the other and are more like vessel operations. These ferry crossings are typically several hours in duration, some as long as 12-15 hours, and the INS considers them seaport inspections. Accordingly, these ferry companies *must* be signatory to the VWP, or be subject to the imposition of fines. Although carriers arriving from contiguous territory are currently exempt the impositions of fines, the passengers are *not* exempt from the requirement of arriving on a signatory carrier for initial admission under the VWP. Failure to do so renders the passengers inadmissible under the VWP, subject to refusal, or, for unforeseen emergencies, the issuance of 212(d)(4) waivers on Form I- 193

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and the collection of the appropriate fee. For additional information concerning the 212(d)(4) unforeseen emergency waiver, see paragraph (1)(A)(ii) of this Chapter.

(4) Other Vessels.

(A) Yachting Schools. These schools, or individual vessels as part of these schools, are not eligible for initial admissions under the VWP, as they are not considered commercial vessels in accordance with 8 CFR 217.2(a). Accordingly, they cannot be signatory to the VWP. However, they frequently have VWP nationals participating in their programs, which often include trips that go foreign. Readmission under the VWP might be a possibility if all other criteria are met. Refer to further discussion on readmission in Chapter 15.7(i).

(B) Cargo vessels. Refer to Chapter 23.3(e) of the IFM.

(5) Adverse Actions. Refer to Chapter 15.7(g), Inadmissibility and Deportability.

(g) Inadmissibility and Deportability. Aliens who attempt entry under the VWP, but are found inadmissible by the inspecting officer, are refused entry into the U.S. without further administrative hearing, unless they seek asylum. The port director, officer-in-charge, or an officer acting in that capacity, has the authority to order the refusal of a VWP applicant. Care must be exercised to ensure that refusals are handled fairly and are thoroughly documented, because, as a practical matter, the inspecting officer's decision is final. VWP applicants have waived their rights to administrative hearings and are not entitled to proceedings under section 240 of the Act. Aliens who have been admitted to the U.S. under the VWP and who have subsequently been determined to be removable, shall also be removed from the U.S. The following sections will clarify the distinctions and ramifications of this often- confusing terminology:

(1) Refusals vs. Removals. 8 CFR 217.4 distinguishes determination of inadmissibility/refusal of an arriving VWP applicant for admission at a POE from the determination of deportability/removal of an alien admitted under the VWP.

(A) Refusals/Inadmissibility.

(i) General. An alien refused admission under the VWP on or after October 30, 2000 must obtain a visa before again seeking admission into the United States. Section 217(g) of the Act addresses VWP refusals at POEs on or after October 30, 2000. Section 217(g) requires "that an alien denied admission under the VWP obtain a visa before again seeking admission into the United States." Visas: Passports and Visas Not Required for Certain Nonimmigrants—Visa Waiver Program, 67 Fed. Reg. 30546. Notwithstanding this requirement, a POE refusal of admission does not constitute a formal order of removal under the Act.

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If the alien has previously violated the terms of admission under the VWP or the predecessor Visa Waiver Pilot Program, even if the Service did not previously apprehend or formally remove the alien, he or she may not apply for admission under the VWP and will need a visa before returning to the United States. Section 217(a)(6) of the Act states that if an alien was previously admitted under the VWP or its predecessor pilot program, the alien must have complied with the conditions of any previous admission under the program.

(ii) Section 212(d)(4)(A) Waiver of Passport and/or Visa. A district director has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an *unforeseen emergency* prevented him or her from acquiring the appropriate passport or visa. See generally *Matter of LeFloch*, 13 I. & N. Dec. 251, 255-56 (BIA 1969) (212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); *Matter of V*, 8 I. & N. Dec. 485, 485-87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). For the purposes of this Chapter, the term "unforeseen emergency" as used in 8 CFR 212.1(g) means:

- an alien arriving for a medical emergency;
- an alien accompanying or following to join a person arriving for a medical emergency; or
- an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

In a case where a 212(d)(4)(A) is under consideration (only in those cases identified above), the alien should complete Form I-193 and remit the appropriate fee. Where a district director favorably adjudicates an application for a 212(d)(4)(A) waiver, the admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission stamp. The admitting officer shall also make the same notation on the reverse side of both the arrival and departure portion of Form I-94.

The 212(d)(4)(A) waiver provisions defining unforeseen emergency shall apply to all VWP country nationals who arrive in the United States without either a signed I-94W or a valid visa and who intend to apply for temporary admission as a nonimmigrant under section 101(a)(15) of the Act.

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An unforeseen emergency waiver would be inappropriate, for example, in the following scenario. A representative of a renowned horse show exhibition notifies a U.S. POE that 22 horse grooms who are nationals of VWP countries will arrive in the United States two days later, aboard a non-signatory VWP carrier, and without valid visas for the purpose of engaging in lawful B-1 horse grooming activities. If the horse grooms arrive later with valid passports, aboard a non-signatory VWP carrier, and lacking either signed I-94Ws or valid visas, each applicant for admission would be ineligible for the 212(d)(4)(A) waiver unless one of the conditions in paragraph (g)(ii) were met. If, instead, each alien presented a valid passport and signed the I-94W each applicant for admission would still be inadmissible because he or she would have arrived aboard a non-signatory VWP carrier without a valid visa.

(B) Removals/Deportability. 8 CFR 217.4(b) addresses VWP applicants admitted and subsequently removed/deported (this does not include those refused at POEs), and states that removal under this section is equivalent to removal under section 240. 8 CFR 217.2(b)(2) states that persons previously removed must apply for permission to reapply pursuant to section 212(a)(9)(A)(iii) of the Act and must secure a USNIV to be admitted to the U.S. as a nonimmigrant. Therefore, these applicants would need a USNIV, a possible waiver, and permission to reapply if attempting to enter prior to the ten (10) year bar under section 212(a)(9)(A)(ii)(I).

(2) Asylum Claims. Aliens who apply for admission under the VWP shall not be subject to expedited removal regardless of their true and correct nationality. See *In Re Suseenthera Kanagasundram*, Interim Dec. 3407, (BIA 1999); 8 CFR § 235.3(b)(1). Until the Service revises Title 8 of the Code of Federal Regulations, a VWP applicant who indicates an intention to apply for asylum shall be referred to an immigration judge using Form I-863. Refer to Chapter 15.7(g)(5), VWP Asylum Requests and Procedures.

Ensure the Form I-94W for a refused VWP applicant is completed and signed. If the alien declines to sign the Form I-94W, he/she is not considered a VWP applicant. In that case, follow procedures outlined in Chapter 17.6 or 17.15 as appropriate, for institution of removal proceedings. In addition, prepare a memorandum of facts for institution of fine proceedings against the carrier, as described in Chapter 43.3.

(3) VWP Refusal Procedures

- If the alien has signed the Form I-94W, open an "A" file and take a sworn statement on Form I-877 to establish inadmissibility.

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- Complete Form I-275, checking the box for VWP refusal and recording all information about the alien and the reasons for refusal. If the refusal is based on a violation of a previous admission under the VWP or the alien is otherwise inadmissible, forward a copy of the I-275 to the appropriate Consulate.
- Endorse the inside of the back cover of the passport with "8 CFR 217.4(a)(1)", the "A" file number, date and POE code.
- Endorse both portions of the Form I-94W "refused in accordance with INA section 217"; line stamp or enter the date, POE and the officer's stamp number. Also note the departure flight information and the reason for refusal (ground(s) of inadmissibility) in block 13 of the form.
- Provide the alien a copy of the sworn statement and a copy of the Form I-94W, free of reference to any lookout intercept.
- Prepare and serve Form I-259, Notice to Detain, Remove or Present Aliens, on the responsible carrier to remove the alien. Provide the carrier with the alien's return-trip tickets (if applicable), travel documents and the endorsed departure portion of the Form I-94W.
- Three sets of fingerprints should be collected on Form FD-258 (Blue), or on Form FD-249 (Red) if the refusal is based on fraud or criminal grounds. If the Automated Biometric Identification System (IDENT) is used, POEs will adjust this guidance accordingly. (A discussion of the IDENT program is contained in Appendix 45-1 of the *Special Agent's Field Manual*.)

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- Prepare a lookout in the National Automated Immigration Lookout System (NAIIS) as described in Chapter 31.5, for the VWP refusal (lookout code VWR) and include any other lookout codes that may apply to the case. If an INS lookout already exists, do not create another lookout, and use the same "A" file number for the alien. Refer to Chapter 31.6, Lookout Intercepts, and follow procedures accordingly. The officer will essentially be attaching a message via the NAIIS Message Function to the original lookout, providing additional information from the current intercept to the originator of the lookout.
- Forward the arrival portion of the Form I-94W for data entry.
- Photocopy the cover, data page and any other relevant passport pages, as well as any other relevant materials. Distribute copies of all these materials to the "A"

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file, consular post having jurisdiction over the alien's permanent residence and the POE file. Ports are required to maintain records of VWP refusals for 1 year.

(4) VWP Asylum Requests and Procedures. A VWP applicant is not entitled to a hearing before an immigration judge, but a VWP applicant who seeks asylum must be referred to an immigration judge for a limited asylum hearing under 8 CFR 208.2(b).

- Complete the procedures in Chapter 15.7(g)(3) as for any VWP refusal.
- Complete Form I-863, Notice of Referral to Immigration Judge, checking Box #3 and the appropriate category within that paragraph, to refer the alien to the judge for the asylum hearing.
- The alien may be placed in INS custody pending the asylum hearing, or, if detention space is not available, the alien may be paroled.
- Asylum claimants under the VWP are counted statistically as refusals in column D of the G-22.1 report, and should also be counted on line 121.

(5) Parole and Deferral. A VWP applicant for admission must convince the examining immigration officer that he or she is clearly and beyond a doubt entitled to be admitted and is not inadmissible under section 212(a) of the Act. The deferred inspection provision contained in 8 CFR 235.2(a) shall not apply to an applicant for admission under section 217 of the Act, except that the inspection or removal of a VWP applicant for admission may only be deferred if the alien is paroled for criminal prosecution or punishment. There are otherwise no provisions for deferred inspections. A VWP applicant for admission may only be paroled for "urgent humanitarian reasons" or a "significant public benefit" on an individual, case-by-case basis.

(A) Urgent humanitarian paroles should not be granted unless:

- the alien is arriving for a medical emergency where the alien cannot obtain the necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa and admission process;
- the alien is needed in the United States in order to donate an organ or other tissue for transplant;
- the alien is arriving to visit a close family member in the United States who is critically ill;

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- the alien is arriving in the United States to attend the funeral of a family member;
- the alien is too ill to depart the United States immediately;
- the alien is placed in 240 removal proceedings pursuant to a challenge issued under section 235(b)(3) of the Act (only if detention is inappropriate or unavailable); or
- the alien is accompanying or following to join a person who arrived in the United States for any of the purposes listed in paragraphs (A) through (E) of this paragraph.

(B) Significant public benefit paroles should not be granted unless:

- the alien's presence is needed to assist the United States Government in a matter, such as a criminal investigation, espionage investigation, or other similar law enforcement activity;
- the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment;
- the alien is paroled to assist in a civil emergency affecting the public health, safety, or welfare; or
- the alien is paroled into the custody of a State or local law enforcement agency to testify as a material witness in a criminal prosecution.

(6) VWP Removal Procedures. Aliens admitted under the VWP program who remain longer than authorized or otherwise violate their status may be removed from the U.S. without a hearing before an immigration judge. This applies regardless of whether the alien admitted under the VWP was originally entitled to admission under the program or not. For example, if an alien gained admission by falsely claiming to be a national of a VWP country (including presentation of a counterfeit or impostor passport from such country), and was later discovered to be here in violation of the law, he/she would still not be entitled to a section 240 hearing before an IJ. Inspectors will not normally be involved in these cases, since most are interior apprehensions, but this may vary by district. When such alien is encountered, the arresting officer should:

- Prepare an I-213;
- Take a sworn statement (if appropriate);

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- Issue a letter to the alien notifying him/her that the INS has determined that he/she violated the conditions of admission under the VWP program and that he/she is being removed from the U.S., without a hearing before an immigration judge, in accordance with the provisions of the VWP.
- Except in cases where the alien entered over the land border, issue Form I- 288, notifying the carrier that it is responsible for removing the alien and that it must make appropriate transportation arrangements; and
- Prepare Form I-296 notifying the alien that he/she is precluded from reentering the U.S. for a period of 10 years (unless the alien has been previously removed or the alien is an aggravated felon, in which case the relevant greater bar would apply). The Form I-296 would be endorsed (including taking the fingerprint and attaching a photograph) and issued at the time of the alien's actual removal from the U.S.
- An INS lookout is created automatically when the case is closed in the Deportable Alien Control System (DACS), which interfaces nightly with NAILS, thereby creating the lookout.
- Although an alien admitted under the VWP program is not entitled to a hearing before an immigration judge, one who seeks asylum must be referred to an immigration judge for a limited asylum hearing under 8 CFR 208.2(b). Complete the procedures above as for any VWP removal, and then use Form I-863, Notice of Referral to Immigration Judge, checking Box #3 and the appropriate category within that paragraph, to refer the alien to the judge for the asylum hearing.

(h) Satisfactory Departure. In accordance with 8 CFR 217.3(a), a district director may, in emergent circumstances, grant an alien admitted under the VWP program satisfactory departure for a period of 30 days or less, provided that the request for satisfactory departure is made during the period of admission and the alien is still in status at the time of the request. This provision was developed for emergent cases only, e.g., in situations where aliens become ill and cannot depart the U.S. within their 90-day period of admission. It is not to be used in lieu of processing the aliens under VWP removal proceedings outlined in Chapter 15.7(g)(6).

(i) Readmission after Departure to Contiguous Territory or Adjacent Islands.

(1) General. Aliens admitted under the VWP may be readmitted to the U.S. after a departure to foreign contiguous territory or adjacent islands for the balance of their original admission period, provided they are otherwise admissible and meet all the conditions of the VWP, with the exception of arrival on a signatory carrier,

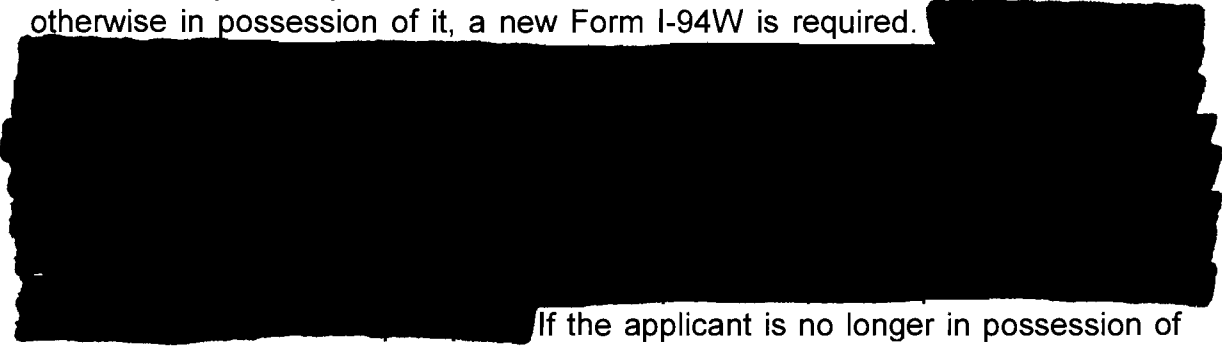
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in accordance with 8 CFR 217.3(b). The inspecting officers also have the discretion to grant the applicants entirely new periods of admission, providing they are arriving on signatory carriers. The following sections discuss the criteria, procedures, liability ramifications for the carriers, and define the term "adjacent islands" for the purposes of the VWP.

(2) Conditions for Readmission. As discussed above, aliens admitted under the VWP may be readmitted to the U.S. under the VWP after a departure to foreign contiguous territory or adjacent islands provided that:

- their authorized period of admission has not expired,
- they plan to depart the U.S. prior to the expiration date of their period of admission,
- they present valid, unexpired passports which reflect admission to the U.S. under the VWP, and
- they continue to meet all criteria set forth in 8 CFR 217 and section 217 of the Act, with the exception of arrival on a signatory carrier.

If the alien still has the original endorsed departure portion of the Form I-94W, admit the alien for the balance of his/her original admission period. If the original endorsed departure portion of the Form I-94W was lifted, or if the alien is not otherwise in possession of it, a new Form I-94W is required.

 If the applicant is no longer in possession of the endorsed departure portion of the Form I-94W at a land border POE, he/she must pay the requisite fee for the new Form I-94W.

If the alien needs to stay in the U.S. for longer than the original period of admission, the officer can consider granting another 90-day period of admission, provided the alien meets the requisite criteria. These cases are considered new admissions and the officers should follow the applicable procedures provided in Chapter 15.7(c), Air and Sea POE Arrivals, or Chapter 15.7(d), Land Border POE Arrivals. Officers should be aware of the potential for fraud in certain cases of repeated entries, although legitimate cases should be given due

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consideration.

If the original period of admission has already expired, the alien cannot be considered for readmission and must meet all the requirements for a new admission into the U.S.

(3) New Admission. Officers must treat those aliens applying for entry after expiration of the original admission period as applicants for entirely new admission. Follow the applicable procedures in Chapter 15.7(c), Air and Sea POE Arrivals, or Chapter 15.7(d), Land Border POE Arrivals, discussed earlier in this chapter.

(4) Carrier Considerations. Reentry during the original admission period need not be on a signatory carrier. Liability of the original carrier, if any, is unaffected by such brief departures. It is important to note that the original carrier retains liability ONLY if the applicant is readmitted for the balance of the original VWP admission. If the applicant is given an entirely new admission period, the new carrier, if there is one, assumes any liability and is also subject to the signatory carrier requirements of the VWP.

(5) Definition of Adjacent Islands. The term "adjacent islands" is defined in section 101(b)(15) of the Act, and for the purposes of the VWP includes: Anguilla, Antigua, Aruba, Bahamas, Barbados, Barbuda, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, Cuba, Curacao, Dominica, the Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Marie-Galante, Martinique, Miquelon, Montserrat, Saba, Saint-Barthelemy, Saint Christopher, Saint Eustatius, Saint Kitts- Nevis, Saint Lucia, Saint Maarten, Saint Martin, Saint Pierre, Saint Vincent and Grenadines, Trinidad and Tobago, Turks and Caicos Islands, and other British, French and Netherlands territory or possessions bordering on the Caribbean Sea.

(j) Special Passport Considerations

(1) General. All VWP document intercepts and related intelligence should be reported through usual channels to the Headquarters Office of Intelligence (HQINT). It is particularly important in the case of VWP countries and documents that HQINT be apprised of any relevant activity. The rightful holders of passports from the designated VWP countries are eligible for admission under the VWP, provided they meet all the requirements in Chapter 15.7(b), Documentary Requirements, and are otherwise admissible. However, certain countries may impose limitations and/or special restrictions governing the issuance of and eligibility for their passports, which may affect the VWP.

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(2) United Kingdom Passports. Only British citizens with unrestricted right of abode in the United Kingdom are eligible for VWP admission. If the national status block on the data page of the passport is endorsed "British citizen" the holder is eligible for the program. If the national status block is endorsed "British Subject: Citizen of the United Kingdom and Colonies," page five must be endorsed "Holder has the right of abode in the United Kingdom" in order to qualify for the VWP program. If the notation "British Subject: Citizen of the United Kingdom and Colonies" is crossed out, page five, or another referenced page must have the endorsement "National Status: British citizen" in order to qualify for VWP admission. The newer machine-readable, burgundy-colored, British passports qualify for VWP admission if the words "European Community" appear at the top of the cover page and the nationality on page four is endorsed "British Citizen."



(k) Authority, References and Related Sections. The primary authority for the VWP is section 217 of the Act and 8 CFR 217. However, there are other related sections in both the statute and the regulations on affiliated subjects and their impact on the VWP. Chapter 15.7 is the primary chapter on the VWP in the IFM, incorporating statutory, regulatory and procedural information. Many of the other related chapters in the IFM that impact the VWP have been referenced throughout Chapter 15.7. However, the following list is provided as a supplemental reference:

- (1) Chapter 15.1, General Considerations
- (2) Chapter 15.2, Passports
- (3) Appendix 15-2, Validity of Certain Foreign Passports (6-month list)
- (4) Chapter 17.6, Preparing Removal or Prosecution Hearings
- (5) Chapter 17.10, Abandonment of Lawful Permanent Residence Status
- (6) Chapter 17.13, Inadmissible Aliens, VWP Cases

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(7) Chapter 17.15, Expedited Removal

(8) Chapter 21.9, Alternative Inspections Systems

(9) Chapter 23.3, Inspecting Cargo Vessels

(10) Chapter 31, Service Records, particularly 31.4 (Service Lookout Systems), 31.5 (Posting, Maintaining and Cancellation of Lookouts), and 31.6 (Lookout Intercepts)

(11) Appendix 31-4, Lookout Case Codes

(12) Chapter 42.3, VWP Agreements

(13) Appendix 42-2, VWP Signatory Carrier List

(14) Chapter 43, Fines and Liquidated Damages, particularly 43.2 (Administrative Fine Violations) and 43.3 (Processing Administrative Fines at POEs)

Contained within the chapters listed above are further references to relevant sections of the statute and the regulations. Any further information and future enhancements can be accessed via the search/query option in INSERTS.

15.8 Guam Visa Waiver Program. (Revised IN01-04)

(a) General Description. The Guam Visa Waiver Program (GVWP) is found in Section 212(l) of the Act. It was created by Section 14 of Public Law 99-396 (Aug. 27, 1986). Regulations pertaining to the Guam Visa Waiver Program are found in 8 CFR 212.1(e). The program allows nationals of designated countries to be admitted to Guam for 15 days for business or pleasure with their stay restricted to the Territory of Guam only. Carriers must sign a separate agreement, Form I-760, to transport applicants under the GVWP. The GVWP is also distinguished from the VWP in that a prior violation of the program does not make one ineligible in the future. Prior to enactment of section 245(i) of the Act in 1994, adjustment of status was prohibited. Section 245(i) provided for the adjustment of status of GVWP aliens.

Applicants for admission from a country included in both the GVWP and the VWP will be inspected under the program determined by the documentation they present.

(b) Documents Required. A GVWP applicant must have a passport valid for 6 months beyond the period of intended stay, a return-trip ticket, a completed Form I-736, and a completed Form I-94.

(c) Processing Procedures. Check Form I-736 and Form I-94 for completeness and

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make sure Form I-736 has been signed. If inspection determines the applicant is admissible, endorse the I-94 with the proper class of admission: GB for nonimmigrant visitor for business or GT for nonimmigrant visitor for pleasure. The period of admission will be for 15 days. Stamp the passport with the appropriate endorsement. Staple Form I-94 to the top of Form I-736 and route to the contractor.

(d) Refusals. Aliens who attempt entry under the GVWP, but are found inadmissible by the inspecting officer, are removed from the United States without further administrative hearing unless they seek asylum. The port director or officer-in-charge, or an officer acting in that capacity, has the authority to order removal of an applicant under this provision. Because the inspecting officer's decision is, as a practical matter, final, you must exercise particular care to ensure removals are handled fairly and thoroughly documented.

Ensure the Form I-736 for a refused GVWP applicant is completed and signed. If the alien declines to sign the I-736, he or she is not considered a GVWP applicant. In that case, follow procedures outlined in Chapter 17.6, for institution of removal proceedings. In addition, prepare a memorandum of facts for institution of fine proceedings against the carrier, as described in Chapter 43.3.

If the alien has signed the I-736, open an "A" file, take a sworn statement to establish inadmissibility, and endorse the passport with the file number, date, and port code. Endorse both portions of the I-94 with "refused," the applicable INA section, and line stamp or enter the date, port, and your stamp number. Enter the reason for refusal in block 26 of the form. Provide the alien a copy of the sworn statement and a copy of the I-94, free of reference to any lookout intercept. Prepare and serve Form I-259, Notice to Detain, Remove, or Present Aliens, on the responsible carrier to remove the alien. Prepare a lookout request as described in Chapter 31.5. Forward the arrival section of the I-94 stapled to the top of the Form I-736 for data entry. Photocopy the cover, data page, and any other relevant passport pages, as well as any other relevant materials. Distribute copies of these materials to the A file, consular post having jurisdiction over the alien's permanent residence and the port-of-entry file. Ports are required to maintain records of GVWP refusals for one year.

Refusals under the GVWP will be shown in the NIIS system as class "GR".

(e) Asylum Requests. For processing GVWP applicants seeking asylum, complete Form I-863, Notice of Referral to Immigration Judge, checking Box #3 and typing or writing "GVWP/applicant" to refer the alien to an immigration judge for an asylum hearing. The alien should be placed in INS custody pending the asylum hearing, or, if detention space is not available, the alien may be paroled. Asylum claimants under the GVWP are counted statistically as refusals in column D of the G-22.1 report, and should also be counted on line 121."

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15.9 Border Crossing Card (BCC) Admissions. (Revised 11/3/04; CBP 6-04)

(a) General. Until October 1, 2002, the term "border crossing card" was used to refer to several different documents.

Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, 110 Stat. 3009 (September 30, 1996) and subsequent amendments, [codified as amended at 8 USC 1101(a)(6) and 8 USC 1101 note] changed the definition of a border crossing card to require the inclusion of a machine readable biometric identifier on all border crossing identification cards and further required that any alien who presents a BCC for admission cannot cross the border unless the biometric identifier on the card matches the biometric characteristic of the alien. As of October 1, 2002, the DSP-150, Biometric Border Crossing Card is the only border crossing card that is valid for entry to the United States.

Until April 1998, a border crossing card issued on Form I-185 was available to Canadian citizens or British subjects residing in Canada. Such cards were commonly issued for the purpose of documenting approval of a waiver of inadmissibility. Form I-185 annotated with a section 212(d)(3)(B) waiver may still be accepted as evidence of a waiver of inadmissibility that is valid until revoked. Form I-185 is not a travel document and may not be accepted in lieu of a passport and visa for a resident of Canada who requires a visa.

(b) Admission Procedures. When a border crossing card is used for an admission requiring Form I-94, enter the card number in the remarks block on the back of the Form I-94.

(c) Card Issuance Procedures. Border Crossing Card issuance procedures are discussed in Chapter 21.5.

15.10 Entry of Nonimmigrant Workers during Labor Disputes.

(a) General. There are specific regulations governing the admission of nonimmigrant alien workers entering during strikes and lockouts involving their employers. In general, an alien who has not yet entered the U.S. under an approved I-129 petition or who has not yet entered as a D, E, or TN, is inadmissible once the Secretary of Labor has certified to the Attorney General that a strike is in progress. An alien who has already commenced employment may participate in a strike (if not engaging in unlawful conduct) without jeopardizing his or her status [Specific regulations governing admission of nonimmigrants during strikes are contained in relevant subsections of 8 CFR 214.2].

(b) Labor Disputes Involving NAFTA Nonimmigrants. Article 1603(2) of NAFTA establishes a safeguard for the domestic labor force in each NAFTA country. This provision permits each party to NAFTA to refuse issuance of an immigration document to a NAFTA business person whose temporary entry may affect adversely the settlement of any labor dispute in progress at the place or intended place of employment, or if temporary entry would affect adversely the

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employment of any person involved in such dispute. This provision may also be invoked with respect to a NAFTA business person seeking entry as a treaty trader, treaty investor, intracompany transferee, or professional, whose activities in the U.S. require an employment authorization. If a petition has already been approved, but the alien has not yet entered the U.S., or has entered the U.S. but not yet started employment, the approval of the petition may be revoked [See §214(j) of the Act, and 8 CFR 214.2(e), (l), and 214.6].

Only if the Secretary of Labor certifies to or otherwise informs the Commissioner that a strike or other labor dispute involving a work stoppage of workers is in progress can adverse action (admission in a NAFTA category or approval of a petition) under this provision be initiated.

After the inspecting official determines if the temporary entry of the applicant may adversely affect the settlement of any labor dispute or the employment of any person who is involved in such a dispute, the applicant must be advised in writing of the reason(s) for the refusal. This can be the routine INS notice of refusal at the port-of-entry.

In addition, written notification must be provided to the NAFTA country of which the business person is a citizen. The following steps should be taken at the port-of-entry or service center:

Notify Headquarters (HQBEN), Business and Trade Services Branch, in writing (fax to (202) 514-0197) of the refusal. Include the following information:

- Name and address, if known, of the business person;
- Citizenship of the business person;
- Date and place of refusal of document authorizing employment (I-94);
- Name and address of prospective employer;
- Position to be occupied;
- Requested duration of stay;
- Reasons for refusal;
- Reference specific statutory or regulatory authority for refusal (if applicable); and
- Statement indicating that the business person was informed in writing of the refusal and the reasons for the refusal.

Headquarters will notify the appropriate government officials whose citizen was refused an employment authorization document pursuant to this NAFTA provision.

Where a principal alien is refused classification under NAFTA, the dependent family members

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are not classifiable as dependents.

(c) Lawful Picketing. An alien residing in contiguous territory who is a member of an international union having membership on both sides of the border may be admitted to participate in peaceful, lawful picketing if such picketing is required to fulfil a union obligation.

15.11 Special Interest Aliens.

Special Interest aliens are processed in accordance with the National Security Entry Exit Registration System (NSEERS). The regulatory authority for the NSEERS program can be found at 8 CFR 264.1(f). NSEERS guidelines are set forth in Appendix 15-9.

15.12 Correction of Erroneous Admissions.

a) General. Authority exists in 8 CFR 101.2 to create a record of a previous admission where none exists or to correct an erroneous record, provided the error was not a result of deliberate deception or fraud on the part of the alien. Erroneous records include, but are not limited to:

- Misspelled name
- Incorrect or inverted date-of-birth (DOB)
- Visa classification reflecting the incorrect non-immigrant classification as noted on the non-immigrant visa, as well as, the classification the alien was admitted under.
- The B-2 visitors stay was limited without signed supervisory approval recording the visa expiration date instead of the petition expiration date as the authorized period of stay.

Jurisdiction for correcting such errors made at the ports-of-entry lies with Customs and Border Protection (CBP). Therefore, CBP locations are responsible for the review and issuance of the appropriate documents to correct the error, to include updating the Non-immigrant Information System (NIIS) as outlined below. Since mail-in procedures are not available, aliens will be allowed to report to the nearest CBP deferred inspection office or port-of-entry, regardless of where the actual document was issued. In many instances, the CBP location of the traveler's final destination where the discrepancy will be resolved may not be the port-of-entry of first arrival.

The procedure described below is not to be used to "correct" an entry without inspection or attempted entry without inspection of an alien at other than a port-of-entry.

(b) No Record of Admission Was Created. From time to time, you may encounter an alien who has not been properly inspected and admitted at a port-of-entry, through an oversight or error on the part of the government. In such a situation, conduct an

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inspection and determine the date, place and manner of arrival. Prepare a memorandum of facts for the Director, Field Operations (DFO) having jurisdiction over the port where the actual entry occurred. If there is no objection from that DFO based on a finding that the incident occurred through inadvertence and was not a deliberate act on the part of the alien to avoid inspection, complete the admission, including preparation of an Form I-94, as if it occurred in the normal manner. If you determine that a record of admission should not be created, institute proceedings to remove the alien. In the interest of efficiency, consultation with the originating DFO may be handled by facsimile or telephonically.

If the alien involved in such an incident is admitted as a new immigrant, follow the same procedures, processing the immigrant visa in the normal manner and attaching a copy of the memorandum of facts to the visa packet prior to forwarding the packet for card issuance.

If the alien involved is a lawful permanent resident, this procedure is required only if he or she is regarded as seeking admission within the meaning of section 101(a)(13)(C) of the Act.

(c) Where an Incorrect Admission Record Exists, Before completing such action, take the necessary steps to ensure that neither the original error nor the proposed correction are deliberate actions designed for fraudulent purposes. For example, a correction on a year of birth may be part of an attempt to qualify for social security benefits.

(1) Correcting nonimmigrant I-94 data: Prepare a replacement Form I-94, Departure Record by striking out the preprinted admission number [REDACTED]

[REDACTED] In the space immediately below the preprinted admission number, copy the original admission number clearly using [REDACTED]

- Carefully print the original name and date of birth from the original Form I-94. NIIS matches arrival and departure records by comparing the admission number, together with the name and date of birth. This is why these values cannot change from the original Form I-94.
- Backdate an admission stamp to the original admission date. Affix the admission stamp in the appropriate location on the departure portion of the replacement Form I-94. Annotate the admission stamp with the corrected class of admission and / or the corrected date admitted to.
- The arrival portion of the Forms I-94 used to create the replacement Form I-94, departure record is to remain blank and discarded. The CBP officer with NIIS maintenance authority will update the NIIS record.
- Each DFO has established a NIIS Maintenance Unit(s) staffed by CBP officers

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authorized to update specific data fields in NIIS, to include but not limited to, name, date-of birth, admission class, and date admitted to. Refer to local policy to determine the location of the NIIS Maintenance Unit designated to process your NIIS data correction requests and the method for forwarding such requests.

1. CBP locations designated as a NIIS Maintenance Unit issuing corrected Forms I-94 must update the corresponding NIIS record within 72 hours of the issuance of the corrected Form I-94 or within 72 hours of the receipt of a request for a NIIS update from a CBP office not designated as a NIIS Maintenance Unit.
2. CBP locations issuing corrected Forms I-94 that are not designated as a NIIS Maintenance Unit must notify the designated NIIS Maintenance Unit of the correction within 24 hours of the issuance of the corrected Form I-94. The NIIS Maintenance Unit will update the corresponding NIIS record within 72 hours of receipt of the request.

(2) Correcting Form I-94 Information: To correct information beyond biographical and admission data, you must administratively "depart" the person from the original, erroneous admission to close out the erroneous record, and then "readmit" them, backdated to the original admission date, using correct information. This is required due to the NIIS system design.

(A) Process the initial departure record: To accomplish this, you must obtain the original departure portion of the Form I-94, and you must query NIIS to determine the original arrival information. Complete the departure portion of the original Form I-94 to reflect that the alien "departed" on the date you make the correction. The port code is your office code. In place of the carrier and flight or vessel information, enter "correction." Forward this departure Form I-94 for data entry with other Forms I-94 from your location.

(B) Record a new nonimmigrant admission: You must then record a new nonimmigrant admission to the NIIS containing all the corrected information. To record the correct information, issue an appropriate version of Form I-94 to the alien. Backdate the admission date to the original admission date. Ensure that all arrival and departure information on the new Form I-94 is complete, legible, and matches the information in the nonimmigrant's passport. Complete processing of the new Form I-94 arrival and departure portions according to Chapter 15.1.

15.13 Nationals of Former Trust Territories. (Revised by CBP 3-04)

(a) General information. In 1986, an agreement between the Republic of the Marshall Islands (RMI), the Federated States of Micronesia (FSM), and the United States became effective. The agreement was titled "Compact of Free Association". In 1994, a separate Compact became effective for the Republic of Palau. The Compacts are

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Public Laws 99-239 and 99-658 respectively. These states are referred to collectively as "the Compact states". In December 2003, Public Law 108-188 approved the Compacts of Free Association, as amended, between the United States and the Federated States of Micronesia and the Republic of the Marshall Islands.

Implementation of the amended compact with the RMI was effective May 1, 2004. The United States and the FSM exchanged diplomatic notes on June 25, 2004, bringing into force the amended compact with that country. The compact with Palau is a separate compact and remains unaffected by P.L. 108-188.

These island nations were the Trust Territories of the United States prior to the enactment of the Compacts. A citizen of the Trust Territories was not required to have a nonimmigrant visa if coming directly from the Trust Territories to Guam or Hawaii or any other part of the United States. If a citizen of the Trust Territory came to the U.S. in any other manner, he or she was required to have a nonimmigrant visa. A nonimmigrant F-1 student from a Trust Territory was also granted economic necessity part-time employment routinely (i.e., upon request only) under a policy stated in the Operations Instructions. In all other respects a citizen of the Trust Territories was subject to the same treatment as any alien.

With the implementation of the Compacts of Free Association, and the Compacts, as amended, the visa requirements for an alien covered by the Compacts changed. Under the Compacts, he or she is admitted as a nonimmigrant and may establish residence and be employed in the United States without regard to sections 212(a)(5)(A) and 212(a)(7) of the Act. All the other grounds of inadmissibility and deportability apply.

In general, the provisions of the Compact with the Republic of Palau do not apply to a naturalized citizen of Palau until such naturalized citizen has resided in Palau for 5 years after naturalization. During the 5-year period, he or she is required to present a valid passport and nonimmigrant visa when applying for entry to the United States. Special provisions for the Republic of the Marshall Islands and the Federated States of Micronesia are discussed below.

An alien who was admitted before the implementation of the Compacts in 1986, and who was in the U.S. at the time of implementation, is to be granted a change of status when encountered. That alien should file Form I-102, Application for Replacement I-94, without fee, so that a new I-94 may be issued showing change of status to CFA/MIS or FSM or PAL as appropriate. Upon filing Form I-765, without fee, a citizen of Palau may also be granted work authorization. Both applications should be filed with the Nebraska Service Center, and may be filed concurrently. A citizen of the RMI or the FSM does not need to file Form I-765, as the alien's passport and Form I-94 showing status as CFA/MIS or FSM constitute employment authorization.

(b) Compact of Free Association with the Republic of the Marshall Islands. The

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United States concluded negotiations with the RMI to implement the amended compact, effective May 1, 2004. Pursuant to the Compact of Free Association between the United States and the RMI, as amended, any person in the following categories may be admitted to lawfully engage in employment and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to section 212(a)(5) (labor certification) or (7)(B)(i)(II) (nonimmigrant visa requirement) of the Immigration and Nationality Act (INA):

- (1) A person who, on October 21, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the RMI;
- (2) A person who acquires the citizenship of the RMI at birth, on or after the effective date of the Constitution of the RMI (May 1, 1979);
- (3) An immediate relative of a person referred to in paragraphs (1) or (2), provided that:
 - (A) Such immediate relative is a naturalized citizen of the RMI who has been an actual resident there for not less than 5 years after attaining such naturalization and who holds a certificate of actual residence, and;
 - (B) In the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) for at least 5 years, and;
 - (C) The U.S. Government is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact.
- (4) A naturalized citizen of the RMI who was an actual resident there for not less than 5 years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the RMI to the Government of the United States, provided, that the United States is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact (the attached list should be safeguarded from general public dissemination); or
- (5) An immediate relative of a citizen of the RMI, regardless of the immediate relative's country of citizenship or period of residence in the RMI, if the citizen of the RMI is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

For purposes of the Compact, terms are defined as follows:

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- 'Residence' means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the INA, and variations of the term 'residence,' including 'resident' and 'reside,' shall be similarly construed;
- 'Actual residence' means physical presence in the RMI during 85 percent of the 5-year period of residency required by paragraphs (3) and (4) above;
- 'Certificate of actual residence' means a certificate issued to a naturalized citizen by the Government of the RMI stating that the citizen has complied with the actual residence requirement of paragraphs (3) or (4);
- 'Nonimmigrant' means an alien who is not an 'immigrant' as defined in section 101(a)(15) of the INA, and;
- 'Immediate relative' means a spouse, or unmarried son or unmarried daughter less than 21 years of age.

Individuals qualifying under one of the above provisions must be in possession of a valid, unexpired passport but are exempt the nonimmigrant visa requirement. Upon inspection, these aliens are issued a Form I-94 with the classification CFA/MIS, without a period of admission. Although these aliens are admitted as nonimmigrants, there is no limitation on the period of time that such alien may reside in the United States.

No person who has been or is granted citizenship in the RMI, or has been or is issued a RMI passport pursuant to any investment, passport sale, or similar program is eligible for admission to the United States under the Compact, as amended. The rights of a bona fide naturalized citizen of the RMI to enter the United States, to lawfully work, and to reside as a nonimmigrant do not extend to any naturalized citizen who naturalized primarily to obtain such rights.

A person admitted to the United States under the Compact may accept employment in the United States. An unexpired RMI passport with unexpired documentation issued by the U.S. Government evidencing admission under the Compact is considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the INA.

The provisions of the INA apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where the INA does not apply) under the Compact, including:

- Any ground of inadmissibility or deportability (except sections 212(a)(5) and

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212(a)(7)(B)(i)(II) of the INA). In addition, an alien admitted under the Compact may be found deportable under section 237(a)(5) of the INA if the alien cannot show that he or she has sufficient means of support in the United States.

- The authority under section 214(a)(1) of the INA providing that admission as a nonimmigrant shall be for such time and under such conditions as may be by regulations prescribed (no regulations have yet been published);
- The requirement for establishing eligibility for employment under section 274A of the INA;
- The provisions of 8 CFR 214.7 regarding habitual residence; and
- The authority to administer and enforce the INA or other U.S. law.

Residence in the United States pursuant to the Compact does not confer on a citizen of the RMI the right to establish the residence necessary for naturalization, or to petition for benefits for alien relatives under the INA. This does not prevent a citizen of the RMI from otherwise acquiring such rights or lawful permanent resident alien status in the United States.

Any person who relinquishes, or otherwise loses his or her RMI citizenship, is ineligible to enter the United States under the provisions of the Compact. Such person may apply for admission to the United States in accordance with any other applicable laws of the United States relating to immigration of aliens from other countries.

Adoption Under the RMI Compact

A person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact, as amended. This applies to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This provision has no effect on the ability of the U.S. Government or any State of the United States or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

DHS has interpreted this provision to include individuals coming to the United States for the purpose of giving up a child for adoption (whether or not that child has yet been born), as well as children coming for the purpose of being adopted.

RMI Compact and Service in Armed Forces of the United States

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Any person entitled to travel to the United States under the provisions of the Compact is eligible to volunteer for service in the Armed Forces of the United States, but is not subject to involuntary induction into military service as long as he or she has resided in the United States less than one year. Time engaged in full-time study does not count towards this one year. An immediate relative of a citizen of the RMI, if not himself a citizen of the RMI, will be subject to the selective service laws.

The Compact provides that at any one time, at least one qualified student, nominated by the Government of the RMI, shall be enrolled in each of the United States Coast Guard Academy and the United States Merchant Marine Academy.

Furthermore, the provisions of the Compacts do not apply to a naturalized citizen of one of the Compact states until such naturalized citizen has resided in the Compact state for 5 years after naturalization. During the 5-year period he or she is required to present a valid passport and nonimmigrant visa when applying for entry to the United States.

With this exception, because a citizen of one of the Compact states is not subject to inadmissibility under section 212(a)(7) of the Act, he or she is not required to be in possession of a valid passport when applying for admission. However, he or she is required to establish Compact state citizenship and may do so through a number of means, including presentation of an expired passport issued by his or her Compact state, presentation of an expired or unexpired passport issued by the former Trust Territory authority, or presentation of any other documentation which establishes such citizenship. This is true regardless of the location where he or she embarked the aircraft or vessel on which he or she arrived.

(c) Compact of Free Association with the Federated States of Micronesia.

The United States and the FSM exchanged diplomatic notes on June 25, 2004, bringing into force the amended compact with that country. Pursuant to the Compact of Free Association between the United States and the FSM, as amended, any person in the following categories may be admitted to lawfully engage in employment and establish residence as a nonimmigrant in the United States and its territories and possessions without regard to section 212(a)(5) (labor certification) or (7)(B)(i)(II) (nonimmigrant visa requirement) of the Immigration and Nationality Act (INA):

- (1) A person who, on November 1, 1986, was a citizen of the Trust Territory of the Pacific Islands, as defined in Title 53 of the Trust Territory Code in force on January 1, 1979, and has become and remains a citizen of the FSM;
- (2) A person who acquires the citizenship of the FSM at birth, on or after the effective date of the Constitution of the FSM (May 10, 1979);

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(3) An immediate relative of a person referred to in paragraphs (1) or (2), provided that:

- (a) Such immediate relative is a naturalized citizen of the FSM who has been an actual resident there for not less than 5 years after attaining such naturalization and who holds a certificate of actual residence, and
- (b) In the case of a spouse, such spouse has been married to the person referred to in paragraph (1) or (2) for at least 5 years, and;
- (c) The U.S. Government is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact.

(4) A naturalized citizen of the FSM who was an actual resident there for not less than 5 years after attaining such naturalization and who satisfied these requirements as of April 30, 2003, who continues to be an actual resident and holds a certificate of actual residence, and whose name is included in a list furnished by the Government of the FSM to the Government of the United States, provided, that the United States is satisfied that such naturalized citizen did not obtain his or her citizenship in order to obtain the right to enter without a visa and establish residence in the United States under the Compact (the attached list should be safeguarded from general public dissemination); or

(5) An immediate relative of a citizen of the FSM, regardless of the immediate relative's country of citizenship or period of residence in the FSM, if the citizen of the FSM is serving on active duty in any branch of the United States Armed Forces, or in the active reserves.

For purposes of the Compact, terms are defined as follows:

- "Residence" means the person's principal, actual dwelling place in fact, without regard to intent, as provided in section 101(a)(33) of the INA, and variations of the term "residence," including "resident" and "reside," shall be similarly construed;
- "Actual residence" means physical presence in the FSM during 85 percent of the 5-year period of residency required by paragraphs (3) and (4) above;
- "Certificate of actual residence" means a certificate issued to a naturalized citizen by the Government of the FSM stating that the citizen has complied with the actual residence requirement of paragraphs (3) or (4);
- "Nonimmigrant" means an alien who is not an "immigrant" as defined in section 101(a)(15) of the INA;
- "Immediate relative" means a spouse, or unmarried son or unmarried daughter

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less than 21 years of age.

Individuals qualifying under one of the above provisions must be in possession of a valid, unexpired passport but are exempt the nonimmigrant visa requirement. Upon inspection, these aliens are issued a Form I-94 with the classification of "CFA/FSM", without a period of admission. Although these aliens are admitted as nonimmigrants, there is no limitation on the period of time that such aliens may reside in the United States.

No person who has been or is granted citizenship in the FSM, or has been or is issued a FSM passport pursuant to any investment, passport sale, or similar program is eligible for admission to the United States under the Compact, as amended. The rights of a bona fide naturalized citizen of the FSM to enter the United States, to lawfully work, and to reside as a nonimmigrant do not extend to any naturalized citizen who naturalized primarily to obtain such rights.

A person admitted to the United States under the Compact may accept employment in the United States. An unexpired FSM passport with unexpired documentation issued by the U.S. Government evidencing admission under the Compact is considered to be documentation establishing identity and employment authorization under section 274A(b)(1)(B) of the INA.

The provisions of the INA apply to any person admitted or seeking admission to the United States (other than a United States possession or territory where the INA does not apply) under the Compact, including:

- Any ground of inadmissibility or deportability (except sections 212(a)(5) and 212(a)(7)(B)(i)(II) of the INA). In addition, an alien admitted under the Compact may be found deportable under section 237(a)(5) of the INA if the alien cannot show that he or she has sufficient means of support in the United States.
- The authority under section 214(a)(1) of the INA providing that admission as a nonimmigrant shall be for such time and under such conditions as may be by regulations prescribed (no regulations have yet been published);
- The requirement for establishing eligibility for employment under section 274A of the INA;
- The provisions of 8 CFR 214.7 regarding habitual residence; and
- The authority to administer and enforce the INA or other U.S. law.

Residence in the United States pursuant to the Compact does not confer on a citizen of the FSM the right to establish the residence necessary for naturalization, or to petition for benefits for alien relatives under the INA. This does not prevent a citizen of the FSM from otherwise acquiring such rights or lawful permanent resident status in the United States.

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Any person who relinquishes, or otherwise loses his or her FSM citizenship, is ineligible to enter the United States under the provisions of the Compact. Such person may apply for admission to the United States in accordance with any other applicable laws of the United States relating to immigration of aliens from other countries.

Adoption

A person who is coming to the United States pursuant to an adoption outside the United States, or for the purpose of adoption in the United States, is ineligible for admission under the Compact, as amended. This applies to any person who is or was an applicant for admission to the United States on or after March 1, 2003, including any applicant for admission in removal proceedings (including appellate proceedings) on or after March 1, 2003, regardless of the date such proceedings were commenced. This provision has no effect on the ability of the U.S. Government or any State of the United States or local government to commence or otherwise take any action against any person or entity who has violated any law relating to the adoption of any person.

DHS has interpreted this provision to include individuals coming to the United States for the purpose of giving up a child for adoption (whether or not that child has yet been born), as well as children coming for the purpose of being adopted.

Service in Armed Forces of the United States

Any person entitled to travel to the United States under the provisions of the Compact is eligible to volunteer for service in the Armed Forces of the United States, but is not subject to involuntary induction into military service as long as he or she has resided in the United States less than one year. Time engaged in full-time study does not count toward the year. An immediate relative of a citizen of the FSM, if not himself a citizen of the FSM, will be subject to the selective service laws.

The Compact provides that, at any one time, at least one qualified student, nominated by the Government of the FSM, shall be enrolled in each of the United States Coast Guard Academy and the United States Merchant Marine Academy.

(d) Geographic description. The Republic of the Marshall Islands is composed of 1,225 islands grouped in 29 atolls, 5 low islands, and 870 reefs. There are two principal chains: the Ralik Chain and Ratak Chain.

- The Ralik Chain islands are: Taongi, Bikar, Utirik, Taka, Mejit, Ailuk, Jemo, Likiep, Wotje, Erikub, Maloelap, Aur, Majuro (the capital), Arno, and Mili/Knox.
- The Ratak Chain islands are: Enewetak, Ujelang, Bikini, Rongerik, Rongelap,

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Ailinginae, Wotho, Ujae, Lae, Kwajalein, Lib, Namu, Jabwot, Ailinglaplap, Jaluit, Kili, Namorik, and Ebon.

- The Federated States of Micronesia is composed of all the Caroline Islands except for Palau (Belau). There are four states within the Federated States. The States with their islands are as follows:
 - State of Kosrae: Kosrae;
 - State of Pohnpei: Ant, Kapingamarangi, Mokil, Ngatik, Nukuoro, Oroluk, Pakin, Pingelap, and Pohnpei (the capital);
 - State of Chuuk (formerly Truk): Chuuk (Truk), East Fayu, Ettal, Kuop, Losap, Lukunor, Murilo, Nama, Namoluk, Namonuito, Nomwin, Pulap, Puluwat, Pulusuk, and Satawan; and
 - State of Yap: Eauripik, Elato, Fais, Faraulep, Garefut, Ifalik, lamotrek, Ngulu, Olimarao, Pikelot, Satawal, Sorol, Ulithi, West Fayu, Woleai, and Yap.
- The Republic of Palau (Belau) is composed of one island group and other isolated islands. The capital is Koror. There are nine inhabited islands. These are: Koror, Babeldaop, Peleliu, Angaur, Kayangel, Tobi, Pulo Anna, Sonsorol, and Helen Reef.

15.14 Hong Kong Travel Documents.

(a) General. On July 1, 1997, Hong Kong reverted to the control of the People's Republic of China. A separate administrative region, referred to as the Hong Kong Special Administrative Region (HKSAR) was established. Permanent residents of the HKSAR may carry various travel documents. Hong Kong residents may present one of several documents which meet the definition of passport under section 101(a)(30) of the Act, and are valid for visa-issuing purposes. British Dependent Territories Citizen passport (BDTC) ceased to be valid as of July 1, 1997, and is no longer be acceptable as a travel document. The following four documents are acceptable travel documents for Hong Kong residents:

(1) HKSAR passport. After July 1, 1997, permanent residents of Hong Kong who are ethnically Chinese can qualify for the new HKSAR passport. This document lists the bearer as a Chinese national with the right to abode in the HKSAR.

(2) British National(Overseas) [BN(O)] passport. This passport identifies the bearer's nationality as "British National (Overseas)." It is issued to permanent residents of Hong Kong whom British authorities consider British nationals without the right to abode in the

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United Kingdom. Although a British travel document, the BN(O) does not confer the same rights as a regular United Kingdom passport. For example, BN(O) bearers do not have the right to live in Great Britain nor are they eligible for the Visa Waiver Program (VWP).

(3) Hong Kong Certificate of Identity. This document has been issued to permanent residents of Hong Kong (of at least seven years) who were not born there, or who lack proof of birth in Hong Kong. These documents will not be issued or renewed after July 1, 1997, but will continue to be valid through their original ten-year validity. They will be replaced by the HKSAR passport.

(4) Hong Kong Document of Identity. This document has been and will continue to be issued to persons legally residing in Hong Kong for less than the seven years necessary to have full right of abode, and who cannot obtain a national passport. The document of identity is valid for return to Hong Kong at any time during its validity, even without an explicit re-entry visa into the HKSAR.

(b) Visas. Machine readable visas issued in the HKSAR, Hong Kong certificate of identity, or Hong Kong document of identity will have "HNK" in the nationality field. The BN(O) passport will have "HOKO" in the nationality field.

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15.15 Cancellation of nonimmigrant visas under section 222(g) of the Act. (Revised IN00-14)

(a) Section 222(g) Defined. An alien who was admitted to the United States on a nonimmigrant visa and who remained beyond the period of stay authorized by the Attorney General is subject to section 222(g) of the Act. The nonimmigrant visa becomes void at the conclusion of the authorized stay, unless the alien filed an application for extension of stay (E/S) or change of status (C/S) that would otherwise fall within the tolling provisions under section 212(a)(9)(B)(iv) of the Act or be deemed a period of stay authorized by the Attorney General. See paragraph (e) of this chapter. When the alien is subject to section 222(g) of the Act, the nonimmigrant visa becomes automatically void, and the alien may not be admitted to the United States, unless he or she obtains or has already obtained another visa in the country of his or her nationality. Consular officers and immigration officers who encounter aliens in possession of nonimmigrant visas that have become automatically void must physically cancel those visas. Aliens subject to section 222(g) may obtain a new visa in a third country only when the Department of State (DOS) finds extraordinary circumstances. Section 222(g)(2)(B) of the Act. Aliens arriving at a POE with a visa that has become automatically void under section 222(g) may apply for a waiver under section 212(d)(4) of the Act in limited circumstances. See paragraph (k) of this chapter. Aliens who present upon arrival at the POE a nonimmigrant visa that is automatically void under section 222(g), and who are not eligible for a waiver under section 212(d)(4) of the Act, are subject to expedited removal under section 235(b)(1) of the Act. In some cases, it may be appropriate to allow them to withdraw their application for admission, rather than to issue an expedited removal order. See paragraph (l) of this chapter and chapter 17.2.

(b) Effective date. Section 222(g) of the Act became effective on the date of enactment, September 30, 1996, and applies to any alien seeking admission on or after that date. The statute voids visas issued before, on, or after the date of enactment. For example, an alien who was issued a B-2 visa in 1994, valid indefinitely for multiple entries, who was admitted to the United States shortly thereafter for six months, and who remained in the United States beyond the I-94 expiration date is subject to section 222(g) if he or she seeks to be admitted with that visa on or after September 30, 1996. In addition, any future application for a nonimmigrant visa must be made in the country of the alien's nationality or last residence abroad, unless the alien is granted an exception under section 222(g)(2)(B) of the Act. We note that section 632(b)(2) of IIRIRA provides a limited exception in cases where the alien overstayed prior to September 30, 1996, was issued another nonimmigrant visa before that date, and has not, during any admission to the United States pursuant to that second visa, remained beyond the period of stay authorized by the Attorney General. The alien may continue using that visa, as appropriate; however, when that visa expires, any subsequent nonimmigrant visa applications must be made in the country of the alien's nationality or last residence abroad, unless an exception is granted under section 222(g)(2)(B) of the Act.

(c) General Applicability. Section 222(g) of the Act applies to aliens who were "... admitted on the basis of a nonimmigrant visa" (Emphasis added.) Section 222(g) does not apply to:

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(1) Aliens not admitted on the basis of a nonimmigrant visa.

(A) Aliens who enter the United States without inspection;

(B) Aliens who remain in the United States beyond the period of parole authorization;

(C) Aliens who were admitted with an I-185 or I-586, Canadian or Mexican Border Crossing Card (BCC) and remain in the United States beyond the authorized period of admission. **(Note:** Aliens admitted with a combination B-1/B-2 NIV/BCC issued by DOS are subject to section 222(g) of the Act if they remain in the United States beyond the authorized admission, including those who were not issued a Form I-94. However, the overstay should be documented through a sworn statement or other credible evidence.)

(D) Aliens who are exempt from the nonimmigrant visa requirements under 8 CFR 212.1(c), (c-1), (c-2), (d), (e), (f), (i), and (j) and admitted without a nonimmigrant visa; or

(E) Aliens who remain in the United States beyond the period of admission authorized under the Visa Waiver Program (VWP) under section 217 of the Act, or under the Guam Visa Waiver Program under 8 CFR 212.1(e).

(2) Certain other aliens not subject to section 222(g).

(A) Aliens who were granted Temporary Protected Status (TPS) before their nonimmigrant stay expired; and

(B) Aliens who violated their status in some way other than remaining beyond the period of stay authorized by the Attorney General.

(d) Applicability to Foreign Government Officials and Representatives of International Organizations. DOS has determined that foreign government officials and representatives of international organizations applying for A-1, A-2, C-2, C-3, G-1, G-2, G-3, or G-4 visas or for visas under NATO-1 through NATO-6, to transact official business on behalf of the foreign government or international organization they represent, are not subject to section 222(g) of the Act. DOS based this determination on sections 102 and 212(d)(8) of the Act. See also 22 CFR 41.21(d). In addition, an alien who was previously admitted to the United States on a nonimmigrant visa until a date certain, who remained in the United States beyond the period authorized by the Attorney General, and who then applies in a third country for one of the nonimmigrant visas listed in this paragraph in his/her capacity as a foreign government official or a representative of an international organization, is not subject to section 222(g) of the Act.

(e) Meaning of Period of Stay Authorized by the Attorney General. (1) Single interpretation for sections 222(g) and 212(a)(9)(B) and (C) of the Act. In agreement and coordination with DOS, a single interpretation of "period of stay authorized by the Attorney General" shall be applied to sections 222(g) (relating to the automatic voidance of the alien's nonimmigrant visa) and

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212(a)(9)(B) and (C) of the Act (relating to unlawful presence). The basic underlying principle of the interpretation of "remain in the United States beyond the period of stay authorized by the Attorney General" that sections 212(a)(9)(B) and 222(g) have in common is that the alien was an overstay or was actually found to have violated his or her status, resulting in termination of the period of stay authorized by the Attorney General.

(2) Treatment of nonimmigrants. The treatment of nonimmigrants under section 212(a)(9)(B) and 222(g) of the Act depends on whether they were admitted until a specific date, or whether they were admitted for duration of status (D/S).

(A) Nonimmigrant Admitted until a Specific Date. Nonimmigrants who were admitted until a specific date are subject to section 222(g) when they remain in the United States after the date noted on their Form I-94. They are subject to section 222(g) before the I-94 expiration date only if there is a formal finding of a status violation resulting in termination of the alien's period of stay authorized by the Attorney General. The Service may make such a formal finding while adjudicating the alien's request for an immigration benefit, such as extension of stay (E/S), change of status (C/S), or reinstatement. The formal finding of a status violation resulting in the termination of the alien's period of stay authorized by the Attorney General may also be made by an immigration judge in the course of removal proceedings.

(B) Nonimmigrant Admitted D/S. Nonimmigrants who were admitted D/S are subject to section 222(g) only when there is a formal finding of a status violation by the Service or by an immigration judge, resulting in the termination of the period of stay authorized by the Attorney General.

(C) Nonimmigrant Whose E/S or C/S Application Is Approved *Nunc Pro Tunc*. Aliens who filed a late E/S application under 8 CFR 214.1(c)(4), or a late C/S application under 8 CFR 248.1(b) that was approved retroactive to the date the previously authorized stay expired are not subject to section 222(g).

(D) Date Certain Nonimmigrants with Timely Filed E/S and C/S Applications. Section 212(a)(9)(B)(ii) of the Act provides that an alien is unlawfully present if he or she is present in the United States without admission or parole or beyond the period of stay authorized by the Attorney General. Section 212(a)(9)(B)(iv) of the Act, however, is a tolling provision that covers certain nonimmigrants. Specifically, if the alien has timely filed a nonfrivolous application for E/S or C/S, the first 120 days of unlawful presence are not counted towards the 3-year bar under section 212(a)(9)(B)(i)(I) of the Act. The Service has designated as a period of stay authorized by the Attorney General the entire time during which a timely filed, non-frivolous application for E/S or C/S is pending, provided the alien meets the requirements set forth below:

- The E/S or C/S application must have been timely filed, as required under 8 CFR § 214.1(c)(4) or 8 CFR § 248.1(b), respectively. The application is timely filed if it is submitted before the previously authorized admission expires, as provided under 8 CFR § 214.2, as applicable to the nonimmigrant class under which the alien was

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admitted. This requirement may be established by submitting evidence of the date the previously authorized stay expired, together with a copy of a dated filing receipt, a canceled check payable to the Service for the E/S or C/S application, or other credible evidence of a timely filing.

- The E/S or C/S application must be nonfrivolous. The application must have an arguable basis in law or fact and must not have been filed for an improper purpose. When applying for a visa at a consular post abroad, the applicant may be required to satisfy additional criteria, as provided in section (g)(1) of this chapter; and
- The alien must not have worked without authorization before the E/S or C/S application was filed or while it was pending. Service and consular officers may take a sworn statement from the alien to this effect. Aliens who make misrepresentations to satisfy this requirement become subject to section 212(a)(6)(C)(i) of the Act relating to fraud and willful misrepresentation of a material fact.

Aliens who meet these requirements are not subject to section 222(g) . See also chapter 30.1(d) of the AFM.

(f) Aliens in Possession of More than One Nonimmigrant Visa. When an alien is in possession of more than one nonimmigrant visa, the nonimmigrant visa under which the alien was admitted and overstayed becomes automatically void and must be canceled. The alien may be readmitted to the United States only on a visa issued in his or her country of nationality, unless an extraordinary circumstances exception is granted under section 222(g)(2)(B) of the Act. While the other nonimmigrant visa does not become automatically void, it may not be used for admission if it was not issued in the alien's country of nationality. Therefore, if the other nonimmigrant visa was not issued in the country of the alien's nationality, it must also be canceled .

(g) Effect on 222(g) of Departure During Pending E/S or C/S Application.

(1) Aliens Admitted until a Specific Date. Nonimmigrants admitted to the United States until a specific date who apply for E/S or C/S but who then leave the United States after the I-94 expires and before a decision on the application has been issued are not subject to section 222(g) of the Act if they can establish, to the satisfaction of the consular officer (if applying for a nonimmigrant visa), or to the satisfaction of the inspecting officer (if applying for admission at a POE) that they were in a period of stay authorized by the Attorney General prior to departure. The application must be timely, non-frivolous, and the alien must not have engaged in unauthorized employment, as provided in chapter 15.15(e)(2)(D). When these requirements have been met, the alien's nonimmigrant visa should not be canceled.

(2) Aliens Admitted D/S. Nonimmigrants admitted D/S who leave the United States while the E/S or C/S application is pending are not subject to section 222(g) of the Act, if no status violation was found that would have resulted in the termination of the period of stay authorized by the Attorney General. In addition, D/S nonimmigrants whose C/S or E/S applications were denied for reasons other than a status violation are not subject to section

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222(g) of the Act.

(h) Effect of Voluntary Departure on section 222(g). An alien who has complied with an order of voluntary departure is not subject to section 222(g), if:

- There was no gap between the date the prior period of authorized stay lapsed and the date that voluntary departure was granted; and
- The voluntary departure was not issued in conjunction with the finding of a status violation.

(i) Cancellation of Automatically Voided Combination Nonimmigrant Visa/Border Crossing Cards. The combination B-1/B-2 NIV/BCCs, large format laminated cards issued by DOS consular officers, are subject to section 222(g) of the Act and become automatically void when the alien remains in the United States beyond the authorized admission date. Combination B-1/B-2 NIV/BCCs that have become automatically void under section 222(g) must be physically cancelled according to the instructions in Chapter 15.15(l). These documents must be distinguished from border crossing cards, DSP-150, as defined in section 101(a)(6) of the Act, which are not nonimmigrant visas per se, and do not become automatically void under section 222(g) of the Act when the alien remains in the United States beyond the period of stay authorized by the Attorney General.

(Revised 11/3/04; CBP 6-04)

(j) Extraordinary Circumstances Exceptions for Third-Country Nonimmigrant Visa Applicants Outside of the United States.

(1) Blanket Extraordinary Circumstances Exceptions. DOS will grant a "blanket" extraordinary circumstances exception under section 222(g)(2)(B) of the Act, if the alien meets certain pre-established requirements. DOS has determined that the following classes of aliens are eligible for the blanket extraordinary circumstances exception:

(A) [reserved]

(B) Aliens with a Residence in a Third Country. Aliens whose current foreign residence, as defined in 9 FAM 42.61, N.1, is in a country other than the country of their nationality, and who apply for a visa in that third country (the country of residence) after having remained in the United States beyond the period of stay authorized by the Attorney General are considered by DOS to qualify for a blanket extraordinary circumstances exception under section 222(g)(2)(B) of the Act in conjunction with their nonimmigrant visa application in that country.

(C) Foreign Medical Graduates. Certain foreign medical graduates (FMGs) who received a waiver of the 2-year foreign residence requirement under section 212(e) of the Act may seek the blanket exception under section 222(g)(2)(B) of the Act based on extraordinary circumstances. To qualify for the blanket exception, the waiver must have been based on a request by an interested U.S. Government agency or a State

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Department of Public Health. In addition, the FMG must be applying for an H-1B visa to fulfill the 3-year obligation to work in a medically underserved area, as required under section 214(l) of the Act. DOS has also determined that the FMG must have filed the H-1B petition with INS, or initiated the waiver request with the interested Federal agency or State Department of Public Health before his or her J-1 status expired (or in the case of a J-2 dependent applying for an H-4 visa, before the principal J-1's status expired). Because J-1 exchange visitors (and their dependents) are now routinely admitted D/S, they will not be subject to section 222(g) in any event, unless the Service or an immigration judge finds a status violation. This blanket DOS exception is, for all practical purposes, only of importance to those FMGs who were admitted until a specific date as opposed to D/S.

(2) Individual Exceptions. Aliens who are not eligible for the blanket 222(g)(2)(B) extraordinary circumstances exception may seek the exception on a case-by-case basis, and at the discretion of the consular officer.

(3) Action by DOS When Section 222(g)(2)(B) Exception Is Granted. When DOS issues a nonimmigrant visa to a third country applicant based on the extraordinary circumstances exception in section 222(g)(2)(B) of the Act (blanket or individual exception), the new visa is annotated "INA section 222(g) overcome under extraordinary circumstances." This means the consular officer determined that section 222(g) of the Act was overcome, and that the alien was allowed to apply for the NIV in a third country.

(4) Action by DOS When a Section 222(g)(2)(B) Exception Is Denied. When an alien subject to section 222(g) files a nonimmigrant visa application in a third country, and that application is denied, DOS will place a notation in the CLASS lookout system under code "222." The notation "222" means the applicant was instructed to obtain a visa at a consular office located in the country of his or her nationality.

(k) Cancellation of Automatically Voided Nonimmigrant Visas and section 212(d)(4) Waivers at the POE. When the inspecting officer encounters an alien whose nonimmigrant visa has become automatically void under section 222(g) of the Act, the visa must be physically canceled. The inspector should write or stamp the word "canceled" across the face of the visa and endorse the passport next to the canceled visa "Canceled pursuant to section 222(g) of the INA." After the nonimmigrant visa has been canceled according to these procedures, the inspecting officer may consider a waiver under section 212(d)(4)(A) of the Act according to the procedures described in section (d) of Chapter 17.5.

(l) Withdrawal of Application for Admission. Aliens who are inadmissible because their NIV has been canceled under section 222(g)(1) of the Act may be offered the opportunity to voluntarily withdraw their application for admission, unless there are other related underlying reasons for proceeding with expedited removal, such as long-term or repeated overstay, or other egregious immigration violations. See 8 CFR 235.4 and Chapter 17.2. When an alien is permitted to voluntarily withdraw his or her application for admission, the following steps should be taken:

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(1) Serve the alien with Form I-275, Withdrawal of Application/Consular Notification.

(2) Have the alien sign the form to acknowledge the request to voluntarily withdraw the application for admission. Because of the need to properly inform DOS of the cancellation and to effectively eliminate port- and consulate-shopping by those in violation of section 222(g) of the Act, do not substitute Form I-180, Notice of Voidance of Form I-186 or Denial of Form I-190, or any other form.

(3) When completing the I-275, write either "NIV/BCC" or the visa classification followed by the alien's alien registration number or visa number in the block for Visa number, type. In the Reasons block, include:

- A statement that the NIV or combination B-1/B-2 Nonimmigrant Visa and BCC was canceled in accordance with section 222(g) of the Act; and
- The specific evidence found to verify that the subject remained beyond the period of stay authorized by the Attorney General.

(m) Recording of Canceled Visas. Record each NIV or combination B-1/B-2 Nonimmigrant Visa and BCC canceled per section 222(g) of the Act in the Performance Analysis System (PAS) on line #49, Nonimmigrant Visas, G-22.1.

15.16 Student and Exchange Visitor (SEVIS) Processing. (Amended by CBP 4-04)

(a) General: The Student and Exchange Visitor Information System (SEVIS) is an Internet/Intranet based system that enables schools and program sponsors to transmit electronic information and event notification to the Department of Homeland Security (DHS) and the Department of State (DOS) throughout a foreign student's or exchange visitor's stay in the United States. This automated system electronically captures, maintains, and monitors information relevant to each student, exchange visitor, and their dependents.

1. Required SEVIS Users:

- Any institution authorized by the DHS to enroll non-immigrant students.
- Any program sponsor designated by the DOS to participate in an exchange visitor program.
- Any agencies within DHS that process students and exchange visitors for benefit, entry, or violation purposes, to include but not limited to: Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services (USCIS).

2. Tracking Mechanism: SEVIS maintains an individual electronic record, referred to as the SEVIS ID number, for each foreign student, exchange visitor, and their dependents. A printed copy of the SEVIS-generated record is documented a:

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- SEVIS Form I-20AB, Certificate of Eligibility for Non-immigrant (F-1) Student Status – For Academic and Language Students.
- SEVIS Form I-20MN, Certificate of Eligibility for Nonimmigrant (M-1) Student Status – For Vocational Students.
- Form DS-2019, Certificate of Eligibility for Exchange Visitor (J-1) Status.

Each electronic SEVIS record includes a “real-time status” indicator that can be updated by a DSO, a USCIS adjudicator, or automatically by the system. However, the printed SEVIS Form only reflects the “Issuance Reason”, which may not indicate the status of the corresponding SEVIS record. The SEVIS record status does NOT appear on the printed SEVIS Form. Simply stated, the alien’s current SEVIS record status can be only determined by viewing the individual’s SEVIS record (Refer to the top right block on the information screen in SEVIS for record status.).

3. Chain of Events:

(i) To obtain a SEVIS-generated Form:

- A student must first apply to the institution(s) of his/her choice. The institution will enter all necessary data related to the student and his/her dependents, if applicable, in SEVIS. The institution will print and send a SEVIS Form I-20 to the student abroad; or,
- An exchange visitor must apply to participate in an exchange visitor program. If selected, the program sponsor will enter all the necessary data into SEVIS and issue the exchange visitor and his/her dependents if applicable; a SEVIS generated Form DS-2019.

(ii) Students and exchange visitors issued an initial SEVIS Form I-20 or SEVIS-generated DS-2019 respectively on or after September 1, 2004 are required to pay a SEVIS fee. Payment will be made prior to the issuance of the nonimmigrant visa. Upon payment, the individual will be issued a Form I-797, Receipt Notice or Internet Receipt Notice for presentation at the U.S. Consulate or U.S. Embassy, or at the port-of-entry (POE) when applying for admission, if visa exempt.

(iii) Foreign students and exchange visitors are required to present a valid SEVIS-generated Form appropriate to the desired visa classification when making an application for a nonimmigrant visa at a Consulate or Embassy abroad.

(iv) The U.S. Consulate or U.S. Embassy will verify visa classification and requirements. Information relevant to the visa issuance is sent to SEVIS via Nonimmigrant Visa (NIV) data-share. (Note: At this time, the NIV data does not always match with the nonimmigrant SEVIS record; therefore, it is not always available in the SEVIS record. DHS is continuing to work to resolve this issue). The appropriate NIV will be placed in the passport and the SEVIS Form will be returned to the individual.

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(v) The non-immigrant is to present the passport with the NIV and the SEVIS Form when making an application for admission at the port-of-entry (POE). If admissible at the time of entry, the CBP Officer records the entry into SEVIS:

- Land POEs have data entry access in the secondary inspection area, allowing for the admission to be recorded directly into SEVIS.
- Air and sea POEs have view only access to SEVIS. Admission is downloaded into SEVIS via an interface between Arrival Departure Information System and SEVIS within the Class of Admission (CAO) Screens.

(vi) If a student (F & M) or exchange visitor (J) travels outside of the United States, the POE can refer the individual to Secondary to confirm his/her status in SEVIS.

(vii) The institution is required to register a student (F& M) in SEVIS within 30 days of the program start date printed on the form. The program sponsor is required to validate an exchange visitor's participation in his/her program within 30 days of the program begin date identified in SEVIS.

(viii) If the individual does not report, the institution or program sponsor is to update the SEVIS record accordingly. This "flagged" record is forwarded to the ICE Compliance Enforcement Unit (ICE) for further research and possible action. Refer to "SEVI Hits" section E for specific details.

(b) Accessing SEVIS: Although SEVIS may be accessed through the Intranet or Internet, it is recommended that the POE use the Intranet. To access SEVIS through PowerPort:

- Click "Operation Center", then "Operational Systems".
- Click "SEVIS", the button is located at the bottom of the list.
- The Login page will appear, enter user name (the same as used for other systems).
- Click "login"; do not click "Register for New Account".
- Follow the directions provided at the change password request prompt. The password should not be less than 8 characters, but no more than 16.
- Once completed, click "Change password".
- Upon entry into the system, one of two screens will appear depending upon the type of access authorized. If INSLAND, the "Port-of-Entry Search Screen" will appear, If INS OFFICER (air/sea POEs) a generic "Welcome" screen will appear.

The "Port-of-Entry Search" or "Welcome" screen is the main screen used to gain access to or update the record of the enrolled student's, exchange visitor's and parts of the system: Port-of-Entry, Schools, Students, Programs, Exchange Visitors, Reports, Help, Tutorial, and Logout. Refer to the tutorial function for specific system instructions.

Land POEs that do not have Internet or Intranet access should make arrangements with a POE that does have access to SEVIS so the admission can be recorded in SEVIS. When inputting data, the code of the POE actually admitting the applicant should be recorded in "POE" data

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entry field.

(c) Searching SEVIS: The following tips should be used when searching SEVIS for records on a particular student, exchange visitor and their dependents when the SEVIS ID Number is not available:

1. Look in the correct place -- F, M, or J

- Search Schools/Students for F's and M's and Programs/Exchange Visitors for J's. Note: many schools have J programs for visiting scholars, etc.

2. "Active" verses. "Initial" status

- All new students and exchange visitors will be located under "Initial" status when applying for admission for the first time. The record does not become "Active" until the alien has reported to the institution or program sponsor.
- Generally, returning student and exchange visitor will be located under "Active" status.
- Terminated refer to Section d below.

3. Name or the Value of Wildcards

- When searching SEVIS for a particular record, it is recommended that a last name and first initial wildcard "asterisk" be used. Although this may result in several records, the possibility of identifying the correct record is greatest. If the full name is queried, but the DFO or Program Sponsor entered the individual's name into SEVIS slightly differently, the correct record will not be retrieved. This is especially troublesome when names are entered with spaces or hyphens or if the school or program sponsor entered the student's first and middle names and the POE searches for first name only.

4. Searching for J Exchange Visitors

- When searching SEVIS for a particular record, it is recommended that a last name and first initial wildcard "asterisk" be used.
- If a direct 'hit' is not retrieved when searching on name, search by date of birth (DOB) only to retrieve a list all exchange visitors with that DOB. If there are too many results, narrow this search by adding country of birth.
- Unusual last names may be searched by last name only to provide a list of all exchange visitors with that last name. However, searching by very common names alone will provide a long list of possible candidates.

5. Searching for F and M Students

- It is easier and more reliable to search for the student by first locating the school and then searching for the student within the school listing. Ask the individual for the name of the school, the state where it is located, and the school program code.
- Searching by name is least reliable since schools often enter names differently –

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beware of spaces, hyphens, and misspellings.

6. Searching for Dependents.

- It is **only** possible to search for the F-2 or M-2 dependents of F-1 or M-1 students by searching for the principle student and then opening his or her record. Dependents will be located at the bottom of the page. Click on the dependent's SEVIS ID record.
- J-2 dependents can be searched in SEVIS directly. In the Exchange Visitor Search screen, go to "search by", and then click "dependent". Type the J-2's SEVIS ID number or the appropriate personal information in the blocks; then follow the instructions provided.

(d) SEVI HITS. SEVIS contains a mechanism to allow ICE to record confirmed status violators into NAILS. Due to the vetting process, there is a lapse between the time the violation is recorded in SEVIS and when it appears in NAILS. In the meantime, the properly documented alien may apply for admission at the POE and maybe admitted, regardless of the terminated status reflected in the SEVIS record. In order to prevent such an admission, the DHS implementation of a work-around solution in which viable leads on all terminated students be entered into NAILS as lookouts. This occurs when the violation is first recorded into SEVIS and prior to being vetted by the ICE Compliance Enforcement Unit (CEU). The CEU follows the established vetting process and removes cases from NAILS as necessary.

1. General. A record in "Terminated" status indicates that, according to the information in the system, a student has ceased to participate in the associated program and/or ceased to maintain her/his F or M status. Always review the "Termination Reason" to determine whether or not the individual is actually being reported as "Out of Status". It may also be advisable to check SEVIS for another, more recently created student record. This will require searching by name and date of birth, rather than solely by the SEVIS ID number. In cases where SEVIS automatically terminates a record, the "Remarks" field will indicate "System Termination", rather than "Manual Termination". Whenever a DSO or an automatic system function terminates a SEVIS record, a "Termination Reason" must be included. The "Termination Reason" will appear just below the status indicator of "Terminated" on the student information screen in SEVIS.

It is possible for a subject of a "Terminated" record to be in possession of a valid immigrant visa (NIV) and SEVIS Form at the time of application for admission. The creator of the "Terminated" record (DSO, Program Sponsor or automatic system indicator) does not have the authority to cancel the NIV. In most instances, the subject will retain the SEVIS Form, which is valid for one year for academic students (F-1) and six-months for vocational (M-1) students. For this reason, it is important to review the dates of the SEVIS records to determine if the individual was able resolve the reason for termination, as discussed below.

It will always be necessary to do further research on a case prior to determining whether or not the SEVIS record termination is an accurate indication of the nonimmigrant's current status and admissibility. In some instances, a previous violator may be able to establish

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admissibility. An individual that has a new SEVIS record in "initial" or "continuing" status that was created subsequent to the terminated record can be admitted, despite an old terminated record. As indicated in the "SEVI" text, dispositions are to be sent to the ICE Headquarters Compliance Unit via Email at ALRCEU@DHS.GOV, or otherwise noted.

2. Reasons for "Terminated" Record:

(i) Reporting Violations: The student did not report to the school or remain in the program as required.

- No Show - Manual Termination. DSO indicates the new/initial entry student entered the United States, and was expected to report to the school but failed to do so.
- No Show - System Termination. Records indicated the student was admitted to the United States to attend the school of record and failed to do so.
- Failure to Enroll. A continuing student was expected to report at the next term or session, and failed to do so.
- Transfer Student No Show. Student transferred out of one school, and did not arrive at the other school when expected.
- Unauthorized Withdrawal. Student ceased to participate in (e.g. has withdrawn from) the program at that school of record without notifying a DSO, and to the school's knowledge, has not transferred to another school. If student has in fact ceased going to an approved school, he/she should have left the U.S. as he/she is no longer maintaining F or M nonimmigrant status and is no longer eligible to stay in U.S. in that status.

(ii) Status Violations: A student who has fallen out of status.

- Authorized Below Full Course Time Exceeded. The student did not resume a full course load when required to (and after being authorized to take less than a full course for a specified period of time).
- Unauthorized Drop Below Full Course of Study. The DSO has found the student to be taking less than a full course of study without prior DSO approval. As students are required to be full-time participants, unless explicitly authorized by a DSO to take less than full course due to certain allowable circumstances, students that take less than a full course load without DSO approval are considered to be out of status.
- Expulsion. The student is not able to maintain status in program because of expulsion from school.
- Suspension. The student was not able to maintain status in program because of suspension from school.
- Otherwise Failing to Maintain Status. Used by the DSO for terminating record for any reason not otherwise contained in list. Remarks should be included and should provide further detail on reason for record termination.

To overcome the violation within the U.S., a student is required to obtain authorization from the school and file a Form I-539, Application to Extend/Change Nonimmigrant Status for re-instatement with USCIS. At this point, the SEVIS record will reflect

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"Reinstatement Pending" or "Pending". However, if the student departs the United States prior to a decision from USCIS, the application becomes void. Upon re-entry, the individual is required to present a new SEVIS Form I-20 indicating "Initial or "Continuing" status with a new SEVIS ID number. If the student presents the SEVIS Form I-20 indicating "Re-instatement" or the SEVIS record reflects "Reinstatement Pending", the POE may consider issuing a Form I-515A, Notice to Student or Exchange Visitor, if otherwise admissible.

(iii) Change of Status (COS): The student has filed an application

- Change of Nonimmigrant Classification/ Change of Status Approved. Nonimmigrant that was in student status and was approved for a change of classification to another nonimmigrant status, or to Lawful Permanent Resident (LPR). This termination code generally indicates that, while the student is not maintaining the F, M or J status as originally granted, they are in another nonimmigrant status, or are applying for immigrant status. May require a new non-immigrant visa or immigrant visa upon re-entry.
- Violation of Change of Status Requirements. Indicates B-1/2 or F-2 nonimmigrant that had been pending COS to student status started the program in advance of USCIS approval. May require new nonimmigrant visa and supporting documentation upon readmission.

(iv) Extension/Transfer Request:

- Denied Transfer. M-1 student that applied to USCIS for transfer, began transfer-in program while awaiting adjudication, and was ultimately denied transfer request.
- Extension Denied. M-1 student applied to USCIS for extension, continued in program past original program end date while awaiting adjudication, and was subsequently denied extension request.

(v). Other:

- Death. Validate identity of non-immigrant.
- Unauthorized Employment. The DSO determined that the student was engaging in employment that was not authorized under their F or M status, thus rendering the alien out of that nonimmigrant status.

(e) Students Lacking Required SEVIS Documentation: Current regulations require that a nonimmigrant student present a SEVIS Form I-20 issued in his/her own name by a DHS approved school as per 8CFR 214.2(f)(1)(i). If the individual is not in possession of a SEVIS Form I-20, but presents evidence of student status (i.e. F-1/M-1 visa possibly noting a SEVIS ID number) the POE should query the individual's record in SEVIS.

1. School and Student registered in SEVIS, Student does not have SEVIS Form: If the school is DHS approved and the SEVIS status of the student indicates:

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(i) "Active" or "Initial". The student is in compliance with the program. Issue a Form I-515A, Notice to Student or Exchange Visitor according to guidelines in Section f.

(ii) "Terminated" Status. Schools are required to terminate a student record in SEVIS for a number of reasons, including when a student enters the United States to attend school and the student fails to register within 30 days of the program start date.

- A SEVIS record status of "terminated" implies that the student is no longer engaged in the program for which the SEVIS I-20 was issued, and the student may be out of status. For specific information concerning the reasons for terminated records, refer to Section d.
- Always review the "terminated reason" to determine whether or not the individual is out of status.
- A record terminated for "failure to enroll, no show or suspension" indicated that the individual does not qualify for the F-1 admission with that record. A Form I-515A must not be issued, nor may the inspection be deferred.
- It is advisable to check SEVIS for another, more recently created student record.

(iii) "Deactivated" Status. The SEVIS record has been transferred and the student has transferred to another school within the United States. Query SEVIS under the student's name for an additional SEVIS record under the same SEVIS ID Number to verify status. Presently, there is no requirement for the student to attend a school for a specific period of time prior to transferring to different school.

(iv) "Completed" Status. The student has graduated or completed his or her course of study and has departed or will depart the United States in the near future.

The "Remarks" section provides the DFO with the capability to record information that may not otherwise be reflected in the student's record. In addition, the "Request/Authorization Details" link on the far left of the SEVIS screen provides information regarding the student's specific benefit authorizations.

Students engaged in post-completion Optional Practical Training (OPT) will most likely have an expired "program end date" on their SEVIS Form I-20. Page three of the SEVIS Form I-20 should have a DSO signature and information at the top of the form indicating either pending or approved OPT, with employment start and end dates. The associated SEVIS record status should be "active".

There have been instances when a student has completed the program and is now participating in OPT, but the SEVIS record incorrectly reflects "Completed". Under these circumstances, the individual is still in F-1 status and requires a SEVIS Form I-20. A Form I-515A should be issued if the individual is otherwise admissible, refer to Section f.

2. School registered in SEVIS, but student is not. If the school is DHS approved, but the student is not in SEVIS, the POE must confirm student status with the school prior to admission. Trends indicate that a student presenting an older nonimmigrant visa and a

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non-SEVIS Form I-20 is returning to an illegal residence.

3. School not in SEVIS. If the school is not identified in SEVIS as DHS approved, refer to the SEVIS website at <http://www.ice.gov/graphics/enforce/imm/sevis/index.htm> for a listing of all of the approved and pending Form I-17, Petition for Approval of School for Attendance by Nonimmigrant Students. If the record indicates that the application is pending, contact the SEVIS Program Office at (202) 305-2346 to determine the status of the case and establish a realistic date of completion, if possible. If the application has been denied or may be denied, the individual is not to be admitted to the United States. Withdrawal of application of admission should be considered in lieu of Expedited Removal in cases where no fraud or other serious violation has occurred. If the SEVIS Program Office is not available, the inspection may be deferred.

The inspection is not to be deferred if the school has not yet filed a Form I-17 to participate in the SEVIS Program.

(f) Form I-515A Processing. The SEVIS Program Office in Washington, D.C. maintains a Form I-515A Unit established to process the Forms I-515A issued to students, exchange visitors, and their dependents not in possession of the required SEVIS documentation at the time of admission at the POE. Centralizing the submission of the Forms I-515A allows the SEVIS Program Office to standardize the adjudication process, which is beneficial to identifying trends and monitoring compliance. POEs are to issue the Form I-515A in the following manner:

- Admit the applicant for 30 days so the required documentation can be obtained from the school or program sponsor and submitted to the address printed on the form.
- Provide all of the information requested in the blocks located on the upper portion of the Form I-515A. It is very important to provide the SEVIS ID number and the admission number.
- Officers are to properly endorse the admission stamp block prior to the applicant's release from the inspection area.
- Identify the reason for issuing the Form I-515A in the blocks provided.
- Note the reverse of the Form I-94 both sections with "I-515A".
- Use the admission number printed on the Form I-94. The pre-printed admission number is not to be crossed out and replaced with any previous admission numbers.
- Staple the departure portion of the Form I-94 to the upper right corner of the Form I-515A and give it to the applicant. When issuing a Form I-515A, do not staple the Form I-94 to the passport.
- Complete the IBIS secondary screen indicating the issuance of the Form I-515A.
- It is not necessary to send the SEVIS Program Office, Federal Record Center, data entry contractor or any other program office a copy of the Form I-515A issued.

When issuing a Form I-515A to an individual who frequently crosses the border and would be reapplying for admission within the 30-day timeframe, the POE may advise the individual to provide the required SEVIS Form upon readmission, when available. Under these circumstances, the POE may replace the pre-printed submission address with the POE address. The Form I-94 is valid for multiple entries within the 30-day timeframe.

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Chapter 16: Special Classes

- 16.1 Parole
- 16.2 Refugee Admissions
- 16.3 Asylees and Asylum Applicants
- 16.4 Temporary Protected Status (TPS) Cases

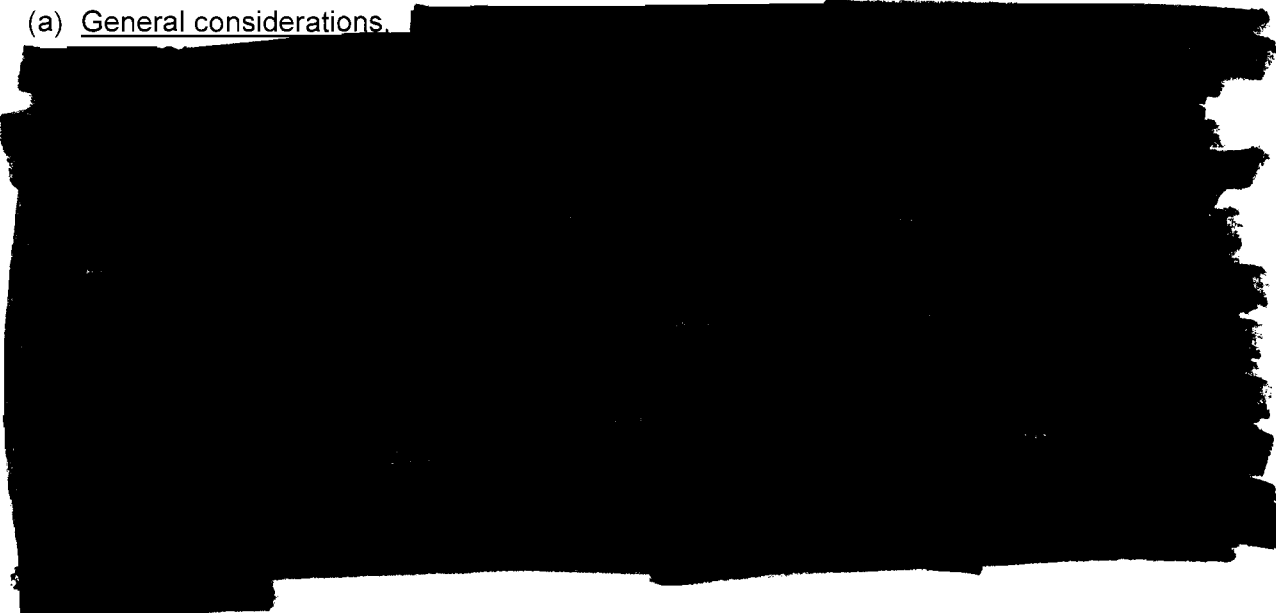
References:

INA: Sections 207, 208, 209, 212, 244.


Regulations: 8 CFR 207, 208, 209, 212, 223, 244.

16.1 Parole.


(a) General considerations.



(b) Processing advance paroles.



The form itself also includes the alien's biographic data, a glued on or computer imaged ADIT-style photograph, and the facsimile stamp of the district director for the issuing district.



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are commonly referred to as "transportation letters" or "boarding letters" since they are addressed to the transportation line and absolve the line of liability for the fine ordinarily incurred when a carrier transports an alien without a required visa.

Ordinarily, processing of paroles is handled in secondary, where there is time to access automated systems to verify the request. When you encounter an I-512 or boarding letter during the inspection process, examine it closely. Counterfeit and altered forms have been encountered. Question the applicant concerning the basis of their parole, to determine if his or her explanation and the basis on which the parole was issued are consistent. For example, an alien who has not previously been in the U.S. should not have a parole document indicating a pending adjustment or asylum application as the basis of issuance.

Once you are satisfied that the person is entitled to parole, endorse the I-94 with the parole stamp, indicate in the appropriate block the basis of parole (e.g. "I-512, adjustment applicant"), the date to which paroled (or indefinite), the date of action, port and your stamp number. Similarly endorse the action block on the I-512 and the alien's passport. If the I-512 is valid for a single entry, collect it and forward it to the files control office where the advance parole was issued. If the I-512 is valid for multiple entries, return it to the applicant, after making a photocopy for forwarding to the issuing office. If the alien parolee is permitted employment and does not have an employment authorization document advise the applicant about filing procedures. Special handling procedures described in Chapter 15.11 also apply to holders of Forms I-512 who are nationals of the affected countries. Handle the I-94 arrival and departure sections in the same manner as other nonimmigrant Forms I-94.

(c) Port-of-Entry paroles.

(1) General. Section 212(d)(5) of the Immigration and Naturalization Act (Act) provides the Attorney General with the discretion to "parole into the United States temporarily under such condition as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit...". Whether to grant a parole request is a matter of agency discretion. Thus, no alien has a right to a grant of parole. This guidance is not intended to create, and does not create, a class of aliens who are guaranteed parole based on their meeting certain criteria, nor does it relieve the INS from making a case-by-case determination on each request for parole at the port-of-entry.

Pursuant to 8 CFR 103.7(b), the established fee for a request for authorization for parole of an alien into the United States is \$65.00. Currently, there is no approved form for public use available for an alien to request parole at the port-of-entry or an automated system to track such requests; therefore, an application is not required. Form I-131, Application for Travel Document, is used to apply for advance parole and is not appropriate for port-of-entry paroles. Instead, parole actions are documented on an Arrival/Departure Record, Form I-94, endorsed with the parole stamp. Preparation of a Form I-94 is not required for paroles of less than one day for certain border functions or certain NATO activities as described in Chapter 11.2. In addition, for all paroles initiated at the port-of-entry, prepare Form I-160, which is retained at the port-of-entry as a record of the action taken. Specific codes (discussed below) are assigned to categorize and track the

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basis of parole in the Non-Immigrant Information System (NIIS). The data is later used for statistical analysis and reporting purposes.

(2) Guidelines for Fee Waiver. The regulations do not specify the situations in which the requirement to pay the filing fees applies. This chapter establishes guidelines for determining when the regulation applies. Note the INS regulations also permit a director to waive a filing fee, if the applicant establishes that he or she cannot pay the fee. 8 CFR 103.7(c). There are other situations in which the INS should not collect a filing fee from an alien seeking parole at a port-of-entry.

(A) When a fee waiver is appropriate. The INS may charge a user fee only for actions that benefit the applicant. 31 U.S.C. 9701. If the INS decides to parole an alien because doing so is of "significant public benefit," then the INS may not properly charge a fee. Situations resulting from an action at the port-of-entry in which it would not be appropriate to charge a fee include those in which the INS paroles the alien:

- For criminal prosecution*
- For incarceration after conviction for a crime*
- Into the custody of another agency*
- For section 240 removal proceedings, if detention is not appropriate or feasible
- As a TWOV applicant technically ineligible for that classification or not a bona-fide transit passenger
- As a stowaway removed from an aircraft/vessel to obtain documentation for eventual repatriation
- To permit the alien to serve as a witness in a judicial, administrative or legislative proceeding being conducted, or to be conducted in the United States*
- For deferred inspection
- For deportation from another country through the United States

* In some instances, requests for Significant Public Benefit Parole are authorized by HQIAO, Parole Branch, in advance of the alien's arrival at the port in accordance with the Significant Public Benefit Parole Protocol. [Refer to the Significant Public Benefit Parole memorandum dated July 24, 1998 for Significant Public Benefit Parole Protocol guidelines.]

Humanitarian parole is chiefly of benefit to the alien. Generally, the INS should collect the fee for requests for humanitarian parole. However, even if the applicant cannot qualify for a fee waiver under 8 CFR 103.7(c), the INS generally should not collect a fee if the alien requests parole because of exceptional circumstances such as, but not limited to:

- Inadmissible alien in need of emergency medical treatment
- Emergency worker responding to a natural disaster
- Medi-vac (land and air ambulance) case
- Minor child accompanying a detained parent

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- Sick or injured crewmember and shipwreck or plane crash survivor
- Unaccompanied minor placed in custody of social service agency
- Spouse or legal guardian of an alien child described above accompanying or following to join the paroled child

(B) When fee waiver is not appropriate. The port-of-entry should **NOT** grant a fee waiver request, as a general rule, when the officer is satisfied that paroling the alien into the United States is to the benefit of the alien, unless, in accordance with 8 CFR 103.7(c), the alien establishes that he or she cannot pay the fee. The following situations are examples of circumstances in which an alien who can pay the fee should be required to do so:

- Parole granted to permit crew to conduct ship's business (limited essential personnel, usually the captain and the first mate, are paroled to maintain normal operations necessary to conduct foreign commerce). or for medical treatment according to 8 CFR 253.1. Collect a fee for each paroled crewmember (Refer to Parole of Alien Crewmembers, Chapter 23.12)
- Alien seeking prescheduled, non-emergency medical treatment
- Crewman pursuing workman's compensation claim against shipping company
- Any humanitarian parole, except in an emergency as described above

In any case where an alien passenger arriving by air or sea is paroled because he or she lacks the proper visa or other required documents, determine whether fine proceedings against the carrier are appropriate, as described in Chapter 43. Initiate fine proceedings when applicable.

(3) Parole codes. Parole of an alien into the United States must be documented on a Form I-94, endorsed with the parole stamp. Specific codes have been assigned to categorize and track the justification for parole in NIIS. The codes provided are limited to the type of paroles referenced in this chapter. Refer to the Statistics Handbook in INSERTS for the complete listing of statistical codes assigned to classes of admission and paroles. Indicate in the block provided on the parole stamp, the appropriate code and basis for parole:



[Urgent] Humanitarian Parole (Advance Authorization): Authorized at INS headquarters [HQIAO Parole Branch or overseas district offices] for "urgent humanitarian reasons" specified in the law. It is used in case of medical emergency and comparable situations.



Significant Public Benefit Parole (Formally Public Interest Parole): Authorized at INS Headquarters for "significant public benefit." It is generally used for aliens who enter to take part in legal proceedings.





Advance Parole: Authorized at the INS district office or service center [or INS


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Headquarters for applicants in proceedings] in advance of the alien's arrival; may be issued to aliens residing in the United States in other than lawful permanent resident status who have an unexpected need to travel and return, and whose conditions of stay do not otherwise allow for readmission to the United States if they depart.

 Port-of-Entry Parole: Authorized at the port upon alien's arrival; applies to a wide variety of situations and is used at the discretion of the supervisory immigration inspector, usually to allow short periods of entry. Examples include allowing aliens who could not be issued the necessary documentation within the required time period, or who were otherwise inadmissible, to attend a funeral and permitting entry of emergency workers such as fire fighters, to assist with an emergency.

 Deferred Inspection: Authorized at the port upon the alien's arrival; may be conferred by an immigration inspector when the alien appears at a port-of-entry with documentation, but after preliminary examination, some question remains about his/her admissibility which can best be answered at his/her point of destination.

 Overseas Parole: Authorized at an INS district or sub-office while the alien is still overseas; designed to constitute long-term admission to the United States. In recent years, most of the aliens the INS has processed through overseas parole have arrived under special legislation or international migration agreements.

(4) Period of parole. The duration of parole should be until the date required to complete the purpose of entry, not to exceed one year from the date the parole was granted at the port-of-entry. Include the date of the action, port code and officer's stamp number. Parole does not constitute a formal admission to the United States and confers only temporary permission to be present in the United States without having been admitted. A parolee is deemed to be still "at the port-of-entry" throughout the period of parole, and must leave when the parole period ends or when the INS terminates the parole.

(5) When parole should not be considered. The port-of-entry should **NOT** grant a request for parole, as a general rule, when the alien requesting parole into the United States is:

- An arriving alien applying for parole for the primary purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization and has not filed an Application for an Immigrant Visa and Alien Registration, Form OF-0230, or an Application to Register Permanent Residence or Adjust Status, Form I-485, and Application for Travel Document, Form I-131. The alien should be denied parole and detained for removal under section 235(b)(1) of the Act or permitted to voluntarily withdraw his/her application for admission.
- Crewmember who is not in possession of a valid, unexpired B-1/B-2 visa requesting to attend regularly scheduled training related to his/her crew

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duties.

- Crewmember aboard a cable-laying vessel, who in the normal course of his/her duties does not intend to depart the United States within 29 days.

It is important to remember that nothing in this chapter limits the discretion of the district director to waive fees when an alien's presence is otherwise in the interest of the U.S. Government. If the district director finds that the parole serves the interest of the U.S. Government, no fee should be collected. The authority to waive fees is contained in 8 CFR 103.7(c). Directors must ensure that the determination not to require the fee, regardless of ability to pay, is made on a consistent, equitable basis.

(d) Parole of crewmembers. Policies and procedures for parole of alien crewmembers are discussed in Chapter 23.12

(e) Parole for deferred inspection. Procedures for parole of aliens whose inspection is deferred are discussed in Chapter 17.1

(f) Special Interest paroles. [Reserved]

(g) Significant Public Benefit Paroles (SPBP). In order to ensure consistency in decisions regarding significant public benefit parole pursuant to section 212(d)(5)(A) of the Act for witnesses or informants and to track and monitor these aliens, DHS has established two separate protocols for these classes of paroles, signed by CBP Commissioner Robert C. Bonner and ICE Assistant Secretary Michael Garcia. [See Appendix 16-2]. One protocol covers components of DHS, including both Border Patrol and Office of Field Operations in CBP, and ICE. The other covers other Federal, state, and local law enforcement agencies (LEAs), such as the Drug Enforcement Administration (DEA) or Federal Bureau of Investigation (FBI). These two protocols supersede any previous SPBP policies for both CBP and ICE.

In most cases, the DHS protocol will primarily involve ICE and Border Patrol investigations. Although relatively rare, there may be instances where CBP Enforcement Officers may be involved in an alien smuggling case or other investigation, and may wish to bring in informants or witnesses to assist in the case; the parole approval procedures in the protocol should be followed in those cases.

The protocols contained in Appendix 16-2 delineate responsibilities and contain detailed procedures for processing SPBP cases. Because both CBP and ICE have been delegated parole authority from DHS, the protocol for DHS components permits approval of the SPBP by designated officials within CBP and ICE, using the DHS SPBP authorization forms and checklists developed for this purpose and included in Appendix 16-2. Notification is then to be provided to the ICE Parole and Humanitarian Assistance Branch (PHAB) for vetting and tracking purposes. The PHAB maintains the Parole Case Tracking System, a database of all alien informants and certain witnesses brought to the United States. This database is designed to record the submission and disposition of all law enforcement parole requests and monitor the arrival of the parolee, the periodic requirements of the LEAs, and departure of the parolee from

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the United States. Other Federal LEAs must continue to forward original and re-parole SPBP requests to the PHAB. State and local LEAs will submit requests to the PHAB through the appropriate ICE Special Agent in Charge (SAC) or Border Patrol Chief Patrol Agent (CPA). Any Federal LEA (including U.S. Attorneys offices) that requests parole of informants, witnesses, and certain defendants, should be referred to the PHAB.

Ports of entry will be notified of the advance parole authorization either via memorandum from the PHAB or by presentation of a Form I-512 by the alien, and will normally honor the advance authorization. If additional derogatory information arises during the inspection that may not have been considered during the advance authorization approval, the CBP Officer may elevate the issue through channels for consideration and resolution. Every attempt should be made to resolve possible differences at the lowest level.

The advance parole authorization may be for multiple paroles, however, regulations provide that parole automatically terminates upon departure from the United States. Consequently, aliens eligible for SPBP under these protocols must be re-paroled upon each application for admission.

The parole stamp should be endorsed with the parole code "CP". Although CBP Officers will execute the parole authorization at the port of entry by issuing a Form I-94 with the parole stamp, it is the responsibility of the authorizing (requesting) office to supervise and monitor the whereabouts and departure of the parolee. Therefore, most monitoring responsibilities will fall to the ICE, Border Patrol, or LEA case officers. Paroles of aliens already in the United States who are deemed applicants for admission (i.e., not inspected and admitted), referred to as parole in place, or re-paroles (extensions), may be granted by either CBP or ICE authorizing officials, depending on which agency has jurisdiction or responsibility for the alien at the time.

The protocols do not apply to paroles authorized on the basis of the significant public benefit provisions of section 212(d)(5)(A) by port of entry officials for cases initiated at the port of entry and arising out of port of entry activities, such as parole for criminal prosecution of aliens presenting fraudulent documents in the course of an inspection, parole for criminal prosecution for drug offenses discovered during inspection, parole for section 240 proceedings if detention is not available or appropriate, and similar situations.

Designated CBP/OFO port officials also have parole authority over aliens arriving at the port of entry without prior parole approval as a result of emerging enforcement actions, such as controlled deliveries, cold convoys, or silent paroles. ICE and CBP officials should coordinate as much in advance as possible to ensure that legitimate law enforcement activities are not impeded. After concurrence by CBP officials, ICE agents will assume responsibility for all aspects of the investigative activity as outlined in the protocol.

The DFO, SAC, or CPA may also authorize an emergency parole for 72 hours for informants or witnesses under exigent circumstances for other LEAs when parole is important to an investigation, prosecution, or other activity deemed necessary to maintain public safety. The authority should be exercised only when the LEA could not reasonably have requested the parole in advance through the PHAB in accordance with the protocol, and the parolee must remain in the custody of agents from the requesting LEA. (IFM Revisions: CBP 14-06)

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(h) Conditional Entrants, Refugee-Parolees, Lautenberg Parolees and Others. Over the years the Attorney General, acting through the Service, has used his or her authority to admit or parole various groups of individuals who may or may not have the characteristics of, and identify themselves as, refugees. These groups of individuals are different from those admitted as refugees under section 207 of the Act or those granted asylum under section 208 of the Act. In order to determine the various types of benefits for which they may be eligible, it is necessary to have a working knowledge of the terms and groups involved:

- **DISPLACED PERSONS** - Under the Displaced Persons Act of 1948, the first legislation enacted specifically for refugees in the nation's history, the United States admitted more than 400,000 persons who were displaced by World War II and its aftermath. Someone admitted in this category is eligible to be issued a Refugee Travel Document.
- **HUNGARIAN REFUGEES** - Under the Hungarian Refugee Act of July 25, 1958, persons who were paroled into the United States as refugees from the Hungarian uprising of October 1956, and who had been in such parole status for at least two years, could be reinspected and admitted to the United States for permanent residence, without regard to the immigrant visa requirement. Someone paroled in this category is eligible to be issued a Refugee Travel Document.
- **CUBAN PAROLEES** - Since 1959 several hundred thousand Cubans have been paroled into the United States. Under legislation enacted November 2, 1966, such individuals who have been physically present in the U.S. can apply for adjustment of status to that of LPR. Permanent residence in such cases is granted as of the date of the person's entry into the United States or thirty months prior to the date the person applied for adjustment, whichever is later. Someone paroled in this category is not eligible to be issued a Refugee Travel Document.
- **CONDITIONAL ENTRANTS** - Prior to the 1980 Refugee Act, the United States admitted persons fleeing from persecution in communist countries of the Eastern Hemisphere and in countries within the general area of the Middle East under section 203(a)(7) of the Act. Under a proviso to that section, a limited number of individuals who were already in the United States could apply for adjustment to conditional entrant status. After two years in the United States (which was later reduced to one year) as a conditional entrant, the alien could be reinspected and admitted for permanent residence. Someone admitted in this category is eligible to be issued a Refugee Travel Document.
- **REFUGEE-PAROLEES** - Prior to May 18, 1980, the Service used its authority in section 212(d)(5) of the Act to parole certain refugees into the United States, including many who, while fearing persecution, were not from communist countries or countries within the general area of the Middle East. Such persons were allowed to apply for adjustment of status after two years (later reduced to one year) in the United States. Someone paroled in this category is eligible to be issued a Refugee Travel Document.
- **VICAM REFUGEES** -Following the fall of South Vietnam and Cambodia in 1975, the
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United States paroled more than 400,000 persons from Indochina. Under legislation enacted on October 28, 1977, those individuals (and certain others who were already in the United States in nonimmigrant or parolee status on March 31, 1975) were allowed to adjust to LPR status. Someone paroled in this category is eligible to be issued a Refugee Travel Document.

- **CUBAN-HAITIAN ENTRANTS** - An estimated 125,000 Cubans from the port of Mariel, Cuba entered the United States shortly after the enactment of the Refugee Act of 1980. There were also a considerably smaller number of Haitian nationals who entered the United States at about the same time. These individuals were not classified as refugees, but rather as "entrants." Beginning in 1984, the Service began adjusting those Cubans entrants who were otherwise admissible to LPR status under the provisions of the 1966 Cuban Adjustment Act. The status of Cuban/Haitian entrants was not finally resolved until the enactment of the Immigration Reform and Control Act of 1986 (IRCA), which included special legislative provisions. Someone in this category is NOT eligible to be issued a Refugee Travel Document.
- **LAUTENBERG PAROLEES** - As part of a program under the Lautenberg Amendment first included in the Department of State's appropriation bill for FY 1990, and extended thereafter, certain individuals from the former Soviet Union, or from Estonia, Latvia or Lithuania, who are found to be ineligible for refugee classification are offered parole by the Service. Those individuals include (but are not necessarily limited to) Jews, Evangelical Christians, and Ukrainian Christians of the Orthodox and Roman Catholic denominations. Prior to mid-1994, Lautenberg paroles were also offered to certain Vietnamese, Cambodians, and Laotians. After one year in the United States, parolees under the Lautenberg Amendment can apply for adjustment of status to that of LPR under section 245 of the Act, without regard to quota. Someone paroled in this category is NOT eligible to be issued a Refugee Travel Document.

(Former paragraph (h) redesignated (i), new paragraph (h) added IN98-14)

(i) Reparoles. Whenever you change the purpose or duration of a parole, a new I-94 must be prepared and processed. Collect the original departure section and forward it for data entry with the new arrival section. Give the new departure section to the alien. (Redesignated IN98-14)

(j) Termination of Parole. Under section 212(d)(5) of the Act, when the purposes of a parole have been served, the paroled alien is to be returned to the custody from which he or she was paroled and his or her case is to be dealt with in the same manner as that of any other applicant for admission. If such alien is found to be admissible, he or she may be admitted (if necessary, with the approval of an appropriate waiver). If not found admissible, the alien may be allowed to withdraw his or her application for admission and depart, or the alien may be prepared for removal proceedings. If the alien was paroled into the United States after arriving as a crewman, stowaway, VWP applicant or S nonimmigrant, the alien is not entitled to formal proceedings; otherwise, the type of removal proceeding involved depends upon the manner in which parole was authorized, whether the alien met the definition of arriving alien at time of parole, and the inadmissibility charge(s) being lodged:

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(1) If the alien's parole was authorized pursuant to an Advance Authorization for Parole (Form I-512) which was issued while the alien was in the United States in order to allow the alien to return to this country, the expedited removal process does not apply and the alien should be placed in removal proceedings under section 240 of the Act as an inadmissible alien, regardless of the grounds of inadmissibility.

(2) If the alien does not meet the definition of "arriving alien" contained in 8 CFR 1.1(q), the expedited removal process does not apply and the alien should be placed in removal proceedings under section 240 of the Act.

(3) If neither 1 nor 2 apply, and the alien is inadmissible under sections 212(a)(6)(C) and/or 212(a)(7), he or she shall be processed under the provisions of the expedited removal program in accordance with section 235(b)(1)(A)(i) of the Act and chapter 17.15 of this manual.

(4) If neither 1 nor 2 apply, and the alien is inadmissible under grounds other than, or in addition to (if the Service decides to apply such additional charges), sections 212(a)(6)(C) or 212(a)(7), the alien will be prepared for removal proceedings under section 240 of the Act.

An alien who is in the expedited removal process and who expresses a fear of persecution or torture, or a desire to apply for asylum, must be referred for a credible fear determination by an asylum officer. If such alien is found to have a credible fear of persecution, the alien shall be referred to an immigration judge for a removal hearing under section 240 of the Act.

However, if an alien whose parole has been terminated has already been found to have a credible fear of persecution (e.g., as part of the original decision to parole the alien), there is no need for a referral to an asylum officer for a new credible fear determination. Instead, the alien should be referred directly to an immigration judge for a removal hearing under section 240 of the Act. In so referring the alien, the processing officer shall follow the procedures set forth in chapter 17.6. Form I-862 shall indicate that the alien is an arriving alien (block 1) and that the notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution, in addition to listing the allegations, specifications and other information which must be provided. The record of proceeding file should also contain a copy of any credible fear determination made previously.

If an alien whose parole has been terminated, and who was previously found to have a credible fear of persecution, states in his or her sworn statement that he or she no longer has a fear of persecution or torture and that he or she wishes to withdraw his or her application for admission and depart, the processing officer may allow the alien to do so in lieu of processing the case for a hearing. The officer must make sure that the alien is making an informed decision. The officer may wish to consult with the Asylum Office before proceeding. However, if the alien does not wish to withdraw his or her application for admission and depart from the United States, the officer must process the case for a hearing under section 240 before the immigration judge. The processing officer does not

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have an option of issuing an expedited removal order. (Added IN98-14)

16.2 Refugee Admissions.

(a) Processing New Refugee Arrivals. Annually, the President, in consultation with the Congress, determines the number of refugees that may be admitted to the United States each fiscal year. The term refugee is defined in section 101(a)(27) of the Act; the authority for refugee admissions is found in section 207.

(1) General Screening. Screening and pre-processing of refugees is completed overseas, and those found qualified for admission will arrive, often in large groups, at a few ports-of-entry. They will have a packet of materials, the contents of their "A" file and an I-94. If all required paperwork is present:

- Endorse the I-94 and travel document (if any) with the refugee admission stamp, which bears the following legend, using security ink:

Admitted as a refugee for an indefinite period pursuant to section 207 of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment Authorized.

- Endorse the refugee stamp with the "A" file number, port code, date of admission and your stamp number.
- Collect all refugee packets and other supporting documents.
- Give the departure section of the I-94 to the alien and route the arrival section for data entry.
- Follow the procedures set forth in section (a)(2) regarding issuance of Form I-688B.

(2) Issuance of Form I-688B. Effective November 10, 2002, in accordance with section 309 of the Enhanced Border Security Act (BSA), the Service issues Form I-688B, *Employment Authorization Card*, to each individual admitted as a refugee under section 207 of the Act immediately upon his or her arrival in the United States and to each individual granted asylum under section 208 of the Act immediately upon the grant of asylum. In addition to issuing I-688Bs, officers continue to issue refugees and asylees at the time they attain such status the Form I-94, *Arrival-Departure Record*, indicating their status.

Note: This does not in any way change the fact that, under existing regulations, asylees and refugees are employment authorized automatically upon attaining their refugee or asylee status. Indeed, refugees and asylees are employment authorized regardless of whether they are in possession of an unexpired Form I-688B, *Employment Authorization Card*, or Form I-766, *Employment Authorization Document*, the two documents that the Service currently issues to refugees and asylees that evidence both employment authorization and

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identity. Officers should be aware of this distinction when communicating with asylees, refugees, government benefits agencies, employers, and other members of the public who may be seeking information about whether or when an individual has been authorized for employment.

(A) Responsibility for Issuance. Issuance of Forms I-688B is delegated to Inspections, District Offices, and Asylum Offices in the manner prescribed below.

- Designated POEs. Inspections personnel are responsible for issuing I-688Bs to each newly admitted refugee and each beneficiary of an approved Form I-730, Refugee/Asylee Relative Petition (refugees and asylees "following-to-join") immediately upon the alien's arrival at one of the ports-of-entry that are specially designated to receive all refugees and refugees following-to-join. (These specially designated ports-of-entry are equipped with the necessary I-688B production hardware and supplies. The list is subject to revision as ports-of-entry are added, subtracted, or changed.) Currently, these specially designated ports-of-entry include:
 - New York John F. Kennedy International Airport (JFK),
 - Miami International Airport (MIA),
 - Chicago O'Hare International Airport (CHI),
 - Los Angeles International Airport (LAX),
 - Newark Liberty International Airport (NEW),
 - Orlando Sanford International Airport (ORL),
 - Hartsfield Atlanta International Airport (ATL), and
 - Washington Dulles International Airport (WAS).
- Non-designated POEs. Some non-designated ports-of-entry may also be appropriately equipped. Inspections personnel at non-designated ports-of-entry that are appropriately equipped will issue I-688Bs to any newly arriving asylees following-to-join. Inspections personnel at non-designated ports-of-entry that are not appropriately equipped should inform any arriving asylees following-to-join of section 309 of the BSA and direct such asylees to the nearest District Office or District Sub-Office to receive their I-688Bs.
- District and Suboffices. In addition to issuing I-688Bs to those individuals referred by ports-of-entry, District Offices and District Sub-Offices are responsible for immediately issuing I-688Bs to individuals who were just granted asylum in a final decision by the Executive Office for Immigration Review (EOIR) or a federal court. The District and District Sub-Offices are responsible for issuing I-688Bs to asylees who were granted asylum by the Service in certain instances as described below. District and District Sub-Offices must issue I-688Bs to newly granted asylees on a walk-in basis.
- Asylum Offices. Asylum Offices are responsible for issuing, immediately upon the grant of asylum, a Form I-688B to each individual granted asylum by the

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Service who was interviewed at one of the local Asylum Offices. Asylum Offices must coordinate with District Offices and District Sub-Offices to establish the most efficient method for issuing I-688Bs, in accordance with the statute, to those asylees who were interviewed at circuit-ride locations. In some circuit-ride locations, it may be more efficient for the District or District Sub-Office to issue the I-688B. In other circuit-ride locations, for example, where the Asylum Office has a more permanent presence, the Asylum Office may be able to issue the I-688B.

(B) Validity Period. Form I-688B is to be issued with a one-year validity period. Issuing officers are to advise refugees and asylees receiving such I-688Bs that the employment authorization/identity documentation that is now being issued to them may be renewed at their option upon application to the Service. It is imperative that all ports-of-entry, District Offices, District Sub-Offices, and Asylum Offices ensure that all data on Form I-688B is uploaded to the Computer Linked Applications Information Management System (CLAIMS) on a timely basis.

(C) Procedure for Issuance of Form I-688B. Observe the following steps to issue I-688B upon completion of inspection for admission as refugee:

- Review I-765 in refugee's application packet
- Enable Employment Authorization Document System (EADS) screen
- Enter I-765 data into EADS
- Generate the camera card (Form I-765 CARD)
- Get applicant's signature (black ink) where indicated on card
- Place fingerprint (right index) where indicated on card
- Take applicant's photo with right ear exposed (remove any ear ring)
- Wait until Polaroid timer stops, cut (from the two photos developed) and place photo in laminate pouch (w/US map)
- Laminate card
- Deliver I-688B card to refugee
- Record A #, name and action in log for daily report
- Store data on floppy disk for forwarding to HQEADS (instructions forwarded separately)
- Forward I-765 with other processed documents to refugee's file at the files control office (FCO) of jurisdiction

(D) Security Issues Relating to the I-688B. It is critical to the integrity of the I-688B process that security measures are followed at the port-of-entry (POE). The following measures were recommended by the Office of Inspector General (OIG) in their Inspection Report Number I-94-07, March 1995, and the Office of Internal Audit (OIA) Report of the Review of the Employment Authorization Process in the Washington and Los Angeles District Offices, Report Number 96-02, February 1996, following a review of the I-688B process in the INS District Offices.

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Each POE must follow standard operating procedures for the I-688B process.

Each POE will institute the I-688B process with a separation of duties and supervisory oversight to the extent possible given individual office circumstances.

(i) Data Integrity:

- Each POE must assign individual employee identification codes and passwords for access to the employment authorization document (EAD) computers. Observe the security requirements for periodic change of passwords.
- Each POE must do data entry on an as needed basis and each POE will do timely data updates of I-688B cards issued.
- Each POE must download and ship EAD data to INS Headquarters following the required format in a timely manner. INS Headquarters will follow up with each POE individually regarding untimely data submissions. A daily submission is preferred.
- Each POE will receive timely CIS error reports and will make the needed corrections in a timely manner.
- The POE will not issue EAD extensions. After receiving an EAD upon admission at the POE, refugees must apply for optional renewal EADs by submitting a Form I-765 directly to the Nebraska Service Center. Optional renewal EADs will be issued using the Form I-766.

(ii) Security of the EAD Program:

- The EAD laminate is a secure document. The laminates must be stored in a secure area overnight or when otherwise not in use.
- Access to laminates must be on an as needed basis and must be strictly accounted for.
- Each POE must inventory the EAD laminates on hand to establish a baseline for further laminate receipt and issuance. The inventory will consist of an initial hand count of each box of laminates received from the ERO and each box will be sealed until the box is to be used. (Instructions for ordering forwarded separately.)
- Each POE must maintain a laminate log that accurately reflects the number of laminates received, used, and the number of laminates on hand for each month. The monthly laminate report shall be sent to the attention of Jean Weber, ERO, or as otherwise directed. Include a telephone and fax # for the reporting POE.
- Each POE must submit a monthly laminate log to the ERO.
- Each POE must inventory the EAD camera equipment and validation plates for each office that were purchased on September 27, 2002. See attached equipment order for each office.
- Each POE must verify the identity of the person to whom an I-688B card is

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issued. Verification of identity shall be accomplished through personal delivery of the card.

(iii) Checklist of Security Measures:

- Provide Jean Weber, ERO Vermont, with designated POC at each office location and telephone number; each office shipping address; and initial laminate needs. Denise Curley is the ERO official overseeing the laminate storage at Vermont.
- Prepare and submit to ERO a monthly laminate report with precise inventory of laminates on hand at the end of the month (per OIG report).
- Count laminates in each box when received and seal box until it is used.
- Apply property control procedures to account for validation plates
- Establish proper supervision
- Ensure proper secure storage of laminate and validation plates for each Polaroid camera:
- Validation plates must be locked up each night.
Exact number of laminates allocated to be used each day.
- Ensure separation of duties – no one person should control all key aspects of the transaction or event.

(3) Medical Screening. Some refugees receive a medical examination and any necessary immunizations at the refugee processing center overseas. Others must have this process completed after entry. Examine the refugee packet to determine if a medical examination form is present. If there is none in the packet, question the refugee to find out if he or she has a medical examination certification. If no medical examination was completed, defer the inspection to the onward local office where the refugee will first reside. That office will arrange for completion of a medical examination prior to admission.

(4) Routing of Refugee Packet. Upon completion of the inspection and admission of a refugee, send the refugee packet to:

INS/Nebraska Service Center
P.O. Box 87730
Lincoln, NE 68501-7730

Note: In the past, some ports of entry have used different variations of the refugee admission

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stamp legend. These variations have caused problems for refugees when they apply for social security cards and other documents, since the staff at the issuing agencies may not accept an I-94 containing non-standard language as genuine. If a refugee is in possession of an I-94 bearing the refugee admission previously used by those ports of entry, the alien may file Form I-102, with fee, seeking a new I-94. Such I-102 should be filed with the service center having jurisdiction over the alien's place of residence. However, if the alien is seeking re-admission at a port-of-entry and is in possession of an I-94 bearing the old-style legend, the inspecting officer should retain the previously-issued I-94 and issue the alien a new one without fee or application.

(Revised IN03-21)

(b) Returning refugees. In general, a refugee may temporarily depart the U.S. and reenter while in refugee status only if granted advance permission to do so. See appendix 16-1 for information regarding the appropriate endorsement to be placed in the alien's refugee travel document.

If an alien presents an unexpired I-571 clearly endorsed "Refugee" on the data page, inspect it for photo substitution or alteration. If you are satisfied that the refugee is the rightful bearer of the travel document and that he or she is still entitled to that status (i.e., is admissible to the U.S. and has not re-availed him or herself of the protection of his or her country of origin), endorse the I-571 with the refugee admission stamp, date, port and stamp number, and return the document to the alien, unless it is nearing expiration.

If the I-571 is nearing expiration (e.g., is valid for less than thirty days from the current date), advise the alien that it is almost expired and that it should be returned to the Service upon expiration. Suggest that if the alien will not be traveling outside the country again before the expiration date, you can collect it at this time. However, if the alien indicates that he or she wishes to retain the document until the expiration date, return the as-yet unexpired document to the alien.

Occasionally, you may encounter a returning refugee who departed the United States without any intention of abandoning status as a refugee, but who failed to obtain a refugee travel document prior to his or her departure. Effective April 1, 1997, the regulations allow district directors the discretion to approve an application for a refugee travel document from an alien who is outside the United States or applying for entry at a port-of-entry. The alien must submit Form I-131, Application for Travel Document, with fee, and must establish that he or she did not intend to abandon his or her refugee status, that he or she did not engage in activities while outside the United States inconsistent with continued refugee status, and that he or she has been outside the United States for less than 1 year. [See 8 CFR 223.2.]

Individuals who have been approved for a Refugee Travel Document overseas will

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present either Form I-571 or a boarding letter issued by an INS overseas district or consular post identifying them as returning refugees. (Boarding letters may be used if the aliens cannot wait overseas for the issuance of the travel documents.) If the alien appearing at the POE is seeking admission to the United States as a refugee and is not carrying Form I-571 or an appropriate boarding letter, you should satisfy yourself that the alien is the individual he or she claims to be and is still entitled to refugee status. If you determine that the individual is admissible as a refugee, you may accept, adjudicate and approve an I-131 application for a Refugee Travel Document.

If all the necessary information is available, including the alien's A-file, and the alien submits the required photographs, you may adjudicate the application and forward it to the Nebraska Service Center, attention: Special Operations Officer for production of the refugee travel document. If you are at a port of entry and the all necessary information (including the alien's A-file) is available but the alien does not have the required photographs and it is not possible to produce them at the port of entry, you may still approve the application and forward it to the Nebraska Service Center, instructing the alien to obtain and forward the photographs to the Special Operations Officer at that service center. You should attach a memorandum to the Special Operations Officer advising that the application has been accepted and approved in accordance with 8 CFR 223. Admit the alien as a refugee by endorsing a Form I-94 with the refugee admission stamp, as above.

On the other hand, if you are not satisfied that the individual is admissible, you should neither adjudicate nor approve the application; instead you should forward the application to the Nebraska Service Center with a memorandum explaining why you find the alien inadmissible and treat the alien as any other inadmissible applicant for admission.

If you are satisfied that the alien is a returning refugee, but do not have sufficient information to adjudicate the application, you may defer the alien's inspection using the procedures in Chapter 17.1, or (if at a land border) require the alien to wait in contiguous territory until his or her file can be obtained and the information verified. See also Chapter 17.15 for expedited removal processing of aliens with refugee claims that cannot be verified.

You should be aware that the provisions of paragraphs (4), (5), and 7(A) of section 212(a) of the Act are not to be applied to refugees. The remaining grounds of inadmissibility may be waived for refugees for humanitarian purposes, to assure family unity, or in the public interest, except for section 212(a)(2)(C) or (3)(A), (B), (C), or (E). Waiver applications should be filed on Form I-602.

(c) Special procedures for adjudication of Refugee Travel Documents for aliens appearing at overseas INS offices. Effective April 1, 1997, overseas district directors

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also have discretionary authority to accept and approve applications for Refugee Travel Documents under the same circumstances as indicated above. Once the application has been approved and forwarded, with photographs, to the Nebraska Service Center, the overseas district director may decide to authorize parole of the alien into the United States if overriding concerns dictate that the alien not be required to remain outside the United States until the Refugee Travel Document has been issued and delivered. If such person arrives at a port-of-entry in possession of a properly-issued I-512, he or she may be paroled into the United States for the period of time necessary for issuance and delivery of the Refugee Travel Document to his or her U.S. address, at which time he or she will be required to report to his local INS office for termination of the parole and inspection as a refugee bearing a Refugee Travel Document.

(d) "Following to Join" Dependents.

(1) General. The spouse and children of a refugee, if not separately eligible for refugee status, may follow to join the principal refugee, whether the principal has remained in refugee status or has been adjusted to lawful permanent resident status. The qualifying relationship must have existed at the time the principal refugee was admitted to the U.S. (a child who was *in utero* at the time of his or her father's admission as a principal refugee meets this requirement) and continue to exist at the time of the spouse's or child's admission. To bring family members to the U.S. under the "following to join" provisions of the Act, a refugee must submit Form I-730 to the Nebraska Service Center. Approved I-730s are transmitted to the National Visa Center and then forwarded to the overseas posts where the dependents reside. All I-730 beneficiaries are interviewed, either by INS or consular officers, to establish their identities, their relationship to the petitioner, and their admissibility to the United States.

(2) Admission procedures. Applicants for admission who fall within these categories should be inspected in accordance with the following:

- Following to join refugees will arrive at the POE with a packet of materials, including the contents of their A files and an I-94. Endorse the I-94 with the refugee admission stamp:

Admitted as a refugee for an indefinite period pursuant to section 207(c)(2) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment Authorized.

- Enter the port, date and your admission stamp number and follow the standard procedures for refugee admissions outlined in Chapter 16.2(a) of this field manual (including issuance of Form I-688B).

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16.3 Asylum Applicants and Asylees.

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(a) General. Asylum applicants are aliens whose claims of eligibility for asylum have not been finally decided. An asylum applicant may travel from, and return to, the U.S. if granted an advance parole. If you are satisfied the asylum applicant is otherwise admissible, parole the alien for the time period indicated on the I-512, endorsing the I-94 and I-512 with the parole stamp, date, port and stamp number. Endorse the parole stamp: "asylum applicant" as appropriate. Return the I-512 to the alien if it is valid for multiple entries and not nearing expiration. If expiring or valid for a single entry, retain the document and forward it to the appropriate files control office.

Asylees are persons who have been granted asylum, but who either have not applied for or have not been granted adjustment to permanent residence pursuant to section 209(b) of the Act. An asylee may be issued a refugee travel document on which to travel from and return to the United States. Upon presentation of a refugee travel document by an asylee, you must verify that the person presenting the document is the authorized bearer and that the document is still valid, establish that the alien has not re-availed him or herself of the protection of the country in which he or she claimed persecution or has become inadmissible (under one of the limited number of grounds of inadmissibility which also constitute mandatory bars to asylum under section 208(a)(2) of the Act), and admit the alien as a returning asylee. (**Note:** Simply traveling to his or her home country does not necessarily mean that the alien has re-availed him or herself of the protection of that country.) Endorse the I-571 and the I-94 with the asylee stamp bearing the legend:

Admitted for an indefinite period as a returning asylee under section 208(b)(1) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment authorized.

The same provisions discussed in Chapter 16.2(a) relating to the issuance of a replacement I-94 to an alien in possession of an I-94 bearing a legend previously used by the Service applies equally to asylees. Furthermore, the same provisions discussed in Chapter 16.2(b) and (c) relating to previously admitted refugees who departed the United States without having obtained a refugee travel document or advance parole also apply to asylees.

(b) "Following to join" dependents.

(1) General. The spouse or children of an asylee may also be granted asylum if they are accompanying or following to join the principal asylee, even if the principal asylee has already adjusted status to permanent residence under section 209 of the Act. Such dependents are commonly referred to as "VISAS 92" cases. The relationship with the principal asylee must have existed at the time the asylum application was approved (a child who was *in utero* at the time his or her father was granted asylum satisfies this requirement). Also, the family member must not fall within any of the mandatory grounds for

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a denial of asylum [See 8 CFR 208.19].

(2) Admission procedures. Applicants for admission who fall within these categories should be inspected in accordance with the following:

- Assuming that the VISAS 92 case is not subject to one of the mandatory bars to asylum, admit the alien for an indefinite period using the asylee stamp bearing the legend:

Admitted for an indefinite period as a dependent of an asylee under section 208(b)(3) of the Immigration and Nationality Act. If you depart the United States, you will need prior permission to return. Employment authorized.

- In accordance with section 309 of the Enhanced Border Security Act of 2002, you must issue an Employment Authorization Card (Form I-688B) to the alien at the time of admission (see Chapter 16.2(a)(2) of this field manual.)

(Revised IN03-21)

16.4 Temporary Protected Status (TPS) Cases.

An alien granted TPS may travel out of the U.S. only if granted an advance parole [See 8 CFR 244]. If a TPS alien presents an unexpired I-512, and is otherwise admissible, parole the alien for the balance of time TPS is available for aliens of the relevant nationality. A TPS alien attempting reentry without an advance parole should be placed in removal proceedings. A table of TPS dates is included in the **Adjudicator's Field Manual**, Appendix 41-1.

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Chapter 17: Inadmissible Aliens

- 17.1 Deferred Inspection
- 17.2 Withdrawal of Application for Admission
- 17.3 Fraudulent Documents
- 17.4 False Claims to U.S. Citizenship
- 17.5 Waivers
- 17.6 Preparing Removal or Prosecution Hearings
- 17.7 Temporary Inadmissibility under section 235(c)
- 17.8 Detention of Aliens
- 17.9 Medical Referrals
- 17.10 Abandonment of Lawful Permanent Resident Status
- 17.11 Asylum Claims
- 17.12 Bonds
- 17.13 Visa Waiver Program Cases
- 17.14 Lookout Intercepts
- 17.15 Expedited Removal
- 17.16 Members and Representatives of Terrorist Organizations.
- 17.17 Technical Notes
- 17.18 **Use of Interpreters and Interpreter Services**

References:

INA: Sections 212, 235, 240, 241.

Regulations: 8 CFR 212, 235, 240, 241.

17.1 Deferred Inspection. (Revised 5/16/05; CBP 9-05)

(a) General. A deferred inspection may be used when an immediate decision concerning admissibility cannot be made at a port-of-entry (POE) and the officer has reason to believe that doubts about the alien's admissibility can be overcome through:

- presentation of additional evidence;
- further review of the case (including perhaps a review of an existing A file);

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- the posting of a maintenance of status and departure bond; or
- other similar action that can only be conducted at the onward location.

In such cases the inspecting officer shall defer the inspection to the office having jurisdiction over the area where the alien will be staying. Deferred inspections may be necessary to review an existing file or some other documentary evidence essential to clarifying admissibility. The inspecting officer shall defer for a specific purpose, and not as a way to transfer a difficult case to another office. The inspecting officer should normally only use deferrals when it appears the case would probably be resolved in the alien's favor, with limited exceptions. The officer shall not defer an alien who is not expected to establish his or her admissibility. Before an alien is deferred, the inspecting officer shall consider the likelihood that the alien will abscond or pose a security risk.

When deferring an alien, the inspecting officer shall query at a minimum the IDENT, SQ11, Central Index and IAFIS, if available, databases in order to determine if any adverse information exists that would preclude the alien being paroled into the United States for deferred inspection and to provide additional information regarding the case. The deferring officer shall note the results on Form I-546, Order to Appear for Deferred Inspection as noted below.

The deferring officer should take the following factors into consideration when making a decision on whether to defer the inspection:

- The likelihood that the alien will be able to establish admissibility;
- The type of documents lacking, and the ability to obtain necessary documentation;
- The alien's good faith efforts to obtain necessary documents prior to arrival at the POE;
- The verification or establishment of the alien's identity and nationality;
- Age, health, and family ties;
- Other humanitarian considerations;
- The likelihood that the alien will appear;
- The nature of possible inadmissibility (i.e. criminal history, previous violations, etc.); and,
- The potential danger posed to society if the alien were to be paroled.

If the alien is clearly inadmissible or may pose a security risk or danger to society, the officer shall not defer the inspection. Instead, the officer shall place the alien in removal proceedings or allow him or her to withdraw his or her application for admission. For information regarding clearance of certain air cargo crewmembers, see Chapter 22.5(f)

(b) Deferral Procedures.

(1) Authorization: The responsibility to authorize a deferred inspection is delegated to the level of port director, assistant port director, or chief inspector at the GS-13 level and above. Express approval from the designated official is required before any inspection can be deferred. Current field guidance on approval authority can be found in CBP policy memorandum "Delegation of Immigration Authority Under Customs and Border Protection (CBP) (T# 03-0495)" dated May 22, 2003 and Exercise of Discretion – Additional Guidance, dated July 20, 2004.

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(2) A-file: If an A-file does not exist, the deferring officer shall open one. To determine if an A-file exists, query the Central Index System. If there is an existing A-file, the deferring officer should indicate the file number and files control office on the Form I-546 so that the onward office can locate or request the file before the alien appears. In the event of an existing A-file, the deferring officer shall place all documentation in a temporary "T" file (unless the deferring officer has access to the A-file itself). The deferring officer shall forward the A-file or T-file containing the Form I-546 to the onward office within 24-hours of the scheduling of the deferred inspection.

(3) Each applicant whose inspection is deferred shall be photographed and fingerprinted on Form FD-249. Only one set needs to be completed. The set of fingerprints shall be maintained with the other information related to the alien and forwarded to the onward office in the A-file. This set of fingerprints is kept in the A-file or T-file (until consolidated with the A-File) and used if the alien fails to appear for his or her scheduled deferred inspection.

(4) Form I-94: Parole the applicant for a brief period, generally not to exceed 30 days, sufficient for the paperwork to arrive at the onward office and for the applicant to obtain any necessary evidence to establish admissibility (additional guidelines related to parole can be found in Chapter 16.1 of this field manual).

Stamp the departure and arrival portion of the Form I-94, with a parole stamp and endorse to indicate:

- Date to which deferred/paroled
- "DE, Deferred Inspection" (Purpose)
- Deferring port code
- Action date
- The officer's admission stamp number
- Onward office code

Place the alien's right index fingerprint on the reverse of the departure portion of the Form I-94.

(5) Deferred Inspection Documentation. All individuals scheduled for a deferred inspection are to be enrolled in the Enforcement Tracking System (ENFORCE). Generally, deferred inspections are documented on a Form I-546 and a Form I-259, Notice to Detain, Remove or Present Alien, if appropriate. General guidelines for creating a deferred inspection record in ENFORCE are as follows:

(A) Complete the Biographical Screen; an A-number is required. When finished, click on the Apprehension Screen.

(B) Apprehension Screen:

- Record the documents presented and arrival information.
- The Arrival/Departure Form I-94 number is mandatory.

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- Click "Charges" then record the section of law and description of the inadmissibility.
- Record the U.S. and foreign address fields.
- Capture as much information as possible on the remaining tabs i.e. relatives, work information, scars etc.

(C) Select "Forms", then generate the forms necessary to document the deferred inspection.

i. Form I-546 Data Collection Screen: A deferred inspection places additional unscheduled work on the onward office. Appearance for deferred inspection may place additional burdens on the applicant who may, in many cases, be required to spend considerable time and money to comply with the required deferral procedures. Ensure that the information provided to the onward office is sufficient to allow the onward office to complete the deferred inspection in a single appearance.

ENFORCE contains a table of all deferred inspection sites. To retrieve the list, type in the first three-letters of the desired deferred inspection location or scroll through the alphabetical list in the "Address (Site)" data entry field. When selecting the "deferred inspection" disposition category, ENFORCE will display only deferred inspection sites in the "Reporting Address" drop down menu. Specific scheduling information such as hours and days of operation, telephone number and zip code are not encoded in the table. Some local offices conduct deferred inspections only on certain days of the week, or during certain hours, and may have specific room numbers for deferred applicants. Therefore, all secondary stations at POEs are to have current information on hours of operation, addresses and telephone numbers of CBP offices that handle deferred inspections available to verify scheduling information. Refer to http://cgovstaging/xp/cgov__Stage/toolbox/contacts/deferred_inspection/ for a complete listing. When scheduling the deferred inspection, identify a specific reporting date and a time block, rather than a specific time. There may be instances where the applicant is required to call the deferred inspection office directly to schedule an appointment. All individuals scheduled for a deferred inspection are to be given the telephone number of the onward office's deferred inspection unit.

The recommending officer must complete the "Detail" block in the following manner:

- Ensure that the information is complete and accurate for the inspector at the onward office by specifically stating the purpose of the deferral;
- Identify any documentation that the applicant is expected to produce;
- Record the results of the database queries;
- Annotate the name and title of the official that authorized the deferred inspection;
- Record the telephone number of the deferred inspection office: and,
- Identify the FCO of the existing A-file, if available.

ii. Form I-259 Data Collection Screen: The creation of the Form I-259 is required for deferred inspections created at the air and sea ports-of-entry. Form I-259 shall be served on the affected carrier or on the captain of a private aircraft or vessel. Generally,

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the CBP Officer should select the fourth block "Notice of potential liability under section 241(c), (d), or (e) of the Act". In the event the alien is formally ordered removed, an amended Form I-259 should be created by checking the second block "Notice to Remove the Alien from The United States on __ at __", inserting the appropriate date and POE. The amended Form I-259 should be issued to the carrier responsible for removing the alien to the last port of embarkation prior to arrival in the United States. Follow local guidelines and procedures for authorization to detain an alien for removal.

iii. Q & A: Depending on the complexity of the case, the deferring office may wish to capture additional information using a question and answer format.

(E) Print Forms:

- Review the data for accuracy.
- Place a legible parole stamp in the "Details" block of the applicant's copy of the Form I-546. Endorse in the same manner as the Form I-94, as described above.
- Attach copies of the amended Form I-259 to the Form I-546 in the A-file or T-file.
- The CBP Officer processing the deferred inspection is to sign the line identified as "Signature of Recommending Officer".

The supervisory CBP Officer will verify that the details on the forms are correct and sign the Form I-546 in the space provided.

(F) Return to the IDENT screen and perform a search and enroll. Do not book the individual in IAFIS.

(6) Close Out:

(A) Verify that the applicant understands what documentation is necessary to overcome the inadmissibility when appearing for the deferred inspection. Prior to departing the secondary processing area, the applicant shall be given:

- the departure section of the Form I-94
- the appointment copy of the Form I-546 with a specific reporting date and a time block, rather than a specific time. In some instances, the applicant will need to contact the deferred inspection office to schedule the appointment.

(B) The deferring officer shall complete the Interagency Border Inspection System (IBIS) secondary screen indicating a deferral. In the remarks section, enter the office deferred to, date of inspection, and reason for deferral.

(C) A-file/T-file: The deferring officer shall include all forms generated in the A-file or T-file along with any other documents relevant to the inspection. The A-file or T-file is to be forwarded to the onward office within 24 hours of scheduling the deferred inspection. Follow local procedures for deferrals within the same field office.

(D) Reporting Requirements: The Form G-22.1 should be completed to indicate the
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category and reason for the deferred inspection.

(E) **Retention Requirements:** A copy of Form I-546 shall be maintained at the deferring office until the ENFORCE record reflects that the case has been completed. Once completed, the deferring office may shred/destroy the original paperwork. POEs are responsible for monitoring the cases deferred to an onward office by reviewing the results of the deferred inspection in IO-95 or ENFORCE.

(c) **Processing a Deferred Inspection at the Onward Office.** The inspecting officer at the onward office should have received the deferral paperwork in advance of the applicant's appearance. It is the responsibility of the onward office to locate and request an already existing A-file, which should be reviewed prior to the applicant's appearance.

- If the applicant is found admissible, a new Form I-94 shall be executed using the office symbol of the onward office and the current date as the date of admission. The officer should ensure that the name, date of birth and country of citizenship written on the new Form I-94 is exactly the same as the information recorded on the Form I-94 issued at the time of the deferred inspection.
- If the inspecting officer concludes that the alien is inadmissible, the officer shall complete processing according to appropriate guidelines, which can be found in Chapters 17.2 through 17.17 of this field manual.

Upon completion of the deferred inspection, use IO-95 to create a new record within IBIS to show the deferred inspection results. Indicate the disposition on the Form I-546 included in the A-file. Forward the original deferred Form I-94 departure section and the new arrival section to the recipient indicated in Appendix 15-8 for data entry, if required. Record the final disposition of the deferral in ENFORCE. Query by event number, then record the outcome of the deferred inspection in the disposition data entry field located in the Form I-546 Data Collection Screen.

The Form G-22.1 should be completed to indicate the disposition of the deferred inspection. The disposition shall be noted on the Form G-22.1 under other (PORT = Other) secondary inspections operation report, complete other columns as appropriate.

(d) **No Shows.** The onward office is to monitor the cases referred for a deferred inspection. Cases should not be pending longer than 30 days after the expiration of the scheduled appointment, unless the applicant has requested an extension. If an alien fails to appear for his or her deferred inspection, a Form I-862, Notice to Appear shall be executed using the information listed on the Form I-546 and mailed to the address provided. All information related to the case shall be added to the A-file. A lookout must be posted in IBIS. All aliens who have lookouts posted shall be reported on the G-22.1 under "IBIS lookout entered". Criminal penalties and the possible pursuit of a criminal warrant under 8 U.S.C. 1325 shall be pursued on a case-by-case basis. All related information shall be forwarded to the CBP Prosecutions Unit (CBP Enforcement Officers) and/or U.S. Immigration and Customs Enforcement to allow further follow-up of the case. All aliens who fail to appear and for whom prosecution is pursued shall be reported of the Form G-22.1 under "Prosecutable Cases Referred to INV". Query ENFORCE by event number, in the "disposition" data entry field located in the Form I-546 Data Collection Screen, to record the action taken.

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(e) Attorney Representation at Deferred Inspection. At a deferred inspection, an applicant for admission is not entitled to representation. See 8 CFR 292.5(b). However, an attorney may be allowed to be present upon request if the supervisory CBP Officer on duty deems it appropriate. The role of the attorney in such a situation is limited to that of observer and consultant to the applicant.

(f) Medical Deferrals. When deferring inspection for a medical ground of inadmissibility under INA Section 212(a)(1), consult with the Public Health Service (PHS) before permitting the alien to proceed. If the alien is required to submit to further medical examination prior to reporting to the onward office, return all medical documents including local PHS certification and x-rays to the applicant in a sealed envelope for presentation to the doctor, medical clinic, or PHS facility as instructed. If the alien is to report first to the onward CBP office, forward the medical documents with the deferral papers directly to the onward office.

17.2 Withdrawal of Application for Admission.

(a) General. A nonimmigrant applicant for admission who does not appear to the inspecting officer to be admissible may be offered the opportunity to withdraw his or her application for admission rather than be detained for a removal hearing before an immigration judge or placed in expedited removal. An alien cannot, as a matter of right, withdraw his or her application for admission, but may be permitted to withdraw if it is determined to be in the best interest of justice that a removal order not be issued. Before allowing an alien to withdraw, you must be sure that the alien has both the intent and the means to depart immediately from the United States. See section 235(a)(4) of the Act and 8 CFR 235.4.

Withdrawal is strictly voluntary and should not be coerced in any way. It may only be considered as an alternative to removal proceedings when the alien is not clearly admissible. Occasionally, POE workload, personnel resources, and availability of detention space may affect whether you will allow withdrawal or pursue removal proceedings before an immigration judge. However, in cases where the alternative to withdrawal is expedited removal, workload and detention space are less significant considerations.

In exercising your discretion to permit withdrawal, you should carefully consider all facts and circumstances related to the case to determine whether permitting withdrawal would be in the best interest of justice, or conversely, that justice would be ill-served if an order of removal were issued. In light of the serious consequences of issuing an expedited removal order, which includes a 5-year bar to re-entry, the decision of whether to permit withdrawal should be based on a careful balancing of relevant favorable and unfavorable factors in order to reach an equitable decision. Such factors might include, but are not limited to:

- (1) The seriousness of the immigration violation;
- (2) Previous findings of inadmissibility against the alien;
- (3) Intent on the part of the alien to violate the law;

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- (4) Ability to easily overcome the ground of inadmissibility (i.e., lack of documents);
- (5) Age or poor health of the alien; and
- (6) Other humanitarian or public interest considerations.

An expedited removal order should ordinarily be issued, rather than permitting withdrawal, in situations where there is obvious, deliberate fraud on the part of the applicant. For example, where counterfeit or fraudulent documents are involved, an expedited removal order is normally the appropriate response. On the other hand, in a situation where the alien may have innocently or through ignorance, misinformation, or bad advice obtained an inappropriate visa but has not concealed information during the course of the inspection, withdrawal should ordinarily be permitted. Where an immigration violation has not yet occurred, and the determination of inadmissibility is based on the alien's ignorance of permissible activities or on a judgment of the alien's future intent, the factors cited above should be carefully weighed in deciding whether to permit withdrawal or issue an expedited removal order. Where the travel documents presented are prima facie valid, you should consider whether the violation warrants the serious consequences of a formal removal. If the alien may readily overcome the inadmissibility by obtaining proper documents, the alien may be permitted to withdraw his or her application for admission and should also be appropriately advised of the necessary forms and requirements to overcome the grounds of inadmissibility.

Under section 222(g) of the INA, as amended by IIRIRA, when an alien has remained in the United States beyond the period of his or her authorized stay, the alien's visa is considered to be void, even though no action may have been taken to physically cancel the visa. In a case when an alien could not have been reasonably expected to know that his or her visa is void, but the alien is otherwise admissible except for the lack of valid nonimmigrant visa, withdrawal of application for admission may be considered. However, if the facts of the case indicate particularly egregious immigration violations, such as long-term or repeated previous overstays, unauthorized employment in the United States, or that the alien is again likely to remain beyond his or her authorized stay or otherwise violate his or her status, an expedited removal order may be appropriate.

An applicant who withdraws his or her application for admission is not considered formally removed and therefore does not require permission to reapply for admission to the United States. Once the reason for the inadmissibility is overcome, the alien may be eligible to apply for a new visa or admission to reenter the United States.

(b) Jurisdiction. Generally, a withdrawal will be taken at the port-of-entry or following a deferred inspection. However, there will be instances where a detained alien, prior to or during the expedited removal credible fear process, is permitted to withdraw his or her application for admission. Any INS officer involved in the continuing processing of an arriving alien may, after obtaining authorization in accordance with local procedures, offer withdrawal if the situation warrants. Withdrawal during the later stages of the expedited removal and credible fear process should be the exception rather than the normal course of action. All facts,

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circumstances, and factors relating to the case should be carefully considered. In expedited removal cases, several units within INS may have already invested considerable time and resources in pursuing expedited removal of the alien. In order to preserve a unified expedited removal process and uniformity of decision, asylum officers may wish to consult with other units involved to obtain any additional information concerning the case which may affect the decision to permit withdrawal.

(c) Withdrawal Procedures. If, after obtaining supervisory concurrence in accordance with local procedures, you decide to permit an applicant to withdraw, complete the necessary paperwork. Once an applicant is granted permission to withdraw, prepare Form I-275, Withdrawal of Application for Admission/Consular Notification. The I-275 must clearly state the reasons for inadmissibility in the remarks block. A sworn statement should be taken and attached to the I-275. If the alien is inadmissible under section 212(a)(6)(C) or (7) and would have been subject to expedited removal if not permitted to withdraw, the sworn statement should be taken using Form I-867A&B. Check any appropriate boxes on the I-275. The alien must sign the I-275, acknowledging that the action is entirely voluntary. The alien should be given a copy of the I-275 and any sworn statement taken, unless the Form I-275 contains classified or sensitive information. Prepare and serve an I-259 on the appropriate carrier to effect removal. Complete the I-94, endorsing both sections with: "WD - Application for Admission Withdrawn. (Stamp number), (Port), and (Date)." On the reverse of the I-94, indicate the file number, if appropriate, in Block 20. In Block 26, under Itinerary/Comments, write the grounds of inadmissibility, and "I-275 served. To be removed via (flight number) on (date)". Also include removal flight information on the front of the departure portion of the I-94. Cancel the nonimmigrant visa, and note the visa page "22 CFR 41.122(h)(3)." In a case where the alien may, through ignorance, bad advice, or misinformation, have inadvertently arrived with inadequate documents or an improper visa, and there was no fraud involved and you are satisfied that the alien will depart in order to comply with admissibility requirements, a visa may be left intact for future use.

Prepare a packet in a sealed envelope for immigration officials in the country to which the alien is being returned, containing the alien's travel document and a copy of the Form I-275 or other relevant information that may be needed by the immigration officials in the ongoing country. Where practical, advise INS offices overseas by phone or fax of aliens moving through their jurisdiction. Forward the original of the I-275 and sworn statement to the consulate where the visa was issued. Route the arrival I-94 for data entry and deliver the departure I-94 to the carrier to be submitted with other departure I-94s for the outbound flight. Maintain a copy of all relating documents, including the pertinent passport pages and other evidence at the port of arrival for 6 months. Refer to Chapter 21.2 for special Canadian border procedures and to Chapter 17.15(f) for specific instructions relating to withdrawal of application for admission by minors.

(d) Return Transportation Arrangements. An alien who is permitted to withdraw must depart immediately from the United States, or as soon as return transportation can be arranged. If the alien arrived at an airport or seaport, arrange for departure on the next available transportation either back to the country where the alien boarded the flight or vessel, or to another country if the alien is entitled to enter that country. In instances where the alien is being returned to a third country through a foreign transit point, every possible effort must be made to ensure that

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an immediate and continuous transit will be ensured. If the alien does not have either a return ticket or the carrier has not otherwise agreed to transport the alien, removal proceedings should be instituted. If the alien has an open ticket, make sure satisfactory confirmed return transportation arrangements are made. If the alien arrived at a land border port-of-entry, he or she is not permitted to enter the United States, and is simply returned to the contiguous territory from which he or she arrived.

(Chapter 17.2 revised 12/22/97; IN98-05)

17.3 Fraudulent Documents.

(a) General. Any passport, visa, alien registration card, or other document presented by an applicant for admission is potentially a counterfeit or altered document, a document procured by fraud or a genuine document being presented by an imposter. As document quality has improved, so has the ability of document vendors to create better quality counterfeits. Tools for detecting fraudulent documents are discussed in Chapter 34. A discussion of the Forensic Document Laboratory and other Intelligence support activities are contained in Chapter 32. The El Paso Intelligence Center (EPIC) can also be of assistance in detecting fraudulent documents. EPIC may be contacted in writing at: EPIC; 11339 SSG Sims St.; El Paso, TX 79908-8098; Att: ICS or by calling (915) 564-2000,. See Chapter 32 for further discussion of EPIC functions.

Once you have determined a document is fraudulent or is being presented by other than the rightful holder, in addition to processing the holder as an inadmissible alien, you must insure that information about the document is properly routed to INS Intelligence for dissemination to others. It is important that information be distributed promptly, since document vendors often produce multiple documents using the same techniques. In order to effectively identify such documents, one of the most valuable assets is current, accurate intelligence information. Local ports generally have one or more designated inspectors assigned as collateral intelligence officers to insure such information is properly routed to and from other officers.

Local ports tend to have patterns for the types of documents encountered which are most likely to be fraudulent. Birth and baptismal certificates, which have no national standards, are the most commonly counterfeited, altered, or improperly issued documents. Familiarize yourself with security checkpoints of documents regularly presented at your port-of-entry. (Revised IN98-13)

(b) Counterfeit or Altered Document. Alteration of documents occurs in several ways: changing data on a valid document to fit the description of the alien applicant, photo substitution, and page substitution are the most common. Counterfeiting of birth records and other similar documents is also commonplace, counterfeiting of entire passports happens less frequently. Some attempts are excellent, others fairly crude. Always examine documents with laminated photos, such as border crossing cards, outside any case or holder so you can feel any relamination. This is a good practice, even at land border primary locations. Familiarity with document alerts and passport studies provided by the Intelligence Division will also make

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detection of this type of fraudulent document easier. Following are tips for passport examination.

- Examination of a passport begins with the cover. Look for the quality and clarity of printing, color, thickness and even spelling. Check the shape and cut of corners.
- Next inspect the inside pages for known watermarks and background printing, as well as any other known security checkpoints. Again, examine spelling and print quality. Check the alignment of pages and the shape and cut of corners. Perforations should generally be sharp, distinct and evenly aligned.
- Review the data page or pages of the document. Handwritten entries should be made with the same color ink, without overwritten or blotched entries. Typed entries should all be with the same typeface and consistency of ink.
- Examine the photo page for signs of double lamination, cuts in the lamination, excessive glue, or wrinkling. Inspect wet or dry seals overlapping the photo. Seals should be aligned and distinct. The seal impression on the reverse side of the page should match that of the front.
- Examine the page immediately opposite the photo page for grommet or staple indentations. Such indentations should match the grommet or staple attaching the photo.
- Examine the binding for jagged or enlarged stitching holes. Stitching should be evenly spaced.

(c) Genuine Document Presented by Imposter. Careful questioning of an applicant regarding the nature of the visit and the particulars of how the visa was obtained, and close scrutiny of the photo and biographic data on the travel document will assist you in determining if the bearer is the rightful holder of the passport or visa. Immigration officers have delegated authority, pursuant to 22 CFR 41.122(h) to cancel genuinely issued visas which have been removed from the original travel document or which are presented by other than the rightful holder. Whenever such action is taken, prepare Form I-275 to advise the issuing consulate.

(d) Genuine Document Obtained by Fraud. Among the more difficult tasks you face as an inspector is making a determination that a passport, visa or, other document issued by competent authority was based on a fraudulent application or agency error. While it is not possible for you to readjudicate the underlying basis of eligibility for every document presented, you should be aware of the general requirements for various immigration benefits and know what relevant questions to ask an applicant for admission when you become suspicious. As INS automated systems improve, you have at your disposal more information from agency files upon which to inquire. Access to INS automated systems is discussed in Chapter 31. Your observation of the applicant's demeanor and his or her responses to simple questions are the best tool for uncovering this type of fraud.

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(e) H-1B Fraud Refusal Notification Report. Pursuant to Section 108 of the "American Competitiveness in the Twenty-First Century Act" (Public Law 106-313), when an H-1B petition is revoked because the alien obtained the H-1B visa through fraud or misrepresentation, the Service will recapture the H-1B visa number. Any revocation based on fraud will restore an H-1B visa number to the total number of aliens who may be issued a visa in the fiscal year in which the petition is revoked. The H-1B Fraud Refusal Notification Report (Appendix 17-7) shall be used in all cases where an H-1B visa fraud determination has been made at a Port-of-Entry. A copy of Form I-275, Withdrawal of Application for Admission/Consular Notification, shall be included to further indicate the basis for the action. This information substantiating an incident of H-1B fraud shall be forwarded, via facsimile, to the service center where the petition was approved. That service center will notify the petitioner of the revocation and will update the computer system to correctly reflect the H-1B visa numerical limitation change.

(Added IN01-14)

17.4 False Claims to U.S. Citizenship.

(a) General. You must always be alert to the possibility that an alien may attempt entry by falsely claiming United States citizenship. The claim may be either an oral claim or one supported by an authentic or fraudulent document. The best defense against false claims to U.S. citizenship is your own instinct as an inspector. The most obvious clues in detecting a false claim are nervous actions or reactions on the part of the applicant or language patterns that don't fit the claim to citizenship.

[REDACTED] If the applicant claims recent naturalization, that may be sufficient to convince you he or she is a U.S. citizen or it may prompt further questions, or a check of the Central Index.

Become familiar with the persons at your port who can assist you in the questioning of a suspected false claim. A native Spanish speaker, familiar with various local accents and idioms, is more likely to quickly detect, for example, a Central American claiming birth in Puerto Rico. Learn the procedures used by various local officials involved in issuing citizenship documents; request original or certified copies of documents which are presented.

A word of caution -- Never refer a person to secondary as a false claim simply because the person is belligerent, disrespectful or suspected of being under the influence of alcohol or other drugs. Refer him or her when you have some reason to believe the person is an alien attempting to commit a fraud.

A new ground of inadmissibility for false claims to U.S. citizenship was added to §212(a)(6)(C)(ii) of the Act by IIRIRA, for representations made on or after the date of enactment, September 30, 1996. Aliens who make a false claim to U.S. citizenship therefore are subject to the expedited removal provisions of §235(b)(1) of the Act. See Chapter 17.15 for expedited removal procedures.

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(b) Procedures. Once you have made a determination that an applicant for admission is making an false claim U.S. citizenship, process the case as an expedited removal case or permit withdrawal of application for admission. In order to prevent the improper removal of a U.S. citizen without hearing or review, a provision was added to the regulations in 8 CFR 235.3(b)(5) to provide for a review of the expedited removal order by an immigration judge. As with any claim to U.S. citizenship, every effort should be made to either verify or disprove the claim prior to proceeding with issuance of a removal order. Only those cases where you are absolutely not satisfied that the person is a U.S. citizen should result in a removal order. To refer the case to a judge, use Form I-863, executing block 4 of the form. In cases of claims supported by documentation, in addition to the above, complete Form G-329, Documented False Claim to Citizenship, and forward it to the appropriate address listed in Appendix 15-8. Attach the original documents, unless they are being used as evidence, a complete set of the alien's fingerprints on Form FD-249, and a photograph. If original documents are needed for other purposes, attach a photocopy. If a genuine document is being presented by an imposter, obtain, if possible, biographic and family information relating to the person to whom the document relates. [Detailed instructions on preparing Form G-329 are contained in Chapter 32.6.]

17.5 Waivers.

(a) General. The grounds of inadmissibility applicable to aliens are established by §212 of the Act. There are a series of exemptions and waivers for various grounds of inadmissibility. Exemptions refer to statutory or regulatory constructions whereby certain classes of aliens are not subject to inadmissibility, under specific circumstances, based on certain general provisions relating to inadmissibility. No application or adjudication is needed when an alien is exempt from a ground of inadmissibility. For example, many aliens are, by regulation, exempt the general passport and visa requirements. Generally, waivers refer to specific applications, filed individually, and adjudicated to remove temporarily or permanently one or more specific grounds of inadmissibility. Waivers are available to immigrants pursuant to sections 211(b), 212(a)(3)(D)(iv), 212(a)(9)(B)(v), 212(d)(11), 212(d)(12), 212(e), (g)(1), (g)(2), (g)(3), (h), (i), and (k). Waivers are available to nonimmigrants under sections 212(d)(1), (d)(3), (d)(4), and (l). Additionally, certain qualifying aliens are eligible for automatic waivers under sections 212(m) and (o). No application or fee is required for such automatic waivers. There are a variety of situations involving inspection of aliens requiring waivers of inadmissibility. In many instances the need for a waiver has been determined and adjudication of a waiver has been completed before the alien arrives at the port-of-entry. In such cases, the nonimmigrant visa will be noted or the alien will possess a notice of action approving the waiver. In other instances, the need for a waiver will be determined during the inspection process and the matter can often be resolved during secondary inspection.

(b) Permanent Residents Without Valid Alien Registration Documents. During the inspection process, you may be required to process a waiver under section 211(b) of the Act if a returning resident is not in possession of his or her alien registration card or reentry permit. If the applicant is otherwise admissible, complete Form I-193, Application for Waiver of Passport and/or Visa, collect the required fee, stamp the I-193 and passport with your admission stamp

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and endorse them "211(b)." Before approving such a waiver, query the applicant's status in Central Index to verify the validity of his or her lawful permanent residence. See Chapter 13.2 for a discussion of this and other options for admitting returning residents. If you deny a waiver under section 211(b) of the Act, the application may be renewed in removal proceedings before an immigration judge.

There are a number of precedent decisions relating to section 211(b) waivers. In *Matter of Abdoulin*, 17 I&N Dec 458 (BIA 1981), the Board ruled that denial of a waiver by the district director did not constitute a definitive adjudication of abandonment of permanent residence. In *Matter of Muller*, 16 I&N Dec. 637 (BIA 1978), the Board discussed factors to be considered in determining the issue of abandonment. Other relating precedents relating to abandonment of residence and entitlement to a waiver include: *Matter of Davis*, 16 I&N Dec. 514 (BIA 1978); *Matter of Delgadillo*, 15 I&N Dec. 395 (BIA 1975); *Matter of Galvan*, 14 I&N Dec. 518 (BIA 1974); *Matter of Castro*, 14 I&N Dec. 492 (BIA 1974); *Matter of Montero*, 14 I&N Dec. 399 (BIA 1973); *Matter of Wu*, 14 I&N Dec. 290 (Regional Commissioner 1973); *Matter of Hoffman-Arvalo*, 13 I&N Dec. 750 (BIA 1971); *Matter of Wighton*, 13 I&N Dec. 683 (BIA 1970, 1971); *Matter of Salviejo*, 13 I&N Dec. 557 (BIA 1970); *Matter of Escalante*, 13 I&N Dec. 223 (BIA 1969); and *Matter of Vielma-Ortiz*, 11 I&N Dec. 414 (BIA 1965).

(c) Waivers for New Immigrants. An alien inadmissible from the U.S. under section 212(a)(5)(A) or (7)(A)(i), who is in possession of an immigrant visa may, if otherwise admissible, be admitted by applying to the district director at the port-of-entry at which the alien arrived for a waiver on Form I-193, under the conditions described in §212(k) of the Act and 8 CFR 212.10. This waiver is available to correct such technical defects as when a consular official has placed an improper classification symbol on the visa or where classification has changed due to the alien turning 21 years of age subsequent to visa issuance. It is available both at a port-of-entry at the time of initial admission or nunc pro tunc. No fee is required. Adjudicate the application and attach the form to the immigrant visa packet. If denied, application for a section 212(k) waiver may be renewed before an immigration judge in removal proceedings.

Precedent decisions involving application for a section 212(k) waiver of section 212(a)(5)(A) include: *Matter of Morgan*, 13 I&N Dec. 283, (BIA 1979); *Matter of Ortega*, 13 I&N Dec. 606 (BIA 1970); *Matter of Ulanday*, 13 I&N Dec. 729 (BIA 1971); *Matter of Paco*, 12 I&N Dec. 599 (BIA 1968); *Matter of Thompson*, 13 I&N Dec. 1 (BIA 1968); *Matter of Welcome*, 13 I&N Dec. 352 (BIA 1969); and *Matter of Rodriques*, 13 I&N Dec. 746 (BIA 1971).

Precedent decisions involving application for a section 212(k) waiver of section 212(a)(7)(A)(i) include: *Matter of Pierce*, 17 I&N Dec. 456 (BIA 1980); *Matter of S- B-*, 7 I&N Dec. 298 (BIA 1956); *Matter of Alarcon*, 17 I&N Dec. 574 (BIA 1980); and *Matter of Khan*, 14 I&N Dec. 122 (BIA 1972).

A waiver of the passport requirement, using the I-193 procedure described above, is also provided in 8 CFR 211.2. Other waiver provisions applicable to new immigrants are normally adjudicated in advance. Approval of such waivers should be indicated by the consular official on the immigrant visa, OF-155A.

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(d) Nonimmigrants.

(1) Section 212(d)(3)(A). Nonimmigrants who are inadmissible to the United States, and who require a visa, must apply in advance for a waiver under section 212(d)(3)(A) of the Act. Joint concurrence by the Secretary of State and the Attorney General is required for approval. The alien usually applies for the waiver in conjunction with the application for a nonimmigrant visa. Once approved, the section of law under which the waiver was approved and any special limitations will be noted on the visa. If otherwise admissible, enter the waiver information and any restrictions on the reverse side of the I-94 in the appropriate blocks.

(2) Section 212(d)(3)(B). Inadmissible nonimmigrants who are already in possession of a nonimmigrant visa, or who are exempt the requirement for a visa, must apply for authorization under section 212(d)(3)(B) of the Act to the district director having jurisdiction over the intended port-of-entry. Application is made on Form I-192, Application for Advance Permission to Enter as a Nonimmigrant. Adjudication procedures are discussed in detail in Chapter 42 of the *Adjudicator's Field Manual*. If such application has been approved, the alien will be in possession of Form I-194, Notice of Approval of Advance Permission to Enter as a Nonimmigrant. If otherwise admissible, enter the section 212(d)(3) authorization information, the file number, and the FCO code on the reverse side of the Form I-94, along with any conditions or restrictions.

[IN 02-08]

(3) Section 212(d)(4)(A) Waiver of Passport and/or Visa.

(A) An authorizing official, as designated in the memorandum Delegation of Immigration Authority Under Customs and Border Protection (CBP) (TC#03-0495), dated May 22, 2003, has the discretion to grant a 212(d)(4)(A) waiver only if the alien clearly demonstrates that an unforeseen emergency prevented him or her from acquiring the appropriate passport or visa. Currently, this authority is delegated to the port director at the GS-13 level and above. See generally *Matter of LeFloch*, 13 I. & N. Dec. 251, 255-56 (BIA 1969) 212(d)(4)(A) waiver of student visa denied after U.S. consulate incorrectly informed B visa holder that no student visa was necessary; no unforeseen emergency); *Matter of V*, 8 I. & N. Dec. 485, 485-87 (BIA 1959) (no unforeseen emergency where alien had ample opportunity in advance of travel to obtain a visa). The term "unforeseen emergency" as used in 8 CFR 212.1(g) generally means:

- (i) an alien arriving for a medical emergency;
- (ii) an emergency or rescue worker arriving in response to a community disaster or catastrophe in the United States;
- (iii) an alien accompanying or following to join a person arriving for a medical emergency;
- (iv) an alien arriving to visit a spouse, child, parent, or sibling who within the

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past 5 days has unexpectedly become critically ill or who within the past 5 days has died; or

(v) an alien whose passport or visa was lost or stolen within 48 hours of departing the last port of embarkation for the United States.

(B) In a case where a section 212(d)(4)(A) waiver is under consideration, the alien should complete Form I-193 and remit the appropriate fee. In the remarks block of the Form I-193, the immigration officer shall precisely describe the unforeseen emergency that prevented the alien from obtaining the proper documentation before arriving in the United States. In addition, the officer shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Mark "n/a" in the block designated for Department of State concurrence on the Form I-193. Where an authorizing official favorably adjudicates an application for a section 212(d)(4)(A) waiver, the admitting officer shall stamp the passport using the regular admission stamp, note the class of admission (i.e., B-1, B-2, etc.), and write, "212(d)(4)(A) unforeseen emergency waiver" in the alien's passport under the admission stamp. The admitting officer shall also make the same notation on the reverse side of both the arrival and departure portion of Form I-94.

(C) An authorizing official may also, on a case-by-case basis, approve a 212(d)(4)(A) waiver should individual unforeseen emergency circumstances arise that do not fall within the scope of an unforeseen emergency as described above. This authority shall also apply to those individuals who are officially acting in the capacity of the port director (GS-13 and above) or higher level.

(D) The official who authorizes a waiver under paragraph (d)(3)(C) of this chapter (i.e., the previous paragraph) shall maintain a log that precisely describes the emergency that prevented the alien from acquiring the required documents before arriving in the United States. In addition, before granting any such waiver, the authorizing official shall describe precisely why a reasonable person in the alien's position could not have anticipated the emergency that predicated his or her arrival in the United States without the proper documents. Finally, the official who authorizes a waiver under paragraph (d)(3)(C) of this chapter shall adhere to the procedures identified in paragraph (d)(3)(B) of this chapter regarding the execution of the Form I-193 and marking the passport.

(e) Headquarters Responsibility for Certain Waivers under Section 212(d)(3)(A) of the Act.

(1) General. Oversight of waivers of inadmissibility for nonimmigrants is the responsibility of the Inspections Program. The Act stipulates that the Secretary of State may recommend

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the waiver and the Attorney General may grant or deny. Normally, the recommendations are made to the Service at the overseas districts. Certain categories, however, are elevated to the "seat of government" level as detailed below. [See 8 CFR 212.8.]

In making the recommendation to the Service, Section 40.111 of the Foreign Affairs Manual (FAM) instructs State Department officers to include:

- The relevant humanitarian, political, economic or public relations factors;
- a statement (where applicable) that DOS is satisfied the alien has a residence abroad which he or she has no intention of abandoning;
- a statement that the alien is properly classified as a nonimmigrant;
- the officer's precise recommendation and the reasons therefor.

FAM guidance to consular officers specifies that a waiver may be requested (except as precluded by statute) for any nonimmigrant alien whose presence would not be detrimental to the United States and that the law does not require that recommendations be limited to exceptional, humanitarian or national interest cases. It further states: "Thus, while the exercise of discretion and good judgment is essential, generally, consular officers may recommend waivers for any legitimate purpose such as family visits, medical treatment (whether or not available abroad), business conferences, tourism, etc." It goes on, however: "In cases of ineligibility for other than security reasons, the consular officer must weigh additional considerations as recency and seriousness of the crime or offense, type of disability, reasons for the proposed travel to the United States and the probable consequences, if any, to the public interests of the United States."

Although the FAM provides guidance for State Department officers, the Service is not bound by it. The inspector should consider all of the above and also consider that the Congress has deemed these aliens inadmissible to the United States. In considering the waiver weigh the benefit, if any, to the United States should the waiver be granted. In situations where the proposed visit is for the purpose of medical treatment, consider whether such treatment is available to the alien abroad. Granting of waivers of these grounds should not be routine and available just for the asking.

(2) Mandatory Referrals. Although any case may be referred to the Department of State Visa Office by a consular officer for consideration of a recommendation to HQINS, there are certain cases in which the FAM mandates the referral:

- Any case where it is requested by the alien or an interested party in the U.S. that it be forwarded;
- Any case where the consular officer knows or has reason to believe that pertinent considerations not available at the post may be available to or through the Department;

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- Prior refusals;
- Any case where the alien's presence or activities in the U.S. might become a matter of public interest or of foreign relations significance;
- Any case in which the Department has mandated an advisory opinion be sought;
- The case of any alien who is a national of a country which the U.S. does not recognize or with which we have no diplomatic relations;
- The case of any alien not classifiable under INA Section 101 (a) (15) (A) or (G) but destined on official business to the United Nations;
- Cases of any SILEX or BUSVIS/SILEX alien and of certain CHINEX or BUSVIS/CHINEX aliens;
- The case of any Soviet applying for an I visa;
- Any case involving 212(a)(3)(B);
- Any cases in which the consular officer recommends a term of greater than one year.

(3) Limitations. Multiple entry waivers are not to be given to an alien who:


- Has a mental or physical disorder;
- Is a narcotic drug addict or a narcotic trafficker (multiples have been granted before in special cases with DEA/Customs/FBI involvement);
- Is afflicted with a communicable disease;
- Was convicted of a CIMT and is less than 5 years post-release;
- Prostitution related activity within 10 years of visa application.

(4) Silent Waivers. The majority of cases referred to HQINS involve either aliens involved with terrorism or illegal drug activity in which the Drug Enforcement Agency or another federal agency requests a "silent waiver" or some other special handling for cases in which the consular officer recommends greater than one year validity. In the terrorist-related cases, request the FBI position on the recommendation and consider any objections presented. If the objections of the FBI cannot be overcome to their satisfaction by travel restrictions or some other consideration, the case should be referred to the Department of Justice's Office of Intelligence Policy and Review (OIPR). In the drug cases, require

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detailed information as to what the alien is expected to do and what benefit exists for the U.S. Do not accept simple assurances. If the requesting law enforcement agency is requesting the "silent waiver" to effect an alien's arrest, the alien to be arrested should be at such a significant level within the criminal organization that the arrest materially affects it, or there should be some other significant gain in the case to justify the expense to the United States.

In all cases, place any restrictions that you feel are necessary. Some examples might be: geographical (4 block radius of the U.N.); port-of-entry (arrive at JFK only); time (3 days); advance itinerary (usually requested by the FBI), etc. on a case-by-case basis.



(Paragraph (e) added by IN97-08)

17.6 Preparing Removal or Prosecution Hearings.

(a) General. If you determine that an alien is inadmissible, and the grounds of inadmissibility cannot be resolved readily and the alien does not elect to withdraw (or is not afforded the opportunity), you must prepare necessary paperwork for a removal proceeding before an immigration judge or for prosecution. Most often, an alien will be detained or paroled until the hearing date. An alien who is inadmissible under section 212(a)(6)(C) or (7) is subject to the expedited removal provisions of section 235(b)(1) and should be processed in accordance with Chapter 17.15. If such an alien is also being charged with additional grounds of inadmissibility, follow the procedures below.

(b) Preparing the Case. There are a number of steps to be taken to refer a case for a removal hearing or for prosecution. Complete, accurate case preparation is extremely important. Prepare cases for prosecution according to guidelines set by the local U.S. Attorney. The following steps must be taken in each case referred to an immigration judge for removal proceedings:

(1) Take a complete sworn statement from the alien, concerning all pertinent facts. Collect any additional evidence relevant to the case which is discovered during the inspection process. Use Form I-263A as a jurat to close the statement. Provide a copy of the statement to the alien and retain copies for the Service file and record of proceedings.

(2) Prepare three copies of Form I-862, Notice to Appear. If the alien is being held in Service custody, indicate that fact and location of the facility where the alien is detained in the address block. If the alien is not being held in Service custody, enter the complete address and phone number where the alien can be reached and provide the alien with Form EOIR-33 to report any change of address. If the alien's mailing address is different than

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the physical address, include both. Check the first box and provide a brief narrative description of the facts of the alien's arrival and inadmissibility under description of charges. Standard language for all charges under section 212(a) is available through most automated forms systems used by the Service. Fill in the complete citation for the provision of law (e.g. 212(a)(2)(A)(i)(I)) under which the alien is being charged. Enter the complete address of the appropriate Immigration Court in the space provided. The Notice to Appear must ordinarily include the time and place of the hearing. Obtain a date and time for the hearing using the EOIR ANSIR system, or following established local procedures. In unusual situations when a hearing date and time cannot be obtained, such as when there is a computer system outage, indicate "to be set" in the appropriate data field. Advise the alien, in a language that he or she can understand, of the time and place of the hearing and of the consequences of failure to appear. Sign and date the I-862. Normally, a hearing may not be conducted sooner than 10 days after service of the Notice to Appear. If the alien wishes to waive this time period and have an immediate hearing (or as soon as one can be arranged), have the alien sign the section entitled "Request for Prompt Hearing." Serve the I-862 on the alien and provide him or her with a current list of organizations and programs prescribed in 8 CFR 292 which provide free legal services.

Serve one copy of the I-862 on the alien, unless the alien is to be released and deferred to an onward office, in which case the service is accomplished by the onward office.

(3) Photograph and fingerprint the alien on FD-249 fingerprint cards (three sets). Distribution of the fingerprints should be made in accordance with the procedures set forth in chapter 18.9(c). Be sure to properly code the fingerprint cards with the proper United States Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

- 18 U.S.C. 1544 Photo substitutions
- 18 U.S.C. 1546 Counterfeit immigrant visa
- 8 U.S.C. 1306 Counterfeit INS documents, such as alien registration
- 18 U.S.C. 911 False claims to U.S. citizenship (imposters, photo substitution of U.S. passport)
- 18 U.S.C. 1001 Other (fraudulent documents, imposter, no documents, etc.)

(4) If the alien is to be detained, consult 8 CFR 236.1(e) to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this **not** be done. Notify the alien that he or she may communicate with a

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consular official.

(5) Complete local procedures for authorization and arrangement of detention, if appropriate. If the alien is being detained pending the removal hearing, complete a Form I-94 for NIIS entry notated: "I-862 served - Detained at _____ for removal proceedings on (date). (Date), (Place), (Officer)." Section 235(b)(2) of the Act, as amended by IIRIRA, provides the detention authority for arriving aliens placed into removal proceedings under section 240. This provision is functionally equivalent to the old 235(b), and does not require issuance of a Warrant of Arrest.

(6) In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required prior to the hearing. If there is no admission, consider forwarding the fraudulent document to the Forensic Document Laboratory (FDL) for analysis. [See Chapter 32 for details on using FDL services.]

(7) Search for existing Service records in CIS and other appropriate automated systems. If an "A" file exists, create a temporary file and request the permanent file for the hearing, otherwise, open a new file. [Chapter 31 contains detailed information on use of Service data bases.]

(8) At air and seaports, serve the carrier with Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to advise the carrier of potential liability for removal and to order the carrier to remove the alien when the removal process is finished.

(9) If the alien is to be released for an removal hearing at an onward office, complete a Form I-546, Notice to Appear for Deferred Inspection, following procedures set forth in Chapter 17.1. In such cases, the I-862 will be served by the onward office. Although ordinarily not an option, this procedure is may be appropriate for determining whether to institute removal proceedings in cases involving returning permanent residents.

(10) Prepare two identical sets of all documents to be submitted as evidence: one for the Service file, and one for the Immigration Court.

(c) Post-hearing actions.

(1) Alien ordered admitted. Complete the inspection process as you would any other admission, including processing a new Form I-94, noting the remarks block "ordered admitted by immigration judge". Collect any prior departure I-94, stamp the reverse with your admission stamp and forward for data entry.

When the immigration judge orders the admission of a detained alien or an alien at a land border, and the decision is not final because the Service's appeal time has not tolled, an appeal has not been decided, or the decision has been certified to the Board of Immigration Appeals, release and parole the alien unless particular facts, such as an alien's serious criminal background, warrant other action.

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(2) Alien ordered removed. Complete and serve Form I-296, Notice to Alien Ordered Removed/Departure Verification, on the alien, checking the appropriate box to indicate the duration of the penalty imposed and the reason for such penalty. The penalty for an aggravated felony may be imposed on such felon, even if the alien was not charged as being inadmissible as an aggravated felon in this proceeding. Forward one set of fingerprints on Form FD-249 to the FBI. At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on the Service copy of the I-296, the alien should sign the form, and the particulars of the departure entered on the form for retention in the file. Cancel the alien's visa or border crossing card, if appropriate, and complete and distribute Form I-275 as described in Chapter 17.2. Note the passport with the file number and action taken, for example: "Ordered Removed 12/1/97 NYC/Section 212(a)(2)(A)(i)(I)". Forward a copy of the removal order with the I-275 to the Department of State. Prepare a new I-94, endorse it with a parole stamp and note the stamp "For removal from the U.S. by (carrier name)", the date of removal, stamp number, port, and action date. Serve Form I-259 on the affected carrier, if appropriate.

In the case of an alien with an immigrant visa ordered removed, the immigrant visa packet, noted by the immigration judge, is retained in the file of the Executive Office for Immigration Review. Other procedures outlined above are the same.

(3) Alien permitted to withdraw during removal hearing. In a case where the immigration judge permits the alien to withdraw his or her application for admission prior to conclusion of a hearing, follow procedures described in Chapter 17.2.

(d) Removal proceedings involving lawful permanent residents.

(1) Meaningful Departure. If a returning lawful permanent resident appears inadmissible, first determine if he or she is an applicant for admission within the meaning of section 101(a)(13)(C) of the Act. See discussion in Chapter 13.

(2) Procedures. If you find that a lawful permanent resident is considered to be seeking admission and appears to have abandoned his or her permanent residence in the United States, there are several possible courses of action: deferred inspection, removal proceedings, nonimmigrant admission or parole and, occasionally, withdrawal of application for admission. In any case, temporarily lift, but do not destroy or return to the card facility, the Alien Registration Receipt Card (Form I-551). In instances where detention is not warranted, defer inspection for institution of removal proceedings, as described above in paragraph (b)(10) and Chapter 17.1. If you are going to schedule a removal hearing, follow applicable procedures above. In addition, issue a temporary I-551 in accordance with 8 CFR 264.5(g) and local procedures. Note the reverse of the temporary card: "Alien is scheduled for removal hearing - do not admit as LPR." Parole the alien for the time necessary to conclude the removal proceeding. Abandonment of residence is discussed in Chapter 17.10, below.

(3) If a lawful permanent resident appears to be inadmissible under section 212(a)(3)(A) (except clause (ii)), (B) or (C), notify your regional director, through the district director, of

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the facts of the case.

(e) Proceedings Involving VWP Applicants Claiming Asylum. When the immigration judge denies asylum to a refused VWP applicant, arrange for the alien to be removed on the first available transportation to the point of embarkation.

17.7 Temporary Inadmissibility under section 235(c).

(a) General. An immigration officer must, pursuant to section 235(c) of the Act, temporarily deny admission to the United States to any nonimmigrant who appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B) or (C). Such actions, although rare, are extremely serious and sensitive.

(b) Procedures. Basic procedures for temporary denial of entry are set forth in 8 CFR 235.8. Take a brief sworn statement from the alien, if possible. Exercise caution in asking questions to insure you do not compromise classified information or confidential sources. Complete and serve the alien with Form I-147, Notice of Temporary Inadmissibility. Explain the action being taken and the right to submit a written representation. Complete actions to remove the alien on the first available transportation. Immediately prepare and submit a short memorandum to the district director containing the alien's name, date and place of birth, residence address, file number if known, port and date of temporary inadmission, and a summary of all pertinent facts developed during the inspection. If the alien was entering as a delegate to a convention, provide the date and place of the convention and the sponsoring organization. In sensitive, high profile cases, follow the procedures for reporting incidents described in Chapter 2.7. Institute checks with other law enforcement agencies to develop further information. Prepare Form G-325A, mark it "Special Handling- I-147 served pursuant to 8 CFR 235.8" and forward it expeditiously to the district director. Photocopy the data page, visa page, and any other pertinent pages from the alien's travel document.

If the alien previously resided in Canada, forward Form G-325B to the Service liaison officer in Ottawa. When a current Canadian resident is to be temporarily denied admission on security-related grounds, notify the liaison officer in Ottawa by phone or fax, providing available personal data. If the denial of admission is based on lookout information, the liaison officer should be so advised, and if the lookout is a temporary one, also provide a synopsis of the lookout. The liaison officer will consult available sources and provide information to the port normally within a few hours. Delay action pending receipt of the response.

After five days, or upon receipt of the alien's written statement, prepare a detailed report for submission to the regional director. In addition to the information from the summary report, include other personal data such as marital status; the destination, duration, and purpose of the proposed visit; basis for temporary inadmissibility, including sources, reliability of informants, and identify what, if any, information is classified and an assessment of whether disclosure of the information would be prejudicial to the public interest, safety, or security of the United States. Attach a copy of any sworn statement taken, or explain why there was none. Attach the results of checks with other agencies. Make a recommendation as to whether or not the alien should be accorded a hearing by an immigration judge.

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(c) Canadian "Summary Conviction". An alien who is convicted of a theft offense punishable on summary conviction under section 334(b)(ii) of the Criminal Code of Canada as the only offense committed is not inadmissible to the United States on the basis of that conviction. [See General Counsel Opinion 92-36 for a detailed discussion of this issue.] (Added IN 99-30)

17.8 Detention of Aliens at Ports-of Entry.

(a) General. During an inspection, officers have the authority to search without a warrant, take sworn statements, and detain applicants for admission to determine their admissibility into the United States. In cases where removal proceedings are being initiated, a decision relating to the detention of the applicant must be made. In some cases the detention needed is only of short duration (i.e., waiting for departure of flight, or preparation of case file, etc.) and transfer to a long-term detention facility is not practical. During an inspection at a port-of-entry, detention begins when the applicant is referred into secondary and waits for processing.

(b) On March 9, 2004, the Office of Field Operations issued CBP Directive No. 3340-030A, which superseded Directive No. 3340-030 issued on July 26, 2001. This directive also supersedes previous port of entry detention procedures established under the former INS. Following is Directive No. 3340-030A:

SUBJECT: SECURE DETENTION PROCEDURES AT PORTS OF ENTRY

1. **PURPOSE.** This Directive establishes national policy for the temporary detention of persons by U.S. Customs and Border Protection (CBP) in secure areas at Ports of Entry (POEs).

2. **POLICY.**

2.1 This policy shall pertain to the temporary detention of all persons who are detained in secure areas. This includes, but is not limited to, those persons suspected of terrorist activity, are under arrest, are awaiting confirmation on National Crime Information Center (NCIC) warrants, suspected as internal contraband carriers, aliens awaiting removal, transfer, or referral, or other processing involved in a secondary inspection, e.g. fuel tank exams.

3. **AUTHORITIES/REFERENCES.** 19 U.S.C. §§ 482, 1461, 1581, 1582; 8 U.S.C. § 236; Title 8 Code of Federal Regulations 236.1(e) [8 CFR 236.1]; Personal Search Handbook (PSH), CIS HB 3300-04A revised November 1999; Physical Security Handbook CIS HB 1400-02A; Enforcement Handbook, Chapter 43, Detention, Arrest, and Handling Prisoners; Customs Directive 3340-028 (Physical Control of Suspects);

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Internal Operating Procedures Notification (IOPN), 00-19, "Accountability Requirements for Lost/Stolen Evidence, Drugs, Currency and Escaped Prisoners," dated April 26, 2000; Policy Memoranda dated April 11, 2003, April 25, 2003, May 13, 2003 relating to Severe Acute Respiratory Syndrome (SARS); Inspector's Field Manual, Chapter 17.

3.1 General. CBP Officers have the combined statutory authority under Title 8 United States Code [8 USC], the Immigration and Nationality Act (INA) and Title 19 United States Code [19 USC]. It allows CBP officers to search without a warrant, take sworn statements, and detain applicants for admission to determine their admissibility into the United States, detain persons suspected of violating the customs, agriculture or other laws of the United States that are enforced at the border. In cases where removal proceedings are being initiated, a decision relating to the detention of the applicant must be made. In some cases the detention needed is only of short duration (i.e., waiting for departure of flight, or preparation of case file, etc.) and transfer to a long-term detention facility is not practical. During an inspection at a port of entry (POE), detention begins when the traveler is referred into secondary and when processing is underway or subject is waiting processing.

4 DEFINITIONS.

4.1 U.S. Customs and Border Protection Officer. Includes all legacy agency inspectors and canine enforcement officers.

4.2 Secure Area. This refers to areas such as a detention cell, search room, interview room, or security office where an individual is detained for a temporary period of time out of public view and cannot flee.

4.3 Attended Area. This refers to a location where a person is constantly in the physical presence of an officer in a secure area.

4.4 Unattended Area. This refers to a detention cell, confinement area, or secure area where a detainee may be out of view of an officer.

4.5 Juvenile. A person who has not reached his/her 18th birthday.

4.6 Patdown Search. The term refers to the act of an officer searching for merchandise, including contraband, weapons, or documents hidden in the clothing a person is wearing or on their body.

4.7 POE Short-term Detention. The temporary detention of a person at a POE while a case is being processed administratively or prepared for presentation for prosecution; pending parole, release, departure from the United States, or transfer of custody to another branch or agency; or while CBP makes arrangements for

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longer term detention. Short-term detention begins with the subject being referred by an officer for further inspection and may take place in a secondary inspection area, POE hold room, or any other designated and/or assigned secure area for less than 24 hours.

4.8 POE Hold Room. A confined area or secured room at a POE in which detained persons are temporarily held pending a secondary process, i.e., vehicle examination, adjudication, processing of documents, interviews, etc. Detention of a person in a POE hold room shall be for the least amount of time necessary.

NOTE: At a POE where no hold rooms exist, and where operationally feasible, a segregated area away from the traveling public should be established within the port. Direct supervision and control of the detainee must be maintained.

4.9 POE Detention Cell. A room where a person is placed who must be physically separated from the primary and/or secondary inspection areas, awaiting transfer to another detention facility or other Law Enforcement Agency (LEA), when constant surveillance of the subject is not feasible, and/or for ensuring the safety of both the traveling public and officers.

4.10 POE Search Room. A private designated location that is designed for extensive search of a person and that prevents all but designated necessary personnel from viewing the subject. A POE search room may serve as a temporary hold room should separation from others be required or extra room needed.

5 RESPONSIBILITIES.

5.1 The Assistant Commissioner, Office of Field Operations, is responsible for policy oversight, which includes the formulation and implementation of guidelines and procedures.

5.2 Directors, Field Operations (DFOs) and Port Directors (PDs) are responsible for managing the implementation of this program and monitoring compliance with the procedures to ensure uniformity of application.

5.3 The PDs are responsible for ensuring that all Treasury Enforcement Communication System (TECS) reports ([REDACTED]), detention logs, and any other reports pertaining to detentions are completed and reviewed. The reviews will determine the effectiveness of the procedures contained within this Directive, as well as, how well they are carried out.

5.4 Supervisors are responsible for ensuring that CBP officers under their direction are familiar with the guidelines set forth in this Directive.

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5.5 The U.S. Customs and Border Protection Basic Inspector Training Academy is responsible for incorporating this Directive into the appropriate training programs.

5.6 The PDs are responsible for identifying and ensuring that CBP officers under their direction are familiar with the areas that have been designated as detention cells, search rooms, or holding rooms. Dual designation of a particular room is authorized, i.e., a detention cell may also be used as a search room.

6 DETERMINATION TO DETAIN.

6.1 Priority of Detention. In cases where it is not possible to detain every person in a POE hold room, persons should be detained in the following priority:

6.1.1 [REDACTED]

6.1.1.1 [REDACTED]

6.1.1.2 [REDACTED]

6.1.1.3 [REDACTED]

6.1.1.4 [REDACTED]

6.1.1.5 [REDACTED]

6.1.1 [REDACTED]

6.1.2 [REDACTED]

6.1.3 [REDACTED]

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6.1.4 [REDACTED]

7 DURATION OF DETENTION.

7.1 Short-term detention begins when the traveler/applicant is referred by a CBP officer for further inspection and may take place in a secondary inspection area, POE hold room, or any other designated area; and is for the least amount of time necessary to complete the inspection or processing.

7.2 As a rule, the maximum time an individual may be held in a secure area at a POE is no longer than [REDACTED]. Accordingly, every effort will be made to transfer, transport, remove, or release those in custody as quickly as is operationally feasible.

7.3 The PD will approve all detentions in secure areas that reach or exceed [REDACTED].

7.4 The DFO must be notified through the chain of command, if the detention period at the POE extends to [REDACTED] or more.

7.5 A person placed in an unattended secure area will be checked [REDACTED], as the situation requires (see section 9.2). These checks will be annotated in the Detention Log [See Appendix 17-8]. For the purpose of tracking the duration of detention, the time will begin when the person is placed in a secure area. The tracking of time will be part of the Detention Log.

8 8 EXCEPTIONS TO SHORT-TERM DETENTION IN POE HOLD ROOMS.

8.1 Officers shall be sensitive to detained persons who are pregnant, on life-sustaining/lifesaving medication, appear ill, comprise family units (parent/adult with child/juvenile), or are persons of advanced age (over the age of 70) or unaccompanied juveniles (under the age of 18). [See section (9.27) of this Directive regarding Juvenile Detention Procedures and legacy Immigration Inspectors Field Manual (IFM) chapter 17.15(f)(5).]

8.2 For humanitarian reasons, the processing of secondary cases for these persons shall be expedited as quickly as operationally feasible.

8.3 To the extent possible, [REDACTED]

Officers should ask the detainee whether medical treatment is necessary. If the

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detainee replies in the affirmative, or if medical treatment appears necessary, officers shall make appropriate arrangements. [See section 9.25 of this chapter regarding Medical Emergencies.]

8.4 Family units, persons of advanced age, and unaccompanied juvenile detainees

[REDACTED]
[REDACTED]
[REDACTED] unless extraordinary and unforeseen circumstances exist.

8.5 In cases where family units are encountered but only the parent or legal guardian is detained, specific circumstances will dictate whether they should be separated from the juvenile who is not detained. If removing the juvenile from the parent or legal guardian is not feasible, arrangements should be made to keep the family unit together until a social service worker or an adult family member arrives to take custody of the juvenile.

8.6 Males and females shall be segregated at all times when in a POE detention cell (even if they claim to be married). Under no circumstances are detained persons under the age of 18 to be held with adult detainees, unless the adult is an immediate relative or recognized guardian who has been charged with the care and custody of the minor, and no other adult detainees are present in the hold room. Special treatment of juveniles is of paramount importance. [See section 9.27 of this chapter regarding Juvenile Detention Procedures.]

8 PROCEDURES.

9.1 Detention Log. Port Directors will ensure that each POE maintains a detention log (manually and/or by computer) for all detainees placed in a POE detention cell. The officer handling the case shall enter the information relating to each detainee immediately upon placing him/her in a hold room and/or holding cell. For uniformity purposes, the attached Detention Log will be used at all locations for each unattended secure area and will contain an entry for each individual detained. The Detention Log will be maintained and filed at the POE [REDACTED] Each entry will contain the information listed below.

- (a) Name of the person detained
- (b) Date of Birth (DOB)
- (c) Reason detained
- (d) Time & Date placed into hold room and/or holding cell
- (e) Time & Date removed
- (f) [REDACTED] interval checks

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- (g) Physical/Mental condition
- (h) Officer's initials and comments
- (i) Meals offered/eaten/declined

9.2 Detention Cell Monitoring. Officers shall closely supervise detention cells at the POE when in use. Officers shall monitor hold rooms [REDACTED] noting in the log the time and officer's initials. It's the responsibility of the supervisor to ensure that an officer is within visual or audible range of the hold room to allow detainees access to restroom facilities (if not incorporated in the detention cell) on a regular basis.

9.3 Individual Caution Sheet. An Individual Caution Sheet [See Appendix 17-8] will be generated and posted near the entrance to the detention cell or in the secure area for those detainees who pose a special risk, i.e. diabetic requiring injections or possible suicide risk. The sheet will be maintained until the detainee is released from CBP custody and the fact that there is a detainee with a Caution Sheet will be communicated to all CBP officers during shift change briefings/musters. After the person is released or transferred to another agency or facility the Individual Caution Sheet will be retained on file [REDACTED] For uniformity purposes, the form is attached. The Individual Caution Sheet will contain at minimum the following check-off list to flag the detainee's special risk factor:

- (a) Name and DOB
- (b) Medical condition – requires prescribed medication
- (c) Hostile or uncooperative
- (d) Depression or suicidal
- (e) Asylum Claimant
- (f) Juvenile
- (g) Communicable Disease
- (h) Other

9.4 Medical. Whenever a CBP officer has reasonable suspicion that a traveler has a respiratory illness such as Severe Acute Respiratory Syndrome (SARS), the individual will be detained, and an Individual Caution Sheet generated. In detaining and transporting them, follow established guidelines. (SARS Policies Attached).

9.4.1 All persons placed in an unattended secure area at a CBP facility will be asked whether they have a medical problem or condition that may require some attention. If they are currently taking any prescribed medications the CBP officers will identify the type of prescribed medication, when it was last taken, and when the next dosage is needed.

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9.4.2 CBP officers will **not** administer or assist in injecting or administering medication. When an injection or administration of prescribed medication is necessary, Emergency Medical Services will be contacted. Prescribed oral medication in a properly identified container, with the specific dosage indicated, may be self-administered under the supervision of a CBP officer. Administration of prescribed medication, medical assistance, or refusal of the same, will be noted in the Individual Caution Sheet.

9.4.3 Officers will closely monitor and if possible segregate any detainee exhibiting signs of hostility, depression, or other symptomatic behavior (i.e. threats of suicide). In such cases, the officer will notify the shift supervisor and execute the Individual Caution Sheet. The Individual Caution Sheet must accompany the subject when transferred to another facility.

9.5 Asylees. When an asylum applicant is encountered, the CBP officer will transfer the applicant to a secure, attended, or unattended area as appropriate and an Individual Caution Sheet will be generated. Asylum applicants will be kept separate from other detainees to the extent possible and not placed in a detention cell unless otherwise indicated by their behavior. Officers should take note of signs of trauma, anxiety, or other factors relating to the case in determining the level of detention required.

9.6 Meals. Funding for meal service is not discretionary and is the responsibility of the local office through the DFOs. Officers shall provide a meal to any person, whether in a hold room or not, who is detained more than 6 hours (including secondary time or case preparation time). Juveniles, small children, toddlers, babies, and pregnant women shall have access to snacks, milk, or juice at all times. Regardless of the time in custody, officers shall provide a juvenile with meal service. In cases where an adult detainee requests a snack or meal due to extraordinary circumstances before the next meal service, the officer shall accommodate the request. Officers should be sensitive to the culinary cultural/religious dietary restrictions and/or differences of all detainees whenever feasible. A record of what type of meal is given to the detainee shall be logged. For an alien detained in a hold room, time of feeding or declination of a meal shall also be noted in the Detention Log.

9.7 Drinking Water. Drinking water shall be available in Styrofoam or paper cups for detainees requesting water. It is the responsibility of the supervisor to ensure that drinking water is available.

9.8 Restrooms. Access to restrooms shall be available to any detainees in a hold room or in the secondary inspection area. An officer of the same sex shall escort and closely monitor a detainee when using the restroom. Detainees using the

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restrooms shall have access to toilet items such as soap, toilet paper, female hygiene items, diapers, and wipes. **NOTE:** Access to restroom facilities may be restricted if the detained person is suspected of being an internal carrier.

9.9 Telephone. Officers shall notify every alien of his or her right to communicate by telephone with the consular or diplomatic officers of country of nationality in the United States when the removal of the alien cannot be accomplished immediately, and the alien must be placed in detention for longer than 24 hours.

9.9.1 In the cases of certain nationalities, if the alien is detained longer than 24 hours at the POE, existing treaties and CBP policy require that the service notify the appropriate consular or diplomatic officers about the alien's detention, even if the alien requests that this not be done. For the list of applicable countries, see 8 CFR 236.1(e).

9.9.2 Officers shall not mention any asylum claim or fear of persecution or torture expressed by the alien when contacting a consular official, nor shall they indicate the nature of the proceedings against the alien.

9.9.3 Dependent upon the length of detention and security risks, the Supervisor will determine whether or not the detainee will be allowed to communicate by telephone or in person with any other person, including consular officials. [See IFM chapter 17.15(b)(7) and 8 CFR 236.1(e).]

9.10 Detention Cells. The secure area where the detained person is placed must be cleared of all items that could be used as a weapon, to facilitate an escape, or to do bodily harm to the detainee or others. This includes purses, handbags, backpacks, and luggage. Weapons or improvised weapons may pose a significant risk to officer safety and care must be taken to minimize the subject's potential access to them.

[REDACTED]

9.10.1 Detention cells will routinely be thoroughly cleaned and sanitized and inspected for evidence of tampering.

9.10.2 Any problems encountered must be reported to the supervisor so that corrective action may be initiated.

9.11 Attended Area. When it is necessary to detain an individual in a work area, additional caution must be exercised to ensure the safety of the person and CBP employees.

[REDACTED]

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9.11.1 The person must be monitored at all times by at least one officer. The area within the person's direct reach must be cleared of all items that could be used as a weapon or to facilitate an escape.

9.11.2 Under no circumstances will evidence or other items that can be destroyed or pose a threat to any person be kept where they are accessible to a detained individual.

9.11.3 When possible, two CBP employees should be assigned to process and monitor persons detained at a CBP facility.

9.12 Search Procedures. Searches may, under certain conditions, be necessary to meet enforcement and/or security, or safety concerns. Under section 287(c) of the INA, officers have the authority to conduct a search of the person and personal effects of a person seeking admission if the officer has reasonable ground to suspect that ground of inadmissibility exists that may be disclosed by the search. All searches of detainees in CBP custody shall be conducted in a manner that is safe, secure, humane, dignified and professional.

[REDACTED]

9.12.1 All officers are to be aware of and comply with the enforcement standard on body searches and the CBP Personal Search Policy. Below are some of the policy guidelines and procedures for searches conducted at the border and functional equivalent of the border (POE) during the time of entry of a traveler for admission.

9.12.2 If a person is temporarily detained by CBP and must be placed in a secure area, CBP officers shall conduct a patdown in accordance with the guidelines established in Chapters 2 and 3 of the Personal Search Handbook and Chapter 43 of the Enforcement Handbook.

9.12.3 When a person has undergone a personal search in accordance with this Directive, the search shall be recorded in the appropriate TECS record using the *Reason for Search* code [REDACTED]

9.12.4 This Directive does not supersede the authority of a CBP Officer to conduct an immediate patdown or to secure a weapon if an officer suspects that a person may be armed.

9.12.5 This Directive does not supersede the authority of a CBP officer to

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conduct a lawful search incident to an arrest.

9.12.6 If an officer reasonably suspects merchandise or contraband is present as a result of the patdown search pursuant to paragraph 6.1, the CBP officer may conduct a more intrusive search to confirm or dispel suspicions, in accordance with the guidelines established in Chapter 4 of the Personal Search Handbook.

9.12.7 To ensure safety, prior to placing a person into a detention cell, officers shall empty the detainee's pockets of all sharp objects that may be used as weapons as well as all rope-like objects that the alien could use to injure him/herself. Examples of these things are:

- (a)
- (b)
- (c)
- (d)
- (e)

9.12.8 An officer may remove and examine [REDACTED] to ensure there are no hidden items. The items shall be returned to the individual and may not be confiscated until probable cause for arrest exists. However, if there are indications or articulable facts that may lead an officer to believe that the individual may attempt to harm themselves while in an unsecured, unmonitored area, then shoelaces, belts, neckties, and scarves may be removed.

9.13 Restraints Procedures. The use of restraints on persons in CBP custody shall be conducted in a manner that is safe, secure, humane, and professional. When restraints are used, the officer must have reasonable articulable facts to support the decision. Officers should employ only the amount of restraint reasonably necessary to ensure the safety of the detainee or others, and to prevent escape. Officers should take into consideration known criminal activity, observed dangerous or violent behavior, verbal threats, and/or the nature of the inadmissibility of the individual in determining whether to use restraints, continue their use, or remove the restraints.

9.13.1 All Officers are to be aware of and comply with the Enforcement Standard on the Use of Restraints. [See Enforcement Standard for the Use of Restraints and Customs Directive 3340-028 Physical Control of Suspects.]

9.13.2 In accordance with Customs Directive 3340-028 (Physical Control of

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Suspects), if an officer uses handcuffs solely for the safety of the officer and others, the officer should inform the restrained individuals that they are not under arrest and that the restraints are a temporary measure.

9.14 Escort Procedures. Inspectors may provide escort services to remove or transport detainees. Escorting officers are responsible for determining the need and level of restraints used at any time while escorting a detainee. All detainees in CBP custody shall be escorted in a manner that is safe, secure, humane, and professional. Whenever operationally feasible the escorting of persons will be conducted by two officers.

9.14.1 All officers are to be aware of and comply with the Enforcement Standard for Escorts. [See Enforcement Standards for Escorts and the Use of Restraints for more detailed guidelines.] Below are some of the policy guidelines for the escort and transport of those apprehended at entry.

- (a) No detainee shall be transported/escorted without the assigned officer conducting a search of the detainee, except when exigent circumstances pose a safety hazard or danger to the officer, detainee or public. In that case, a search shall be conducted as soon as it is practicable. At minimum, a patdown search shall be performed and recorded in accordance with the Personal Search Policy.
- (b) When escorting detainees in CBP vehicles, especially unaccompanied detainees of the opposite sex or minors, all officers shall maintain regular radio or telephonic communication with other CBP personnel, insofar as technologically possible and resources allow.
- (c) Families, unaccompanied females, and unaccompanied minors shall be separated from unrelated adult males by separate passenger compartments or an empty row of seats. If possible, these detainees shall be transported separately from other detainees.
- (d) When transported in a CBP vehicle, detainees shall be restrained in accordance with the Use of Restraints Policy and placed in seatbelts (when practicable).
- (e) The passenger section of all empty CBP vehicles and all immediate confinement areas shall be searched prior to, as well as following, each escort to ensure that no weapons or contraband have been hidden or left behind.
- (f) When escorting a detainee in view of the general public (i.e., airport

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terminal) for removal from the United States, officers shall use care and discretion when handling and removing restraints from detainees to avoid undue concern by the traveling public and airline personnel.

9.15 Transfer Procedures. Every effort must be made to transfer, transport or release detainees in custody as quickly as possible. The DFOs or their designees shall develop local procedures in writing for authorization and arrangement for detention.

9.15.1 Once a detainee has been transferred to the custody of another agency and/or Detention and Removal, responsibility for the individual is transferred to that entity.

9.16 Control and Safeguarding Detainee Personal Property. The control and safeguarding of detainee personal property shall include the secure storage of funds, valuables, baggage and other personal property.

9.16.1 All property will be receipted on the appropriate form CBP-6051.

9.16.2 Initial and regularly scheduled inventories of all funds, valuables, and other property will be conducted and documented on a CBP-6051.

9.16.3 All items belonging to the detainee shall be placed in a properly marked plastic sealed bag, inventoried, and placed in a secure area.

9.16.4 A safe, secure designated storage area shall be assigned. [See Detention Standard on Accountability and Safeguarding of Detainee Funds and Personal Property.]

9.16.5 Officers shall use the following form:

- (a) Form CBP-6051, Custody Receipt for Retained/Detained or Seized Property. Used when items or personal property are removed from a person and stored for safekeeping. CBP officers should turn over all items or evidentiary value with a CBP-6051 to the next person taking custody of the person, i.e., Special Agent or other federal, state or local law enforcement Officer. Guidelines for retaining personal effects/property from individuals that have been arrested are outlined in Customs memorandum, File: CO:TO:S:O SSJ, titled "Personal Effects," dated March 29, 1993.
- (b) A logbook and inventory sheet will be maintained listing the detainee name, A-number if applicable, Form CBP-6051 number, date items were

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retained or seized, property description, name of officer(s) recording the property, and the date, time, officer(s) conducting the inventory.

9.16.6 Where operationally feasible, two officers will inspect all funds and property, including those items found in parcels, suitcases, bags, bundles and boxes, in the presence of the detainee to ensure officer safety and accountability. This procedure will also be followed when property is returned to a traveler subsequent to his or her release. All PDs or other management officials accountable for POE operations must ensure that appropriate procedures are in place and in use.

9.17 Fire, Building Evacuation and Medical Emergencies. Established written evacuation plans for the POE shall include directions for an officer to remove detainees from hold rooms in case of fire and/or other building evacuation. Such event and its duration must be annotated in the Detention Log.

9.17.1 Appropriate emergency services will be called in the event of a medical emergency (i.e., heart attack, difficulty breathing) during the detention of any person.

9.17.2 The CBP officer must notify the supervisor immediately of all medical emergencies.

9.17.3 If the detainee is removed for medical treatment, a CBP officer shall accompany the detainee and remain with the detainee until doctors determine whether the illness will require hospitalization.

9.17.4 If the detainee is not hospitalized the CBP officer must remain with the detainee until treatment is completed and then escort the detainee back to the POE.

9.17.5 If the detainee is hospitalized, the CBP officer shall notify the supervisor and await further instructions from the supervisor.

9.18 Special Notification Requirements.



9.19 Juvenile Detention Procedures. Special care must be exercised when processing and detaining persons under the age of 18. The CBP policy is outlined in 8 CFR 236.3 and must be strictly followed. [See IFM chapter 17.15 (f), Special Treatment of Minors.]

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9.19.1 At all stages of the inspection, detention, and removal process of a juvenile, officers shall take precautions to ensure the minor's rights are protected and that he or she is treated with respect and concern. Any detention following processing at the POE must be in accordance with the Flores v. Reno settlement. [See IFM Appendix 17-4, policy memorandum discussing Flores settlement.]

9.19.2 Minors will have access to restrooms, drinking water, food, and medical assistance if needed.

9.19.3 Minors will NOT be placed in short-term detention hold rooms, unless they have shown or threatened violent behavior, have a history of criminal activity, or there is an articulable likelihood of escape.

9.19.4 Minors will NOT be restrained unless they have shown or threatened violent behavior, have history of criminal activity, or there is an articulable likelihood of escape.

9.19.5 Minors will be allowed reasonable access to their parents or legal guardians if the supervisor believes it will be constructive. However, parent(s) or legal guardian(s) will not be allowed to inflict corporal punishment upon the juvenile while in the custody of CBP.

9.19.6 Unaccompanied minors must NOT be held with unrelated adults.

9.19.7 In situations where a female is nursing an infant, the infant will not be removed from the care of the mother (unless she poses a danger to the child). If a mother and infant must be separated for safety purposes, a social service worker must be contacted to take custody of the child.

9.20 Fingerprinting Individuals. When individuals are being fingerprinted, i.e., 10 digit hard print (excluding single digit IDENT prints), officers shall secure their firearms and chemical weapons in an approved firearms locker prior to beginning the process.

10 REPORTING REQUIREMENTS.

10.1 If a person makes a credible threat, assaults someone, is injured, is suspected of having SARS or any other communicable disease, escapes, or attempts to escape while in CBP custody, notification will be made to the PD, DFO, and Commissioner's Situation Room, [REDACTED] If a person escapes, notify all appropriate law enforcement agencies.

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10.2 If a person threatens or assaults a CBP officer, in addition to above requirements, notification will also be made to local field office of the FBI, or other Agencies as appropriate.

11 NO PRIVATE RIGHT CREATED. The procedures set forth in this Directive are for CBP internal use only and create no private rights, benefits, or privileges for any private person or party.

17.9 Medical Referrals.

(a) General. The U.S. Public Health Service (PHS) has statutory and regulatory responsibility to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Applicable regulations are found in 42 CFR Parts 34 and 71. These responsibilities are delegated to the Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Division of Quarantine.

Quarantine stations are located at several major international airports. Each quarantine station has responsibility for all ports in an assigned geographic area. You should know which quarantine station has jurisdiction over your port. Historically, PHS quarantine stations have been referred to in the port community simply as "PHS" or "Public Health." As actual organizational names and assignments have changed over the years, that tradition has remained constant.

The Division of Quarantine is empowered to apprehend, detain, medically examine, or conditionally release individuals (including U.S. citizens) suspected of having one of the following diseases:

- Cholera and suspected cholera,
- Diphtheria,
- Infectious tuberculosis,
- Plague,
- Suspected smallpox,
- Yellow Fever,
- Suspected viral hemorrhagic fevers such as Lassa, Marburg, Ebola, Congo-Crimean and others not yet isolated or named, and
- Severe Acute Respiratory Syndrome (SARS).

Foreign quarantine regulations require that death or illness of an arriving international passenger or crew member is to be reported by the captain of the arriving ship or plane to the quarantine station having responsibility for the port of entry; however, illnesses

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are not always reported.

Whenever a Federal inspector has any questions regarding public health entry requirements for persons or importations, he or she should contact (day or night) the appropriate quarantine station or Division of Quarantine headquarters in Atlanta, Georgia. [A list of addresses and phone numbers for quarantine stations is contained in Appendix 17-2.]

(b) Inspection of Arriving Persons. The following guidelines relate to the inspection for medical purposes, of all arriving international passengers and crewmembers.

(1) Observe. Observe all arriving passengers and crew for signs and symptoms of illness, such as

A person is considered to be ill in terms of foreign quarantine regulations when symptoms meet the following criteria:

(A) Temperature of 100 degrees F. (38 C.) or greater which is accompanied by one or more of the following: rash, jaundice, glandular swelling, or which has persisted for 2 days or more;

(B) Diarrhea severe enough to interfere with normal activity or work.

(2) Detain. Hold ill passengers and crew, and ask for details about symptoms and itinerary. At a port-of-entry where a quarantine station is staffed, that station should be notified and a quarantine inspector will investigate. If there is no quarantine inspector at your port, the appropriate quarantine station should be notified. The quarantine station will release or conditionally release the ill person, or if the circumstances warrant, call a physician to conduct an examination and recommend appropriate action.

(3) Check Itinerary. It is sometimes necessary to check the itinerary of arriving persons because of the possibility of an outbreak of a communicable disease in a foreign area. Knowledge of the itinerary helps in determining the appropriate preventive measures. If this situation should arise, CDC will direct that each arriving person be asked if he or she has been in the infected country within a specified number of days. If so, the person is to be referred to the appropriate quarantine station.

(c) Medical Inspection of Arriving Aliens. The health-related grounds of inadmissibility of aliens under section 212(a) of the Act provide for the inadmissibility of any alien who:

(1) Is determined to have a communicable disease of public health significance

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(currently, the same diseases previously classified as "Dangerous Contagious Diseases" which are: Chancroid; Gonorrhea; Granuloma Inguinale; Human Immunodeficiency Virus (HIV) Infection; Leprosy, infectious; Lymphogranuloma Venereum; Syphilis, infectious stage; and Tuberculosis, active.); or

(2) Seeks admission or adjustment as an immigrant and who has not been vaccinated against at least the following diseases: mumps, measles, rubella, polio, tetanus, diphtheria, pertussis, influenza type B and hepatitis B, and any other vaccinations recommended by the Advisory Committee on Immunization Practices; or

(3) Has or had a physical or mental disorder with associated behavior that poses or may pose a threat to the property, safety, or welfare of the alien or others; or

(4) Is a drug abuser or addict.

(d) Procedure. Inspectors should immediately advise the appropriate quarantine station when an immigrant arrives without medical documents or with incomplete medical documents. When processing aliens, do not keep the alien's chest X-ray film. This is an important medical document that the alien should retain as part of his or her permanent health records.

Refer to the appropriate quarantine station all aliens for whom a "Medical Hold" (Form CDC 75.40) should be issued. Candidates for a "Medical Hold" are:

(1) All aliens who are not routinely required to have a medical examination and who, upon arrival in the U.S., exhibit a physical condition which may render them inadmissible under section 212(a) of the Act;

(2) All aliens who are not routinely required to have a medical examination and who, upon arrival in the U.S., exhibit variations in behavior which may indicate a physical or mental disorder that may pose a threat to the property, safety, or welfare of the alien or others, and may be inadmissible under section 212(a) of the Act;

(3) All aliens who require a medical examination overseas (immigrants, refugees, fiancé(e)s of U.S. citizens and their minor children), but who arrive without evidence or with incomplete evidence of having had one performed, or with one that has expired. Satisfactory evidence can consist of a properly completed "Medical Examination of Applicants for United States Visas" (Form OF-157), with results of chest X-ray and serologic tests for syphilis and human immunodeficiency virus (HIV) infection indicated (**Note:** Chest X-ray and serologic tests are required for aliens 15 years of age and older); and

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(4) All aliens with a Class A condition or a Class B condition including tuberculosis, not infectious; and Hansen's disease [leprosy], not infectious. These aliens should have a stamp imprinted on the face of their visa (Form OF-155A) as follows:

CLASS A OR CLASS B REQUIRES ATTENTION OF USPHS AT POE

While consular officers normally stamp the OF-155A when an immigrant has a medical condition of public health concern, this is sometimes not done. The inspector should check all OF-157's whether or not the "Attention PHS" stamp is present.

When quarantine station personnel are not available to process aliens with these medical conditions, retain a copy of the OF-157. On the reverse side, write the alien's U.S. address, sponsor's name and address, arriving flight and date, port-of-entry, and the INS inspector's name. A photocopy of the alien's visa (OF-155A) is satisfactory in lieu of transcribing this information on the reverse of the OF-157 provided that the address is correct on the OF-155A and that the flight number and date of arrival are recorded on the OF-155A prior to making the photocopy. The OF-155A and/or OF-157 with requested information should be given, mailed, or sent by FAX to the appropriate quarantine station.

If the alien has a Class A communicable disease of public health significance, copies of the OF-157, OF-155A, and both sides of the Form I-601 (being changed to new Form I-724) waiver application should be given or mailed to the appropriate quarantine station. The statements to be completed by waiver applicants who are HIV positive or who have Hansen's disease will be affixed to the back of the I-601 waiver application by CDC Division of Quarantine staff. See IMMACT Wire #65 dated August 7, 1991 for further information.

If the alien has a Class A physical or mental disorder with associated harmful behavior, a copy of USPHS/CDC Form 4.422-1, "Statements in Support of Application for Waiver" should be given or mailed to the appropriate quarantine station, along with the OF-157, OF-155A, and I-601 (I-724).

Note: There is no waiver provision in the law for aliens applying for immigrant visas who are found to be excludable under section 212(a)(1)(A)(iv) of the Act for drug abuse or addiction. If an alien arrives with a visa indicating Class A drug abuse or addiction, please refer to the appropriate quarantine station.

(e) Special Procedures Pertaining to First Time Refugees and Asylees. Refugees and asylees normally arrive at ports where quarantine inspectors are assigned, but this may

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not always be the case. Notify the appropriate quarantine station of all refugees and asylees entering the U.S. for the first time. If a quarantine inspector is not available to process the refugee or asylee, you will be asked to obtain the following information, normally by making copies of documents carried by the refugee or asylee. This information is necessary to ensure that all refugees and asylees receive a health screening and any appropriate immunizations or treatment at the place of resettlement:

- Name, date, country of birth, and sex of refugee,
- Language spoken,
- "A" Number,
- Name, address, and phone number of local sponsor,
- Name of principal sponsor (Voluntary Agency), and
- Date, place of arrival, and flight number.

(f) Suspected Tubercular Parolees. Every effort should be made to determine the tuberculosis status of parolees prior to release. Refer those who are suspected of having infectious tuberculosis to the appropriate quarantine station.

[Rev. IN 03-41]

17.10 Abandonment of Lawful Permanent Resident Status.

(a) General. There are several possible actions when the inspecting officer has reason to believe an alien seeking admission with an alien registration card or SB-1 visa has actually abandoned lawful permanent residence. Refer to the discussion in Chapter 13 on this subject. In some instances, the applicant voluntarily wishes to relinquish his or her alien registration document and either enter as a nonimmigrant or depart from the U.S. immediately. Most often such aliens will already be in possession of a nonimmigrant visitor's visa. The inspecting officer must never coax or coerce an alien to surrender his or her alien registration document in lieu of a removal hearing.

(b) Procedure for Documenting Abandonment of Residence. These instructions regarding the disposition of completed I-407 forms apply not only to Inspections personnel, but to all Service or Department of State employees involved in the execution of any I-407. In a situation where the alien does voluntarily relinquish his or her alien registration card, complete the Form I-407, Abandonment by Alien of Status as Lawful Permanent Resident. The alien must sign the I-407, acknowledging that the action is strictly voluntary. Execute Form I-89, completing the appropriate blocks if the alien is surrendering Form I-551, Alien Registration Receipt Card. If the alien is surrendering a previous edition, Form I-151, no I-89 is required. Ordinarily, you should take a sworn statement in addition to completing Form I-407. Attach the Alien Registration Receipt Card to the Form I-89, if completed, or the Form I-407. Forward the I-89 (if completed), attached to the Form I-407 and additional sworn statements, to the Texas Service Center for CLAIMS/CIS data entry and document destruction. After data entry and card

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destruction, the Service Center will forward the original Form I-407, I-89 and sworn statements to the appropriate FCO for filing in the original "A" file.

If the I-407 is executed in connection with an application for admission at a port-of-entry, admit the applicant as a nonimmigrant, following normal procedures for aliens with visas; or exercise the visa waiver option pursuant to section 212(d)(4) of the Act or the Visa Waiver Program. If the alien chooses to immediately depart the U.S., advise the alien that he or she may still be entitled to issuance of a temporary alien registration card, for reentry and a removal hearing, as described above in Chapter 17.6(d).

If the I-407 is being executed for an alien who is in the United States pursuant to admission as a lawful permanent resident and is not in removal proceedings, yet who wishes to relinquish resident status and depart from the United States, the alien should be granted a suitable period of time to effect voluntary departure, in accordance with current procedures.

Occasionally, you may receive an alien registration card surrendered by a resident alien either to the Service or to a transportation line, where the bearer has expressed an intention to relinquish residence. If the bearer has not yet departed and if time permits, take a sworn statement from him or her concerning the facts surrounding the abandonment and attach it to the I-407. If the bearer has already departed the U.S. and you are sure of the facts surrounding the abandonment, execute Form I-407, noting the departure information and other relevant facts. (Paragraph (b) revised 3/5/98; IN97-04)

(c) Restriction in the San Antonio District. The U.S. District Court for the Southern District of Texas prohibits immigration officers from soliciting or taking waivers of removal hearings in INS district 14. See Leticia Sanchez-Hernandez et al c. Richard Casillas et al, Civil Action No. L-78-4 2, April 10, 1981.

17.11 Asylum Claims/Safe Third Country Agreement with Canada. (Revised 2/23/05; CBP 8-05)

(a) General. The Agreement Between the Government of the United States of America and the Government of Canada for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (Safe Third Country Agreement) was signed on December 5, 2002. Final implementing regulations were published on November 29, 2004, with an effective date of December 29, 2004.

The Agreement provides a framework to determine which country is responsible for consideration of asylum or torture claims. With certain exceptions, the Agreement requires asylum-seekers to make the asylum claim in the country where they were last physically present (either Canada or the United States) upon arrival at a U.S.-Canadian land border port of entry. Unless they qualify for an exception under the agreement, asylum-seekers will generally have to seek protection in Canada if attempting to enter the United States from Canada, or in the United States if attempting to enter Canada

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from the United States.

(b) Exceptions. The Agreement does not apply to persons who are citizens of Canada or the United States or who, not having a country of nationality, are habitual residents of Canada or the United States.

The Agreement contains numerous other exceptions. Persons determined to qualify for one of these exceptions will be allowed to proceed with their asylum claim in the country to which they are seeking admission.

- Persons who have a spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or legal guardian in the other country, as long as the relative has lawful status (other than B-1/B-2 visitor status) or has a pending asylum claim in the country where the alien is seeking asylum (*the relative with a pending asylum claim must be 18 years of age or older; there is no age limit for relatives with other lawful status*);
- Unaccompanied minors, defined as an unmarried asylum claimant under the age of 18 who does not have a parent or legal guardian in either the United States or Canada (*this differs somewhat from common usage of the term "unaccompanied" for other purposes under the immigration laws*);
- Persons who have a validly issued visa or other valid admission document, other than for transit (*refers to genuine visas or travel documents issued to the alien by the U.S. government, including those that may have been obtained through misrepresentation, but does not include those obtained through identity fraud or issued in fraudulent or photo-subbed passports*);
- Persons who are not required to obtain a visa for the United States, but are required to have a visa for Canada (*currently no countries fall into this exception*);
- Additionally, the Agreement specifically includes a provision allowing each country to examine, at its own discretion, any asylum claim made to that country where it deems that it is in its public interest to do so.

(c) Applicability. The Agreement applies only to arriving aliens at established land border ports of entry along the U.S.-Canada border, as defined in 8 CFR 100.4(c)(2), when the port is open for inspection and to certain aliens being deported from Canada (not pursuant to the Agreement) in transit through the United States.

Arriving aliens are defined in 8 CFR 1.1(q), and for purposes of the Agreement generally include:

- Persons presenting themselves for inspection at a port of entry;
- Persons coming or attempting to come into the United States through a port of

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entry (whether or not by presenting themselves for inspection); and

- Persons apprehended or continuously observed crossing the land border by a port official within the physical boundaries of the port, and for this purpose, in the immediate vicinity of the port. Port runners who are observed attempting entry through the port and who are apprehended immediately in the vicinity of the port are considered arriving aliens. Persons who effect entry through a port of entry without detection and who are later apprehended are not subject to the Agreement.

Arrivals by train where the passengers on the train are inspected at the border or other designated place inland where the train arrives are considered land border arrivals for this purpose.

For purposes of the Agreement, ferry crossings along the Canadian border are not considered land border ports of entry.

The Agreement does not apply at preclearance stations in Canada, nor does it apply to aliens who attempt illegal entry between the ports of entry.

It does not apply at airports, except as noted below for aliens being removed from Canada, who claim asylum while in transit through the United States,

(d) Processing aliens subject to the Agreement. There are two distinct sets of processes, depending on whether the alien is an applicant for admission arriving from Canada and applying for asylum in the United States (an arriving alien pursuant to 8 CFR 1.1(q)), or whether the alien attempted to travel from the United States to apply for asylum in Canada and is being returned to the United States pursuant to the Agreement.

Arriving Aliens - Asylum-seekers who arrive from Canada at a land border port of entry and apply for asylum in the United States.

Aliens arriving from Canada at a land border port of entry who request asylum or claim a fear of persecution or torture will be processed for expedited removal and referred to an asylum officer for a credible fear interview. Prior to proceeding with the credible fear interview, the asylum officer will conduct a threshold screening to determine whether an exception to the Agreement applies and the alien will be allowed to proceed with the credible fear interview. If the asylum officer determines that no exception applies, these individuals will be ordered removed by the asylum officer and returned to Canada and their asylum claim examined in accordance with the Canadian refugee status determination system.

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CBP Officers at ports of entry are not to attempt to determine whether the Safe Third Country Agreement applies or whether the alien qualifies for any of the exceptions; that determination will be made by an asylum officer. However, any information that CBP Officers obtain through the inspection process that may have a bearing on the eligibility for an exception under the Agreement, such as the use of fraudulent documents, should be fully documented in the file.

(1) Process for expedited removal in accordance with existing guidelines and refer for a credible fear interview. [See Chapter 17.15 concerning the expedited removal/credible fear process.]

(2) In addition to the Form M-444, Information about Credible Fear Interview, the alien shall be given a supplemental notice, Information about Threshold Screening Interview.

(3) Fax the Form I-860, I-867A&B, M-444, legal services provider list, and Information About Threshold Screening Interview to the Asylum Office having jurisdiction over the case. If there is other information in the file, such as the Form I-213 or I-275, that may assist the asylum officer in making the determination under the Agreement, fax that information as well. Information about the use of fraudulent documents or identity fraud, in particular, may have a bearing on the determination.

(4) Prepare Form I-160A, Notice of Refusal of Admission/Parole into the United States. Check the box "Refused admission and paroled into the United States", even though the alien will actually be initially detained in DHS custody rather than paroled. Give (or fax) one copy to Canadian Immigration authorities and have them stamp a second copy to be placed in the A file. This will ensure that Canada will take back the alien if no exceptions to the Agreement are found and the alien is to be returned to Canada.

(5) Seize any fraudulent documents in accordance with existing guidelines. Prepare a travel packet to include a photocopy of the document presented that includes copies of all the pages with cachets, notations, or visas on them, as well as the biometric pages. Also complete a Single Journey Letter on CBP letterhead with the traveler's photograph and fingerprints incorporated in it. Place the packet in the A file to be used if or when the alien is returned to Canada.

(6) Pursuant to existing policy, unaccompanied minors (aliens under the age of 18) are not generally subject to expedited removal, and may qualify for an exception under the Agreement. The definition of unaccompanied minor as used in the Agreement differs somewhat from the definition of juvenile used for other immigration purposes; however, officers need not consider whether the alien meets the definition under the Agreement. For general immigration purposes, a minor is

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considered unaccompanied if not traveling with an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. Unaccompanied minors claiming asylum will normally be placed in section 240 proceedings where the immigration judge will make the determination whether any exceptions apply under the Agreement and whether they will be allowed to apply for asylum in the United States. [See Chapter 17.15(f) for processing of minors].

(7) If an asylum-seeker expresses concerns about being placed in expedited removal and detained for a credible fear interview and asks to withdraw his or her asylum claim and application for admission, CBP may permit such withdrawal, in accordance with section 235(a)(4) and 8 CFR 235.4. The decision whether to permit withdrawal of application for admission rather than issue a removal order should take into consideration the seriousness of the inadmissibility and other factors. Aliens who presented fraudulent documents should normally not be permitted to withdraw their application for admission, except under extraordinary circumstances, although they may still wish to withdraw their asylum claim and be removed immediately. The officer handling the case must ensure that there is no misunderstanding and that the alien is voluntarily making that decision. The officer may wish to consult the Asylum Office to determine whether the case should still be referred. Before allowing the withdrawal, the officer must be sure that the alien has both the intent and the means to depart immediately from the United States. When processing an asylum-seeker who wants to dissolve or withdraw his asylum claim, the officer should take a second sworn statement from the alien, using the Form I-867A&B. Ensure that all the facts of the case and the alien's willingness to withdraw are recorded. See Chapter 17.2 for procedural guidance relating to withdrawal of application for admission.

(8) Aliens applying for admission under the Visa Waiver Program (VWP) are not subject to expedited removal, regardless of their true and correct nationality. If an alien applying under the VWP indicates an intention to apply for asylum or a fear of persecution, the alien will be referred to an asylum officer using the supplemental notice, Information about Threshold Screening Interview, to determine whether an exception to the Agreement applies. If the alien does not qualify for an exception, he or she will be refused entry under the VWP and returned to Canada. If an exception applies, the asylum officer will refer the alien to an immigration judge for an asylum-only hearing using Form I-863.

- a. Search for existing records in CIS and other appropriate automated data systems. If an A file exists, create a temporary work folder. If a file does not exist, follow local procedures for creating an A file. Track the work folder in the National File Tracking System (NFTS).
- b. Complete the sworn statement using Form I-877.

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- c. Partially complete the Form I-275 with the identifying information, noting the facts of the case and the inadmissibility in the narrative. Indicate that the alien was referred for a Safe Third Country Agreement threshold screening.
- d. Fill out both portions of the Form I-94W, but do not endorse the form. Include it in the A file.
- e. Give the alien the supplemental notice, Information about Threshold Screening Interview.
- f. Arrange for detention in accordance with local procedures and fax the sworn statement, Form I-275 and the threshold screening notice to the appropriate Asylum Office.
- g. If the alien does not qualify for an exception, he or she will be returned to Canada. ICE DRO will normally transport the alien to the port of entry. The CBP Officer will complete the Form I-275, checking the box for VWP refusal. Forward a copy of the I-275 to the appropriate Consulate.
- h. Endorse both portions of the Form I-94W "refused in accordance with INA section 217"; line stamp or enter the date, POE and the officer's stamp number. Also note the reason for refusal (ground(s) of inadmissibility) in block 13 of the form.

Returnees - Aliens who entered the United States either legally or illegally and are returned from Canada pursuant to the Safe Third Country Agreement.

The courts have long held that aliens who entered the United States, either legally or illegally, then traveled to a foreign country, who were refused entry and are returned, are deemed not to have departed the United States. *Matter of T*, 6 I&N Dec. 638 (BIA 1955). [see also *GenCo Opinion 89-17*]. Thus, aliens who apply for admission to Canada but are returned to the United States after having been returned by Canada pursuant to the Agreement are not arriving aliens and therefore not subject to expedited removal. These aliens will be processed as if apprehended or encountered within the United States. Depending on their status, they may or may not be placed in removal proceedings. These aliens may be processed either by port of entry personnel, or turned over to Border Patrol or ICE for processing in accordance with existing local practice.

For persons traveling from the United States and seeking refugee status in Canada, Citizenship and Immigration Canada (CIC) will make the determination of whether the

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exceptions to the Agreement apply directly at the port of entry at the time of the refugee claimant's application for admission to Canada. Those who qualify for an exception to the Agreement will be permitted to file their refugee application in Canada. Those who do not qualify for an exception will be returned to the United States the same day in most cases. CIC officials will fax an IMM 5569 to the designated U.S. official at the receiving U.S. port of entry and will normally contact the U.S. port of entry by telephone to confirm that the alien is returning. CIC will provide the alien with a copy of the IMM 5569, the negative eligibility decision, and a copy of the removal order. CIC will seize all fraudulent documents and fax copies to U.S. officials. They will return legitimate documents to the alien. Most ineligible applicants will be returned unescorted from Canada in their own vehicles, although uncooperative or dangerous persons may be escorted. Ineligible claimants will usually be returned to the United States through the same port of entry.

Port Directors should coordinate with their local Canadian counterparts to determine the most effective and efficient means of notification or return in accordance with each country's procedures.

Aliens being returned from Canada will be processed according to their status in the United States.

(1) Aliens who are in status upon being returned from Canada after applying for asylum there.

Aliens who are in status upon their return from Canada may be released and given a Form I-589, Application for Asylum and for Withholding of Removal, if they wish to file their claim with an Asylum Office in the United States. Asylum claims made at an Asylum Office are "affirmative" applications filed voluntarily by aliens.

(2) Aliens who entered the United States illegally or are out of status upon return from Canada after applying for asylum there.

Aliens who have not been admitted or paroled into the United States are amenable to removal proceedings before an immigration judge based on inadmissibility under section 212(a) of the Act. Aliens who were admitted to the United States but who are out of status are subject to removal proceedings before an immigration judge based on deportability under section 237(a) of the Act. Upon their return from Canada, these aliens may be placed in removal proceedings pursuant to section 240 of the Act and may be detained in accordance with current ICE detention priorities if they are subject to mandatory detention, are of national security interest or their release would represent a danger to the public, or meet other established detention criteria.

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a. Removal hearings under section 240 of the Act

- (i) General. Upon an alien's return from Canada, a determination must be made as to what section of the Act that alien will be charged with. Regardless of whether the alien is being charged under section 212(a) or section 237(a) of the Act, the officer will institute removal proceedings under section 240 of the Act by issuance of a Form I-862, Notice to Appear. However, since these are not arriving aliens, other aspects of processing may differ from those used for arriving aliens. If the alien indicates a fear of persecution or return, advise the alien that he or she may present his or her asylum claim during removal proceedings before the immigration judge. If the alien does not understand the English language, an interpreter must be used to ensure that the alien is appropriately advised of the process and rights.
- (ii) Search for existing records in CIS and other appropriate automated data systems. If an A file exists, create a temporary work folder. If a file does not exist, follow local procedures for creating an A file. Track the work folder in the National File Tracking System (NFTS).
- (iii) Process the alien in IDENT/ENFORCE, using the NTA module. DO NOT use the Inspections/NSEERS module for these cases, as they are not arriving aliens/applicants for admission. The modules designed for non-POE cases automatically record the disposition according to the module selected, and include the appropriate forms, which may not be included in the Inspections/NSEERS module. Select Detained (WA/NTA) with I-217 or Released OR (NTA) with I-217, as appropriate. Complete the biographical information on the initial screens.
- (iv) Complete IDENT processing. Notate "Safe Third Country Returnee" in the comments field, followed by any other appropriate notations. This will assist in tracking and verifying that the alien was returned by Canada pursuant to the Agreement.
- (v) Complete Form I-213, Record of Deportable/Inadmissible Alien.
- (vi) Take a sworn statement, giving the administrative warning of rights. Although ENFORCE contains Form I-215B, Record of Sworn Statement in Affidavit Form, it is preferable to take a sworn statement in question and answer format to fully establish inadmissibility or deportability. Use Form I-263A as the jurat.
- (vii) Complete a Form I-265, Notice to Appear, Bond, and Custody

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Processing Sheet, to provide a record that uniform criteria were applied in making the custody determination. Current detention priorities must also be considered in making custody decisions.

(viii) Complete Form I-826, Notice of Rights and Request for Disposition. Every alien apprehended within the United States and charged with inadmissibility or deportability must be given a Form I-826. Provide the alien with a copy of the form.

(ix) When a minor (a person under the age of 18) is returned from Canada, he or she must be given a Form I-770, Notice of Rights and Disposition. If the minor is less than 14 years of age or unable to understand the notice, the notice shall be read and explained to the minor in a language he or she understands. Minors should be treated in accordance with the *Flores v. Reno* Settlement Agreement. The terms of that agreement were incorporated in an INS memorandum dated July 19, 1997, entitled Settlement of Jenny Lisette Flores, et al., v. Janet Reno.

(x) Prepare an original and two copies of Form I-826, Notice to Appear. An NTA for a non-arriving alien may be issued only by those officers specified in 8 CFR 239.1(a). This includes Directors of Field Operations, Port Directors, and Deputy Port Directors. The Commissioner has also delegated this authority to Assistant Port Directors. The Form I-826 shall be prepared in the name of and signed by the authorizing official. If the alien is being held in DHS custody, indicate that fact and the location of the facility where the alien is detained in the address block. If the alien is not being held in DHS custody, enter the complete address and phone number where the alien can be reached and provide the alien with Form EOIR-33, Change of Address Form, to report any change of address. If the alien's mailing address is different from the physical address, include both. Check the appropriate block to indicate whether the alien is present without inspection, overstay or status violator. If the alien had been granted voluntary departure previously and failed to depart within the time specified, the NTA should contain a factual allegation stating when the voluntary departure was granted and for what period of time, and that the alien did not depart within that time frame.

Check any other appropriate boxes on the form immediately following the "provisions of law" section. The NTA must ordinarily include the time and place of the hearing. Obtain a date and time for the hearing, following established local procedures. In situations where a hearing date and time cannot be obtained, indicate "to be set" in the appropriate data field. No hearing date may be scheduled earlier than 10 days from the date of service of the NTA (to allow sufficient time to obtain counsel and prepare for the

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hearing), but the form includes a waiver that the alien may execute in order to obtain an earlier hearing date. Fill in the appropriate address and room number for the Immigration Court where the alien is to appear. On the reverse of the Form I-862 is critical information concerning representation, conduct of removal proceedings and the consequences of failure to appear at the scheduled hearing. These should be specifically explained to the alien in a language the alien understands.

The NTA must be served on the alien within 24 hours of issuance where DHS proposes to set bond or detain the alien. Have the alien sign the original, place the original and a copy in the A file, and serve the alien a copy. If the file contains a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the alien's counsel must also be sent a copy of the Form I-862. The officer serving the NTA must execute the Certificate of Service block.

(xi) Provide the alien with a current list of organizations and programs prescribed in 8 CFR 292 that provides free legal services.

(xii) If the alien is to be detained, prepare a Form I-200, Warrant for Arrest of Alien, for the authorizing official to sign. A Warrant for Arrest of Alien may be issued only by those officers listed in 8 CFR 287.5(e)(2) (limited to Port Directors and Area Port Directors) and may be served only by those officers listed in 8 CFR 287.5(e)(3) (includes CBP Officers). A Warrant for Arrest of Alien shall be prepared in the name of and signed by the authorizing official. Follow the local procedures for authorization and arranging of detention.

(xiii) Consult 8 CFR 236.1(e) to ensure that the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official.

(xiv) If qualified, the alien may be released on his or her own recognizance from custody or under bond, as a matter of discretion, pending a removal hearing. Such discretion should be applied only if the alien does not pose a danger to the public and is likely to comply with the terms of the exercise of discretion, or in accordance with detention priorities. Prepare a Form I-286, Notice of Custody Determination, with such conditions as the Director or the Director's designated representative may establish. If releasing the alien on his or her own recognizance, complete Form I-220A. If a bond is required, the amount can be no less than \$1500.00. Consult local ICE DRO for bond procedures. Provide alien with a copy of Form I-830,

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Notice to EOIR: Alien Address.

- (xv) Photograph and fingerprint the alien on FD-249 fingerprint cards (two sets) either manually or through IAFIS, if available. Note the FINS number under Miscellaneous Numbers on back of FD-249. Code the fingerprint cards with the proper United States Code citation. A third copy may be kept at the port.
- (xvi) Complete Form R-84.
- (xvii) Complete Form I-217, Information for Travel Document or Passport and place in the A file.
- (xviii) Coordinate with ICE/DRO, ICE Counsel, and Records for disposition of the A file.

b. Voluntary departure

DHS may permit an alien to voluntarily depart the United States at the alien's own expense in lieu of being subject to section 240 proceedings or before initiation of such proceedings, if the alien is not deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)(B) of the Act. If the alien is granted voluntary departure with safeguards, he or she must depart immediately and under the direct observation of DHS and is not permitted to be out of DHS custody. Since an alien being returned from Canada pursuant to the Agreement may not be granted voluntary departure to Canada and has indicated an intention to seek asylum, voluntary departure will not normally be considered in these situations, except in extraordinary circumstances.

In accordance with 8 CFR 240.25, only district director (CBP Directors of Field Operations) are authorized to grant voluntary departure as a matter of discretion. The processing officer must weigh favorable and unfavorable factors before deciding to offer the option of voluntary departure in each case. Among the factors to be considered include previous immigration violations, age, infirmity, and indications for stricter enforcement policies at a particular location or during a particular time period. The processing officer must be satisfied that the alien has the means to immediately depart the United States at his or her own expense. See Chapter 13 of the Detention and Deportation Officer's Manual for information on voluntary departure.

- (i) Once having decided to permit voluntary departure, the processing officer must make sure the alien understands his or her rights contained in the Form I-826. Have the alien initial the block indicating his or her wish to depart the

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United States voluntarily. The officer serving the Form I-826 must execute the Certificate of Service block. Give a copy of the form to the alien.

(ii) If the alien elects to waive his or her right to a hearing before an immigration judge, complete the Form I-213 in ENFORCE, using the Full VR module.

(iii) If applicable, cancel the alien's nonimmigrant visa pursuant to 22 CFR 41.122(h)(5) which provides that the nonimmigrant visa should be canceled if an alien is in violation of his or her status.

c. Aliens not entitled to a removal hearing upon being returned from Canada.

Certain aliens are not entitled to formal removal proceedings under section 240 of the Act. The procedures for processing these aliens are described below.

(i) Previously Admitted Crewmember/Violator Returned From Canada.

Crewmembers are not entitled to a hearing before an immigration judge, except for the purpose of resolving an asylum claim. In the case where a crewmember does not wish to apply for asylum in the United States and his vessel or aircraft remains in the United States, he or she may be issued a Form I-99, Notice of Revocation, and returned to the vessel or aircraft for removal. If the vessel or aircraft has departed the United States, the crewmember may be ordered removed by issuing a Form I-259, Notice to Detain, Remove or Present Alien, to the transportation line or agency representing the transportation line on which the alien served. Procedures for removal of crewmembers are described in Chapter 23.10.

If removal occurs within 5 years of the crewmember's landing in the United States, the carrier is liable for the costs of removal. When carrier liability exists, complete and serve a Notice to Transportation Line Regarding Alien Removal Expenses, Form I-288. Expenses billable to a carrier may be tracked and recorded on a Record of Expenses Billable to Transportation Company, Form I-380. Coordinate removal and service upon carrier with ICE/DRO.

If such crewmember wishes to apply for asylum, use the Form I-863, check Box #3 and the appropriate box indicating the status of the crewmember before serving, and forward the form to the appropriate Immigration Court. Crewmembers may be detained if they present a danger to the public or a risk of absconding. In the absence of these adverse factors, they may be released on bond as a matter of discretion. Crewmembers who were present

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in the United States before April 1, 1997, are an exception and must be placed into removal proceedings under section 240 of the Act.

(ii) Visa Waiver Program (VWP) Violators Returned From Canada.

Aliens who were admitted under the VWP pursuant to section 217 of the Act and who violated their status or stayed beyond the 90-day admission period permitted by statute are not eligible for a hearing, except in cases involving an asylum claim. In the case where there is no asylum claim or the asylum claim is denied, such alien may be ordered removed by means of a letter from the Port Director. This letter should advise the alien of the determination that he or she violated the conditions of admission under the VWP and that he or she is being removed from the United States without a hearing before an immigration judge. Sample language to be used may be found in Appendix 14-2 of the Detention and Deportation Officer's Field Manual.

Coordinate with local ICE/DRO concerning detention or release of the VWP violator and the service of the Form I-288, Notice to Transportation Line Regarding Alien Removal Expenses, and the Form I-259 on the carrier that brought the alien into the United States, if the alien originally arrived by air. See IFM Chapter 15.7 (g)(6), VWP Removal Procedures, for detailed instructions on processing procedures.

In the case where an alien wishes to apply for asylum, complete Forms I-863, check Box #3 and the appropriate category within that paragraph, and refer the alien to the Immigration Court for the asylum hearing in accordance with IFM Chapter 15.7(g)(4), VWP Asylum Requests and Procedures.

In situations where a removal order under section 217 has been issued and there is limited detention availability, Form I-220B, Order of Supervision may be issued by ICE/DRO to allow the alien to voluntarily report to a DRO office for verification of departure.

d. Aliens previously ordered removed, who reentered the United States and are not admitted to Canada after applying for asylum there.

Section 241(a)(5) of the Act provides that the Attorney General [now the Secretary of Homeland Security] shall reinstate, without referral to an Immigration Court, a prior order against an alien who illegally reentered the United States after having been deported, excluded or removed, regardless of the date that the previous order was entered. An alien who voluntarily departed the United States while under a final order of exclusion, deportation or removal,

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and then illegally reentered the United States is also subject to this provision.

Reinstatement is not applicable to an alien who was granted voluntary departure by an immigration judge and left the United States in compliance with the terms of that grant. These aliens are subject to the removal provisions under section 240 of the Act. If, however, the alien stayed beyond the period authorized for voluntary departure, or left of his or her own volition while a final order was outstanding (i.e., the alien "self-deported"), the alien is subject to reinstatement.

Before processing the alien for reinstatement, you must verify the facts relevant to reinstatement of a previous order. Regulations at 8 CFR 241.8 require that the officer must establish: whether the alien was subject to a prior order; the identity of the alien, that is, whether the alien is in fact an alien who was previously removed; and whether the alien unlawfully reentered the United States. You must obtain evidence of the prior removal order, which may be faxed from the National Records Center or the office currently holding the file. In cases of disputed identity, verify identity through fingerprint comparison. Consider all relevant evidence, including alien's statements, other evidence in alien's possession, and database checks to determine whether last entry was lawful. In any case in which you are not able to satisfactorily establish the facts, the previous order cannot be reinstated, and the alien must be processed for removal through other applicable procedures, such as removal proceedings under section 240 of the Act.

On November 18, 2004, the 9th Circuit Court of Appeals ruled in *Morales-Izquierdo v. Ashcroft* that the reinstatement provisions in 8 CFR 241.8 violate the statutory requirement that removal determinations may be made only by immigration judges. Therefore, in processing aliens returned pursuant to the Agreement at Canadian land border ports of entry, the reinstatement provisions may not be applied in the states of Washington, Idaho, Montana, and Alaska.

In preparing cases for aliens who are subject to reinstatement, officers should use the following procedure. See Chapter 14.8 of the Detention and Deportation Officers Field Manual for additional information.

- (i) Create a work folder and obtain database printouts containing the previous order. Track the work folder in NFTS.
- (ii) Complete the Form I-213 through the Reinstatement with I-217 module in ENFORCE. If the alien admits to being previously ordered removed or granted voluntary departure, the Form I-213 must so indicate. If a fingerprint hit verifies such previous adverse action, include that information on the Form I-213. If the alien disputes the fact that he or she was previously removed,

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the alien's fingerprints must be compared with those in the A file documenting the previous removal to affirm positively the alien's identity. The fingerprint comparison must be completed by a locally available expert or by the Forensic Document Laboratory via electronic means.

(iii) Take a complete sworn statement from the alien using Form I-877, concerning all pertinent facts. Use Form I-263A, Record of Sworn Statement, as a jurat to close the statement. The record of sworn statement must document admissions, if any, relevant to determining whether the alien is subject to reinstatement, and whether the alien expressed a fear of persecution or torture if returned on the reinstated order. The sworn statement must include the following question and the alien's response thereto: "Do you have any fear of persecution or torture should you be removed from the United States?" If the alien expresses a fear of persecution or torture, once detained, ICE Office of Detention and Removal Operations will refer him or her to an asylum officer who will determine whether he or she has a reasonable fear of persecution or torture. Provide a copy of the statement to the alien and retain copies for the file.

(iv) Complete the Form I-871, Notice of Intent/Decision to Reinstate Prior Order. Sign the top portion of the form, provide a copy to the alien, and retain the original for the file. You must read, or have read, the notice to the alien in a language the alien understands. The alien signs the second box of the file copy and indicates whether he or she intends to rebut the officer's determination. In the event that the alien declines to sign the form, note the block that a copy of the form was provided and the alien declined to acknowledge receipt or provide any response.

(v) Execute Form I-205, Warrant of Removal/Deportation.

(vi) All reinstatement cases must be detained. Follow the local procedures for authorization and arranging of detention of the alien so that ICE/DRO may complete the reinstatement of a final order.

e. Aliens who have been ordered removed from Canada, are transiting the United States pursuant to that removal, and claim asylum.

CBP may parole an alien deportee from Canada through the United States, in accordance with section 212(d)(5)(A) of the Act. These aliens will be escorted by Canadian officials. Pursuant to the Agreement, if the alien deportee claims asylum while transiting the United States, he or she shall be returned to Canada for consideration of the claim.

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In practice, most of these cases would have been paroled by CBP through a preclearance airport in Canada. As these flights normally arrive at domestic gates of an airport in the interior of the United States, CBP will not have direct contact with the alien. However, the alien may make his asylum claim to the escorting Canadian officers, airline employees, or other officials and may be brought to the CBP offices in the airport. In these cases, parole status will be terminated and the alien deportee will be placed in expedited removal proceedings and referred to an asylum officer for a credible fear interview, where the alien will first receive a threshold screening determination. The alien should be given the Information About Threshold Screening Interview along with the Form M-444. After processing, DHS will return the alien to Canada. This process should be coordinated with ICE DRO as it will require detention.

(e) Dispute Resolution Under the Safe Third Country Agreement

The Agreement provides that procedures must include mechanisms for resolving differences in interpretation and implementation of the terms of the Agreement. There may be situations where the alien, upon return to the United States, claims that there is new material evidence that was not reasonably available to Canadian officials, or the alien alleges that Canadian officials did not consider all evidence, or the alien's true identity is discovered upon return to the United States. While CBP Officers should not attempt to act as advocates for the alien, they may request a reconsideration of the decision if warranted.

(1) The CBP Port Director may contact the CIC manager in writing, providing the name and FOSS ID number of the alien and a summary of the new material evidence to be considered along with any supporting documentation.

(2) A CIC officer will review the case and determine if the evidence was considered at the time of the interview. If the evidence was already considered, the information will be provided to the CBP Port Director with confirmation that the case will not be redetermined. If the CIC officer requires clarification from the claimant, contact will be by telephone. If it is determined that the applicant is eligible to make a refugee claim in Canada, the CIC manager will request the return of the applicant.

(3) Any further disputes that cannot be resolved at the local level should be referred through the DFO to CBP HQ Immigration Policy and Programs (IPP). IPP will forward the information to the USCIS Asylum Division Director for resolution.

(4) If Canadian officers have similar concerns about an alien returned to Canada under the Agreement, they must contact the Deputy Director of Asylum at USCIS Headquarters.

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17.12 Bonds.

Whenever an alien for whom a bond has been posted is admitted, endorse the reverse of the arrival portion of the I-94 with the "A" number, FCO code and the word "Bond". When a bond has been pre-posted as a condition of visa issuance, the nonimmigrant visa will be so noted by the consular officer.

17.13 Visa Waiver Program Cases. (Revised IN01-04)

See discussion in Chapter 15.7 concerning VWP refusals and limitations on removal hearings. A VWP applicant who claims asylum may be accorded a limited removal hearing, but such a hearing is limited solely to the issue of asylum or withholding of removal, in accordance with 8 CFR 208.2(b). In such a situation, process the applicant using Form I-863, Notice of Referral to Immigration Judge.

17.14 Lookout Intercepts.

See Chapter 31.6.

17.15 Expedited Removal.

(a) Inadmissibility. Section 302 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) amended section 235(b) of the Immigration and Nationality Act (Act) to authorize the Attorney General (now the Secretary of the Department of Homeland Security (DHS)) to remove without a hearing before an immigration judge aliens arriving in the United States who are inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act. Under these expedited removal provisions, aliens who indicate an intention to apply for asylum or who assert a fear of persecution or torture are referred to an asylum officer for a credible fear interview. Those who are found to have a credible fear by the asylum officer are referred to an immigration judge for a full removal hearing on the merits of their claim or claims.

The expedited removal provisions became effective April 1, 1997. Under section 235(b)(1) of the Act, expedited removal proceedings may be applied to two categories of aliens.

First, section 235(b)(1)(A)(i) of the Act permits expedited removal proceedings for aliens who are arriving in the United States. 8 CFR 1.1(q) defines the term "arriving alien." Refer to section (a)(1) of this chapter for the meaning of "arriving alien." Pursuant to section 235(b)(1)(F) of the Act, Cuban nationals who arrive at U.S. ports-of-entry

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(POEs) by aircraft are exempt from expedited removal proceedings.

Second, section 235(b)(1)(A)(iii) of the Act provides the Attorney General (now the Secretary of DHS) the discretion to designate certain other aliens to whom the expedited removal proceedings may be applied, even though they are not arriving in the United States. This provision permits application of the expedited removal proceedings to any or all aliens who have not been admitted or paroled into the United States and who have not been physically present in the United States continuously for the two-year period prior to a determination of inadmissibility by an immigration officer. The Attorney General delegated this authority to designate classes of aliens to the Commissioner of the Immigration and Naturalization Service, and this has since been delegated to the Commissioner of CBP and the Under Secretary of Immigration and Customs Enforcement (ICE). Pursuant to 8 CFR 235.3(b)(1)(ii), the designation may become effective upon publication of a notice in the Federal Register.

On November 13, 2002, the INS published in the Federal Register a notice designating an additional class of aliens who may be placed in expedited removal proceedings - aliens who arrive in the United States by sea, who are not admitted or paroled, and who have not been physically present in the United States continuously for the two-year period immediately preceding the determination of inadmissibility. Aliens falling within this newly designated class will be detained at the discretion of the government during the course of immigration proceedings. This newly designated class does not include Cuban nationals, crewmen, or stowaways.

(1) Arriving Aliens. For an alien to be subject to the expedited removal provisions at a POE, the alien must first meet the definition of "arriving alien." The term "arriving alien" as defined in 8 CFR 1.1(q) means an applicant for admission coming or attempting to come into the United States at a POE, or an alien seeking transit through the United States at a POE, or an alien interdicted in international or U.S. waters and brought into the United States by any means, whether or not to a designated POE, and regardless of the means of transportation. An arriving alien remains such even if paroled pursuant to section 212(d)(5) of the Act, except that an alien who was paroled before April 1, 1999, or an alien granted parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States shall not be considered an arriving alien for purposes of section 235(b)(1)(A)(i) the Act.


Aliens who entered the United States without inspection; aliens apprehended in the United States without legal status; and aliens who have departed the United States, are refused admission into another country and are thereafter returned back to the United States do not fall within the definition of arriving aliens. Alien stowaways on arriving vessels, lawful permanent resident aliens of the United States, or applicants under the Visa Waiver Program may be considered arriving aliens for other

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purposes under the Act, but are not subject to the expedited removal provisions.

It is the responsibility of the officer to determine whether the alien is an arriving alien subject to being placed in expedited removal proceedings. Also see Chapter 17.11 for processing alien applicants for admission who claim asylum at ports-of-entry.

(2) Applicability. In general, arriving aliens who are inadmissible under section 212(a)(6)(C) and/or (7) are subject to expedited removal under section 235(b)(1) of the Act. Officers should only charge those grounds of inadmissibility that can be fully supported by the evidence and that will withstand any further scrutiny. Officers may, but need not, charge more than one ground of inadmissibility. If 212(a)(6)(C) and/or 212(a)(7) are the only charges lodged, the alien must be processed under expedited removal and may not be referred for an immigration hearing under section 240. If additional charges are lodged, the alien may be referred for a section 240 hearing, but this should only occur in extraordinary circumstances. Generally speaking, if an alien is inadmissible under 212(a)(6)(C) and/or (7), additional charges should not be brought and the alien should be placed in expedited removal. There will be very few instances where it will be advantageous to the government to lodge additional charges and institute section 240 removal proceedings if a solid expedited removal proceeding can be concluded. Even in criminal cases, an expedited removal proceeding will normally be the preferred option.



DHS retains the discretion to permit withdrawal of application for admission in lieu of issuing an expedited removal order (see Chapter 17.2). Provisions for withdrawal are contained in both statute and regulation, with specific guidance in the IFM, and should be followed by all officers with authority to permit withdrawals. As an example, in cases where a lack of proper documents is the result of inadvertent error, misinformation, or where no fraud was intended (e.g. an expired nonimmigrant visa), officers may consider, on a case-by-case basis and at the discretion of the government, any appropriate waivers, withdrawal of application for admission, or deferred inspection to resolve the ground of inadmissibility rather than issue an expedited removal order.

The authority to formally order an alien removed from the United States without a hearing or review, carries with it the responsibility to accurately and properly apply the grounds of inadmissibility.

(3) Grounds of Inadmissibility. All officers should be aware of precedent decisions

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and policies relating to the relevant grounds of inadmissibility. Section 212(a)(6)(C) is an especially difficult charge to sustain unless the case involves obviously fraudulent or counterfeit documents. Misrepresentation is even more difficult to determine. Also keep in mind that an alien who is determined to be inadmissible for fraud or misrepresentation is barred forever from the United States, with few waivers available. Any one or several of the following points should be considered in determining if an alien has committed fraud or misrepresentation.

- To support a charge of having procured a document by fraud or misrepresentation, the procuring must have been done from a government official, not from a counterfeiter, and any misrepresentation must have been practiced on a U.S. Government official.
- The procurement by fraud must relate to a person who has done so to obtain his or her own admission, not someone else's.
- The fraud or misrepresentation must be material, i.e., the alien is inadmissible on the true facts, or the misrepresentation tends to shut off a relevant line of inquiry that might have resulted in a determination of inadmissibility.
- In general, an alien should not be charged with misrepresentation if he or she makes a timely retraction of the misrepresentation, in most cases at the first opportunity.
- Silence or failure to volunteer information does not in itself constitute a misrepresentation.
- Aliens who are determined to be mentally incompetent and small children judged to be incapable of independently forming an intent to defraud should not be ordered removed using section 212(a)(6)(C)(i) as the inadmissibility charge. The preferred charge in such cases would be section 212(a)(7)(A).
- Section 344 of IIRIRA did not create any waiver for immigrants found inadmissible under section 212(a)(6)(C)(ii) relating to false claims to U.S. citizenship. Therefore, immigrants found inadmissible under section 212(a)(6)(C)(ii) are permanently barred from the United States.

(4) Supervisory approval of removal orders. All expedited removal orders require supervisory approval before service upon the alien. By regulation, this approval authority is not to be delegated below the level of a second-line supervisor. Each field office may determine at what level (second-line supervisor or above) this review authority should be delegated.

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The expedited removal provisions are not applicable in pre-clearance or pre-inspection operations. If DHS wishes to proceed with expedited removal of an alien inspected during an en route inspection of a vessel, action on the case will be deferred until the vessel has arrived in the United States. The alien may then be processed as an expedited removal case.

Port directors are responsible for ensuring that all officers conducting expedited removal proceedings, and supervisors approving expedited removal orders, are properly trained in the expedited removal provisions.

See Appendix 17-3 for a flow chart mapping the entire expedited removal process.

(Paragraph (a) amended 8/21/97; IN97-05)

(5) Aliens seeking asylum at land border ports of entry. Section 235(b) of the INA does not provide for an affirmative asylum application process at a port of entry. Therefore, an officer should consider an alien who arrives at a land border port-of-entry and seeks asylum to be an applicant for admission by operation of law. The alien will most likely be inadmissible under section 212(a)(7)(A)(i) of the INA as an intending immigrant without proper documentation or under section 212(a)(6)(C) of the INA as an immigration violator with fraudulent documents. As a result, he or she will be subject to expedited removal proceedings.

Except as noted below, the alien, if otherwise subject, should be placed in expedited removal proceedings, referred for a credible fear interview, and detained pending a final determination of a credible fear of persecution or torture. See INA § 235(b)(1)(B)(iii)(IV); 8 CFR § 235.3(b)(4)(ii). Once it has been determined that an alien has a credible fear of persecution or torture, DHS may continue to detain the alien or parole the alien from custody, as appropriate.

(Paragraph (a)(5) added 11-1-05; CBP 12-06)

(6) Cuban asylum seekers at land border ports-of-entry. Natives or citizens of Cuba arriving at land border ports of entry, whose immediate removal from the United States is highly unlikely, should be placed directly into section 240 proceedings in lieu of expedited removal, without lodging additional charges. These aliens may be paroled directly from the port of entry while awaiting removal proceedings if identity is firmly established, all available background checks are conducted, and the alien does not pose any terrorist or criminal threat. Pursuant to section 235(b)(2)(C) of the INA, they may also be returned to contiguous territory pending removal proceedings under section 240 of the INA. This option should only be considered if the alien is not eligible for the exercise of parole discretion, the alien has valid status in Canada or Mexico, Canadian or Mexican border officials are willing to accept the alien back, and the claim of fear of persecution is

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unrelated to Canada or Mexico.

An officer should not parole a native or citizen of Cuba from a land border port of entry for the sole purpose of allowing the alien to apply for adjustment under the Cuban Adjustment Act of 1966, Pub. L. 89-732, 80 Stat. 1161 (1966), without initiating section 240 proceedings. The Cuban Adjustment Act (CAA) provides that any native or citizen of Cuba who has been admitted or paroled into the United States, *and who is otherwise admissible as an immigrant*, may adjust status to that of a lawful permanent resident after being physically present in the United States for at least one year. It does not, however, require an officer to parole a native or citizen of Cuba at a port of entry without regard to public safety. Therefore, an officer should grant parole to a native or citizen of Cuba only if the alien does not pose a criminal or terrorist threat to the United States.

(Paragraph (a)(6) added 11-1-05; CBP 12-06)

(b) Preparing a case. The expedited removal proceedings give officers a great deal of authority over removal of aliens and will remain subject to serious scrutiny by the public, advocate groups, and Congress. All officers should be especially careful to exercise objectivity and professionalism when processing aliens under this provision. Because of the sensitivity of the program and the potential consequences of a summary removal, you must take special care to ensure that the basic rights of all aliens are preserved, and that aliens who fear removal from the United States are given every opportunity to express any concerns at any point during the process. This includes conducting interviews in an area that affords sufficient privacy, whenever feasible. Since a removal order under this process is subject to very limited review, you must be absolutely certain that all required procedures have been adhered to and that the alien has understood the proceedings against him or her.

The steps to be taken in the expedited removal proceedings differ somewhat from those in which an alien is referred for a removal hearing before an immigration judge. It is important that a complete, accurate record of removal be created, and that any expedited removal be justifiable and non-arbitrary. The following steps must be taken in each case in which an order of expedited removal is contemplated or entered against an alien:

(1) Use of Form I-867A&B. Clearly explain to the alien, in a language he or she understands, the serious nature and impact of the expedited removal process, as noted on the Form I-867A&B. Officers must use an interpreter, when needed, to assist in the expedited removal process. Refer to Chapter 17.18 for Guidance on the Use of Interpreters and Interpreter Services.

Read the statement of rights and consequences contained on the first page of Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, to the alien. Explain that you will be taking a statement from him or her, and

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that any information given or discovered will be used in making a decision on the case and may result in his or her prompt removal. Advise the alien that if he or she is found to be inadmissible and a decision is made to order the alien removed, he or she will be immediately removed from the United States. Explain that there is no appeal to this decision and explain that this will be his or her only opportunity to provide any information or state any fear of return or removal that he or she may have.

In every expedited removal case, you must use the Form I-867A&B to take a complete sworn statement from the alien concerning all pertinent facts. If the case did not initially appear to involve inadmissibility and removal under the expedited removal proceedings, and the sworn statement was begun using other forms, you must immediately advise the alien of the rights and warnings on Form I-867A once you determine that the expedited removal proceedings will apply. The officer shall note either on the Forms I-867A&B or in a memorandum, explaining why those other forms are included.

The sworn statement will be done in question and answer format. Form I-831, Continuation Sheet, or a blank page may be used for the body of the statement. The sworn statement must cover several general areas of inquiry:

- Identity - include true name, aliases, date and place of birth and other biographical data.
- Alienage - determine citizenship, nationality, and residence. Cover any possible claim to U.S. citizenship through parents.
- Inadmissibility - questions should cover the alien's reason for coming to the United States, information about the specific facts of the case and the specific suspected grounds of inadmissibility.
- Fear of persecution or torture - if the alien indicates in any fashion or at any time during the inspections process, that he or she has a fear of persecution, or that he or she has suffered or may suffer torture, you are required to refer the alien to an asylum officer for a credible fear determination. One of the significant differences between expedited removal proceedings and regular removal proceedings is that the inspecting officer has a responsibility to ensure that anyone who indicates a fear of persecution or intent to apply for asylum in the United States is referred to an asylum officer for a credible fear determination. Inspectors should consider verbal as well as non-verbal cues given by the alien. The obligatory questions on the Form I-867B are designed to help in determining whether the alien has such fear. Ask the questions as they appear on the Form I-867B at the end of the sworn statement. If the alien indicates an intention to

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apply for asylum or a fear of harm or concern about returning home, or makes any such statements or comments at any time during the inspections process, the inspector may ask a few additional follow-up questions to ascertain the general nature of the fear or concern. Any comments of concern made by the applicant must be recorded in the sworn statement, including any indications made by the alien prior to the secondary interview.

Do **not** ask detailed questions on the nature of the alien's fear of persecution or torture: leave that for the asylum officer. In determining whether to refer the alien, inspectors should not make eligibility determinations or weigh the strength of the claims, nor should they make credibility determinations concerning the alien's statements. The inspector should err on the side of caution, apply the criteria generously, and refer to the asylum officer any questionable cases, including cases that might raise a question about whether the alien faces persecution or torture. Do not make any evaluation as to the merits of such fear; that is the responsibility of the asylum officer. Officers processing aliens for expedited removal may contact the Asylum office point(s) of contact when necessary to obtain guidance on whether to refer questionable cases involving an expression of fear or a potential asylum claim. See paragraph (d) of this chapter for more detailed information regarding credible fear referrals.

- Impact of decision - once you have gathered all the facts, you will decide, in consultation with a supervisor, the best course of action. Depending on the circumstances, you may admit the alien, allow the alien to apply for any applicable waivers, defer the inspection or otherwise parole the alien, permit the alien to withdraw his or her application for admission, issue an expedited removal order, or refer the alien for a credible fear determination. Whatever decision is made, clearly advise the alien of the impact and consequences of the determination and record this in the sworn statement.

You must use the Form I-867B as the final page of the sworn statement and jurat. Be sure to obtain responses from the alien regarding the mandatory closing questions contained on the form. If the alien in any way indicates a fear of removal or return, follow the procedures in paragraph (d) of this section. Collect any additional evidence relevant to the case that is discovered during the inspections process.

After the sworn statement is completed, have the alien read the statement, or have it read to him or her in a language the alien understands. Use an interpreter if necessary. Make any necessary corrections or additions. Have the alien initial each page and each correction. Provide a copy of the completed statement, upon signature, to the alien. Retain a copy for the A file and a copy for the port file, if one is created

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If at any time you feel that an amendment to the initial sworn statement is needed, you may complete a second sworn statement during the inspections process. An incident may also take place after you have completed the initial sworn statement, but before the alien is removed from the United States, where a second sworn statement may be helpful. Ask the alien enough questions under oath to address all concerns that may have arisen during the process.

The statement must be signed by the alien and by the officer taking the statement, as well as by a witness. An alien cannot avoid expedited removal by refusing to sign the statement or answer the questions. If the alien will not sign, write "Subject refused to sign" on the signature line. If the alien will not answer any questions, take a skeleton sworn statement, listing all pertinent questions, and writing after each "Subject refused to answer". An expedited removal order may still be issued, provided the removal is otherwise substantiated (e.g., if the alien presented a fraudulent document), and is not dependent solely on the alien's statements.

(2) Form I-860, Notice and Order of Expedited Removal. Prepare three copies of Form I-860. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. 212(a)(6)(C)(i)), and insert a narrative description of each charge and the violation committed. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters may not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded in either the sworn statement or an addendum to the statement. Expedited removal forms exist in other languages. If a form in the alien's native language or in a language the alien understands is used, place only the English version in the file and give the translated version to the alien.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second-line supervisor) or a person officially acting in that capacity for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The Form I-860 must be signed legibly by the

statements.

(2) Form **I-860**, Notice and Order of Expedited Removal. Prepare three copies of Form I-860. Check the appropriate ground(s) of inadmissibility under which the alien is being charged (e.g. **212(a)(6)(C)(i)**), and insert a narrative description of each charge and the violation committed. Read and explain the charges to the alien in the alien's native language or in a language the alien can understand. An interpreter may be required to ensure that the alien understands the allegations and the removal order. Interpreters may not be used if they are employees of the government of the alien's home country, such as an employee of a government-owned airline, except for the most routine questioning. Never use an employee of a foreign government if there is any possibility of sensitive areas (e.g., persecution or torture) being discussed. The alien should be given an opportunity to respond to the charges, and any response must be recorded in either the sworn statement or an addendum to the statement. Expedited removal forms exist in other languages. If a form in the alien's native language or in a language the alien understands is used, place only the English version in the file and give the translated version to the alien.

After all statements are taken and other paperwork is complete, present it through your chain of command to the appropriate supervisor (not to be delegated below the second-line supervisor) or a person officially acting in that capacity for review and approval. If the appropriate supervisor is not present at the port, the supervisory review and approval may be obtained telephonically, by fax, or by other means. The approving authority must be properly advised of all facts in the case in order to make an informed decision. Print the name and title of the supervisor approving the order, and check the box on the form indicating that concurrence was obtained telephonically or by other means. The Form **I-860** must be signed legibly by the preparing officer.

(3) Photographing and fingerprinting. Enroll the alien in [REDACTED]. Take the alien's photograph and fingerprint the alien on FD-249 fingerprint cards (three sets—see **chapter 18.9(c)** for distribution), or electronically, if [REDACTED] are available at the port. Be sure to complete the entire form and properly code the fingerprint cards with the proper U.S. Code citation, since the FBI will not clear cards without such codes. Following are examples of codes that may be used:

- 18 U.S.C. 1544 Photo substitutions
- 18 U.S.C. 1546 Counterfeit immigrant visa
- 8 U.S.C. 1306 Counterfeit immigration documents, such as alien registration
- 18 U.S.C. 911 False claims to U.S. citizenship (imposters, photo substitution of U.S. passport)
- 18 U.S.C. 1001 Other (fraudulent documents, false statements, imposter, etc.)

(4) Forensic Document Lab (FDL) analysis. Obtain forensic analysis, if appropriate. In cases involving fraudulent documents, if the sworn statement includes an admission of the fraud, no forensic analysis may be required. For the expedited removal proceedings, actual forensic examination of the document by the FDL may not be feasible. This does not mean that it is permissible to "rush to judgement", or that it is permissible to expeditiously remove an alien based on incomplete evidence. If forensic analysis is required to establish that the alien is inadmissible, such analysis must be obtained before the Form **I-860** is executed. If necessary, the alien should be detained until the analysis is performed, and then the Form I-860 can be executed. (On the other hand, if the alien's inadmissibility under section **212(a)(7)** has been established, there is little or no reason to delay the expedited removal process in order to also establish the **212(a)(6)(C)** charge.) Offices with electronic devices for transmitting quality images should use those technologies whenever possible or necessary. [See **Chapter 32** for details on using FDL services and for contributing documents or intelligence information concerning the fraud.]

(5) Tracking of ER cases. Unless an A number already exists for an alien placed into expedited removal, an A number must be

[REDACTED]

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assigned to every expedited removal case at the POE in order to ensure proper tracking of the case from the onset.

Codes have been created for entry of expedited removal cases into the Central Index System (CIS). Those codes are:

- ERF Expedited Removal case has been initiated under section **235(b)(1)** of the INA and a final decision is pending a credible Fear determination by an asylum officer or immigration judge.
- ERP Expedited Removal case has been initiated under section **235(b)(1)** INA and a final decision is Pending for reasons other than referral for credible fear interview before an asylum officer.
- ERR Expedited Removal case has been initiated and alien has been Removed from the United States under that program.

Entry of cases into CIS should be accomplished as quickly as possible in accordance with local policy. To ensure prompt data entry, A files for expedited removal cases should be separated from other files and flagged as expedited removal cases.

Codes have also being created to designate expedited removal cases in the National Automated Immigration Lookout System (NAILS) and the Interagency Border Inspection System (IBIS).

Search for existing records in CIS and other appropriate automated systems. If an A file exists, create a temporary file and request the permanent file. After the file is received, update it with all relevant documents completed or collected during the expedited removal process, and forward it to the proper files control office. If no previous file exists, create a new A file relating to the alien.

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6) Consular notification of alien detention. Consult **8 CFR 236.1(e)** to ensure that, if required, the appropriate consular official is immediately notified of the alien's detention, even if the alien requests that this not be done. Notify the alien that he or she may communicate with a consular official. These steps normally will only be necessary when removal of the alien cannot be accomplished immediately and the alien must be placed in detention for longer than 24 hours. When you contact a consular official, never mention any asylum claim which may have been filed, or give any indication that the alien has expressed a fear of persecution or torture.

(7) Criminal prosecution. Aliens arriving at the POEs who are subject to the expedited removal provisions may also be subject to criminal prosecution. If criminal prosecution of the alien is contemplated in addition to expedited removal, the criminal action must be completed before the alien is ordered removed. [See **Chapter 18** for procedures for criminal prosecution]. Officers must give the alien his/her Miranda warning and once the warning of rights has been given to the alien, questioning of the alien can only occur with the alien's consent. If the alien refuses to provide a sworn statement, or if the U.S. Attorney's Office prohibits the officer from taking any sworn statements or completing removal processing prior to the completion of the criminal proceedings, the administrative process must be completed after the alien's criminal proceeding is concluded.

If the alien permits questioning and the U.S. Attorney's Office does not prohibit questioning and processing of the alien, complete the sworn statement and the Form I-860. Do not serve the Form **I-860** on the alien, but place it in the A file pending the criminal processing. If the alien is to be turned over to another law enforcement agency, serve a Form **I-247**, Immigration Detainer - Notice of Action, on the other agency. Once the alien is returned to DHS custody, the Form I-860 may be served and the alien removed under the expedited removal order.

(8) Service of the Form I-860. Serve the original Form I-860 on the alien, unless the alien is to be deferred to an onward office, in which case the service is accomplished by the onward office. If the alien is being prosecuted criminally, the Form I-860 will be served after the criminal conviction. Place a copy of the Form I-860 in the A file. The third copy may be retained at the port.

(9) Form I-296, Notice to Alien Ordered Removed/Departure Verification. Check the appropriate box to indicate the period during which the alien must obtain permission to reenter: 5 years for the first removal; 20 years in the case of a second or subsequent removal; at any time if the alien has been convicted of an aggravated felony (even though the alien is not being charged as an aggravated felon in this proceeding). Do not check the 10-year box; that is for aliens removed under other provisions of the Act. At the time of actual removal, a photograph and a pressed print of the alien's right index finger should be placed on a copy of the Form I-296, the alien should sign the form, and the particulars of the departure should be entered on the form for retention in the file. Serve the alien with a copy of the Form I-296 before removal. The original form should remain in the A file.

(10) Form I-275, Consular Notification. Cancel the alien's visa or border crossing card, if appropriate. Complete and distribute the Form **I-275** as described in **Chapter 17.2**. Check all the boxes that apply, with a brief description of the denial and removal of the alien. Note the passport with the file number and action taken, for example: "Ordered Removed 6/1/04 NYC/Section 212(a)(6)(C) (i)". Forward a copy of the Form I-860 with the Form I-275 to the Department of State.

(11) Form I-94, Arrival/Departure Document. Prepare a new Form I-94. If the alien applied for admission at a land border, annotate the Form I-94 to read: "Form I-860 Removal Order issued pursuant to section **235(b)(1)** of the Act. (Date), (Place), (Officer)". If the alien applied for admission at an airport or seaport, use the parole stamp and endorse the I-94 to read: "For removal from the United States by (carrier name). Form I-860 Removal Order issued pursuant to section **235(b)(1)** of the Act. (Date), (Place), (Officer)".

(12) Detention. Detain the alien as appropriate. Follow local procedures to obtain detention authorization and arrange for detention. Aliens placed into expedited removal proceedings must be detained until removed from the United States. Parole may be permitted only if there is a medical emergency or if it is necessary for legitimate law enforcement purposes, such as for criminal prosecution or to testify in court. Refer to **Chapter 17.8** for the CBP policy on the detention of aliens at POEs. Aliens subject to expedited removal who claim a fear of persecution or torture must be detained pending a credible fear determination. Once an alien has established a credible fear of persecution or is otherwise referred (as provided by regulation) for a full removal proceeding under section **240**,

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release of the alien may be considered under normal parole criteria. Aliens who make false claims to U.S. citizenship, or unverified claims to lawful permanent resident, asylee, or refugee status, must be detained pending review of the removal order by the immigration judge. Aliens arriving at a land border port-of-entry who do not claim lawful status in the United States or a fear of persecution should normally be processed immediately and either returned to Canada or Mexico or detained until removed.

(13) Credible fear interview referral. See paragraph (d) of this chapter for detailed information on credible fear referrals. Credible fear interviews will normally take place at DHS or contract detention facilities. Each POE and detention facility will be provided with a point or points of contact at the Asylum office having responsibility for that geographical area. It is the responsibility of the referring (Inspections) officer to provide the alien being referred for a credible fear interview with both a Form **M-444**, Information about Credible Fear Interview, and a list of free legal services, as provided in **8 CFR part 292**. It is generally the responsibility of the detention and removal personnel to notify the appropriate Asylum office point of contact when an alien subject to the expedited removal process is being detained in DHS custody pending this interview. That officer should also provide any additional information or concerns of the alien, such as whether the alien requires an interpreter or other special requests and considerations. However, in locations where the credible fear interview requires travel by the asylum officer, the referring officer should notify the Asylum office when referring the alien in order to provide as much advance notice as possible. When aliens are detained in non-DHS facilities or at remote locations, the referring officer must notify the appropriate Asylum office. If the alien is subsequently transferred to another detention site, the detention or deportation officer must ensure that the appropriate Asylum office has been notified.

Normally the credible fear interview will not take place sooner than 48 hours after the alien arrives at the detention facility. If the alien requests that the interview be conducted sooner, the referring officer, or any other officer to whom the alien makes the request, should immediately convey that information to the appropriate Asylum office.

(14) Removal from the United States. Most aliens removed under the expedited removal provisions will be promptly removed; however, some aliens, such as those who claim asylum or LPR status, may be detained pending a decision on their claim. At the land border, ensure the alien's departure to the contiguous foreign territory. At air and seaports, serve the carrier of arrival with the Form I-259, Notice to Detain, Remove, or Present Aliens, and check the appropriate boxes to order the carrier to remove the alien when the removal process is finished. If the case cannot be timely completed, advise the carrier of potential liability.

(15) Database entries. The expedited removal process continues to be the subject of extensive inquiry and requires appropriate tracking of specific case data. Expedited removal cases will normally be processed through [REDACTED]. In addition, every case in which an expedited removal order is issued must be entered into the Deportable Alien Control System (DACS) until that system is replaced with the [REDACTED]. Entry of data for those aliens detained by DHS will be handled by the Detention and Removal personnel responsible for the detention facility. Entry of data for aliens who do not require detention and are removed directly from the POEs is the responsibility of CBP. Cases initiated at the POEs and referred for removal proceedings under section 240 will continue to be entered into DACS by Detention and Removal. Complete appropriate closeouts in [REDACTED].

(16) Form G-22.1, Inspections Summary Report. Consult G-23 Report of Field Operations Procedures for reporting guidelines.

(c) Withdrawal of application for admission in lieu of an expedited removal order.

DHS has the discretion to allow an inadmissible alien to voluntarily withdraw his or her application for admission and to depart the United States in accordance with section **235(a)(4)** of the INA. This discretion applies to aliens subject to expedited removal, and should be applied carefully and consistently, since an officer's decision to allow withdrawal or issue a removal order is final. Officers should keep in mind that an order of expedited removal carries with it all the penalties of an order of removal issued by an immigration judge (including a bar to reentry of at least 5 years following removal pursuant to section **212(a)(9)(A)(i)**).

Follow the guidelines contained in **Chapter 17.2** to determine whether an alien's withdrawal of an application for admission or asylum claim best serves the interest of justice. An officer's decision to permit withdrawal of an application for admission must be properly documented by means of a Form **I-275**, Withdrawal of Application for Admission/Consular Notification, to include the facts surrounding the voluntary withdrawal and the withdrawal of the asylum claim. In addition, an officer should prepare a new sworn statement, or an

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[REDACTED]

addendum to the original sworn statement on Form I-867A&B, covering the facts pertaining to the alien's withdrawal of the asylum claim.

An alien may not be pressured into withdrawing his or her application for admission or asylum claim under any circumstances. An officer must provide adequate interpretation to ensure that the alien understands the expedited removal process and the effects of withdrawing an application for admission or an asylum claim. Furthermore, an asylum officer must be consulted before an alien who has expressed a fear of return to his or her home country may be permitted to withdraw an asylum claim.

If an officer permits an alien to withdraw his or her application for admission and elects to return the alien to Canada or Mexico, the Form I-275 should indicate the alien's status in Canada or Mexico and the basis for determination of that status. This determination may be based on contacts with Canadian or Mexican authorities, stamps in the alien's passport, or other available documentation. The narrative on Form I-275 should also indicate that the alien has not expressed concern about returning to Canada or Mexico.

If the alien expresses any concern or reluctance about returning to Canada or Mexico and wishes to pursue the asylum claim in the United States, the officer should advise the alien that he or she will be placed in the expedited removal process, unless subject to section 240 proceedings by statute, regulation, or policy, and will be detained pending the credible fear determination. The alien should not be given the Form I-589, Application for Asylum and for Withholding of Removal, nor should an affirmative asylum interview be scheduled at the port of entry.

(Paragraph (c) revised 11-1-05; CBP 12-06)

(d) Fear of persecution or request for asylum. Aliens who indicate an intention to apply for asylum or a fear of persecution or torture may not be ordered removed until an asylum officer has interviewed the alien to determine whether the alien has a credible fear of persecution or torture and warrants a full asylum hearing before an immigration judge.

When questioning or taking a sworn statement from any alien subject to the expedited removal provisions, you need not directly solicit an asylum claim. However, to ensure that an alien who may have a genuine fear of return to his or her country is not summarily ordered removed without the opportunity to express his or her concerns, you should determine, in each case, whether the alien has any concern about being returned to his or her country. Further, you should explore any statement or indications, verbal or non-verbal, that the alien actually may have a fear of persecution or torture or return to his or her country. You must fully advise the alien of the process, as indicated on the Form **I-867A**, and of the opportunity to express any fears.

Keep in mind that the alien need not use the specific terms "asylum" or "persecution" to qualify for referral to an asylum officer, nor does the fear of return have to relate specifically to one of the five grounds contained within the definition of refugee. The United States is bound by both the Protocol on Refugees and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and, except under extraordinary circumstances, may not return an alien to a country where he or she may face torture or persecution.

The alien may convey a fear of violence or harm, a need for protection, an indication of harm to, or disappearance of, relatives or associates, or dangerous conditions in his or her country. Even disputes of a personal nature sometimes may relate to asylum, such as domestic violence, sexual or child abuse, child custody problems, coercive marriage or family planning practices, or forced female genital mutilation. All officers should recognize that sometimes unusual cases have been found eligible for asylum that may not have initially appeared to relate to the five grounds contained in the definition of refugee, such as AIDS victims who face government persecution, land or money disputes with wealthy persons or persons in power, whistle blowers, witnesses to crimes and even organized crime connections. Harm sufficient for a credible fear referral can include

[REDACTED]

Do not make judgement decisions concerning any fear of persecution, torture, or return. Any alien who by any means indicates a fear of persecution or return **may not** be removed from the United States unless the alien has been interviewed and a credible fear determination been made by an asylum officer. An alien who does not indicate a fear of return but responds to one of the protection-

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[REDACTED]

related questions by stating that he or she has applied for refugee or asylum status in the United States or elsewhere in the past, or mentions a relative, friend or associate who has done so (even if such claims are still pending or were denied), should be asked further questions to determine whether or not the alien is expressing a fear of return or an intention to apply for asylum indirectly. If, on more detailed questioning, the alien states that he or she has no fear of return and no interest in applying for asylum, the case need not be referred for a credible fear interview.

If the alien answers affirmatively to one the protection-related questions or requests asylum, and later changes the answer or asks to be sent home, the officer should consult with the local Asylum office or refer the case. If an attorney, friend, or relative notifies any officer that an individual in the expedited removal process is planning to apply for asylum or has a fear of return, that officer should notify the port of entry. The officer responsible for the case should either consult with an asylum supervisor or refer the alien for a credible fear interview, even if the alien does not express a fear directly. In the expedited removal process, an attorney, friend, or relative who acts as a consultant to the alien need not file a Form G-28.

Any alien who exhibits any [REDACTED] - that alert the office to possible fear of harm should be referred. If an officer notices signs of [REDACTED] the officer should consult an asylum supervisor, or the applicant should be referred. [REDACTED] should be noted in parentheses or brackets in the sworn statement or memo to file.

[REDACTED] It is important to be aware of these possible reactions. Do not dismiss them automatically as signs of uncooperative behavior.

[REDACTED]

Considerations that should NOT affect the officer's decision to refer an alien for a credible fear interview include:

- [REDACTED]. The asylum officer will review the sworn statement and documents and ask the alien about any inconsistencies and discrepancies. Only an asylum officer can make a credibility determination for purposes of deciding whether the alien has a credible fear of persecution.
- [REDACTED]
- [REDACTED] Aliens should be referred, for example, if they claim [REDACTED] or if for example, that they claim [REDACTED]
- Country of origin: No country should be considered safe - or dangerous- for all residents. However, knowledge of conditions in the alien's home country may help alert an officer to non-verbal cues or confused or vague expressions of fear.

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- Whether harm is on account of the alien's race, religion, political opinion, nationality or social group: Officers should not make a determination on whether the harm feared is on account of the alien's race, religion, nationality, membership in a particular social group or political opinion. Asylum law, and particularly the definition of a "social group" is evolving – cases involving domestic violence, spousal abuse, sexual abuse of children, female genital mutilation, coercive family planning practices, organized crime, whistleblowers on government corruption, homosexuality, and AIDS, and other unresolved legal areas should be referred. An alien may also be offered protection from return under Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, when it is more likely than not that the alien would be tortured, even if the motivation for the torture is not on account of the applicant's race, religion, nationality, social group or political opinion.
- Mandatory Bars: The presence of a mandatory bar to asylum should not prevent referral. Referrals should occur even in cases where, for example, the alien appears to be firmly resettled in a third country, transited through a third country, or when there is information that appears to indicate that the alien is a criminal or a danger to national security.
- Stated Preference to Apply for Asylum Elsewhere: If an alien expresses a fear of return, but states that he or she does not want to apply for asylum in the United States because he or she plans to apply for asylum elsewhere, the alien should be referred. Some applicants may not be aware that certain countries will not accept an asylum application from them if they have transited through the United States.

The International Religious Freedom Act of 1998 (IRFA) was passed by Congress out of a growing concern about violations of religious freedom in countries around the world. IRFA requires training for certain government employees on the nature of religious persecution abroad. Violations of religious freedom can include prohibitions on, restrictions of, or punishment for:

- Assembling for peaceful religious activities
- Speaking freely about religious beliefs
- Changing religious beliefs or affiliation
- Possessing and distributing religious literature
- Raising children in the religious practices and teachings of one's choice.

Any of the following acts are violations of religious freedom if committed on account of an individual's religious belief or practice:

- Detention
- Interrogation
- Imposition of onerous financial penalties
- Forced labor
- Forced mass resettlement
- Imprisonment
- Forced religious conversion
- Beating, torture, mutilation, rape, murder, enslavement, and execution

IRFA defines "particularly severe violations of religious freedom" as systematic, ongoing, egregious violations of religious freedom, including violations such as:

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to a person's life, liberty, or security.

Applicants who are questioned by officers in expedited removal proceedings may not understand that religious persecution is an issue they should reveal in their interview. Sometimes an applicant will not indicate any past incidents of religious persecution, but you might become aware of it incidentally. Perhaps you learn that the applicant is a Jehovah's Witness and realize he or she is from a country in which Jehovah's Witnesses are persecuted.

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You might also come across customs and behavior that are new to you, for example, the wearing of scarves for religious reasons. In talking with that person, you might learn that there is a fear of return, but the person did not realize that religion was a protected ground for asylum at the time of inspection. Therefore, it is important to adhere to the procedural safeguards built into the expedited removal process.

IRFA requires that the State Department annually publish a report on the condition of religious freedom in the world. Specifically, the report describes the status of religious freedom in every foreign country. It also cites any violations of religious freedom or trends toward improvement or deterioration in the respect and protection of religious freedom. There is an Executive Summary at the beginning of the report, which highlights the report's findings. Each Asylum Office has bound copies of the report for reference. The report is also posted every year on the State Department's web site.

IRFA does not change the legal standard for determining refugee or asylum eligibility. It also does not give preference to religious persecution. It does require refugee and asylum officers to receive specialized training concerning religious persecution. When religious issues are involved, adjudicators must become informed about conditions in the applicant's home country by referring to the annual report on religious freedom published by the Department of State. However, a claim cannot be denied solely because an officer cannot find information in the report. As with every case, officers should consult a variety of current and reliable sources for an accurate representation of country conditions. In certain unconventional cases, determining whether an applicant's unique set of beliefs is a religion may require careful consideration and research, and when appropriate, consultation with proper DHS personnel.

While IRFA mandates that certain new processes be implemented, it does not change the basic job requirements.

- IRFA does not authorize individuals housed in DHS facilities to do anything they wish under the guise of religious practice.
- IRFA does not require officers to determine what a religion is or what constitutes religious persecution.
- And while IRFA emphasizes issues of religious persecution, it does not imply that other types of persecution are any less important.

All officers must disregard their own religious convictions and beliefs evaluating an asylum or refugee claim. For example, you may be a Muslim officer interviewing a non-Muslim asylum applicant who claims to be persecuted by Muslims on account of his religion. Upon hearing such claims, you may be surprised, offended, disbelieving, or have other adverse personal reactions because of your own religious convictions and opinions. While it may be difficult, you must evaluate such claims objectively and without personal bias.

If the alien indicates an intention to apply for asylum or asserts a fear of persecution or torture, and is being referred for a credible fear interview with an asylum officer:

- (1) Create an A file, if one does not already exist.
- (2) Fully process the alien as an expedited removal case. Establishing inadmissibility cannot be left to the asylum officer. Record a description of the particulars of the interview and the alien's initial claim to asylum or fear of return by means of a sworn statement using Form **I-867A&B**. Follow the instructions in paragraph (b)(1) above to ensure that the alien understands the proceedings. Although you should not pursue the asylum claim in detail, enough information should be obtained to inform the asylum officer of the alien's initial claim to asylum or fear of persecution or return. If the alien answers the closing questions on Form I-867B in the affirmative, several other questions may be necessary to determine the general nature of the fear or concern.
- (3) Complete the Determination of Inadmissibility portion of the Form **I-860**, including sufficient information to support the charges of inadmissibility should the asylum officer find that alien does not have a credible fear of persecution. Sign **only** the Determination portion of the form. The removal part of the order will be signed by the asylum officer only after it is determined that the alien does not have a credible fear of persecution. Refer also to **Chapter 43.3** for documenting any potential fines issues.
- (4) Advise the alien of the purpose of the referral and that the alien may consult with a person or persons of his or her choosing, at no expense to the government and without delaying the process, prior to the interview. The Form **M-444**, Information about Credible Fear Interview, must be given to the alien and explained in a language the alien understands. The alien should sign two

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copies, acknowledging receipt of the information. One copy should be placed in the A file, and the other retained by the alien. Give the alien a current list of organizations and programs prescribed in **8 CFR 292** which provides free legal services.

(5) Arrange for detention of the alien according to local procedures. Although it is normally the responsibility of the detention and removal personnel officer to notify the Asylum office, in some circumstances, you must advise the appropriate Asylum office that an alien being detained requires a credible fear interview. The Asylum office should also be advised whether the alien requires an interpreter and of any other special considerations. It may be helpful for the officer to provide the asylum officer with information on the alien's gender, the language(s) the alien speaks, whether the alien is traveling with a spouse or children, and any special medical needs or unusual behavior. Forward the A file to the location where the credible fear interview will take place. Prepare Form **I-259** and serve it on the affected carrier. Complete Form I-94 for NIIS entry notated "Detained at _____ pending credible fear interview pursuant to section **235(b)(1)(B)** of the Act. (Date), (Place), (Officer)".

An asylum officer will conduct an interview to determine if the alien has a credible fear of persecution, either at the detention facility or at a location arranged through the Asylum office having jurisdiction over the place of apprehension, depending on location. If the alien is determined to have a credible fear of persecution or torture, the asylum officer will refer the alien before an immigration judge for full consideration of the asylum and withholding of removal claim in proceedings under section **240** of the Act. If the alien is found not to have a credible fear of persecution or torture, following review by a supervisory asylum officer, the asylum officer will order the alien removed pursuant to section **235(b)(1)**, unless the alien requests that the determination of no credible fear be reviewed by an immigration judge. If the alien makes such a request, the asylum officer will use Form **I-863**, Notice of Referral to Immigration Judge, checking box #1, to refer the alien to the immigration judge for review of the credible fear determination. If the immigration judge determines that the alien does not have a credible fear of persecution, DHS will present the alien for removal to the carrier on which he or she arrived. There may be some situations where the actual carrier of arrival and port of embarkation cannot be ascertained. Such cases may require additional processing, including detention, in order to arrange for travel documents and transportation at government expense (User Fee).

If an alien claims a fear or concern about possible harm, and later asks to be sent home, the officer should review the sworn statement carefully with the alien to determine if there was a misunderstanding. If there was no misunderstanding, the officer should prepare a second Form **I-867A&B** and note that the alien has changed his or her mind. The officer must consult with an asylum supervisor before executing the decision. If the asylum supervisor concurs that it is appropriate to remove the applicant without a credible fear interview, the name of the supervisor, and the date and time of concurrence should be noted in the A file. Both the original and final Form I-867A&B must remain in the file.

If the alien maintains throughout the sworn statement that he or she has no fear of return and later claims a fear or a desire to apply for asylum, the applicant should be referred for a credible fear interview. The officer should reinterview the alien and complete an addendum to the statement, re-asking the fear questions. The officer should void the original Form **I-860** and complete a new Determination of Inadmissibility. The Form **I-296** should be voided if the verification of removal section has already been completed, and the officer should complete a memo to file, explaining the circumstances of the case.

(e) Claim to lawful permanent resident, asylee, or refugee status, or U.S. citizenship.

(1) An expedited removal case involving an alien who claims to be a U.S. citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee under section **207**, or to have been granted asylum under section **208**, should be handled very cautiously to ensure that the rights of the individual are fully protected. The expedited removal authority provided by IIRIRA is a powerful tool and there are grave consequences involved in incorrectly processing a bona fide citizen, LPR, refugee or asylee for removal. You should be extremely aware of those consequences when you are using this tool. Although the statute and regulations provide certain procedural protections to minimize the risk of such consequences, you should never process a case for expedited removal which you would not feel satisfied processing for a hearing before an immigration judge.

If the alien falsely (or apparently falsely) claims to be a U.S. citizen, LPR, refugee, or asylee, and is not in possession of documents

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to prove the claim, make every effort to verify the alien's claim prior to proceeding with the case. This can be accomplished through a thorough check of the data systems, manual request to the Records Division, careful questioning of the alien, or prudent examination of documents presented. Use whatever means at your disposal to verify or refute a claim to U.S. citizenship, including verification of birth records with state authorities, etc.

(2) Verifiable claim. When inspecting an alien whose claim to LPR status has been verified, determine whether the alien is considered to be making an application for admission within the meaning of section **101(a)(13)(C)**. [See discussion in **Chapter 13.4**.] Although the LPR may not be considered to be seeking admission, he or she is nonetheless required to present proper documents to establish his or her status as an LPR. If the claim is verified and the alien appears to be admissible except for lack of the required documents, consider a waiver under section **211(b)** for an LPR. When inspecting an alien who had previously been admitted as a refugee or granted asylum status and who had departed the United States without having applied for a refugee travel document, consider accepting an application for a refugee travel document in accordance with **8 CFR 223.2(b)(2)(ii)** for a refugee or asylee. Refer to **Chapters 13.2** and **17.5** for a discussion of this and other options for admitting returning residents.

If the claim is verified, but a waiver is not available or is not clearly warranted, such as when fraud was committed in obtaining status or upon entry, or in cases where the alien appears to have abandoned his or her residence, you may initiate removal proceedings under section **240** of the Act. Procedures for preparing for removal hearings and processing inadmissible LPRs are discussed in **Chapters 17.6** and **17.10**. Although the charging document, Form **I-862**, Notice to Appear, is the same for both inadmissible and deportable aliens, immigration officers performing inspections at a POE are authorized to issue a Notice to Appear only to arriving aliens, as defined in **8 CFR 1.1(q)**. If an LPR is not considered to be seeking admission, he or she is not an arriving alien. If a Notice to Appear is to be issued charging the returning resident as a deportable alien, the Notice to Appear must be issued by one of the authorizing officers listed in **8 CFR 239.1**, including port directors.

(3) Unverifiable Claim. If no record of the alien's lawful admission for permanent residence, grant of refugee status, admission as an asylee, or citizenship can be found after a reasonably diligent search, advise the alien that you are placing him or her under oath, or take a declaration as permitted in 28 U.S.C. 1746, and warn the alien of the penalties for perjury. Section 1746 of the Title 28 U.S. Code reads as follows:

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him as true under penalty of perjury, and dated, in substantially the following form:

- If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
- If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

The penalties for perjury contained in 18 U.S.C. 1621 (perjury generally) provide for fine and imprisonment of not more than 5 years, or both. The penalties for perjury contained in 18 U.S.C. 1546 (fraud and misuse of visas, permits, and other documents) provide for fine and imprisonment of not more than 10 years, or both.

If the alien declares under oath, pursuant to the advice above, that he or she is a citizen, LPR, refugee, or asylee, order the alien removed under section **235(b)(1)(A)** and refer to the immigration judge for review of the order. Complete Form **I-860** after completing all procedures in this chapter. Serve the Form **I-860** on the alien. Serve Form **I-259** on the affected carrier, if

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appropriate. Use Form **I-863**, checking Box #4, to refer the removal order to the immigration judge for review. The alien should be detained pending review of the order by the immigration judge. In the event an alien who has made a verbal claim to citizenship or to LPR, refugee, or asylee status declines to make a sworn statement, conclude the expedited removal process in the same manner as any other nonimmigrant in the same situation.

If the immigration judge determines that the individual is not a citizen or is an alien who has never been admitted as an LPR, refugee, or asylee, the expedited removal order will be affirmed and the alien removed. There is no appeal from the decision of the immigration judge. If the judge determines that the individual is a citizen, the process is terminated and the citizen is released. If the judge determines that the alien was once admitted as an LPR, refugee, or asylee, and that status has not been terminated, the judge will vacate the expedited removal order and the government may initiate removal proceedings under section **240**.

(f) Special Treatment of Unaccompanied minors. When a minor (a person under the age of eighteen) who is unaccompanied and appears to be inadmissible under section **212(a)(6)(C)** or **(7)** of the Act, officers should first try to resolve the case under existing guidelines. Existing guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, if applicable, including withdrawal of an application for admission.

(1) Withdrawal of application for admission by minors. Whenever appropriate, officers should permit unaccompanied minors to withdraw their application for admission rather than placing them in formal removal proceedings. In deciding whether to permit an unaccompanied minor to withdraw his or her application for admission, every precaution should be taken to ensure the minor's safety and well-being. Factors to be considered include the seriousness of the offense in seeking admission, previous findings of inadmissibility against the minor, and any intent by the minor to knowingly violate the law.

Before permitting a minor to withdraw his or her application for admission, the officer must be satisfied either that the minor is capable of understanding the withdrawal process, or that a responsible adult (relative, guardian, or in cases where a relative or guardian is not available, a consular officer) is aware of the actions taken and the minor's impending return. Officers must attempt to contact a relative or guardian either in the United States or in another country regarding the minor's inadmissibility whenever possible. A minor brought to the United States by a smuggler is to be considered an unaccompanied minor, unless the smuggler is an adult relative (parent, brother, sister, aunt, uncle, or grandparent) or legal guardian. If the smuggler is not a relative or guardian, he or she should not be consulted concerning the disposition of the minor's case.

The true nationality of the minor must be ascertained before permitting the minor to withdraw. Another factor to consider is whether the port of embarkation to which the minor will be returned is the country of citizenship of the minor. A minor may not be returned to or be required to transit through a country which may not be willing or obligated to accept him or her. If the minor is being returned to a third country through a transit point, officers must ensure that an immediate and continuous transit will be permitted.

When deciding whether to permit the minor to withdraw his or her application for admission, officers must also make every effort to determine whether the minor has a fear of persecution or return to his or her country. If the minor indicates a fear of persecution or intention to apply for asylum, or if there is any doubt, especially in the case of countries with known human rights abuses or where turmoil exists, the minor should be placed in removal proceedings under section **240** of the Act. If there is no possibility of a fear of persecution or return and the INS permits the minor to withdraw his or her application for admission, the consular or diplomatic officials of the country to which the minor is being returned must be notified. Safe passage can then be arranged, and after all notifications to family members and government officials have been made, the minor may be permitted to withdraw.

(2) Minors referred for section **240** proceedings. Except as noted below, if a decision is made to pursue formal removal charges against the unaccompanied minor, the minor will normally be placed in removal proceedings under section **240** of the Act rather than expedited removal. The unaccompanied minor will be charged under both section **212(a)(7)(A)(i)(I)** of the Act as an alien not in possession of proper entry documents and section **212(a)(4)** of the Act as an alien likely to become a public charge. This additional charge renders the minor subject to removal proceedings under section **240** of the Act. Other charges may also be lodged, as appropriate. As a general rule, minors should not be charged with section **212(a)(6)(C)** of the Act, unless circumstances indicate that the alien clearly understood that he or she was committing fraud or that the minor is knowingly involved in criminal activity

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relating to fraud.

Minors who are placed in section **240** proceedings and who are not in expedited removal may either be released in accordance with the parole provisions, or placed in a DHS-approved juvenile facility, shelter, or foster care in accordance with existing juvenile detention policies and the Flores v. Reno settlement. At all stages of the inspections and removal process, officers should take every precaution to ensure that the minor's rights are protected and that he or she is treated with respect and concern. [See **Appendix 17-4**, policy memorandum discussing the Flores settlement.]

(3) Expedited removal of minors. Under limited circumstances, an unaccompanied minor may be placed in expedited removal proceedings. The minor may be removed under the expedited removal provisions only if the minor:

- has, in the presence of a DHS officer, engaged in criminal activity that would qualify as an aggravated felony if committed by an adult; or
- has been convicted or adjudicated delinquent of an aggravated felony within the United States or another country, and the inspecting officer has confirmation of that order; or
- has previously been formally removed, excluded, or deported from the United States.

If an unaccompanied minor is placed in expedited removal proceedings, the removal order must be reviewed and approved by the director of field operations, or person officially acting in that capacity, before the minor is removed from the United States. This is in addition to the normal supervisory approval required of all expedited removal cases.

(4) Treatment of Minors during Processing. Officers should treat all minors with dignity and sensitivity to their age and vulnerability. Processing of minors should be accomplished as quickly as possible. Like all persons being detained at POEs, officers must provide the minors access to toilets, sinks, drinking water, food, and medical assistance if needed. Minors may not be placed in short-term hold rooms, nor may they be restrained, unless they have shown or threatened violent behavior, they have a history of criminal activity, or there is a likelihood the juvenile may attempt to escape. Unaccompanied minors should not be held with unrelated adults. Any detention following processing at the POE must be in accordance with the Flores v. Reno settlement.

(Paragraph (f) added 8/21/97; IN97-05)

(g) Minors accompanied by relatives or guardians. If formal proceedings are initiated against an accompanying adult relative or legal guardian, the minor should be placed in the same type of proceeding (i.e. expedited removal or **240** proceedings) as the adult. However, withdrawal of application for admission by the minor should be considered whenever appropriate, even though the relative or guardian may remain subject to formal removal proceedings.

(h) United Nations High Commissioner for Refugees monitoring guidelines. The United States has signed various international agreements accepting an obligation to protect refugees and asylum-seekers from return to persecution or torture, and to follow certain international standards in processing those needing protection. The organization that monitors compliance with these agreements and provides guidance on their implementation is the United Nations High Commissioner for Refugees (UNHCR). As such, the United States has a responsibility to cooperate with UNHCR's requests for access to processes involving those needing protection. Therefore, DHS believes it is appropriate for the UNHCR to observe, to the extent within the resources available to the UNHCR, the expedited removal process to make a fair and impartial assessment of the process.

For these reasons, full cooperation with visiting UNHCR delegations is essential. Below are general guidelines and procedures to follow regarding a visit from the UNHCR. While the guidelines concentrate on the limits of the UNHCR's access and potential problem areas, in our experience the UNHCR has approached site visits professionally and responsibly, providing us with positive comments and useful feedback, and problems are unlikely to arise during its site visits.

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(1) UNHCR requests. The UNHCR has agreed to make all requests to observe the expedited removal process at POEs or the credible fear interview at detention facilities in writing to the Office of Field Operations. If any field office receives a request for access to the expedited removal process from a representative of the UNHCR, the field office should advise the representative to make the request to the Office of Field Operations.

Written requests from UNHCR to conduct a site visit must be received a minimum of two weeks in advance. CBP will consider written requests submitted less than two weeks in advance for only exceptional circumstances. The request will include the purpose and site (s) of the visit, the duration of the visit, the complete list of names of the UNHCR staff on the delegation, the title and official responsibilities of everyone on the delegation, the information about the person leading the delegation, and any special needs or requests. The Office of Field Operations will evaluate the request in consultation with the field and make a decision as quickly as possible.

Should there be a need to clarify or confirm the identities of visiting team members, local CBP staff will call the Office of Field Operations.

(2) Scope of UNHCR's access to secondary inspection processing. The UNHCR has agreed to maintain the confidentiality of any information to which it has access such as training materials and procedures manuals. Therefore, it can be given full access to tour the primary and secondary inspection areas, holding cells, food storage facilities, and other areas related to processing of expedited removal cases. While at the port, UNHCR representatives should be accompanied by a CBP officer, unless CBP has arranged for the representatives to talk confidentially with an alien. For safety reasons, the representatives will not be allowed to participate or be used as witnesses in baggage and personal effects search or body-pat-down search. Viewing of the baggage search may be allowed if there is no safety concern or threat to the representatives. The representatives should not be given access to computer databases or programs containing sensitive law enforcement information, but may be given a demonstration of certain programs in relation to the expedited removal process. The representatives may ask questions about the process, so long as their movements and the timing of their questions do not impede the processing of cases.

The port will designate a supervisor on the shift to whom the UNHCR team may direct questions about the processing. As time permits, the supervisor may arrange for the representatives to talk directly with line officers. During a secondary inspection, when possible, the representatives should be allowed to view the secondary inspection from an area (seated or standing) that would enable them to hear and see all participants.

The port will designate one or more secondary and primary officers on the shift to whom the UNHCR representatives may direct questions. Designation of these officers should be initially on a voluntary basis.

(3) Interactions between UNHCR and aliens in secondary inspection. If UNHCR representatives ask to sit in on interviews of either specific aliens or a random sample of aliens in secondary, the CBP officer should explain to the alien that the UNHCR representatives do not work for the U.S. Government, but work for the United Nations, and have asked to observe some interviews to understand the U.S. process. No more than two representatives may be present during the interview, and business cards will be provided to the alien after the interview is completed. The officer should explain that it is the alien's decision whether the UNHCR representatives are allowed to observe the interview or not, and that CBP will ask the same questions and follow the same procedures either way. If the alien does not want the UNHCR representatives to sit in on the interview, his or her wish should be respected. If the applicant requests to talk briefly and confidentially with the UNHCR representatives, he or she may do so after the officer finishes the secondary interview and process.

If the alien indicates that he or she does not want the presence of the representatives, and the representatives appear to be questioning that decision, a supervisor should be notified immediately and should support the alien's decision to be interviewed without UNHCR observers with no further discussion. The CBP supervisor will provide an explanation to the UNHCR delegation lead official that the interview will not continue with their participation. Additionally, the supervisor reserves the right to terminate the entire site visit, any part of an interview, or a particular portion of the site visit. A reason must be provided to the lead UNHCR official at the time of the termination. Prior to a decision to terminate the entire site visit, the supervisor must immediately advise the

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Headquarters Field Operations point-of-contact through appropriate channels. The alien's agreement or refusal to have a UNHCR presence at the interview should not be factored into the officer's decision to refer a case for a credible fear interview.

If an alien agrees to be interviewed with the UNHCR representatives present, the UNHCR representatives may observe the interview, and will be given a few minutes at the end of the interview to communicate directly with the applicant. In general, the UNHCR representatives should not ask questions or make comments during the interview. The CBP officer may, however, at his or her discretion, allow the representatives to make a comment or ask a question if the officer believes that it is facilitating the progress of the interview. Any interruptions of the interview will be recorded in the sworn statement.

CBP is not responsible for interpreting the interview verbatim or locating an interpreter to provide a verbatim interpretation in such circumstances. If the CBP officer and the alien are communicating in a language other than English without the assistance of an interpreter, and the representatives do not understand the language, the officer should explain what is being stated or asked.

When the interview is concluded, the UNHCR representatives should be invited to communicate briefly with the applicant. Any questions or statements asked by the representatives or the applicant, and any responses, will be recorded in the sworn statement.

If the UNHCR team or the alien requests a brief private discussion, the request should be accommodated within the constraints of the facility. Normally the issues aliens bring up with the UNHCR are the same like those they bring up during secondary inspections, e.g.: when can they call a relative, how long does the process take, and so forth. This request should be noted on the sworn statement. Generally, the meeting should take place out of hearing, but not out of sight, of CBP staff. If the UNHCR team requires translation and is not able to locate its own telephonic interpreter quickly, an interpreter should be provided when feasible. The local Asylum office will have been notified that the UNHCR is conducting a site visit and can cover the cost of interpretation using a commercial interpreter service if necessary. However, if an interpreter cannot be located quickly and there are time constraints (such as finishing in time to put an applicant on a scheduled plane), the officer should consult with his or her supervisor to decide whether there are compelling reasons for delaying the process to provide the representatives time to obtain an interpreter.

If the UNHCR team reports back to the CBP officer, after a private conference, that the alien alleged abusive treatment, either by CBP, an airline employee, or a smuggler, a supervisor should be notified immediately and the alien should be asked further questions in the representatives' presence. If the UNHCR team indicates that the alien has expressed a fear during the private conference which was not expressed during the interview with the CBP officer, the officer should ask the alien, in the representatives' presence, whether the alien is afraid of or concerned about return and would like to discuss his or her situation privately with an asylum officer. The alien's answer to the above questions should be recorded in the sworn statement or in a memo to file.

If the alien appears unwilling to discuss the alleged claim of fear with the CBP officer, states that the UNHCR representatives misunderstood, or does not want to be detained for a credible fear interview, the officer should call the local Asylum office for guidance on whether to refer the alien for a credible fear interview.

(4) Follow-up. If serious problems or misunderstandings arise during the UNHCR site visit, a CBP supervisor should immediately contact the Headquarters Field Operations representative who set up the meeting. After the UNHCR visit is completed, the field office will provide the Office of Field Operations feedback on how the visit went and alert it to any issues which the UNHCR representative (s) might raise.

(Added IN 00-22.)

(h) Non-governmental organizations secondary inspection access guidelines.

Since the implementation of expedited removal, many non-governmental organizations (NGOs) have requested access to observe and monitor this process at POEs. It is the DHS policy to promote a fair and open process by granting such requests for access to the extent that the visits do not compromise fundamental law enforcement interests and confidentiality as well as privacy rights. The aim of this policy is to achieve a reasonable balance between providing access to government information and protecting fundamental law

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enforcement obligations and the individual interests of arriving aliens. The following guidelines provide the procedures and practices to be followed by field offices and POEs receiving requests for visits or tours of CBP inspection facilities and operations by NGOs. An NGO may be generally defined as a group of individuals outside of the public and for-profit sectors, usually established to serve the interests of their communities, of a particular target group, or the common good. This definition should be interpreted broadly, and may include local and international organizations, business and professional associations, chambers of commerce, and policy development and research institutes. It is not intended to include the media or persons or organizations whose intent is to provide legal representation to individuals during secondary inspection processing at the time of their visit.

(1) Requests for visits.

- Any request to visit an inspection facility or observe secondary immigration inspection processing must be made in writing to the director of field operations having jurisdiction over the POE to be visited. The request must be made sufficiently in advance of the proposed visit, normally at least two weeks, to allow coordination with all affected parties, including facility operators and other agencies as appropriate. Special tours by visiting dignitaries or other special interest groups may be arranged at the discretion of the director of field operations, or at the request of headquarters offices.
- The request will include the proposed purpose and site(s) of the visit, the duration of the visit, the full names of the organization and the proposed visitors, whether they will have any special needs or requests, and point of contact. The field office receiving the request, in consultation with the site to be visited, will make a prompt decision and notify the interested party either in writing or telephonically of that decision. Whenever possible, visitors should be provided with a copy of these guidelines prior to their arrival at the POE.
- The size of the group and the number and duration of visits permitted are to be determined by the director of field operations, based on operational and resource considerations. If the director of field operations, port director, or other official determines that the visit will have an adverse effect on port operations, staffing resources, or the confidentiality or integrity of the inspection process, the request may be denied, the visit postponed, or the terms of the visit limited in a way appropriate to the potential adverse effects. If the director of field operations feels that an excessive number of requests would have an adverse impact on operations, he or she may ask the NGOs to consolidate their requests for visits. The director of field operations may also deny, limit, or terminate a visit based on particular law enforcement or security concerns, but should not deny such requests as a routine matter.
- If the director of field operations denies the request, the requesting party will be notified, in writing, of the specific reasons for the denial.
- The field office will retain a record of all POE visit requests. The record will include, at a minimum, the number of requests made, the disposition of each request, the name of the organization and the number of participants in each visit, and the date on which each visit occurred. Field offices may include comments on significant incidents, impact on operations, or other relevant information.

(2) Scope of access.

- Visitors will be escorted through the facility at all times. They may be present only in parts of the inspection area that are authorized by the official escorting them. For safety concerns, they will not be allowed to participate in baggage searches or be used as witnesses in baggage or body searches. They may be permitted to view a baggage search, with the consent of the alien, unless the officer determines there may be a safety concern or threat.
- Visitors may be permitted to observe the overall immigration inspections process, both primary and secondary, in such a way that it does not interfere with port operations. The port director may designate a supervisor or officer to whom the visitor may direct questions about the processing. As time and circumstances permit, the port official may arrange for visitors to talk directly

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to officers.

- Visitors may observe individual immigration secondary inspections of applicants for admission only with the consent of the applicant and the port officials. The port official will explain to the alien who the visitor is and what he or she wishes to observe. The alien's consent must be entirely voluntary, and should be noted in the sworn statement, if taken, or otherwise in the file. Visitors may not interfere with or interrupt the inspection or question applicants for admission. They may ask the inspector questions about the case being processed only when the alien is not present. Inspectors must not divulge any information about any secondary case that may compromise law enforcement confidentiality or the privacy of any alien. Visitors may not speak confidentially to an alien during the inspection process or while the alien is in CBP custody at the POE.
- CBP is not responsible for interpreting the interview verbatim for visitors or locating an interpreter to provide a verbatim interpretation in cases where the CBP officer and the alien are communicating without the assistance of an interpreter in a language other than English.
- Visitors may not have access to computer databases or programs containing sensitive law enforcement nature of the information, but may be given a demonstration of programs that are not law enforcement sensitive. They may not observe video display monitor outputs of systems data on screen or in print relating to specific applicants for admission.
- Visitors may not film, photograph, videotape, or audiotape POE operations, inspectors, or applicants for admission.
- CBP reserves the right to terminate the entire site visit, a particular portion of the site visit, or access to any part of an interview, if it determines that the visit has become disruptive to port operations or may in any way compromise the integrity of the inspection process. For safety reasons, port officials may remove visitors from the inspection area or terminate the visit if any visitor or applicant for admission becomes unruly or violent, or if any other safety hazard becomes apparent.
- Any violations of this policy by visitors to POEs will be documented in writing, and any significant incidents or interruptions will be reported to Headquarters Office of Field Operations through the chain of command.

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17.16 Members and Representatives of Terrorist Organizations. (Added IN98-04)

(a) General. Section 212(a)(3)(B) of the INA, as amended by the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, added new grounds of inadmissibility applicable to members and representatives of terrorist organizations. Section 219 of the Act provides authority for the Secretary of State to compile and publish an official list of organizations whose members and representatives are subject to this ground of inadmissibility. The official list was published in the Federal Register on October 8, 1997. [See Appendix 17-5 of this manual.]

These new procedures are extremely important enforcement tools designed to keep such aliens out of the U.S. and prevent domestic terrorism. Some members and representatives of designated terrorist organizations may possess a visa issued prior to publication of the list of terrorist organizations. Such aliens are nonetheless inadmissible if they fall within the descriptions discussed above.

(b) Definitions.

(1) Representatives. Under Section 212(a)(3)(B)(i)(IV) of the Act, an alien who is a "representative" of a designated terrorist organization is inadmissible. Section 212(a)(3)(B)(iv) of the Act states that the term "representative" includes: an officer, official or spokesman of an organization, and any person who directs, counsels, commands or induces an organization or its members to engage in terrorist activity.

If an alien falls within this definition, he or she is inadmissible. Evidence of past representative status is a highly probative, although not dispositive, factor which should be considered when determining if current representative status exists.

(2) Members. Under Section 212(a)(3)(B)(i)(V) of the Act, an alien who is a member of a designated terrorist organization is inadmissible if the alien "knows or should have known" the organization is a terrorist organization. The statute does not define "member." However, membership does not require actual participation in terrorist activities. Some organizations require that an individual take an oath or perform an act that is a prerequisite of membership, but some do not. The Service must determine whether an alien is member of a designated organization on a case-by-case basis. Factor relevant to determining membership include but are not limited to the following:

- Past membership without evidence that the alien terminated membership
- Acknowledgment of membership by the organization, by other members, or by the alien
- Actively working to further the organization's aims and methods
- Occupying a position of trust in the organization, either past or present

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- Receiving financial support from the organization, such as a scholarship, salary or pensions
- Contributing money or other items of value to the organization
- Frequent association with other members
- Participation in the organization's activities, even if lawful
- Voluntarily displaying symbols of the group
- Receiving honors and awards given by the group
- Determination of membership by a competent court

These factors must be considered in their entirety, and some may not be sufficient in isolation to support a finding of membership. For example, while contributing money to an organization in itself does not necessarily indicate membership, it may indicate membership in certain situations, depending on the nature of the organization.

To make a finding of inadmissibility, the Service must determine that an alien is not only a "member" of a designated organization, but additionally, that the alien "knows or should have known" that the organization is a terrorist organization. This "mens rea" or "state of mind" determination should also be made on a case-by-case basis. Factors relevant to this determination are: the specific organization involved; classified or unclassified information regarding the alien's participation in the organization, including the alien's statement; and any other relevant information.

(c) Procedures. In order to implement these provisions, the following procedures must be strictly followed:

(1) The list of terrorist organizations will be distributed to all ports-of-entry and included in the Inspector's Field Manual. Port directors will ensure that all inspectors and other officers are familiar with and have ready access to the list at both primary and secondary inspection booths.

(2) Immigration inspectors who have reason to believe an applicant for admission may be a member or representative of an organization on the list must refer the applicant for secondary inspection. Inspectors may develop a suspicion concerning such membership as a result of questioning during primary inspection or as a result of lookout information or other intelligence. In any case where the secondary officer establishes inadmissibility under this provision, he or she must take a sworn statement addressing the factors described in paragraph (b).

(3) If the inspecting officer concludes that the alien is inadmissible, the officer must inform the alien that he or

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she is inadmissible to the United States and complete processing for a removal hearing, withdrawal, or temporary removal, as appropriate and in accordance with outstanding instructions. [See Chapters 17.2, 16.6 and 17.7 of this manual.] The type of removal proceeding will depend on the alien's status and whether the evidence is classified or unclassified.

(4) Forward copies of all sworn statements and other relevant documentation to Headquarters, Office of Field Operations, attention: Counterterrorism Coordinator.

(5) The Counterterrorism Coordinator will take appropriate action, which may include consultation with other agencies, such as the Federal Bureau of Investigation and the Department of State.

17.17 Technical Notes. (Redesignated as 17.17, previously 17.16; IN98-04)

(a) [Reserved] (Removed by CBP 3-04)

(b) Inadmissibility after Alien Leaves Primary but Remains in Inspectional Area. There are occasions when an alien, after completing primary inspection, is intercepted by another CBP officer and is found to be inadmissible. Such alien may be held for removal proceedings if he or she has not left the confines of the federal inspection area, regardless of the fact that the passport may have been stamped "Admitted" and an I-94 issued. Case law has made it clear that an alien does not effect an "entry" into the United States for immigration purposes unless all of the following elements are present: (1) the alien is physically present in the territory of the United States; (2) the alien has been inspected and admitted for immigration purposes or the alien has actually and intentionally evaded inspection; and (3) the alien is free from official restraint. *Correa v. Thornburgh*, 901 F.2d 1166 (2d Cir. 1990); *in re Dubbiosi*, 191 F. Supp. 65 (E.D. Va. 1961); *Matter of Pierre*, 14 I & N Dec. 467 (BIA 1973) [See also **General Counsel Opinion 91-37**]. Although the definition of "entry" is no longer defined in the INA, and has been replaced by the definition of "admission" and "admitted" in section **101(a)(13)**, the general provisions still apply in this context. (Revised by CBP 3-04)

17.18 Use of Interpreters and Interpreter Services.

(a) **General.** In the inspections process, an interpreter may be required to ensure that an alien being interviewed understands the process. The alien needs to be given an opportunity to respond to questions during a sworn statement and to be able to understand and respond to any charges and allegations brought against him or her. It is the responsibility of the officer to read and explain to the alien, in the alien's native language or in a language the alien understands, any determination regarding admissibility and/or removal from the United States. In an interview requiring an interpreter, the role of the interpreter is crucial and any misinterpretation can lead to an incorrect determination of an alien's admissibility.

During the expedited removal process, an interpreter may be required to ensure that the alien understands the allegations and the removal order. As part of the process, the applicant for admission is questioned and a sworn statement taken to establish inadmissibility and to ascertain that the alien has no fears or concerns about being returned to his or her home country or country of last residence. The officer needs to be aware of whether the alien requires an interpreter to convey any concerns or fears he or she may have. Any alien who indicates an intention to apply for asylum or a fear of persecution or torture may not be removed until an asylum officer interviews the alien to determine whether he or she has a credible fear of persecution or torture and warrants a full asylum hearing before an immigration judge.

The International Religious Freedom Act of 1998 (IRFA), PL 105-292, 112 Stat. 2787, section 603, seeks to safeguard aliens against the inadvertent use of interpreters who may have hostile biases. In particular, when interviewing possible asylum applicants, inspectors are

prohibited from using airline personnel or other interpreters provided by the airline if the airline is owned by a government that is "known to be involved in practices which would meet the definition of persecution under international refugee law." Since an inspector may not actually know which foreign carriers are privately owned and which are state owned, inspectors should use other officers or commercial interpreters whenever possible.

(b) Interpretations and Translations. Ports of entry (POEs) should accommodate, whenever possible, special requests from an alien, such as a request for a male or female interpreter or request for an interpreter with a specific dialect or from a specific part of the country. Officers are to monitor the quality of interpretation the alien and the translation. If a problem with the interpretation/translation persists, a new interpreter shall be obtained.

Officers are also responsible for informing the interpreter of their role in the process. Below are some guidelines to be aware of when using interpreters.

(1) Interpreters and Translators. If the alien being inspected cannot speak English well enough to fully understand the questions and answer them without difficulty, the alien must be provided with an interpreter. While some aliens can speak and understand English well enough to be interviewed without an interpreter, many aliens may feel more comfortable with an interpreter during the interview.

It is important to know who is qualified to serve as an interpreter and who is not. Officers may use another officer who is fluent in the alien's language, a commercial interpreter services company, a family member, another passenger, an employee or representative from an airline that is not foreign-owned, or on a limited basis, the legacy Immigration and Naturalization Service (INS) New York Interpreters Unit. In sensitive cases, particularly those involving expedited removal, officers should use professionally trained and certified interpreters, rather than family members, other passengers, or airline employees.

(2) Beginning the Interview. Before an interview with an alien, the officer shall emphasize to the interpreter (whether it be another officer, contract interpreter, family member, airline employee, or other individual) the importance of interpreting verbatim, without adding or omitting any information. If a translation of a form(s) in the alien's language is needed, the officer will provide the interpreter with a copy of the form(s), either by physically handing the form to the interpreter, or by faxing a copy of the form(s) to the interpreter before the interview takes place, if the interpretation is being conducted telephonically.

Officers should stress to interpreters the confidentiality of all information discussed, and that the interpreter must remain neutral and objective throughout the interview. The interpreter should also be told that the interviewer or alien may ask for clarification whenever necessary.

(3) Interpreter's Certification. Currently there is no standardized interpreter's certification form. Therefore, a statement must be added at the bottom of the sworn statement. With an expedited removal case, an interpreter's certification may be added at the bottom of the Form I-867B (i.e.; "I _____ certify that I have literally and fully translated the questions asked by the officer into the _____ language and that I truthfully, literally and fully translated the answers to such questions into English.").

(4) Role of the Interpreter. The role of the interpreter is an important one. Interpreters allow the two parties to communicate with each other. Any misinterpretation may result in the applicant for admission being admitted, detained or removed in error. The fundamental role of the interpreter is to faithfully translate everything that is said, and nothing else. The interpreter guidelines specified below do not constitute an exhaustive list but are considered basic interpreter requirements.

- The interpreter must be fluent in both English and a language the alien fully understands

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- The interpreter is to remain neutral and impartial.
- The interpreter must not engage in conversation with the alien during the interview.

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interview.

- The interpreter must interpret verbatim using the officer and alien's choice of words, rather than the interpreter's choice of words.
- The interpreter should advise the officer if certain terminology cannot be interpreted verbatim and that an interpretation that will accurately convey the meaning of what is being said will be used instead.
- The interpreter should not try to resolve ambiguities or to paraphrase or summarize the exchange with the alien.
- The interpreter should use the same grammatical voice as the speaker (e.g., "I came to visit my family" rather than "He says he came to visit his family").
- The interpreter is not to adopt the role of inspector or take on a primary questioning role, or to indicate in any way his or her opinion of what the alien is saying.

(5) Competency of the Interpreter. Competency of the interpreter is not always easy to determine. There are a number of signs that indicate that there may be miscommunication or that the interpreter is having difficulty interpreting. The alien may indicate non-verbally that he or she is confused or does not understand. It is important that the officer look for signs of miscommunication between the alien and the interpreter. Below are some indications that misinterpretation exists:

- Response to the officer's question does not answer the question or only partially answers the question.
- Officer recognizes words not being interpreted.
- Interpreter uses many more words to interpret the question than the question appears to have.
- Lengthy response from the alien is interpreted from the interpreter as a very brief response.
- There is back-and-forth dialogue between the interpreter and the alien.
- The alien indicates non-verbally that he or she is confused, concerned, or does not understand.

If the officer notices any indication that the alien and/or interpreter do not fully understand each other, or if the officer and interpreter do not fully understand each other, the officer must stop the interview and contact another interpreter as soon as possible. The officer will note on the sworn statement or in a memo to the file that a second interpreter was obtained and include the reason. The officer, in consultation with the supervisor, has the discretion to obtain another interpreter for the interview. A statement/question should be added to the sworn statement to verify that the alien fully understands and feels comfortable with the interpreter (i.e.; "Do you understand and are you satisfied with the translation provided to you?")

(6) Factors Affecting the Accuracy of the Interpretation.

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- The interpreter may not be sufficiently competent in English or the other language.
- The interpreter may have biases.
- The interpreter may have difficulties interpreting from one language to another.
- The alien and interpreter may be communicating through a second language.
- The alien and interpreter may speak different versions of a language.
- Either the interpreter or the alien may exhibit unprofessional behavior.
- The alien may not know how to best communicate through an interpreter.
- There may be cultural differences between interpreter and alien.
- The disposition of the interpreter may not foster good communication.

(7) Ways to Facilitate the Interpretation Through an Interpreter.

- Address the alien directly, not the interpreter.
- Avoid conversations with the interpreter in front of the alien that are not interpreted to the alien.
- Be conscious of your speech patterns.
- Choose your words carefully and avoid idioms.
- Be conscious of the use of certain pronouns and avoid them if possible (i.e.; he, she, they). It is better to use words that denote relationship or refer specifically to an individual (by using name, position, etc.) rather than certain pronouns.
- Speak clearly, and when necessary, speak slowly.
- Ask straightforward questions and avoid making statements disguised as questions.
- Keep questions clear and simple, asking specific questions one at a time.
- Break down what is to be said into reasonable amounts of information.
- Ask the alien to break his or her statements into short segments so the interpreter can interpret accurately.
- Repeat the question/statement slowly or rephrase it if the interpreter does not appear to understand.
- Check with the interpreter to be sure that he or she understands what is being said, particularly at the beginning of the interview.
- Speak with both the interpreter and alien as soon as it appears that there is a problem in interpretation.
- Remind the interpreter of his or her role when necessary during the interview.

(8) Ending the interview. Before ending the interview with the alien and the interpreter, the officer shall stress to the alien the need for any information relevant to the case and address the alien's questions and concerns. With an expedited removal case, the mandatory closing questions on the Form I-867B must be asked. An interpreter's certification statement should be added at the bottom of the Form I- 867B (see subsection "(c)" above, "Interpreter's Certification"). The sworn statement must be read back to the alien, and a copy of the statement given to the alien after the alien and the officer(s) sign it. If the alien is being referred for a credible fear interview, the officer

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must provide the alien with the Form M-444, Information About Credible Fear Interview. This information should be provided while the interpreter is available, in order to ensure that the alien understands the information and to address any questions the alien may have. The 3/22/99 revision of Form M-444 has been translated into Mandarin, Arabic, Haitian Creole, French, and Albanian. If available, the officer should provide the alien with a Form M-444 in the language the alien understands. The officer must make sure that all needed interpretations and translations are completed before dismissing the interpreter/translator.

(c) Interpretation/Translation Services. When the officer cannot find an interpreter / translator at the POE, he or she should use an interpreter service. Each field office should have arrangements with one or more commercial interpreter services for telephonic interpretations 24 hours a day, 7 days a week. These services either have a contract with the agency or accept payment with a government credit card. Certified interpreters may also be available on a limited basis through the legacy INS's New York Interpreters Unit.

Following is a list of available commercial interpreter services. Others companies may also be available.

AT&T Language Line Services	(800) 419-9206	
CyraCom International	(800) 713-4950	(520) 745-9447
Language Learning Enterprises	(800) 234-0780	
Language Line Services	(800) 874-9426	(800) 523-1786
Language Services Associates	(800) 305- 9673	
TransPerfect Translations:	(212) 689-5555	

Chapter 18: Criminal Prosecution (Added INS - TM2)

- 18.1 General
- 18.2 Criminal Offenses Under the INA
- 18.3 Types of Arrest
- 18.4 Arrest Authority
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- 18.9 Procedures After the Arrest
- 18.10 Jurisdiction and Venue
- 18.11 Case Presentation
- 18.12 General Rules of Evidence
- 18.13 Definitions

References:

INA: Sections 235, 252, 287.

Other: Title 18 U.S.C; and Form M-69, The Law of Search and Seizure for Immigration Officers,

18.1 General.

Every criminal prosecution originates from the commission of an offense, which for the purposes of this text, generally occurs during the primary or secondary inspection process. This is also the case with administrative proceedings. Development of the investigation of either type is basically the same. The issues must be determined, all essential elements of the violation established, witnesses located and interviewed, and supporting evidence gathered.

The difference between the two types of investigations is the adherence or non-adherence to a strict application of the rules of evidence in the resulting administrative or court proceedings. Any evidence that is relevant may be accepted in an administrative hearing. The immigration judge (IJ) has wide discretionary latitude about what is acceptable as evidence in a hearing. The case can be continued or can be reopened upon discovery of more or better evidence. During criminal proceedings, however, a strict application of the rules of evidence holds true in the Federal Courts. A lost case is irretrievable. The case can not be reopened and the finding of better or more evidence will not allow for a retrial. Moreover, a lost case may have lasting negative impact on all future similar cases within that judicial district.

Although most investigations will be conducted at the port-of-entry, nothing in this chapter should be construed as restricting case development strictly to the confines of a port for port-related case development. The gathering of evidence, interviewing and locating witnesses, and executing requests from Assistant United States Attorneys are some examples where this may be applicable.

Typically, senior immigration inspectors are tasked with conducting investigations upon which criminal prosecution proceedings are based for port related cases, but this is not necessarily the case at all ports.

Text within this chapter is meant to familiarize officers with useful material and references for development of criminal cases for prosecution.

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18.2 Criminal Offenses Under the INA.

A chart of the criminal offenses within the purview of this chapter will be found in Appendix 18-1. The description of a criminal offense is abbreviated; therefore, officers should become familiar with the complete section of the INA and the United States Criminal Code.

A criminal offense is any violation of law that is punishable in a criminal proceeding.

Generally, offenses are classified as follows:

- (1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.
- (2) Any other offense is a misdemeanor.
- (3) Any misdemeanor, the penalty for which, as set forth in the provision defining the offense, does not exceed imprisonment for a period of six months or a fine of not more than \$5,000 for an individual and \$10,000 for a person other than an individual or both, is a petty offense.

The senior immigration inspector, or any other officer assigned these duties, is charged with a knowledge of the essential elements of each of the offenses set forth as well as the pertinent regulatory, manual, and instructional material.

18.3 Types of Arrest.

By regulation, the Attorney General has delegated administrative enforcement authority to the Commissioner, who in turn has re-delegated authority to immigration officers. The term immigration officer includes, among others, immigration inspectors, investigators, and border patrol agents [See Chapter 2.2 and sections 235, 252, 287 of the Act and, Form M-69, The Law of Search and Seizure for Immigration Officers].

An INS officer is authorized to make arrests for both administrative (civil) and criminal violations of the Act. The procedures for administrative and criminal arrests differ substantially and will be addressed separately.

(a) Administrative Arrest (Civil Arrest).

(1) Authority and Purpose of Administrative Arrest. The law strongly favors the use of an arrest warrant, even for a non-criminal arrest. Therefore, warrants are required unless a specific exception to the warrant requirement exists. The Act and regulations promulgated pursuant to the Act address the warrant requirement in administrative arrest situations, i.e., where the only legal action to be taken relates to the inadmissibility or deportability of an alien.

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Section 287(a)(2) of the Act empowers an INS officer to arrest without warrant any alien "who in his presence or view is entering or attempting to enter the United States" if he has "reason to believe" (probable cause) that the particular alien is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his or her arrest.

The regulations provide that an alien arrested without a warrant under section 287(a)(2) of the Act (e.g. for removal hearing) shall be taken without unnecessary delay before an INS officer other than the arresting INS officer and examined concerning his or her right to enter or remain in the United States. If no other qualified INS officer is readily available and it would entail unnecessary delay to take the alien before another INS officer, the arresting INS officer may examine the alien if the conduct of such an examination is part of the duties assigned to that arresting officer. The purpose of this procedure is for the examining officer to decide if there is sufficient evidence to determine whether the individual is an alien who is excludable or deportable.

Section 287(a)(5) of the Act authorizes immigration officers to execute and serve any warrant, subpoena, summons, order, or other process issued under the authority of the United States. Section 236(a) of the Act provides the authority to arrest an alien upon warrant of the Attorney General pending determination of his or her removability. When an order of removal becomes final, the alien must be detained for 90 days or released on bond pursuant to section 241(a) of the Act. INS may detain an alien under Form M-69 section 235 of the Act at any time to remove him or her after he or she has been finally so ordered pursuant to section 240 or 235(b) of the Act.

Likelihood of escape before a warrant can be obtained may be shown by evidence of previous escapes or evasions of immigration authorities, as well as lack of ties to the community such as family, home, or a job. Attempted flight from an INS officer or nervous behavior suggesting that the suspect is looking for an opportunity to abscond may justify an arrest without a warrant. The mobility of the suspect may justify a belief that the suspect is likely to escape before a warrant can be obtained.

(2) Warnings Required Following Administrative Arrest. Once the examining officer determines that formal removal proceedings will be instituted, certain advisories must be given to the alien (e.g., 8 CFR 287.1). The alien must be informed of the reason for the arrest, of the right to be represented by counsel of his or her choice at no expense to the Government, and of the availability of free legal services programs and or organizations recognized pursuant to 8 CFR 292.2 located in the district where the proceedings are to be held. The alien must be given a list of such programs and organizations. The alien also must be advised that any statement made may be used against him or her in a subsequent proceeding. If arrested without a warrant, the alien must be advised that a decision will be made within 24 hours whether custody will be continued or whether release on bond or on personal recognizance will be available. The I-862 (Notice to Appear) provides the required warnings to aliens placed in removal proceedings or granted administrative voluntary departure. Miranda warnings need not be given where the only contemplated legal action

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against the alien is removal or voluntary departure. Where the alien is in custody and the focus of the interrogation shifts to contemplated criminal prosecution, Miranda warnings must be given. If Miranda warnings are not provided, evidence derived is inadmissible in the criminal prosecution, unless it is otherwise discoverable.

Aliens arrested under section 287(a)(2) of the Act will be provided with a Notice of Rights and Request for Disposition, Form I-826. Upon request, such aliens will be given two hours to contact counsel before questioning can proceed. Complete the lower portion of the I-826 for those aliens who will be offered the option of voluntary return in lieu of removal proceedings, and who accept this offer.

(b) Criminal Arrest. Whenever feasible, INS officers should obtain a warrant prior to making an arrest. Section 287(a)(4) of the Act permits officers authorized by the Attorney General through regulation to arrest without a warrant any person for felonies cognizable under the immigration laws if the officer has reason to believe (probable cause) that the particular person committed such felony and is likely to escape before a warrant can be obtained.

Section 287(a)(5) of the Act has expanded the arrest authority of those officers designated by the Attorney General through regulation to have such authority. Pursuant to Section 287(a)(5)(A) of the Act an officer may arrest for offenses against the United States committed in his or her presence. Under Section 287(a)(5)(B) of the Act, an officer may arrest for any felony cognizable under the laws of the United States, if the officer has reason to believe (probable cause) that the person to be arrested has committed or is committing such a felony.

To exercise authority under section 287(a)(5)(A) or (B) of the Act, an officer must be performing duties relating to the enforcement of the immigration laws at the time of the arrest and there must be likelihood that the person will escape before an arrest warrant can be obtained. An officer must be certified as having completed a designated training program before exercising the authority contained in section 287(a)(5)(B) of the Act.

Other felonies that fall within the jurisdiction of the INS include those described in sections 243(a) and 276(d) of the Act as well as certain felonies in Title 18 of the United States Code that relate to the immigration of aliens. General criminal offenses are found in Title 18 of the United States Code. However, other criminal offenses can be found in other titles.

Rule 41 of the Federal Rules of Criminal Procedure sets forth the procedure for an arrest made pursuant to a criminal warrant. A person arrested without a warrant must be taken without unnecessary delay before a United States Magistrate Judge. The judicial determination of probable cause must be made as soon as possible, and in no case more than 48 hours of the arrest, absent an emergency or extraordinary circumstances. For purposes of computation, the time includes weekends and holidays. A person arrested must be taken without unnecessary delay before a magistrate-judge for arraignment.

18.4 Arrest Authority.

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(a) General. An arrest is the taking of control, under real or assumed authority, of another for the purpose of holding them to answer to a criminal or administrative charge. It is the seizing of another's body.

In the Federal system, the authority to make arrests varies from agency to agency. The scope of a Federal officer's authority is set forth by statute, and each individual officer must know the authority granted to them. For some officers, their authority is limited to certain geographical areas, while for others, their authority is limited to certain subject matter.

Therefore, just because a crime, Federal or otherwise, has been committed, it does not mean that a Federal officer may make the arrest. Officers may do so only if they have the statutory authority to arrest for that specific crime. An officer must be acting under real legal authority in taking a person into official custody. This power, or authority, to arrest must be statutory in nature as to the person, the place and the crime. There are three types of arrest authority: Federal statutory authority, state peace officer authority and citizens arrest authority.

(b) Federal Statutory Authority. Authority is granted to Federal officers/agents by acts of Congress. All Federal arrest authority is based on laws passed by the Congress. This authority varies from agency to agency.

(c) State Peace Officer Authority. Power granted by some states to some Federal officers/agents authorizing them to enforce state law. As separate sovereigns, each state may determine who is authorized to enforce the laws of that state. Usually this means that arrest power is granted to state police, sheriffs, and to various municipal police departments. Some states have enacted legislation designating Federal law enforcement officers as state peace officers with the power to enforce state law. Whether or not a specific Federal officer has this state authority is sometimes difficult to determine.

Some states enumerate by title those officers who qualify as peace officers, but most merely list some officials and then add either "or other officers who have the authority to arrest for specific or general crimes" or similar language. While this would appear to indicate that Federal officers are included, some state court decisions have limited their application to state law enforcement officers only. Other states have not had the opportunity to interpret the language and it is unsettled as to whether or not Federal officers are included. Do not assume that as a Federal officer you are considered as a state peace officer. You should check with the U.S. Attorney for your district for advice as to your "peace officer" status.

In addition, it may be possible to obtain state peace officer status by being "deputized" by a local sheriff or other state law enforcement official. If you are so deputized, be sure that it is not just an honorary deputation but actually carries with it the power of arrest.

In any event, recognize that the state authority is being granted to assist you in your enforcement of Federal law.

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If a Federal officer, acting as a peace officer, deprives an individual of any of the rights, privileges or immunities secured by the Constitution and laws of the United States, that Federal officer could be subject to a civil rights suit under 42 U.S.C. § 1983.

(d) Citizens Arrest Authority. The power is granted in some states to permit citizens who witness a felony crime to arrest for that crime. In the absence of Federal arrest authority, the law of the state in which the arrest takes place is controlling. Since most states do not confer peace officer status on Federal officers, any arrest made by them outside of their statutory Federal arrest authority will generally be treated as a citizen's arrest.

Federal law enforcement officers with statutory Federal arrest authority may make arrests with probable cause, with or without a warrant, for a Federal felony offense which is encompassed by their authority. If you make an arrest with probable cause for a crime over which you have statutory authority, you will generally be protected from criminal charges and/or civil liability.

While most, if not all, states allow the so-called citizen's arrest to be made, such authority should only be exercised in limited situations because a citizen making such an arrest acts at their own peril. In most states, a citizen is privileged to make an arrest only when they have reasonable grounds for believing in the guilt of the person arrested and a felony crime has in fact been committed.

Note that unlike an officer's authority to arrest on probable cause that a felony has been committed, the general rule for a citizen's arrest is that a felony must have occurred, a certain cause standard, instead of a probable cause standard.

An absolute defense to a false arrest suit based on a citizen's arrest is the actual conviction of the person arrested. Additionally, Federal law enforcement officers in states where a citizen's arrest may be made on "reasonable cause" would appear to be free of liability for false arrest where they have verified a NCIC felony warrant before making a citizen's arrest.

When an arrest is made for a state offense by a Federal officer under citizen's arrest authority, the accused should be turned over to a state peace officer, without undue delay, or brought before a state magistrate or judge in accordance with the law of that state. Federal officers must remember that the Terry doctrine will allow a limited detention for investigative matters, and once that continued detention becomes unreasonable, then either a valid Federal violation must be charged, peace officer status invoked, arrest as a citizen, or release the individual. Clearly, arresting for a Federal violation enables the Federal officer to remain within scope of Federal authority, and affords the highest level of civil liability protection. When you arrest under color of state law, exposure to liability increases, and a citizen's arrest requires that the citizen be right, or be liable.

18.5 Arrests Based on IBIS or National Crime Information Center (NCIC) Information.

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(a) Outstanding Federal Warrant. Authority to arrest is limited to agency statutory arrest authority. An officer should verify that a warrant is still valid and that the person to be arrested is the person specified on the warrant. The officer need not have the warrant in possession at the time of the arrest, but upon request the officer is required to show the warrant to the suspect as soon as possible. If the officer does not have the warrant at the time of the arrest, the officer should inform the suspect of the offense charged and of the fact that a warrant has been issued. See Rule 4(d)(3), Federal Rules of Criminal Procedure.

Should you discover that a person you have detained has an outstanding Federal warrant for a crime outside the scope of your statutory authority, you may detain the individual until an officer or agent with the proper authority can make the 'official' arrest. This could be either a Federal or state officer.

(b) Outstanding State Warrants. No Federal statute authorizes an arrest by a Federal law enforcement officer based on an outstanding state warrant. Federal officers making such an arrest are arresting either as a peace officer or a citizen depending on the law of the state in which the arrest is made.

However, when a person moves or travels in interstate or foreign commerce with the intent either:

to avoid prosecution, or custody or confinement after conviction for a felony under the laws of the place from which the fugitive flees, or

to avoid giving testimony in any felony criminal proceeding, or

to avoid service of, or contempt proceedings for alleged disobedience of lawful process requiring attendance,

that person has committed a Federal felony under 18 U.S.C. § 1073.

The better practice is to detain an individual for a reasonable period of time until state or local police officers can effect an arrest. When you call the state or local police officers, ask them if they want you to hold the suspect for them. If they say yes, state law may give you additional authority because of their request.

If an individual is detained beyond a reasonable time because of delay in the arrival of state or local police, the Federal officer will have, in fact, arrested the individual. Authority for that arrest will be based on state law and the existence of the outstanding warrant will provide the necessary probable cause.

18.6 Warrantless Searches and Seizures.

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(a) Border Searches. Routine searches by INS officers at an international border or the "functional equivalent" (International Airports) may be conducted without a warrant or probable cause. The interrogation and search of individuals and their effects at the border without probable cause or a warrant, is considered reasonable under the fourth amendment.

INS officers may interrogate individuals to determine admissibility without reasonable suspicion or probable cause. However, border searches are subject to constitutional limitations. Searches of persons, particularly body cavity searches and similar intrusive procedures, require some level of suspicion under the fourth amendment. Routine searches of persons or things may be made upon their entry or exit in or from the country without probable cause or a search warrant. The border search authority extends to all persons or vehicles attempting to enter or seen entering the United States.

(b) Extended Border Searches. An extended border search takes place after a person, vehicle, mail or some other property has crossed the border or cleared a prior checkpoint, or a significant amount of time has elapsed since the object first arrived in the United States. An extended search must be justified by "reasonable suspicion" that the subject of the search was involved in criminal activity. An extended border search requires:

reasonable suspicion of criminal activity;

reasonable certainty that the vehicle/person crossed the border; and

reasonable certainty that the condition of the vehicle/person remained unchanged since the border was crossed (often established through constant surveillance).

(c) Functional Equivalent. The broad authority which exists at the international border also extends to areas found to be the "functional equivalent". An airport which is the destination of a nonstop flight from outside the United States. If there is a mixture of domestic traffic with the international traffic, then the location will not be considered a functional equivalent. If there is any question of whether a particular area is a functional equivalent, an officer should apply reasonable suspicion and probable cause standards for searches and seizures that are applicable to interior locations.

The functional equivalent of the border may be the mouth of a canyon, or the confluence of trails or rivers. The key factor for consideration is whether the person or item entered into the country from outside. Three factors are used to determine whether a location other than the actual border is a "functional equivalent":

reasonable certainty that a border crossing has occurred;

lack of time or opportunity for the object to have changed materially since the crossing; and

execution of the search at the earliest practical point after the actual crossing.

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(d) Entry of Lands Within 25 Miles of the Border. Immigration officers may enter private lands, but not dwellings, within 25 miles from any external boundary of the United States for the purpose of "patrolling the border to prevent illegal entry of aliens into the United States" as "conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States."

A dwelling is protected under the fourth amendment of the constitution and entry should only occur with consent, exigent circumstances, or a properly executed search warrant.

As to private lands, the officer shall inform the owner or occupant that they propose to avail themselves of their power of access to those lands.

(e) Checkpoints. The Border Patrol conducts two types of inland traffic-checking operations: checkpoints and roving patrols. Border Patrol agents can make routine vehicle stops without any suspicion to inquire into citizenship and immigration status at a reasonably located permanent or temporary checkpoint provided the checkpoint is used for the purpose of determining citizenship of those who pass through it, and not for the general search for those persons or the vehicle. Inquiries must be brief and limited to the immigration status of the occupants of the vehicle. The only permissible search is a "plain view" inspection to ascertain whether there are any concealed illegal aliens.

In contrast, INS officers on roving patrol may stop a vehicle only if aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion (reasonable suspicion) that the vehicle contains illegal aliens. Absent consent, a more in-depth search requires probable cause for both types of inland traffic-checking operations.

18.7 Degrees of Suspicion.

(a) Mere Suspicion. At the border or its functional equivalent, an inspector needs only mere suspicion to justify a search and comply with the requirements of the Fourth Amendment. This is because the person is attempting to enter the United States from abroad and may reasonably be required to demonstrate that the person and his or her belongings are entitled to enter the United States.

(b) Reasonable Suspicion. Before an inspector may constitutionally detain a person (non-entry related case), the inspector must have reasonable suspicion that the person is an alien and is illegally in the United States. This higher degree of suspicion arises generally in questioning persons encountered in and around the port who are awaiting persons referred to secondary. This suspicion is based on questioning of alienage alone and also involves specific articulable facts, such as particular characteristics or circumstances which the inspector can describe in words.

(c) Probable Cause. Probable cause is the degree of suspicion which an inspector must have before constitutionally making an arrest under either civil or criminal law. An inspector has probable cause to arrest or search if evidence and circumstances which would lead a

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reasonable person to believe that an offense has been or is being committed are known by the inspector.

18.8 Criminal Action Procedures.

There are three accepted modes of initiating criminal action against an accused person in a federal district court. They are:

(a) By COMPLAINT - In criminal law, a charge, proffered before a magistrate-judge having jurisdiction, that a person named (or an unknown person) has committed a specified offense, with an offer to prove the fact, to the end that a prosecution may be instituted. Although the complaint charges an offense, an indictment or information may be the formal charging document. The complaint is a written statement of the essential facts constituting the offense charged. In the federal courts, it is to be made upon oath before a magistrate-judge. If it appears from the complaint that probable cause exists that the person named in the complaint committed the alleged crime, a warrant for his arrest will be issued.

If the magistrate-judge has reason to believe from the evidence presented at the examination that a crime has been committed and the accused probably committed the offense, he or she will order the defendant held for the filing of an indictment or an information to answer in the district court. In so doing, he or she may order the accused held in custody, or released under bond or on his own recognizance. If the magistrate-judge does not believe there is *probable cause* to hold the accused he may discharge the defendant.

The complaint shall not be filed without the consent of the United States Attorney.

(b) By INDICTMENT - A formal written accusation originating with a prosecutor and issued by a grand jury against a party charged with a crime. An indictment is merely a charge which must be proved at trial beyond a reasonable doubt before defendant may be convicted. An offense which may be punished by death shall be prosecuted by indictment. An offense which may be punished by imprisonment for a term exceeding one year or at hard labor shall be prosecuted by indictment or, if indictment is waived, it may be prosecuted by information. Any other offense may be prosecuted by indictment or by information.

(c) By INFORMATION - A written accusation made by a United States Attorney, without the intervention of a grand jury. Function of an "information" is to inform defendant of the nature of the charge made against him and the act constituting such charge so that he can prepare for trial and to prevent him from being tried again for the same offense. It is signed by the United States Attorney or one of his or her Assistants.

18.9 Procedures After the Arrest.

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(a) General. An arrest may be made with or without a warrant under either Federal or state arrest authority. If the crime is a state crime and not a Federal offense, you must follow the state post-arrest procedures. If it is a Federal crime, the Federal Rules of Criminal Procedure require you to take the adult defendant before the nearest available Federal magistrate-judge without unnecessary delay. [See Rule 5a, Federal Rules of Criminal Procedure.] A detailed flow chart of the Federal criminal case processing system will be found in Appendix 18.4.

Every Federal officer is responsible for knowing the location of the nearest U.S. Magistrate-Judge or other United States District Court Judge. If a Federal judicial official is not available, the defendant may be brought before certain state officers for the initial appearance [See 18 U.S.C. § 3041.].

In the event that a defendant must be held in jail before the initial appearance, the prisoner must be placed in a Federally approved detention facility. It is the responsibility of the arresting officer to transport the defendant to the holding facility and from there to the court for the initial appearance. The U.S. Marshal's Service will not take custody of a prisoner until ordered to do so by the court.

It is the responsibility of the arresting officer to see after the well-being of the arrestee. This means seeing that food, shelter, etc., are available. If the arrestee is injured, or has special medical problems such as diabetes or drug addiction, the officer should obtain medical assistance for the arrestee.

(b) Evidence Processing. Each arresting officer is responsible for preserving physical evidence seized and for assuring that the chain of custody for that evidence is properly established. Names and addresses of witnesses should be recorded and the necessary paper work completed. Additional discussion of case related evidence can be found in section 18.11 of this chapter.

(c) Fingerprinting. Every alien 14 years of age or older who has been:

- arrested under a warrant of arrest or without a warrant; or
- a willful crewman violator;
- served with a notice to appear;
- excluded from the United States; or
- removed from the United States under the expedited removal program

shall be fingerprinted on a criminal card (FD-249) which shall be sent to the Identification Division, FBI. A second FD-249 card shall be prepared and forwarded by first class mail to:

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Biometric Support Center
1151 "M" Seven Locks Road
Potomac, MD 20854-2905

A third FD-249 shall be prepared and retained in the file.

FBI Form R-84 shall be prepared at the time of processing. In the case where criminal prosecution is contemplated, two FBI Form R-84's shall be prepared to timely record administrative and criminal disposition. The final disposition of each case shall be reported to the Identification Division, FBI, on FBI Form R-84. (Revised IN00-25)

(1) Administrative Arrests. In administrative arrest, notification of disposition shall be prepared after receipt of verification of departure. Verification of departure documents, which are handled by the Detention & Deportation Branch, usually consist of an executed I-94 and/or executed Warrant of Deportation or Removal, or an executed Notice of Exclusion. Final disposition shall be shown as follows: "deported, departed voluntarily, status adjusted to lawful permanent resident, notice to appear canceled, proceedings terminated by IJ (BIA), alienage not established, released as U.S. citizen (lawful resident alien), or the alien died." The date of occurrence should follow each instance. After the date, in appropriate cases include the mode of government or commercial transportation used for removal.

(2) Criminal Arrests. In criminal arrest, notification of disposition shall be prepared by the case agent (officer) after sentencing by the court of record. Final disposition shall include the judgement and sentence. This information serves to timely update the criminal history records in the National Crime Information Center (NCIC) of offenders and/or significant violations and the final disposition.

(d) Release of an Arrested Person. Situations sometimes arise where a person is arrested but before the initial appearance, the officer learns that the U.S. Attorney has declined to prosecute, that the warrant has been withdrawn, or that additional facts are discovered which cause the officer to realize that there is no longer probable cause for the arrest. The Federal Rules require that any time a person is arrested, they must be taken before a U.S. Magistrate-Judge without unnecessary delay [See Rule 5a, Federal Rules of Criminal Procedure.].

Should you be required to travel to a magistrate-judge's office, sometimes several hours away, to have the magistrate-judge release the suspect? The Department of Justice has considered this question and is of the opinion that the person could be released. Once released, there is no need to present the defendant before the magistrate-judge as that would serve no useful purpose. Note however, that this is only an opinion of the Department of Justice based upon their interpretation of Rule 5(a) of the Federal Rules of Criminal Procedure, and not the result of an actual court decision.

The methodology of the release would depend upon how far the arrest had progressed. If it

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was determined that the subject should be released before booking, the officer may release the subject. If the prisoner has been booked, the officer should go through the Assistant U.S. Attorney who would notify the magistrate-judge and the officer should prepare a memo for the AUSA stating the facts behind the arrest and the subsequent decision to release the subject.

It should be noted that the above is only a recommendation and actual policy may vary from district to district (e.g., INS related detainers). You should seek advice from your agency and the U.S. Attorney's office to learn the procedure in the district in which you will be working.

Many districts have instituted a procedure known as 'citation release,' which authorizes certain officials in the agencies to review the personal information provided by an arrestee, and if the charge is a minor one, to either collect collateral for the charge, or release on personal recognizance with a mandatory court date. This process is closely monitored by court personnel, and serves to speed up the process by which some Federal agencies, who commonly make numerous misdemeanor arrests, handle their prisoners.

(e) Initial Appearance. After making an arrest, Rule 5(a) Federal Rules of Criminal Procedure requires that the arresting officer take the arrested person before the nearest available U.S. Magistrate-Judge without unnecessary delay. The term 'without unnecessary delay' means exactly what it says and does not mean that prisoner be taken there when it is convenient or practical. The amount of acceptable delay will vary according to the district in which the arrest takes place. For instance, the amount of time a juvenile can be processed before transportation to a U.S. Magistrate-Judge for an Initial Appearance is considerably less than the time allowed for processing an adult.

Title 18 U.S.C. § 3501 addresses what is reasonable delay for the purpose of admitting statements taken during that processing period. The 'six hour rule of reasonableness' means that if the arrested person makes any statements within six hours of the arrest, it will be presumed that any statements taken during that six hour period were voluntary. Any statements taken after the six hours following an arrest are presumed to be coerced, and only admissible after review by the trial judge. Note, however, that it is only a presumption and it may be rebutted by either side.

(f) Unnecessary Delay. Following an arrest, the arresting officer has adequate time to process the defendant, i.e. fingerprint, photograph, interrogate, etc. In other words, there is adequate time to do the normal booking procedures prior to the initial appearance. If you intentionally fail to comply with the 'without unnecessary delay' requirement, there are serious consequences. You could be held liable for violating the person's civil rights, your case could be dismissed, and/or any confession could be suppressed.

(g) Magistrate-Judge or Other Official. If no U.S. Magistrate-Judge is available, you may take the defendant before any other person authorized in 18 U.S.C. § 3041, such as:

Any U.S. Judge or Justice;

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Judge of a supreme court or superior court;

Chief or first judge of common pleas;

Mayor of a city; or

Justice of the peace or other magistrate of any state where the offender may be found.

Note: that if you take the defendant before someone other than a Federal judge or magistrate-judge, the obvious practice is that the official should be of a level where written records are kept of the proceedings. A good rule of thumb to follow is: should you need to use a state official, only use a judge of a state court of record, i.e. one that has the power to punish for contempt and maintains a record of its proceedings. A state court that can hear felony cases will be a court of record.

The Rule requires that you take your prisoner before the nearest available U.S. Magistrate-Judge. If the nearest available magistrate-judge is in another district, in order to avoid additional paperwork and other problems, take the prisoner to the magistrate-judge in the district of the arrest even though that magistrate-judge may be further away.

(h) Arrests Made Without Warrants. Should you arrest someone without a warrant, they must be taken before a magistrate-judge without unnecessary delay and a complaint needs to be filed prior to the holding of the initial appearance.

(i) Detaining Prisoners. If the defendant is to be housed in jail prior to the initial appearance, the prisoner can only be housed in a Service or federally approved detention facility.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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18.10 Jurisdiction and Venue.

(a) Venue. The Constitution requires that the trial of all crimes shall be held in the state and district where the crime was committed, or, if not committed in any state, where Congress shall direct. The place where the offense may be tried is known as "venue." Rule 18 of the Federal Rules of Criminal Procedure states that prosecution will generally be in the district in which the offense was committed.

In determining where the offense was committed, consideration is given to whether a single act was involved, or whether the offense was a continuing one or one which involved more than one act. In the latter cases, venue would lie at any point where a criminal act occurred. In cases involving offenses against the United States committed on the high seas, in a foreign country, or when more than one person is involved, venue is determined by where the offender(s) are first arrested or transported into the United States, 18 U.S.C. § 3238.

(1) Venue Distinguished from Jurisdiction (Rule 18). "Jurisdiction" is the inherent power of the court to decide a case. All U.S. District Courts have jurisdiction over offenses committed against the United States. Venue refers to the particular place (judicial district) where a court that has jurisdiction may hear and decide a case. A district court may have jurisdiction to decide a case but may lack the venue to hear it. Time of Motions to transfer the case to another district will be made at or before arraignment, or as the rules or court allow (Rule 22).

(2) Change of Venue [Rule 21]. Under Rule 21, the court may, upon motion of the defendant, transfer the proceedings to another district if:

There exists in the district where the prosecution is pending so great a prejudice that the defendant cannot obtain a fair or impartial trial; or

It appears that the transfer of proceedings against the defendant or any one or more of the counts against the defendant would be more convenient for the parties and witnesses, and in the interest of justice.

(3) Transfer from the District for Plea and Sentence (Rule 20). If a defendant is arrested or held pursuant to indictment or information in a district other than the one in which the indictment or information is pending, the defendant may state in writing that they wish to plead guilty or nolo contendere, to waive trial in the district of indictment or information, and to consent to disposition of the case in the district where they were arrested or are being held. If the United States Attorneys for both districts agree to this procedure, the relevant papers will be transferred to the clerk of the court where disposition is to occur and the prosecution will continue in that district. The defendant may also waive that right to be indicted in the venue district.

(4) Commitment to Another District (Rule 40). A defendant may be arrested on a warrant based on a complaint, an information or indictment; or arrested without a warrant based on

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probable cause. If this occurs in a district other than one where the offense occurred or the proceedings are pending, and the defendant wishes to plead not guilty to the pending charges, the defendant must be returned to the original district. As with other arrest situations, the first step is to take the arrested person to the nearest available magistrate-judge without unnecessary delay. The court will then proceed with the initial appearance, in accordance with Rule 5, to include advisement of the provisions of Rule 20.

If the defendant has been indicted, an information has been returned, or if the defendant elects to have the preliminary examination, pursuant to Rule 5, conducted in the district in which the warrant was issued, there will be no preliminary examination in the district of arrest. Instead, the magistrate-judge will determine at the initial appearance whether the arrested person is the person named in the indictment, information, or warrant. If so, the defendant will be ordered to return, if on bail; or the magistrate-judge will order the defendant returned, if not on bail, to the district where the prosecution is pending, subsequent to the court receiving the warrant or certified copy of such, which may now be submitted by facsimile (fax) transmission.

Otherwise, pursuant to Rule 5.1, the magistrate-judge will hear evidence in the district of arrest as to probable cause for the arrest. If the magistrate-judge finds that there is probable cause to believe a crime has been committed and that the arrested person committed it, the magistrate-judge will order the defendant's removal to the district in which the prosecution is pending.

If the person is arrested for a probation violation, the court will proceed in accordance with 32.1 (revocation or modification of probation), or conduct a prompt preliminary examination if the alleged violation occurred within the district of arrest.

If bail has been set in the original district, the magistrate-judge in the district of arrest will take into account that the amount of bail previously fixed and the reasons therefore, if any. The magistrate-judge is not bound by this amount, however, and may fix a different bail if it appears that a different amount would more reasonably assure the presence of the accused at future judicial proceedings.

(5) Trial (Rule 23(a)). If the defendant has previously entered a plea of not guilty, the question of guilt will be determined at a trial of the defendant. At the trial, the government will attempt to offer evidence to support a finding of guilt beyond a reasonable doubt. The defendant may offer a defense to disprove the allegation of guilt but is not obliged to do anything at all inasmuch as the burden of proof is on the government.

(6) Functions of the Judge and Jury. In general, the judge decides questions of law, and the jury decides questions of fact. Defendants may waive jury trial if they do so in writing and the request is approved by the court and the government. In such cases, the judge will decide questions of both law and fact.

(7) Trial By Jury (Rule 23(a)). A trial jury is sometimes called a petit jury, as opposed to a grand jury. A grand jury is selected and impaneled by the judge. A trial jury, however, is

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selected upon the basis of a voir dire conducted by either the judge and/or the attorneys for each side. In a trial by jury, the jury will consist of 12 jurors. At any time before verdict, however, the parties may stipulate in writing, with the approval of the court, that the jury may consist of any number less than 12. This allows a verdict to be returned should the court need to excuse one or more jurors for just cause after trial has begun. In fact, the court may allow a jury consisting of 11 jurors to return a verdict even without the approval of both parties. A offense, the statute of limitations does not begin to run until the criminal conduct ceases. In a conspiracy, the statute of limitations begins to run with the last overt act.

(8) Tolling the Statute. To 'toll' the statute is to suspend or interrupt the running of the statute over a period of time. This will extend the date on which the statute ends and prosecution is subsequently barred. A statute may be tolled when it can be shown that an individual is 'fleeing from justice.' Title 18 U.S. C. § 3290 provides: 'No statute of limitations shall extend to any person fleeing from justice.'

The essential characteristics of fleeing from justice have been defined as "leaving one's residence, usual place or resort, or concealing one's self with intent to avoid punishment." The key word in the definition is 'intent.' One of the most common ways of fleeing from justice is to leave the country to avoid prosecution, but it is not the only one. Using a false name in a location other than one's usual habitat is generally sufficient. Once a person has fled from justice, the reasons for his continued absence have no effect on tolling the statute, so that an excuse that the individual was in jail in Mexico is irrelevant if the original intent in going to Mexico was to avoid prosecution in the United States. The burden of proving the intent to flee is on the government. If proven, the statute will be tolled for the duration of the time the individual was "fleeing from justice."

(9) Extradition. When an individual has fled the jurisdiction of the United States to a foreign country, the process for bringing that person back to this country is known as extradition. It is important to remember that in the Federal system, the term "extradition" applies only to transfers of defendants and potential defendants on the international level. Transfers within the jurisdiction of the United States are covered by Rule 40 (Commitment to Another District).

Extradition is effected through a request from the U.S. Attorney to the Attorney General to conduct extradition proceedings. These proceedings are accomplished through the U.S. State Department which will deal with the foreign government concerned. In order to extradite an individual from a foreign country, there must be an extradition treaty between the United States and the foreign country involved. The United States does not have such treaties with all countries. In addition to the existence of an extradition between the two countries, there must be enough evidence to make a strong case and the offense charged must be one that is recognized by both countries. If the offense charged is not a crime in the host country, there can be no extradition.

Refer to Chapter 209, Title 18 U.S.C., Extradition, Sections 3181 through 3196; for the procedural requirements, and the listing of extradition treaties.

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18.11 Case Presentation.

There are no general guidelines for criminal prosecution of immigration related matters in the Federal courts. Practices and policies may vary from one judicial district to another. In certain judicial districts, blanket authority has been granted by the United States Attorney to file complaints for specified violations.

(a) Role of the United States Attorney and Their Assistants. These are the officials who, with certain exceptions, represent and defend the United States in both civil and criminal trials in Federal Courts. They determine, on the basis of all the evidence, whether authority should be granted to file a complaint. Unless the information given the United States Attorney is concise, clear, and completely explanatory of the supporting evidence for each element of the offense, the United States Attorney may deny authority to file a complaint. The clearest possible presentation of the admissible evidence supporting each element of the offense is essential to insure full consideration of the case for prosecution.

Any questions regarding cases (criminal INS) or the charges should be directed to this office. You may be asked to attend an informal pretrial conference to discuss a case with the Assistant U.S. Attorney (AUSA) who is assigned to the case. At this time, you should inform him or her of any problems you have with the case. Do not wait until the trial where they could be surprised. The AUSA may require you to do some additional work on the case (e.g., locate, obtain statements, and subpoena witnesses, etc.). Remember, he or she has a right to make such decisions.

(b) Liaison. An amiable acquaintance with the United States Attorney's staff, the magistrate-judge's office, and the Federal District Court hierarchy is of critical importance as to whether a case will be prosecuted. Friendly, person-to-person liaison on a local level must be emphasized if there is to be a successful prosecution program.

The thrust of the Inspections prosecutions program is to have every possible case accepted for prosecution that is presented. This can be accomplished through a thorough investigation and a complete willingness to assist the Assistant United States Attorney in the preparation of the case after it is accepted for prosecution.

The prosecution officer must sell the case. Just as the Service sets priorities based upon available resources, the court system sets priorities. An innovative approach or an energetic officer can often effect a change in priority commitment.

(c) Appearance Before United States Magistrate-Judge. Most prosecutions are begun by filing a complaint before a United States Magistrate-Judge after authority for this action has been granted by the AUSA. One exception is in the case of an arrest without a warrant for a felony involving the immigration laws where the person arrested is likely to escape (see Chapter 18.6 - Warrantless Searches and Seizures). In such case, the person must be taken without unnecessary delay before the nearest available United States magistrate-judge, or some other officer empowered to commit person charged with offenses against the laws of the United States, and complaint filed forthwith.

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The magistrate-judge informs the defendant of the right to a preliminary examination, right to counsel, retained or appointed, and right to remain silent. The defendant is not required to plead before the United States magistrate-judge.

If the defendant does not waive preliminary examination, the magistrate-judge hears the evidence, including the testimony of the person filing the complaint. During examination, the defendant has the right to examine witnesses and to present witnesses in his or her own behalf, as well as to give testimony himself or herself.

The magistrate-judge may order the accused held in custody, or released under bond or on his or her own recognizance.

An AUSA will generally appear at the preliminary examination before the United States magistrate-judge to represent the Government and to examine witnesses.

(d) Action After Accused Held by United States Magistrate-Judge. After the defendant is ordered held by the United States magistrate-judge, that official reports the action to the clerk of the appropriate United States district court. If the violation for which the defendant is held is a misdemeanor, the AUSA files the information in court. If the offense is a felony, a draft of an indictment is drawn by the AUSA and the case is presented to the appropriate grand jury for its consideration.

Frequently, if the crime involved is a felony, and if a grand jury is sitting, the facts are presented directly to the grand jury, without first being considered by a United States magistrate-judge.

(e) Case Report. A good investigative report should stand alone. An AUSA, without talking to the case officer, should by use of the report alone, decide on prosecution. A good investigation without a good report is meaningless. An investigation develops facts, a report renders these facts into a final product upon which to adjudicate or to base a prosecution.

The report should set forth clearly the basis for the investigation, the acts of the accused which constitute the elements of the crime, when and where such acts were committed, and all relevant circumstances surrounding the commission of the acts. It is particularly important that all facts establishing jurisdiction and venue be clearly set forth. The report should also show the manner in which each of the acts constituting the elements of the crime is to be proved, whether through witnesses, documents, admissions or confessions of defendant, etc. It should be confined to those facts which will be of value to the AUSA in determining whether the defendant should be prosecuted, and which will be of assistance to the AUSA during the trial.

The report will vary depending on whether your case is a planned operation or an unplanned apprehension. When a case is planned, the sooner the AUSA is brought into the picture, the better. At various stages of the case, the evidence should be shown to the AUSA and the report should be developed as you go. In an unplanned apprehension, the

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case officer (or agent, as typically referred to by the AUSA) will be required to do a great deal of work at the last minute. Early in the process, the agent should discuss grand jury with the AUSA. The case report should be submitted prior to grand jury. If some evidence will not be available by that time, the report should be submitted with an explanation for the missing evidence and an estimated date for the supplemental case report containing that evidence.

Keep in mind, an AUSA will not want to present a case to a grand jury without all the evidence before him. The lack of a case report may not cause the AUSA to reject the case in hand, but the next time you seek his authorization, he may be slow to commit himself. Also, keep in mind that without the evidence acquired in the case, the AUSA cannot comply with the court's discovery order. Failure to comply with discovery orders can result in the exclusion of evidence and may cause the case to be dismissed.

Elements of the case report should be tabbed and bound. It should contain the following items:

- (1) Synopsis, a brief analysis of the case.
- (2) List the crime and the elements of the crime.
- (3) List the defendants and a brief biological sketch including immigration, criminal history, and detention status.
- (4) List the witnesses, including the aliens, with a brief biological sketch and information on how to reach the witnesses. The sketch should state any criminal or immigration history.
- (5) Any related forfeiture proceedings.
- (6) The narrative should discuss the case as it relates to the evidence and should explain how the evidence will satisfy all of the elements of the offense.
- (7) List of the exhibits.
- (8) List of all other evidence.
- (9) Any indications of a defense, a weakness in the case or evidence we have uncovered that would aid the defendant's case.
- (10) Attachments:
 - a. Affidavits of each law enforcement officer who participated in the case.
 - b. Statements taken from any of the aliens, defendants, or other witnesses.

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- c. Copies of any tapes, if applicable.
 - d. Copies of all photographs.
 - e. A list of physical evidence detained by the Service including money, vehicles, and personal property.
 - f. Any conviction records or immigration records that might be relevant to the prosecution (e.g. prior exclusion/deportation/removal records, etc.).
- (f) Testifying in Court. As an officer involved in prosecuting a case, you will be called upon to testify in open court. A guide to conducting yourself in court is contained in Appendix 18.2.

18.12 General Rules of Evidence.

It is impossible to discuss all of the possible rules of evidence here, but all Immigration Inspectors should be familiar with the general rules of evidence. However, there can be no substitute for initiative and experience.

(a) The following is a brief summary of some of the more important rules essential in establishing sufficient evidence to successfully prosecute for violations of the INA and related laws:

(1) Evidence is anything which tends to prove or disprove a fact in issue, and must be relevant, and competent to the point or fact at issue.

(2) A witness may testify to what he sees, hears, or knows.

(3) Opinion evidence - (i.e., Testimony from a handwriting analysis expert that the defendant in a smuggling case wrote the note used by the alien for directions on how to enter the U.S. and later found in the possession of the alien(s).)

(4) Only the best evidence may be introduced in evidence unless it is shown that the best evidence is not available. (**Note:** Black's Law Dictionary states that "the words 'testimony' and 'evidence' are not synonymous.") Although testimony is evidence, evidence may or may not be testimony or may, and in most cases does consist of more than testimony."

(5) Hearsay testimony, with certain exceptions, as in pedigree cases, is not admissible. (The pedigree exception to hearsay rule allows consideration of hearsay evidence regarding a person's family relationship as proof of existence of the relationship.)

(6) Any fact that shows motive or preparation for the criminal act is admissible against the defendant.

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(7) Evidence is admissible to show any conduct or condition of the defendant subsequent to the act charged, apparently influenced or caused by the doing of the act, and any act done in consequence of it, or by the authority of it; but the defendant will not be permitted to introduce evidence as to what are generally known as self-serving acts or declarations.

(8) When the defendant's conduct is in issue, or is relevant to the issue, evidence as to statements made in his presence and hearing, by which his conduct is likely to be affected, and the manner of his reception of such statements, is admissible. For example, a statement is made in the hearing of a person and is such that if false, he would naturally deny it and he remains silent.

(9) Res Gestae means literally things or things happened. It is considered as an exception to the hearsay rule. In its operation it renders acts and declarations which constitute a part of the things done and said admissible in evidence, even though they would otherwise come within the rule excluding hearsay evidence or self-serving declarations. The rule is extended to include, not only declarations by the parties involved, but statements or exclamations made by bystanders and strangers asserting the circumstances of the occasion as it is observed by them, is admissible as a spontaneous statement or exclamation.

(10) Evidence of the commission of other crimes may or may not be admissible. The officer should endeavor to learn of other crimes committed by the defendant and should report his information in that respect. The information may at least be helpful to the trial judge in fixing sentence.

(11) In a conspiracy trial, some acts and declarations of co-conspirators are admissible against the defendant on trial, and others are not. Effort should be made to learn about all such acts and declarations, all of which should be reported.

(12) Dying declarations are admissible only in homicide cases.

(13) Statements or declarations made by the defendant or by another person acting under this authority, are admissible against him, but not in his favor.

(14) Character testimony may or may not be admissible, depending on the case.

(15) All facts must be secured. Those that might clear the suspect in the case are just as important as those that might assure his conviction. No possible excuse has ever existed for concealing evidence. Establish sufficient evidence during the course of your inquiry to assure a conviction when the accused comes to trial.

18.13 Definitions.

A list of commonly used definitions in the U.S. court system is contained in Appendix 18.3.

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Chapter 21: Land Border Inspection (Added INS - TM2)

- 21.1 Land Border Inspection Procedures
- 21.2 Secondary Inspection
- 21.3 Persons Arriving by Common Carrier
- 21.4 Cross Designation
- 21.5 Mexican Border Crossing Cards
- 21.6 Canadian Border Crossing Cards
- 21.7 Use of Form I-94
- 21.8 Commuters
- 21.9 Northern Border Inspection System (NorBIS)
- 21.10 Secure Electronic Network for Traveler's Rapid Inspection (SENTRI)
- 21.11 Facilities Inspections
- 21.12 Emergency Procedures during Canadian Air Traffic Controller Strikes

References:

INA: Sections 212, 235.

Regulations: 8 CFR 100, 211, 212, 235.

21.1 Land Border Inspection Procedures.

(a) General. More than 85% of all persons entering the United States each year apply for admission at land border ports of entry. There are several individual land border ports where the number of persons processed annually exceeds the total for all sea and air ports of entry combined.

(b) (1) Land border ports of entry are designated and approved by the Commissioner of CBP. The ports of entry are divided into three classes, depending upon which categories of aliens may be processed. [See 8 CFR 100.4(c)(2).]

(2) The great majority of persons arriving at land border ports are residents of the border area who cross frequently and who are familiar with requirements concerning their entry into the United States. Consequently, at land border ports of entry a screening procedure has been established to rapidly inspect applicants for admission, passing those found readily admissible and referring for further action those requiring more detailed examination.

(3) Without an efficient primary inspection, it would be impossible to process the great volume of applicants at large land border ports or utilize manpower effectively at the smaller ports. The effectiveness of inspections at such ports is entirely

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dependent on the effectiveness of the primary officer. Despite the limited time devoted to each inspection, primary officers at land borders intercept a high volume of fraudulent documents and false claims to U.S. citizenship. Officers at land borders are trained in respective sections of the law pertaining to immigration, import/export of goods and agriculture in order to conduct an effective primary inspection.

(4) (A) An effective primary inspection will not only pertain to an officer's keen ability to oral questioning, but for the officer to be well versed in primary enforcement database systems as well. (Paragraph (b)(4) revised 11/3/04; CBP 6-04)

(B) [REDACTED]

(C) Where a passport is not required of an applicant for admission; officers may omit the passport number and passport issuing country. However, where an applicant for admission is not required to present a passport, but does so voluntarily, officers must query the document using the criteria provided in 21.1(b)(5)(B) above.

(D) [REDACTED]

(E) [REDACTED]

(F) [REDACTED]

(G) [REDACTED]

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(H) A [REDACTED]

(I) In locations that have biometric verification systems, (equipment that reads a person's fingerprint and compares it to the print imbedded in the card,) all border crossing card holders who require a Form I-94 to complete their entry documentation must have a biometric verification performed between the card and the holder before being issued the Form I-94.

(c) In your role as primary officer, you must rely heavily on your powers of observation. On the vehicular lanes, as you clear one vehicle and turn to watch the next approach, you make several determinations in the short time it takes for the vehicle to stop. [REDACTED]

[REDACTED] In most cases you will determine almost immediately if you will be referring the vehicle for a secondary inspection. In other cases, the occupants may initially appear to be admissible, but their responses to your questions, combined with your observations, may indicate that further inspection is required. A conversational knowledge of Spanish for officers assigned to the Mexican border or French, for officers assigned to some Canadian border ports, is essential.

(d) As a primary officer dealing with pedestrians, you can learn by observing arriving persons (especially during very heavy traffic periods) as they approach the inspection point. [REDACTED] may all have some bearing on the determination that you make as to admissibility. As quickly as possible, you must determine the nationality of each applicant for admission.

(e) (1) As a general rule, every person will either present a passport or border crossing card or make an oral declaration of nationality. An oral declaration for a child may be accepted from an accompanying adult.

(2) Aliens will frequently attempt entry using fraudulent documents of every description at land border locations, hoping to escape detection because of the high traffic volume. A comprehensive discussion of fraudulent documents is contained in Chapter 17.3. Also refer to discussions of Intelligence functions in Chapter 32 and tools for detecting fraudulent documents in Chapter 34.

(f) (1) [REDACTED]

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[REDACTED]

[REDACTED]

(g) (1) You must then determine the nationality and admissibility of each applicant for admission as well as obtain an oral CBP declaration from the operator of each vehicle and other persons as may be indicated. Based on the answers to questions asked and your observations of the occupants of the vehicle, you must determine immediately whether an in-depth inspection is required. If you are satisfied that all of the Federal requirements have been met, you will admit the vehicle/and or persons.

(2) (A) In determining which oral claims to accept as is, an officer may rely on the confidence of the applicant's demeanor and English language ability. Veteran officers rely upon their developed questioning skills, recognition of applicants and past experience to conduct an effective inspection.

(B) An officer should develop a consistent, systematic approach to the visual examination and assessment of the validity of a document. Additionally, an officer should attempt to gain experience with a wide range of counterfeit and altered documents typical of those presently being used by inadmissible aliens applying for admission at their particular port of entry. Officers should be constantly aware of the possibility of concealed aliens and compartment cases, impostor loads, lead vehicles (guide cars to impostor vehicles).

(C) In determining which applicants to refer to secondary, an officer should rely on his or her powers of visual observation (i.e., matching the person to the vehicle). This, combined with strong interviewing skills, familiarity with the surrounding geography, customs and traditions (especially in determining false claims to U.S. citizenship.) should help in secondary determination. Quick check features such as a laminate check, single feature facial identification for impostors and genuine security checks will aid in the primary inspection.

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[REDACTED]

[REDACTED]

(h) (1) Mexican Land Border Ports. At southern land border crossings, the majority of applicants for admission will fall under the documentary requirements of 8 CFR 212.1(c). The frequent border crosser at the southern land border crossings will readily present proof of citizenship/visa without being asked. Most border crossers are familiar with the documentary requirements of the INA.

[REDACTED]

(2) The questions below, in addition to Customs and Agriculture declarations, will aid an officer in the primary inspection:

[REDACTED]

(3) The most frequently encountered documents presented at Mexican land border ports are:

Mexican Passport with visa

Alien Resident Cards/Commuter Resident Alien Cards (I-551)

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Stand-alone visa (BBBCC)

Forma Trece/Temporary BCC (in lieu of document, used in place of a passport)
Naturalization certificate

Birth certificates/State issued drivers license or identification card U.S. passport

"Laser Visa" B-1/B-2 Visa and Border Crossing Card (DSP-150)

(i) (1) At U.S./Canadian land border crossings, you will often accept oral declarations of nationality (United States or Canadian citizens) from most applicants for admission because of the waiver of visa and passport requirements for Canadian citizens. See 8 CFR 212.1(a). However, documentary proof of Canadian citizenship may be required to satisfy the immigration officer that the applicant is entitled to enter the United States and not inadmissible.

(2) A landed immigrant of Canada requires a passport and a valid, unexpired visa to enter the United States, unless he or she is a national of and presents a passport issued by a country eligible for the Visa Waiver Program (VWP).

(3) (A) Each adult applying for admission should be questioned as to citizenship. Never accept a single spokesperson (driver) for an oral group declaration of citizenship. Questions, such as the following, should help in determining oral claim admissibility as well as when to require documentary proof of citizenship:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(B) See Chapter 12.3 for a discussion of oral claims as evidence of U.S. citizenship. (IN98-16)

(C) Common Documents Encountered at Canadian Land Border Ports. Among the documents you will frequently encounter and should be familiar with are the

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following:

Canadian Passport

Canadian Citizenship Card

Provincial driver's license with a birth certificate (or baptismal birth certificate - Quebec)

Canadian Travel Document (issued to Convention Refugees who are permanent resident of Canada but not Canadian Citizens)

Certificate of Identity (issued to permanent residents of Canada who are unable or unwilling to get a passport from their country of nationality)

Certificate of Indian Status

Commuter resident alien card

(4) (A) Canada Border Services Agency (CBSA) stamps commonly appear in foreign passports as an indicator of the date of arrival of the person in Canada and the authorized length of stay. It is important to determine current status in Canada to ensure re-admission back into Canada if that is the applicant's intention. The stamp is usually next to the Canadian Visitor Visa (CVV); however, this is not mandatory.

(B) Notes, written by the officer who granted entry, regarding the length of stay and so forth, may accompany such entry documents.

(C) Generally, a visitor is admitted to Canada for a period of 6 months. Additionally, on a reciprocal basis (Canada/U.S.A), an applicant who is admitted to Canada on a one-entry visitor visa will usually be re-admitted to Canada from contiguous territory within the original authorized period of stay.

(D) Anyone seeking to remain in Canada permanently requires an immigrant visa. Immigrant visas are issued by Canadian foreign missions abroad in the same manner as visitor visas. Immigrant visas are issued on a form entitled "Record of Landing" (commonly referred to as an "IMM 1000"). In actual fact, it only becomes a Record of Landing once the immigrant has been admitted (or "landed") by an officer at a port of entry for the first time. The permanent resident process is similar to that of the United States. (IN98-16)

21.2 Secondary Inspection.

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(a) General. Follow established local procedures for referrals to secondary, using I- 443 referral forms, written notes, or whatever other local system is set up to communicate precisely with the secondary officer. Where possible, persons suspected of making a false claim to United States citizenship or suspected of making a fraudulent application for admission should be escorted to the secondary area and isolated from other persons, to the extent possible, until the secondary inspector is able to initiate interrogation. Advise the secondary inspector of statements made to you by the applicant at the initial inspection.

Most secondary referrals will be for routine matters such as the processing of immigrants (see Chapter 14) and nonimmigrants (see Chapter 15). Matters relating to processing inadmissible aliens are discussed in Chapter 17. Handling of paroles and other special classes are discussed in Chapter 16.

Conduct an IDENT query if equipment is available at the port. If it is found that a U.S. citizen or lawful permanent resident has had problems at the border or with other agencies, it should be brought to the attention of the agency concerned. (A discussion of the IDENT program is contained in Appendix 45-1 of the *Special Agent's Field Manual*.)

(Revised IN01-21)

(b) Special Procedures for Aliens Not Admitted at Canadian Ports. At a Canadian border port, if an alien is refused entry and returned to Canada or paroled, execute Form I-160A, Notice of Refusal of Admission/Parole into the United States. The top copy is given to the alien for presentation to the Canadian Immigration officials, the second copy is retained at the port. This procedure is in addition to the procedures described in Chapter 17, relating to withdrawals and exclusion hearings and in Chapter 16, relating to paroles. (IN98-16)

21.3 Persons Arriving by Common Carrier.

As with the inspection of persons applying for admission as pedestrians or in automobiles, it is the policy of this Service and of the Customs Service to have only one officer conduct the primary inspection for all agencies of passengers arriving on buses or trains at land border ports. The primary officer refers to an officer of the agency concerned only those persons requiring detailed secondary inspections.

Persons arriving by ferry are inspected at the landing as though they were arriving at a land border port. Where ferry passenger are pre-inspected, they can be screened by one inspector as they enter the loading area, but space must be provided for required secondary inspections. (IN98-16)

21.4 Land Border Inspection Responsibilities. (Revised 11/3/04; CBP 6-04)

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The main objective of a primary inspector is to determine quickly and accurately whether the arriving person and goods are clearly admissible and meet all customs, agricultural, and immigration requirements for entry. To keep traffic moving smoothly, persons or goods not immediately admissible are referred to other specialized CBP officers for resolution or further processing, as necessary.

Land border ports are seen as resources of the community in which they are located. Local news outlets often feature the ports in articles and they notice when changes occur. Ports function as the connection point with government groups in the neighboring country. Often civic officials from the community meet with port directors from the U.S. or from both adjoining countries to clarify government procedures or work on joint projects.

Port managers and officers maintain close liaison with border law enforcement officials from the neighboring country to complete inspection responsibilities; this includes police forces as well as immigration and customs officials. Port building projects and equipment installation often require the ports to interact with CBP facility personnel and GSA.

See Chapter 41.1 for additional information on port liaison activities.

21.5 Mexican Border Crossing Cards. (Revised 11/3/04; CBP 6-04)

(a) General. The term "border crossing identification card," as defined at Section 101(a)(6) of the Act, means a document of identity bearing that designation issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in foreign contiguous territory, by a consular officer or an immigration officer for the purpose of crossing over the borders between the United States and foreign contiguous territory in accordance with such conditions for its issuance and use as may be prescribed by regulations. Such regulations provide that (1) each such document include a biometric identifier (such as the fingerprint or hand print of the alien) that is machine readable and (2) an alien presenting a border crossing identification card is not permitted to cross over the border into the United States unless the biometric identifier contained on the card matches the appropriate biometric characteristic of the alien (effective October 1, 2002).

(b) Inspection Procedures for BCC Holders and other Mexican citizens at Mexican Land Border Ports. At United States/Mexico land border crossings, all aliens, except those specifically exempt passport and/or visa requirements, seeking admission to the United States are required to present documentary proof not only of their citizenship, but also of their right to enter the United States. Mexican nationals, who account for the vast majority of aliens crossing into the United States across the southern border, do not need to present either a passport or visa if they are in possession of a valid DSP-150 biometrically enabled border crossing card. Bearers of Mexican diplomatic or official passports and their spouses and children traveling with them do not require a visa for entry into the United States if they are not here for either a diplomatic or government purpose, and will be here for six months or less. Officials of the International Boundary and Water Commission, entering in connection with their employment, require only their official identification for admission to the border area.

Document fraud and impostors are serious problems on the southern border. In order to

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process the large number of people seeking entry in pedestrian lanes within a reasonable amount of time, inspectors must quickly examine documents presented. The use of document readers, the biometric verification systems where available, and conducting IBIS queries provides additional verification that an entry document is valid and belongs to the person presenting it. The same holds true for vehicular traffic. Often several individuals in a vehicle will make detailed document identification difficult.

The majority of Mexicans who cross the border do so frequently. Those who are legal crossers will more often than not exhibit the presence of mind of someone who is doing something out of habit.

(c) Use of the Mexican Border Crossing Card on the Canadian Border. Occasionally, an officer at a Canadian land border port will encounter a border crossing card. If the Mexican citizen still resides in Mexico, and the card is the current edition of the DSP-150, the card may be used for entry until the date of expiration. However, if the Mexican citizen is no longer a resident of Mexico, the card may be voided on the grounds that the card requires the bearer to reside in Mexico.

(d) Issuance Procedures for Border Crossing Cards (Form DSP-150). Effective April 1, 1998, the Department of State began issuing Mexican Border Crossing Cards, Form DSP-150, B1/B2 Visa and Border Crossing Card (also known as the "laser-visa"). Issuance procedures are set forth at 22 CFR 41.32.

(e) Revocation. An immigration officer may revoke a Form DSP-150 issued by a consular officer in Mexico if the holder is found to be inadmissible. Authority for the revocation is found at 22 CFR 41.122(h). Cancellation of a DSP-150 requires supervisory approval, must be recorded on Form I-275, and the I-275 is then returned to the issuing consular post.

21.6 Canadian Border Crossing Cards. (Revised 11/3/04; CBP 6-04)

(a) General. Refer to Chapter 21.5(a) above for a general discussion of the term "border crossing card." Until March 31, 1998, a Canadian citizen or British subject who had permanent residence in Canada could apply for and receive from the Immigration and Naturalization Service a Nonresident Alien's Canadian Border Crossing Card. The laminated card (Form I-185) was issued to facilitate that alien's admission into the United States.

The card was usually issued to persons who had shown rehabilitation or had otherwise overcome grounds of inadmissibility (usually criminal) by the previous granting of a section 212(d)(3)(B) waiver; however, any citizen of Canada or British subject who had permanent residence could apply for and be issued a card. The card was valid until revoked. In cases where grounds of inadmissibility had been overcome, the alien's file number and the grounds of inadmissibility that applied were printed on the reverse side of the card.

As Form I-185 does not meet the definition of a border crossing card in Section 101(a)(6) of the Act, it ceased to be issued on April 1, 1998 and cannot be used as a travel document. Form I-185 issued prior to April 1, 1998, may be accepted as evidence of a valid section 212(d)(3)(B)

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waiver if the card is annotated with the waiver and the waiver has not expired or otherwise been revoked or voided. With the publication of the regulation titled "Requirements for Biometric Border Crossing Identification Cards (BCCs) and Elimination of Non-Biometric BCCs on Mexican and Canadian Borders" on December 2, 2002, CBP may now approve section 212(d)(3)(B) waivers for up to 5 years. Such waivers are now documented on Form I-194.

(b) Use at the Mexican Border. A Canadian citizen or British subject residing in Canada may continue to use Form I-185 as evidence of a waiver granted, provided that the term of the waiver has not expired, at any U.S. port of entry (although British subjects now also require a nonimmigrant visa).

(c) Revocation. Form I-185 may be declared void at a port of entry by a supervisory immigration officer on the grounds that the holder has violated the immigration laws; is inadmissible to the United States; or has abandoned residence in Canada.

(Procedures to be followed are set forth at 8 CFR 212.6(d).)

21.7 Use of Form I-94. (Revised 11/3/04; CBP 6-04)

(a) General. Most Mexican and Canadian land border applicants are exempt issuance of a Form I-94 pursuant to the policy described in Chapter 15.1(b). In addition, aliens reentering after short trips to Canada or Mexico, as described in Chapter 15.3(b), do not require a new Form I-94 if they still hold a valid form issued at a land border port-of-entry during a prior visit. Each nonimmigrant issued a Form I-94 at a land border is required to pay the fee prescribed in 8 CFR 103.7, except if the applicant is paroled.

Issue a Form I-94 to each Mexican nonimmigrant who is otherwise admissible and entering for more than 30 days and/or going beyond a 25-mile distance from the border or who is entering for other than visiting for business or pleasure (class B1 or B2) or transit. For those Mexican nonimmigrants entering through the Arizona ports-of-entry at Sasabe, Naco, Mariposa, Nogales, and Douglas, a Form I-94 is only required if the applicant is otherwise admissible and entering for more than 30 days and/or going beyond a 75-mile distance from the border. Issue a Form I-94 to Canadian nonimmigrants entering for other than visits for business or pleasure (class B1 or B2).

[Rev. IN 00-09]

(b) Multiple entry Form I-94. Issue a Form I-94, valid for multiple entries over a specified period, to any nonimmigrant alien who is otherwise admissible and frequently needs to cross at land border ports-of-entry. Form I-94 may be issued to Canadian visitors to facilitate the inspection process. Upon expiration, the form should not be extended, but canceled and reissued. Forward multiple entry Forms I-94 for data entry in the same manner as single entry forms. Endorse the departure copy of the Form I-94 with a "multiple entry" stamp on its face; note the reverse of the form "multiple entry" in the remarks block. [See Chapter 22.7 for I-92/I-94 forwarding instructions.] If the Form I-94 is not to be used for multiple entries, the departure copy should be endorsed on its face with the number of entries for which it is valid, and the reverse of the form should be annotated accordingly in the remarks block.

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(c) Departure I-94 forms and other documents. Collection of departure I-94 forms at land borders has always been difficult, resulting in inaccurate Nonimmigrant Information System records. Canadian immigration officials collect some departure documents for DHS, other I-94 departure forms may be retained by the alien for reentry. Collection boxes for depositing some departure I-94 forms are in place at some Mexican border crossings. Whenever a departure Form I-94 is found in the possession of an arriving nonimmigrant, unless the form remains valid, annotate the reverse of the Form I-94 with the correct departure date, if this can be ascertained, and the method of departure [See Chapter 15.1(b)]. Do not endorse the back with your admission stamp when the new Form I-94 is issued, as this may indicate an incorrect departure date. Forward the old departure Form I-94 and the new arrival Form I-94 for data entry. Departure forms collected by Canadian immigration or deposited in collection boxes should be reviewed to insure departure information is endorsed on the back and regularly forwarded for data entry. [See Chapter 22.7 for I-92/I-94 forwarding instructions.]

Occasionally, you may be asked to personally verify departure of an alien. This situation may be a result of a need for verification of a voluntary departure, compliance with the terms of a bond, or other reasons. In such instances, verify the identity of the alien and properly endorse and forward forms being presented. In some instances it may be necessary to take a fingerprint of the departing alien.

(d) Special procedures for Canadian loggers. Special procedures are in effect for admission of Canadian loggers entering as H-2B workers within the USCIS Portland, ME district. An I-129 petition for the woodsmen is filed with the USCIS District Director in Portland, based on a labor certification for loggers, skidder operators, cooks, or mechanics. The I-129 is accompanied by the labor certification specifying the number of woodsmen, the jobs they will hold, and the proposed port-of-entry.

The Portland office creates a petition number, adjudicates the petition and notifies the appropriate port of the action taken, number of beneficiaries, petition number and validity dates. The beneficiaries apply for admission at the specified port, which issues and maintains control over the single or multiple entry I-94s and insures the number of admissions on each petition does not exceed the approved total. The I-94 forms for such aliens do not get entered into the NIIS database.

(e) Disposition of Forms I-94. [reserved]

(IN98-16)

21.8 Commuters.

(a) General. Commuters are lawful permanent resident aliens who work in the United States but reside in contiguous territory. Commutation may be daily or seasonal but must be, on the whole, regular or stable. Commuter aliens may "commence or continue to reside in foreign contiguous territory." See 8 CFR 211.5(a). It is not necessary for commuter aliens to establish a residence in the U.S. and then return to either Canada or Mexico to assume commuter status. An alien may present for initial

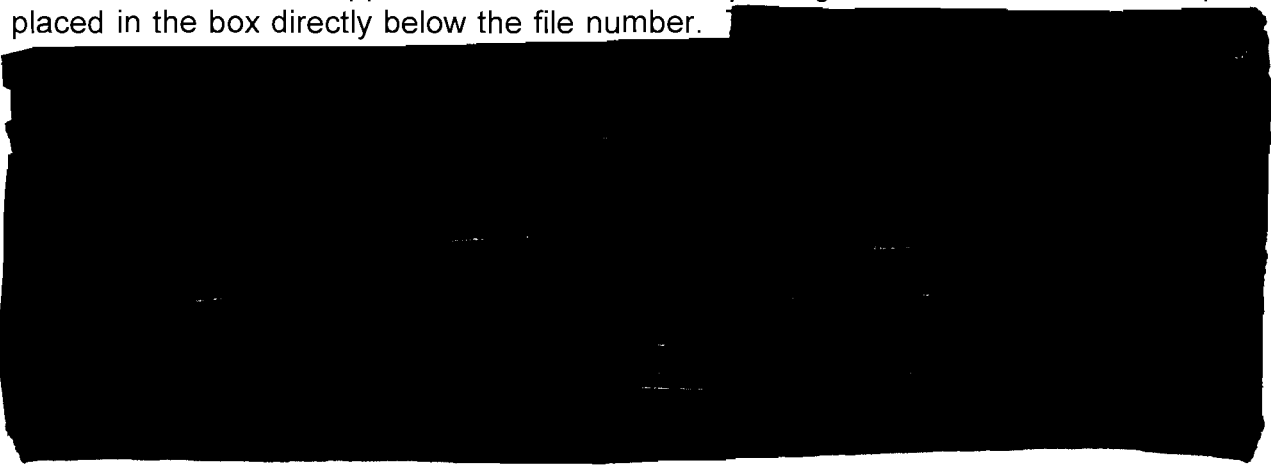
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entry a valid, unexpired immigrant visa at a port of entry that shows an address in a foreign contiguous country. As long as the alien is otherwise admissible and makes an entry into the U.S. subsequent to the processing of his/her visa at the port of entry, the alien may begin his/her lawfully admitted resident alien status as a commuter. There are two types of commuters, those who commute regularly, normally entering at least twice a week, and those who enter to perform seasonal work for extended periods, but whose annual stay in the United States is for less than six months. The latter are referred to as "seasonal commuters", also known as seasonal workers. Resident aliens physically present in the United States for more than six months in the aggregate each year are not considered commuters.

(b) Inspectional Procedures.

(1) Initial Admission. When an alien presents an immigrant visa for initial admission as a lawful permanent resident, the inspector should check the accuracy of all information given on the face of the immigrant visa. All necessary corrections should be made directly on the visa. After opening the visa packet, check for necessary documentation required by the assigned immigrant classification. The alien should be questioned to ascertain if he/she is still eligible for the classification. If not, the alien should be set up for removal. If the alien is admissible, then the immigrant visa should be routinely processed.

(2) Conversion to Commuter Status. Once a permanent resident has been identified as a commuter alien, the alien should file Form I-90 for a replacement card indicating the new status of commuter. This will require a completed I-89 also showing the proper status. The alien's incorrect Form I-551 should be lifted and a temporary I-551 issued to the alien along with a properly executed Form I-178. Form I-178 is used to ensure that an alien commuter remains eligible for that status by not having been out of employment in the United States for more than six months, except for circumstances beyond his or her control. Form I-178 is endorsed with the alien registration number of the commuter in the upper left corner. The inspecting officer's admission stamp is placed in the box directly below the file number.



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ceased to exist.

(3) Reinspection: Every time an alien presents a primary inspector with Form I-551, the inspector should personally handle the card. In the course of such examination, the reverse of the card should be checked to see what the transmittal code of the card is. A transmittal code of "2" indicates that the card belongs to a commuter alien who is required to present Form I-178 along with his/her Form I-551 at the time of application for admission. The inspector should request to see Form I-178 if not presented with the Form I-551. Should a commuter alien not be in possession of Form I-178, he/she should be referred to secondary where the reason should be ascertained for not having Form I-178. If the alien is in possession of proof of current employment, Form I-178 should be issued at that time. If not, then the alien should be deferred for presentation of the required proof or issued Form I-176 and required to reappear at the port-of-entry with such proof, whichever is more practical.

(4) Identifying Commuters. Identifying lawfully admitted permanent residents who are, in fact, commuter aliens is a challenge. While some commuter aliens enter through airports, the vast majority apply for entry at the land borders. The hallmark of commuter aliens who commute daily or weekly to work in the United States is the application for entry made at regular recurring intervals, often on the same day of the week and/or at the same time of day. This is often hard to spot since a given inspector rarely will have a primary inspection schedule that matches that of any given commuter alien. However, over time, an inspector can identify patterns of border crossing that will indicate the possibility that a specific resident alien is, in fact, a commuter. When such a possible identification is made, the primary inspector should refer the alien to secondary at which time a deferred inspection, on Form I-546, back to the port of entry should be made and the I-551 temporarily lifted pending completion of the deferred inspection. The alien should be required to bring documentary proof of his/her current employment and residence. This proof may be in the form of rent/mortgage receipts, utility bill receipts, paycheck stubs, or other types of documentation.

Inspectors should remember that residence documentation may be in the name of a spouse or parent. This is one aspect that makes the identification of commuter aliens difficult.

(5) Loss of Commuter Status. In addition to loss of employment, commuter status is lost when a commuter alien begins to reside in the U.S. When the commuter alien takes up residence in the U.S. he/she may immediately file Form I-90 to change his/her status. It is not necessary for the alien to wait six months after having established such residency. However, sufficient proof must be presented to the inspecting officer to convince the inspector that the residence is bona fide and not frivolously established solely to facilitate the receipt of other benefits and entitlements.

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At the time of the filing of Form I-90, the previously issued Form I-551 shall be lifted and temporary evidence of permanent residency shall be issued to the alien. The Form I-89 shall be filled out to indicate that the alien is now resident within the United States and is no longer a commuter.

It should also be noted that under 8 CFR 211.5(b) there is an exception to the general rule that an alien commuter who has been out of regular employment in the United States for 6 months is out of status. That proviso states in part that 8 CFR 211.5(a) does not apply if " ... the commuter can demonstrate that he or she has worked 90 days in the United States in the aggregate during the 12-month period preceding the application for admission into the United States."

A commuter whose status is in question is not subject to expedited removal under section 235(b)(1) of the Act. He/she should be referred for proceedings under section 240 of the Act.

Note: Inspectors should be aware that commuter aliens who have lost employment or been out of work because of an illness or injury, whether eligible for workman compensation or not, are rarely ordered removed by an immigration judge. Care should be taken when deciding whether to set up such an alien for removal. Consultation with a supervisor or district official may be beneficial. Family members of commuter aliens present additional problems. Such family members living in foreign contiguous territory with the commuter alien may be U.S. citizens, B1/B2 nonimmigrants, or other lawful permanent residents. When unemployed immediate family members are also lawful permanent residents, inspection of such family members becomes complicated. It is recommended that a supervisor or other port of entry or district official be consulted should an inspector desire to set up for removal a lawful permanent resident immediate family member of a commuter alien based solely on that alien's lack of employment in the U.S.

(6) Statistical Reporting. See Statistics Handbook, paragraph 31101(a)(3), Inspections Activity Workload Reports, Specific Line and Column Definitions, Primary Inspection Operations Report Line #3, and Enforcement Activity Report, Line #46.

(IN98-16)

21.9 Northern Border Inspection Systems (NORBIS).

(a) General. The INS and the United States Customs Service (USCS) have developed NorBIS to enhance security, enforcement, and service along the northern border of the United States. Designed to use the latest in automation and video technology, NorBIS improves the current primary inspection process in place for many small, rural, border communities.

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(b) Remote Video Inspection System (RVIS). The INS and USCS have initiated a program called the Remote Video Inspection System along the northern border. RVIS has been placed at low-volume, small, remote POEs that were only open for limited hours to extend their hours of operation. Now, INS and Customs inspectors from larger 24 hour POEs are able to remotely inspect travelers at the RVIS POE using interactive video, surveillance and control equipment, and a validation system for PortPASS (See Chapter 31.3 *Introduction to Service Automated Systems*) holders. The *enrolled* traveler must swipe his/her PortPASS card through a card reader. If the card is valid and there are no alerts, the system instructs the traveler to proceed into the United States. If the card is invalid or expired, or if there are any alerts, the system prompts the inspector to continue the inspection manually. The infrequent (not enrolled) traveler after remote manual inspection by the inspector may either be instructed to cross the border, referred to a staffed POE for a secondary inspection, or instructed to return to Canada.

(c) Outlying Area Reporting Station (OARS). The *enrolled* traveler (arriving by small boat or snow mobile for entry into the U.S. or Canada) swiped his/her Port PASS card through the card reader. Once identified and validated, the system displays a message on the text display, instructing the traveler to proceed into the U.S. The non-enrolled traveler simply pushes a button on OARS that corresponds to the country being entered and is connected to a U.S. inspector or a Canadian inspector.

(d) Videophone Inspection System. Videophones are located in marinas and docks that are accessible to the public. The boater simply opens the door and lifts the handset. The boater is automatically connected to an officer and the inspection begins.

(e) License Plate Readers (LPRs). License plate readers use optical character recognition to read the license plates displayed on a vehicle as it enters a land border Port of Entry. The LPR automatically enters the information into the Interagency Border Information System (IBIS) for use by the inspecting officer or for later historical use.

(IN98-16)

21.10 Secure Electronic Network for Traveler's Rapid Inspection (SENTRI)

While similar to the initiatives on the northern border, the SENTRI program is not subsumed under NorBIS. SENTRI is an electronic, dedicated commuter lane that enhances the flow of low risk frequent border crossers through a port of entry while maintaining the security and integrity of our borders. SENTRI uses a pre-enrollment process and the PortPASS card coupled with a vehicle-mounted electronic transponder to improve the inspection process and provide a predictable wait time for entry into the United States. An inspector reviews the information that appears on the computer monitor, and if no lookout information appears, the vehicle and driver are allowed to proceed. (IN98-16)

21.11 Facilities Inspections.

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Bridge owners or operators may, pursuant to section 271 of the Act, and 8 CFR 271.1 request inspection of their facility to insure it is properly constructed to prevent illegal entry of aliens. If a facility has been certified by the district director as adequate, the owner or operator is not liable for a fine under section 271(a). The certification may be revoked, at any time. If the operator or owner believes the district director's requirements are too stringent, he/she may request a review by the regional director. All requests, findings, certifications and revocations shall be prepared formally, in writing and served by routine service as prescribed in 8 CFR 103.5a . (IN98-16)

21.12 Emergency Procedures during Canadian Air Traffic Controller Strikes.

See Chapter 22.9(a)(1).

21.13 Entry of Commercial Truck Drivers. (Revised 8/2/05; CBP 10-05)

(a) General. The immigration regulations and policies have long held that alien truck drivers may qualify for admission as B-1 visitors for business. Two BIA precedent decisions, *Matter of Cote*, 17 I&N Dec. 336, (BIA 1980) and *Matter of Camilleri*, 17 I&N Dec. 441, (BIA 1980), support the entry of commercial truck drivers as B-1 visitors to pick up or deliver cargo traveling in the stream of international commerce. These decisions provide that certain other activities that are "necessary incidents" of international commerce are also permissible under the B-1 classification. Drivers must meet all general entry requirements for the B-1 classification, including any applicable documentary and admissibility requirements.

(b) DHS Regulations and NAFTA. The regulations at 8 CFR 214.2(b)(4) codify the Distribution provisions found in Appendix 1603.A of the NAFTA with respect to the admission of Canadian and Mexican citizens as B-1 business visitors. The NAFTA Distribution provision is based on applicable U.S. law, precedent decisions, and experience with the B-1 classification at the time the trade agreement was negotiated. The contiguous nature of the United States with Canada and Mexico and the importance of cross-border transportation prompted the need to develop explicit provisions regarding distribution of goods and passengers. Acceptable activities for B-1 nonimmigrants under the NAFTA are the same as those allowed for other B-1 nonimmigrants under current DHS regulations, such as delivering or transporting products. The intent of the Distribution provision of the NAFTA Business Visitor category is to set forth transparent criteria for the admission of alien drivers transporting goods or passengers across the border, an activity that is international in scope – it is not to facilitate access to the domestic labor market. 8 CFR 214.2(b)(4)(i)(E)(1) defines the distribution activity as:

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Transportation operators transporting goods or passengers to the United States from the territory of another Party or loading and transporting goods or passengers from the United States to the territory of another Party, with no unloading in the United States, to the territory of another Party. (These operators may make deliveries in the United States if all goods or passengers to be delivered were loaded in the territory of another Party. Furthermore, they may load from locations in the United States if all goods or passengers to be loaded will be delivered in the territory of another Party. Purely domestic service or solicitation, in competition with United States operators, is not permitted).

(c) Key Principles Relating to Cabotage. Several General Counsel opinions have addressed certain aspects related to trucking. However, as the transportation industry grows and evolves, officers are faced with new and unique situations that did not previously exist and may not have been considered or addressed. Cabotage (carrying goods picked up at one point in the United States and dropping them off at another point in the United States), sometimes referred to as point-to-point hauling, is not a "necessary incident" of international commerce. Although this guidance cannot address every situation, there are several general principles to keep in mind when determining whether a trucking movement is a permissible B-1 activity versus an activity constituting cabotage or unlawful employment in the United States:

(1) The goods must be leaving or entering, and remain, in the stream of international commerce.

(2) Cargo that has its origin and final destination within the United States generally moves in the stream of domestic, rather than international commerce. The mere fact that goods originate from a foreign source does not make such goods "foreign" for purposes of the immigration laws. The goods must remain in the international stream of commerce – once they have come to rest, they assume a domestic character, including foreign goods that undergo a change, alteration, processing, or remanufacturing upon arrival in the United States.

(3) A driver bringing goods from Canada or Mexico may transport those goods to one or several locations in the United States, and may pick up goods from one or several U.S. locations for delivery to Canada or Mexico, but the driver may not load, haul, or deliver a cargo that has its origin and its final destination within the United States.

(4) The regulation focuses on the transportation of goods from one location to another and not the place where the goods are manufactured, processed or packaged. While the origin of the goods may be U. S. or foreign, the driver may not both pick up a shipment from one location and deliver that shipment to another location within the United States. Further, a driver may pick up goods in Canada or Mexico, regardless of

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whether they are foreign or U.S. made, and deliver them to a location in the United States.

(5) The entry of the driver must be for the purpose of an international movement of goods.

(6) Drivers may not engage in any activity that qualifies as local labor for hire.

(7) As with the application for admission of any nonimmigrant visitor, the burden of proof remains with the driver to establish eligibility for entry.

(d) Permissible Activities. In addition to the basic international deliveries and pick-ups discussed above, following are some other permitted movements and activities. These activities are not all-inclusive, but generally follow the same principles involving international commerce.

(1) Deadheading trailers. While delivering goods from Canada or Mexico to the United States, or picking up goods in the United States for delivery to Canada or Mexico, drivers may deadhead (pull empty) a trailer from one location to another within the United States, PROVIDED the deadhead trailer is either the one the driver came in with or the one he or she is departing with. The driver may not haul an empty trailer from one location to another within the United States (known as trailer spotting or repositioning) if the driver did not either bring that trailer in or take it out of the United States. Hauling an empty trailer that the driver does not either enter with or depart with is considered local labor for hire and alien drivers require employment authorization for this type of movement.

(2) Driving an empty tractor. Drivers may enter with an empty tractor to pick up a trailer for delivery to Canada or Mexico. They may drop a loaded trailer from Canada or Mexico at one location in the United States and then drive the empty tractor to another location in the United States to pick up a loaded trailer destined to Canada or Mexico. Drivers may also enter with an empty tractor to pick up a loaded trailer or goods previously brought from either Canada or Mexico and left at the port-of-entry or a customs warehouse or lot for government inspection or entry processing, and deliver that loaded trailer or goods to another point in the United States. The driver must present documentation or provide verification that the trailer or goods are under government control and that they originated outside the United States. Since it is the government itself that is hindering the driver from completing a continuous international move, this limited exception to the prohibition on both loading and unloading goods within the United States is permitted. For example, if further agriculture clearance is required before goods are delivered further within the United States, then the holding of the goods is part of the entry procedure and analogous to holding the goods for inspection at the port-of-entry. The goods remain in the international stream of

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commerce. An alien driver may be admitted to pick up the goods at the port-of-entry or agriculture hold lot and deliver the goods to another point in the United States, even if that driver did not originally bring those goods to the United States. However, if clearance by the government agency is not required before the goods are delivered further within the United States, the holding of the goods is not part of the entry procedure. In this scenario, use of an alien driver to deliver the goods from a holding lot to another point in the United States is cabotage and deemed an impermissible B-1 activity.

(3) Back-Up and Relay Drivers. To promote highway safety or address emergency situations only, CBP allows certain limited movements that would otherwise be considered domestic or point-to-point hauling. Back-up or relay drivers employed by the same company may be admitted as B-1 nonimmigrants in order for drivers to comply with Federal regulations regarding the number of consecutive hours an individual is permitted to drive. These relay drivers may drive entirely domestic segments of an international delivery, provided the domestic portion of the trip is a necessary incident to the international nature of the trip. They need not enter with the vehicle, but must enter within a reasonable period of time before or after the vehicle enters the United States. Drivers entering as relay drivers are considered to be entering for the purpose of an international movement.

(4) Tractor Replacements. For emergency or safety reasons, an alien driver may enter the United States with an empty tractor (bobtail) to replace a tractor already in the United States, such as when the tractor in the United States has broken down, or when the original driver needs to return to either Canada or Mexico for a medical or other emergency.

(5) Yard Moves. An alien driver may "spot" or "shunt" an empty trailer (other than the one he came in with) within a yard or lot only if moving the trailer from one location in the yard to another is a necessary incident to that driver's international commerce, i.e. the driver must move the empty trailer out of the way in order to complete an international delivery to that warehouse door or loading dock.

(6) Trailer Switches. An alien driver delivering goods from Canada or Mexico to a point in the United States (or traveling in the opposite direction) may meet at a drop yard or other location and switch trailers with another driver also delivering goods from Canada or Mexico to a different point in the United States (or traveling in the opposite direction), so that, for instance, the drivers may make their deliveries closer to their home in Canada or Mexico, or so that one driver can meet a tighter delivery schedule. Both drivers must continue in an international move. On the other hand, a driver coming from Canada or Mexico may not switch trailers with a Canadian or Mexican driver coming from a point within the United States, when the driver coming from within the United States will only be returning to another point in the United States. In other

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words, both drivers must either enter or depart the United States with a load.

(7) Necessary Incidents. Drivers may perform activities that are "necessary incidents" of international commerce, or a necessary function of delivery, such as loading or unloading international cargo. In addition to loading and unloading, the driver may participate in activities to safeguard the cargo, as needed. For instance, an alien driver delivering a portable dwelling (i.e. modular home) or prefabricated parts (i.e. modules) may unload the dwelling or prefabricated parts and any required supporting or temporary foundation, including temporary stanchions, shipped with the dwelling to its delivery point in the United States. However, the alien driver, and any other personnel admitted as a B-1 visitor who is involved in the delivery, may not engage in building, construction, or other activities, such as clearing or leveling the site, sealing seams, installing steps, hooking up utilities, attaching the portable dwelling or prefabricated parts to the foundation or slab, assembling of the various parts of the portable dwelling or prefabricated parts, and/or securing them to one another. Drivers may not return to U.S. job sites to unload, move or affix previously delivered parts of a building.

(8) Alien Drivers Paid by U.S. Carriers. U.S. carriers may hire an alien truck driver to engage in cross-border trucking activity into and out of the United States. These drivers may be paid by the U.S. carrier, provided that the alien driver is engaged solely in the international delivery of goods and cargo to or from the United States. Regardless of the terms of the hiring or any contract between the U.S. company and the driver, the alien driver may not engage in domestic carriage of goods without specific DHS employment authorization. The alien driver must have an established foreign residence and must affirm that he or she does not plan to immigrate to the United States or abandon his or her foreign residence. Prior to entry, the driver must obtain any applicable entry documents.

(e) Activities Not Permitted. In addition to certain prohibitions discussed above:

(1) Drivers may not pick up goods at one U.S. location and deliver those goods to another U.S. location, except as discussed above. In addition, on January 11, 1999, the INS issued a memorandum entitled *Leasing Agreements Between U.S. and Mexican Carriers* that included paragraphs relating to picking up goods stored in a U.S. facility pending distribution in the United States. DHS and the courts have since determined that picking up goods at a storage facility in the United States and delivering them to another location in the United States, even if those goods entered the United States pursuant to a pre-existing delivery contract, is contrary to the Distribution provisions of the NAFTA and the regulations at 8 CFR 214.2(b)(4). Such activity would constitute cabotage. This chapter supersedes that memorandum.

(2) Drivers may not reposition an empty trailer between two points in the United States when the driver did not either enter with or depart with that trailer.

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(3) Drivers may not "top up" an international shipment with U.S. domestic shipments.

(4) Drivers may not pick up goods at one location in the United States and travel through Canada or Mexico to deliver those goods to another location in the United States, i.e. a driver may not pick up goods in Washington State and then drive those goods through British Columbia to deliver them in Alaska. That is essentially the same as a driver picking up goods in Washington State and driving through Oregon to deliver the goods in California. The determining factor is the action of the driver picking up goods in one location in the United States and delivering the same goods to another location in the United States.

(5) Drivers may not directly solicit shipments for deliveries while in the United States.

(f) Disparity with Customs Regulations. In February 1999, the U.S. Customs Service revised its regulations to permit certain foreign-based commercial vehicles to engage in transportation of goods between points in the United States, when such transportation is either immediately prior to, or subsequent to, an international move. While DHS recognizes the disparity between what is now permitted under customs regulations for the entry of equipment and goods and what is permitted for the driver under current immigration regulations, it is important to note that the NAFTA provisions and the immigration statutes governing the entry of drivers are more restrictive than those governing customs activities, and do not allow as much flexibility in the regulatory and policy process. Both the NAFTA provisions and precedent decisions interpreting the visitor for business statute expressly forbid point-to-point hauling within the United States by alien drivers. The fact that foreign equipment may be permitted under Department of Transportation or customs regulations to operate within the United States in domestic service does not permit the employment of foreign drivers who are not authorized by DHS to accept employment in the United States. A U.S. carrier that employs an alien truck driver without appropriate employment authorization to transport goods that move within the stream of domestic commerce may be subject to civil and/or criminal penalties under section 274A of the INA.

Chapter 22: Airport Procedures.

- 22.1 General
- 22.2 Inspection Systems
- 22.3 Primary Inspection Procedures
- 22.4 Secondary Referrals
- 22.5 Inspection of Air Crewmembers
- 22.6 Processing Arrival Manifests and Flight Logs
- 22.7 Departure Manifest Procedures

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- 22.8 Progressive Clearance
- 22.9 Emergency Procedures during Canadian Air Traffic Controller Strikes
- 22.10 Inspection of International-to-International (ITI) Transit Passengers (Heading changed 11/17/98; IN99-04)

References:

INA: Sections 212, 231, 232, 233, 234, 235, 251, 252.

Regulations: 8 CFR 212, 231, 232, 233, 234, 235, 251, 252.

22.1 General.

Aircraft arriving from foreign territory are inspected at ports-of-entry designated in 8 CFR 100.4(c)(3) under authority contained in section 234 of the Act. Although the total volume of passengers is small by comparison to the that of land borders, the inspection process is considerably more complex, reflecting the diverse nature of the persons seeking admission to the United States. Personnel assigned to airport inspectional duties are generally funded by the Inspections User Fee Account, from revenue generated by a \$6.00 per-person charge paid by each arriving passenger through a surcharge to their airline ticket price.

Congress, in enacting the User Fee statute, also mandated that the agency improve the level of inspectional service by reducing waiting times at international airports. In order to insure full compliance with the intent of Congress, the Service has established inspector-to-passenger ratios as a guide to help insure waiting time for arriving passengers does not exceed 45 minutes. [See section 286(g) of the Act.] The normal staffing levels are: one inspector per 45 passengers on flights which are all aliens, one inspector per 100 passengers on flights which are all U.S. citizens and returning residents and one inspector per 60 passengers on mixed flights. Of course, in many locations multiple flights arrive for inspectional area during the same time period. Inspectors who are on duty should not be withheld from primary inspection simply because of these ratios.

A complete list of ports-of-entry for arriving international aircraft is included in 8 CFR 100.4(c)(3). Ports-of-entry are designated by the Secretary of Treasury. Ports-of -entry for the arrival of aliens by air are designated by the Commissioner of INS. [See section 234 of the Act and 8 CFR 234.4.] Pursuant to 8 CFR 234.2, unless permission is granted by the Office of Field Operations, aircraft arriving from Cuba must arrive at one of these three locations in the United States:

- John F. Kennedy International Airport, Jamaica, New York
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- Los Angeles International Airport, Los Angeles, California
- Miami International Airport, Miami, Florida

22.2 Inspection Systems.

In years past, inspection of arriving air passengers was separately conducted by various inspectional agencies: Public Health, Immigration, Customs and Agriculture. Over time, several interagency agreements have resulted in a variety of consolidated inspectional procedures. The variations among airport Federal Inspectional Services (FIS) work areas at different airports reflect this evolution. As a result of these physical FIS differences, there are some differences in local inspectional procedures, although the inspectional requirements of the Service remain essentially unchanged.

The current inspectional process, used at all new facilities, includes an INS-staffed primary inspectional area with Interagency Border Inspection System (IBIS) terminals, located in front of the baggage claim area. The immigration officer completes a primary inspection, including IBIS query, for all agencies and refers to each agency any secondary cases, according to agreed-upon criteria. A Memorandum of Understanding between INS and Customs which was signed on October 17, 1990, and serves as a guideline for interagency cooperation and procedures at airports, is reproduced as Appendix 22-1.

There are a number of special programs in place which will result in variations in the inspectional procedures. Each of these programs is designed to facilitate the inspection process or improve its effectiveness. Although some may be referenced in this chapter, they will be discussed in more detail in Chapter 26.

22.3 Primary Inspection Procedures.

(a) An airport primary inspector performs a series of procedures to quickly complete the admission of readily admissible persons and the detection and referral to secondary of those needing further questioning or more involved processing. The primary immigration inspector conducts an inspection for immigration purposes, including a lookout query for all agencies in the Interagency Border Inspection System (IBIS).

(b) A primary officer determines identity, examines the applicant's travel documents, and completes immigration primary inspection of various categories of aliens and citizens, including execution of Arrival/Departure Record, Form I-94, for admissible nonimmigrants. Detailed procedures for completing inspection of U.S. citizens and each category of nonimmigrant and immigrant are discussed in Chapters 11-16.

(c) (1) During the primary inspection, the inspecting officer shall ensure that the passport number for each applicant for admission who presents a passport (with the exception of a returning resident alien in possession of an Form I-551 or temporary evidence of such, Re-Entry Permit or Refugee Travel Document) is queried in

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IBIS/Advance Passenger Information System (APIS) as part of the primary query.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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passport numbers contained in the TECS record have been reviewed.

(d) (1) In cases where no APIS record relating to the applicant has been transmitted, the primary IBIS query shall consist of the Applicant's Last Name(s), First Name(s), Date of Birth, and passport number, or A-number (entered into the document # field). In cases where an APIS record relating to the applicant has been transmitted, but the record does not contain document number information, the APIS record must be modified to include the applicant's correct passport number, or A-number (entered in the document # field after the record is selected for modification).

(2) Regardless of whether an APIS record relating to the applicant has been transmitted, when either the biographical page of a machine readable passport or a machine readable nonimmigrant visa is scanned on primary, the system automatically incorporates the passport number into the primary query, and modifies the corresponding APIS record, if necessary. When an I-551 or temporary evidence of such, Re-Entry Permit or a Refugee Travel Document is scanned, the system automatically incorporates the A-number into the primary query, and modifies the corresponding APIS record, if necessary.

(3) When manually entering the passport number on primary, if the passport has a perforated number, inspectors shall enter this number into the document # field on primary. If the document does not have a perforated number, the individual booklet number that is preprinted at time of production (as opposed to the number added at the time of issuance) shall be entered. If the document has neither a perforated number nor a pre-printed booklet number, the inspecting officer shall enter the number found in the passport/document number field on the biographical/photograph page of the passport. In the latter case, the "passport number" is typically located in the Machine-Readable Zone (MRZ) and is also the number transmitted to IBIS via the APIS.

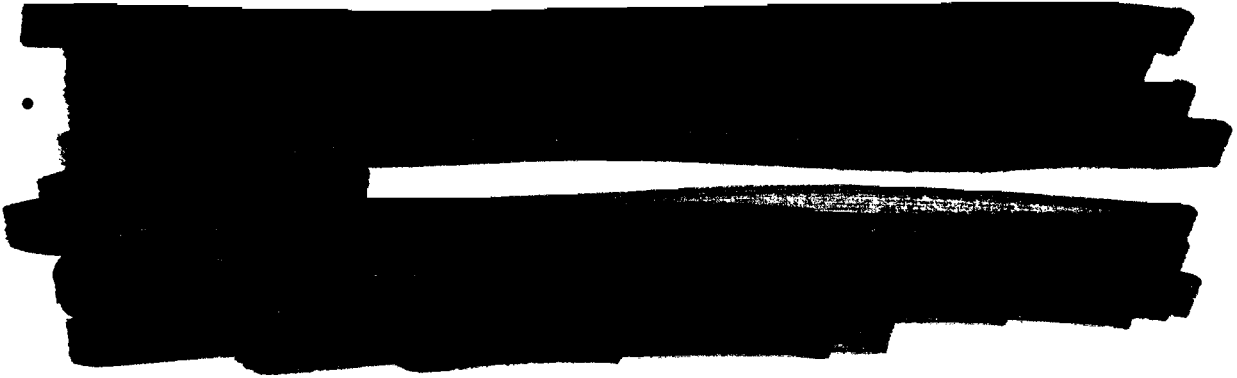
(4) When APIS provides passenger information, the inspecting officer must confirm that the data contained on the biographical page of the passport and the APIS data, including the passport number, are the same. The inspector must modify any missing, partial, or incorrect information and perform another IBIS query. Where APIS provides a passport number, or the passport number is queried by scanning the MRZ through a document reader, inspectors need not perform a second query. This is the only exception to the above mandate.

(5) For all IBIS queries, officers must enter, at a minimum, the first and last name; date of birth; passport number and issuing country. Officers may omit the passport number and passport-issuing country where a passport is not required of an applicant for admission. However, where an applicant for admission is not required to present a passport, but does so voluntarily, officers must query the document

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using the criteria provided above.

(6) There are several, different IBIS screens commonly used for conducting IBIS primary queries, including:



(7) There may be other screens used to perform queries during primary inspection or in secondary inspection offices. The above examples are intended to highlight the fact that the location where the passport number is queried may appear differently on various screens, but nevertheless, it must be queried.

(e) (1) For those locations that do not currently have access to IBIS (i.e., seaports, ferry landings, private aircraft and vessel landings, and other remote locations), the Director, Field Operations (DFO) must make arrangements for IBIS to be available in those locations.

(2) One way to make IBIS available in these remote locations is by phone-in queries. Regional, district and port of entry managers will compile a list of phone contacts within the region, district, and area port jurisdiction, where queries can be phoned-in from these remote sites on a 24 hours, 7 days per week basis (24x7). Field managers must provide the contact list to officers performing inspection duties at remote locations to facilitate phone-in queries. The contact lists should give the officer multiple contact options and must include back-up contact numbers as well to ensure that 24x7 coverage is established and maintained. Optional contact locations might include:

- A secondary inspection office at any 24x7 port of entry;
- Existing regional or district-command or operations centers with IBIS access;
- or,
- Ports of entry where officers perform 24x7 port security duties.

(3) Field managers will provide a means for officers receiving phone-in queries to establish that they are speaking with an officer performing inspections and will ensure expeditious processing for all phoned-in queries, bearing in mind that the

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officer at the remote site is performing a primary inspection. Some ways to verify the identity of the caller include (but are not limited to): alerting the receiving office prior to the inspection that a call will be coming, the calling officer should provide their port-code and stamp number, and the name and duty location of the calling officer can be confirmed via cc:mail.

(f) (1) In emergent circumstances, where locally developed primary or back-up phone contacts are unavailable to run a query, the [REDACTED]

[REDACTED] Field managers must ensure that officers conducting inspections at these remote sites have access to suitable communications devices, at all times, to enable officers to phone-in the IBIS query and that they are in good working order.

(2) Officers processing passengers at these remote locations should search IBIS, in the Inspection Operation Passenger Information screen, for APIS data submitted by private, ferry and cargo carriers. Where APIS is provided, the inspecting officer would need to ensure that APIS data is accurate and complete at the time of inspection. The inspecting officer would only need to phone-in queries for missing or incorrect APIS data.

(3) The use of the phone-in query procedure will remain in effect until portable IBIS devices are distributed, and officers have these devices available for use during primary inspection. In cases where there is an IBIS system outage, or it is otherwise unavailable, officers will continue to resort to the Portable Automated Lookout System (PALS). Because PALS does not contain lists of all lost or stolen blank passports, it should be used only in the absence of access to IBIS, including phoned-in IBIS queries.

(g) (1) Procedures for Computer System Failures. The following clarifies and documents the standard operating procedures to be followed in circumstances where the primary system, IBIS, becomes unavailable at ports of entry. All officers performing inspectional duties are required to be proficient with IBIS, to include the APIS, and all other systems available, e.g., National Automated Immigration Lookout System (NAILS) and PALS, which support the inspectional process. These procedures must be followed in sequential order when access to the IBIS database is unavailable. All system problems and outages must be reported to the CBP Help Desk at (703) 921-6000.

[REDACTED]

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(6) Local ports of entry are encouraged to establish their own system of backup contacts to process IBIS, NAILS, and PALS queries. These plans should be forwarded to Field Office for consolidation.

22.4 Secondary Referrals.

The inspector must quickly identify passengers who may not be admissible or whose inspection will require additional time. The primary inspector must communicate with the secondary officer

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via IBIS, concerning the basis for referrals. Local procedures for referral to the secondary areas for each inspectional agency may vary. Generally, each of the procedures discussed in Chapter 17 would be conducted in the secondary area. In addition, most paroles, new immigrant, and refugee admissions are handled as secondary functions because of special stamps required.

22.5 Inspection of Air Crewmembers.

(a) General. At most airport facilities a separate booth is designated solely for inspection of crew members. In some locations, this function may be conducted by a secondary officer. The inspector handling the crew will usually also be designated to receive Forms I-92, Aircraft/Vessel Report and the crew list on either an International Civil Aviation Organization General Declaration or Customs Form 7507, and often has responsibility for closing out the flight paperwork, as discussed below. The paperwork is normally presented by an airline ground agent or a member of the crew. Before the agent or crewmember leaves the area, the inspector should review the paperwork to insure that necessary information, such as total number of passengers and crew and flight arrival or block time, has been provided. The separate alien and citizen numbers are not required until after the flight is closed out and Forms I-94 are tallied. If there is missing information, such as a missing crewmember's name, the inspector should advise the ground agent or purser to make the necessary changes to the declaration.

Although air crewmen are subject to the same conditions which apply to crewmen arriving on vessels, there is a lesser enforcement problem relating to air crewmen.

At air ports-of-entry it is the general practice to expedite the admission of arriving crewmen. There is no objection to this practice so long as inspection of arriving passengers is not delayed simply to expedite crewmen. Waiting passengers should not be asked to step aside so that crewmen can be inspected. The crewmen must wait until the inspection of passengers already in the booth is completed. Under no circumstances should the arriving passengers be left with the impression that crewmen come first.

(b) Passport, Visa and Form I-95 Requirements for Nonimmigrant Air Crew. Each arriving alien crewmember must present a completed Crew Customs Declaration, a valid passport with a "D" visa (except as discussed below) and Form I-95. Exceptions:

- (1) Crewmembers who are Canadian citizens are exempt a "D" visa, but require a Form I-95;
- (2) Mexican crewmembers on the Mexican National Airline, Mexicana, are exempt both a passport and a "D" visa if they present a Mexican "Aeronautical Card"; and
- (3) Crewmembers in possession of Form I-184 do not require a Form I-95.

(c) U.S. Citizen and Resident Alien Crew. U.S. citizen crewmembers must have a valid passport only if arriving after travel outside the western hemisphere. Resident alien

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crewmembers may travel on Form I-551. Resident alien crew ordinarily would not be employed on the same flights as "D" crewmembers. Do not stamp passports of U.S. citizens or returning resident crewmembers unless asked to do so.

(d) INSPASS and crewmembers. The INSPASS inspection process is also available to air crew. This means that some crew will not be inspected in the regular crew booth. Verify through Customs that crew members who were not inspected in the crew booth submitted a Crew Customs Declaration at the crew Customs booth.

(e) "Deadheading" Crew. "Deadhead" crewmembers are air crew members who enter as passengers or non-working crew on board a regular flight or "positioning" aircraft. They are generally entering solely for the purpose of joining the working crew of an outbound flight. Although ordinarily a C-1 visa is appropriate in such circumstances, a B-1 visa is also permitted. At some ports, such crewmembers may be added to the general declaration and admitted as D-1. In all other circumstances, working crewmembers may be classified only as D-1 or D-2.

(f) Clearance of Certain Air Cargo Crewmembers. (1) A clearance may be granted for certain air cargo crewmembers to an onward port-of-entry when the initial stop in the United States is a refueling/technical stop. However, the clearance must have the approval of the local Federal Inspection Service (FIS) agencies.

(2) If the FIS Agencies' approval is granted, the air cargo crewmembers will be inspected at the onward U.S. port-of-entry in accordance with FIS regulations and procedures. The INS port director or his or her representative granting approval is responsible for telephonically contacting the onward port-of-entry to confirm the FIS agencies' clearance approval at the onward port-of-entry.

(3) This clearance for certain air cargo crewmembers does not apply to flights arriving from or transit through the following countries: Afganistan, Egypt, Malaysia, Pakistan, Phillippines, Saudi Arabia, Somalia, Sudan, United Arab Emirates, and Yemen. Crewmembers on flights arriving from or transit through these countries must be presented to INS and Customs for full inspection at the first port-of-entry.

22.6 Processing Arrival Manifests and Flight Logs.

(a) Forms I-92 & I-94. Once the last passenger from the flight has been cleared, complete the citizen/alien counts on the Form I-92. The alien count will be the tally of all Forms I-94 collected for the flight. The citizen count includes U.S. citizens and any others who do not require a Form I-94. The Form I-92 should also contain the number of U.S. citizen and alien crew inspected. After the flight count has been finalized, re-sort Forms I-94, segregating those for F-1, M-1, TWOV, VWP and departure. Bundle remaining I-94 forms with the form I-92 for the flight.

Forward all Forms I-94 and I-92 for data entry as described in Chapter 22.7.

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(b) **I-577.** Every INS airport inspectional facility is required to maintain a Daily Air Passenger Inspection Log, Form I-577, containing key information about each arriving aircraft. Most often, this is maintained in the crew booth or secondary area by the crew inspector, secondary inspector or supervisor. The log contains key information concerning the passenger load, arrival and inspection times, and number of inspectors assigned. [See airline codes in Appendix 22-2.] A complete, accurate log is necessary, since the Service is often required to respond to inquiries regarding flight delays and manpower on duty. Frequently, you will be required to process more than one flight simultaneously, somewhat complicating obtaining the flight opening and closing times. Enter flights on the log in order of arrival, to the extent possible. Ports with multiple terminals or separate cargo facilities may maintain multiple daily logs. Flights are generally expected to be cleared in less than 45 minutes. Mark the flight log, in the left hand margin, "DLY" whenever passenger inspection exceeds 45 minutes. In addition, follow local procedures for adherence to the national policy for reporting such delays or other unusual situations affecting the inspection. Do not include clearance times for large groups of TWOV passengers or refugee groups in the passenger processing time for a flight. Note that the first passenger time (FIRST PAX) time on Form I-577 should be the time that the first passenger enters the inspection room and not when the flight paperwork is presented to the crew inspector. If the passengers are detained on the aircraft due to congestion in the inspection area, add to the inspection time the minutes elapsed between blocking and the actual commencement of inspection. (Strictly speaking, this does not allow for the time it took for the passengers to proceed from the aircraft to the FIS area, normally counted as time between block time and first passenger.) The last passenger time (LAST PAX) is the time when the last passenger from the flight clears primary inspection. This may be an estimated time if there are multiple flights in the inspectional area at the same time. The flight closing time is the time when the last passenger has cleared both primary and secondary.

(c) **APIS flights.** When entering the number of primary inspectors on duty for an APIS flight, include only those assigned to "Blue Lanes," or actually engaged in inspecting the APIS flight. When completing the I-577 for an APIS flight, mark an "A" in the right hand margin of the flight log next to the flight. If a flight is ordinarily an APIS flight, but was not processed using APIS, note the right hand margin "NA" and explain the reasons for not using APIS on the reverse side of the log.

(d) **Overtime billable flights.** Flights arriving between 5:00 p.m and 8:00 a.m and:

- (1) are not scheduled (do not appear on the INS flight schedule), or
- (2) flights which arrive one hour or more off schedule

are billable for overtime charges **only** if there are INS officers working overtime during the time of inspection. Identify billable flights on the I-577 by circling the block time for the flight in red.

(e) **Manifests for Precleared Flights.** Enter all Precleared flights on the I-577, listing passenger and crew counts as "0", unless inspection of either is required.

22.7 Departure Manifest Procedures.

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(a) General. Air carriers are required to submit departure manifests, ordinarily within 2 working days of departure, as specified in 8 CFR 231.2. The port-of-entry is responsible for reviewing and sorting the departure forms and forwarding them for data entry. In addition, ports must obtain departure flight schedules and insure manifests are received for all scheduled departing flights. Unlike arrival forms, departure I-94 forms do not have to be separated, except for TWOV forms (I-94T). Promptly (not to exceed 3 days from receipt at airports with permanent staff, 7 days at other locations) forward all forms I-92 and I-94 in accordance with Appendix 15-8

(b) Special TWOV I-94 Handling Requirements. Form I-94T is the primary document used to determine if a TWOV violation has occurred. Although the TWOV carrier has responsibility for submission of a complete and accurate form for each passenger, Service officers must monitor performance to ensure compliance and for completing the shaded blocks on the form.

Some carriers will ask for INS port officials to sign a receipt for departure I-94T forms, separately turned in from other departure forms. When signing such a receipt, advise the carrier, orally or in writing, that such a receipt does not relieve the carrier from responsibility for proper completion of the departure information. The receipt is merely an acknowledgment that the forms were submitted. Improperly completed departure forms should be sent to the contractor for data entry. The contractor will identify forms with missing departure information and notify the National Fines Office of the possible violation of section 231 of the Act. Port officials should **not** recommend fines in such situations.

Date stamp each departure Form I-94T directly below the admission number with the Service date of receipt. Forms I-94T should be sent for data entry via overnight express, to avoid needless notices of intent to assess liquidated damages. Forward in accordance with Appendix 15-8.

(c) Issuance of a Receipt for I-94 Forms Received from Carrier. When submitting I-94 departure records, some carriers may request that a receipt be signed or stamped to acknowledge the submission. If the Service later alleges that a particular departure record was not submitted, the carrier may be able to prove otherwise and avoid a fine under Section 231(b) by providing a copy of the Service-endorsed receipt. Therefore, ports of entry should be sensitive to the requests of carriers with regard to receipts for I-94 departure records.

When endorsing a receipt for Forms I-94, the receiving officer should draw a diagonal line through any unused spaces on the receipt. The receiving officer should then make a copy of the receipt for retention in a local office log (using the same retention schedule as for other Service correspondence). This important step protects the carrier from any potential questions regarding possible additions subsequent to endorsement, as well as protecting the Service from potentially fraudulent receipts.

If you have questions regarding these receipts, please contact Senior Fines Officer

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Michael D Jones at 202-305-7018 or via ccMail.

22.8 Progressive Clearance.

Some flights have been approved to deplane some passengers and crew at one port-of-entry and the remainder at an onward port. In such instances, the agent will deliver two Forms I-92 to the first port of entry. If you are at the first port, record on the flight log and one copy of the I-92 only the number of passengers and crew cleared at your port. Indicate on the second I-92 the number of passengers and crew which remained on board. Stamp the second I-92 with your admission stamp and return it to the agent, to be turned in at the second port. At the onward port, the agent will deliver the I-92 stamped by the first port, indicating the number of passengers and crewmembers which should be inspected. Complete the inspection, I-92 and flight log, including only those persons inspected at your port. Occasionally, there may be domestic passengers who boarded at the first port, but who are not subject to inspection at the onward port. Such passengers should be airline employees, "deadheading" crewmembers or their families. Such persons are not to be included in the flight log or I-92. [See 8 CFR 231.1(c) for authority and conditions of progressive clearance and Chapter 42.8 discussion of progressive clearance approval.]

22.9 Emergency Procedures during Canadian Air Traffic Controller Strikes.

(a) The following guidelines and emergency procedures will be placed in force at the direction of Headquarters in the event of an air controller work stoppage in Canada.

(1) Passengers destined to the United States from Canada will be accorded inspection at preclearance locations in Canada and bused to the United States. They will be accompanied by an airline representative or guard together with a memo from the INS supervisor in Canada stating the number of passengers inspected and boarded on the bus. In this situation, no inspection will take place at the port-of-entry.

(2) Passengers destined overseas from Canada will be transported on buses from the Canadian airport to an airport in the United States. On arrival at a land port-of-entry, the airline representative accompanying the passengers will provide a list containing the names of all persons on the bus to the INS or Customs officer. The bus then may be allowed to proceed to the United States airport of embarkation where the airline representative will provide the list (second copy) of the names of all persons aboard the bus. An INS or Customs officer will observe the boarding of the flight and make a head count for comparison with the listed names. In the alternative, when the airport is close to the port-of-entry, an INS or Customs officer may escort the bus to the airport and observe the boarding. No inspection will be accorded at the port-of-entry or the airport in this situation.

(3) Passengers arriving at a United States airport on a Canada-bound flight will be accorded full inspection if destined to the United States and inspection is requested. All other

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passengers will not be inspected, but will be transported on buses and escorted to Canada by airline representatives. These flights will be met at the U.S. port of departure by an INS or Customs officer who will then proceed to Canada. In some jurisdictions, the passengers will be inspected by Canadian officials at the border and in others, at Canadian airports of destination. In either case, Canadian officials should furnish a list (second copy) of the names of persons inspected to his United States counterpart at the port or at the airport in Canada (preclearance post).

(4) Passengers traveling from one point in Canada to another point in Canada via a flight entirely within the United States will be bused to U.S. airports through ports-of-entry. The airline representative accompanying the passengers will furnish the port-of-entry with a list of names of all passengers and the port-of-entry will make a head count and furnish this information to the U.S. airport of embarkation. An INS or Customs officer will observe the boarding of the flight and take a head count. The inspector will then furnish the head count and other flight information to the United States airport of debarkation. Each flight will be met at the U.S. airport of debarkation by an INS or Customs officer who again will observe the boarding of buses and make a head count. The buses will then proceed to Canada where airline representatives will furnish Canadian officials with a list of the names of all persons (second copy of the list provided the port-of-entry) transported.

(b) All carriers transporting passengers to and from U.S. airports for flights that usually originate or terminate in Canada under the provisions of guidelines 2 through 4, must be signatory to a Form I-426 agreement. Carriers not signatory to a Form I-426 agreement should be given a reasonable opportunity to enter into an agreement with the Service. If no agreement is entered into, those carriers not signatory shall be precluded from transporting passengers in the manner prescribed in paragraphs 2, 3, and 4 of these guidelines. Every carrier must be reminded that under the provisions of the Form I-426 agreement, liquidated damages may be assessed for each passenger transported who fails to depart in accordance with the provisions of these guidelines.

(c) Employees of carriers whose flights normally operate from Canadian airports are not authorized to be stationed at U.S. airports to conduct routine duties or to perform routine maintenance and aircraft servicing functions. A limited number of supervisory employees may be admitted in B-I status for the purpose of advising and observing operations of personnel under contract to handle maintenance, janitorial services, ticketing, and reservation services. Mechanics and maintenance personnel may be admitted in B-I classification to perform emergency mechanical services. They should not be admitted to be stationed at U.S. airports in anticipation of a need for their services. The admission of airline personnel under B-I classification should be controlled by issuance of Form I-94. The airline employee should be instructed to surrender the original copy of Form I-94 to a United States immigration officers at the time of departure from the United States.

(d) It is anticipated that specific problems not covered in these guidelines will present themselves. As such problems present themselves, the Regional Office concerned should coordinate with Headquarters to resolve them.

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(e) These guidelines are established to apply to air carriers who regularly provide air service to and from Canadian airports and are precluded from doing so due to a work stoppage. The guidelines are not meant to apply to new routes or supplemental service being inaugurated after a work stoppage has commenced.

22.10 Inspection of International-to-International (ITI) Transit Passengers (Heading changed 11/17/98; IN99-04)

(a) General. Changes to the Act as effected by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) require the inspection of all international-to-international (ITI) passengers (formerly known as in-transit lounge (ITL) passengers). Section 235(a)(3) now reads that "[a]ll aliens (including alien crewmen) who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States shall be inspected by immigration officers"

(b) Procedures.

(1) International-to-international passengers shall be inspected but not admitted to the United States. This inspection should be conducted at the In-Transit Lounge (ITL). If this is not feasible, the port director or district office manager shall contact the appropriate deputy assistant regional director for inspections to provide justification for not using the ITL and to make alternative arrangements in keeping with the overall goal of facilitation of the ITI operation.

(2) The transit passenger inspection (TPI) shall consist of a visual examination of ITI passengers during the transfer process at the port-of-entry. This does not require an examination of each passenger and their travel documents. Questioning of ITI passengers and examination of travel documents shall be done selectively and on a random basis but should not interfere with the overall facilitation of the ITI operation.

(3) The POE's shall dedicate sufficient resources at the ITI inspection locations to maximize facilitation and law enforcement while ensuring inspector safety and security without adversely affecting the inspection of passengers seeking admission to the United States.

(4) Carriers are not required to present for inspection ITI passengers or crewmembers who remain on board the aircraft.

(5) Ports-of-entry shall report to the Office of Programs, through channels, any significant implementation problems, including adverse effects on the 45 minute inspection requirement and/or on resources, with any of the above inspection requirements.

(6) Ports-of-entry need to obtain and record accurate ITI passenger counts. Carrier representatives should be questioned regarding ITI passengers counts upon presentation of the Aircraft/Vessel Report, Form I-92. This refers to passenger counts only and not to

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biographical data. The figures reported on the G-22.1 are for planning purposes and for use in discussions with the carriers.

(c) Carrier Responsibilities. Carriers signatory to Immediate and Continuous Transit Agreements (with provisions for control of uninspected passengers and In-Transit Lounge Use), also known as ITL agreements, will be allowed continued transit privileges of ITI passengers until further notice. [See also Chapter 42.2.] Management officials at each port-of-entry with a transit lounge should work closely with air carriers using the transit facilities to ensure the Service receives sufficient advance information about transit passengers who will use ITI facilities. Such information includes date and time of arrival, flight number and an estimate of the number of ITI passengers.

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Chapter 23: Seaport Inspection.

- 23.1 General
- 23.2 Exceptions to Inspection Requirements
- 23.3 Inspecting Cargo Vessels
- 23.4 Inspecting Cruise Ships
- 23.5 Payoff and Discharge of Crewmembers
- 23.6 Refusals
- 23.7 Deserters and Abscondee
- 23.8 Stowaways
- 23.9 Mustering
- 23.10 Revocation of Landing Permits
- 23.11 Performance of Longshore Work by Crewmembers
- 23.12 Parole of Alien Crewmembers
- 23.13 Vessels Remaining beyond 29 Days
- 23.14 Ship Intelligence Cards
- 23.15 Departure Manifests
- 23.16 United States-Based Fishing Vessels
- 23.17 Vessels Serving on the Outer Continental Shelf (OCS)
- 23.18 Asylum Claims by Vessel Crewmembers or Stowaways
- 23.19 Special Interest Vessels/Non-Entrant Countries

References:

INA: Sections 212, 235, 251, 252, 253, 254, 255, 256, 257, 258, 273.

Regulations: 8 CFR 212, 235, 251, 252, 253, 258; 22 CFR 41.41, 41.42.

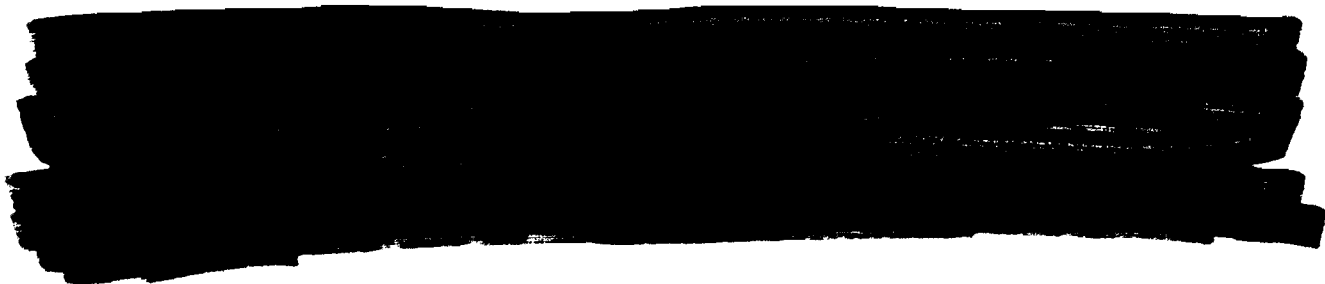
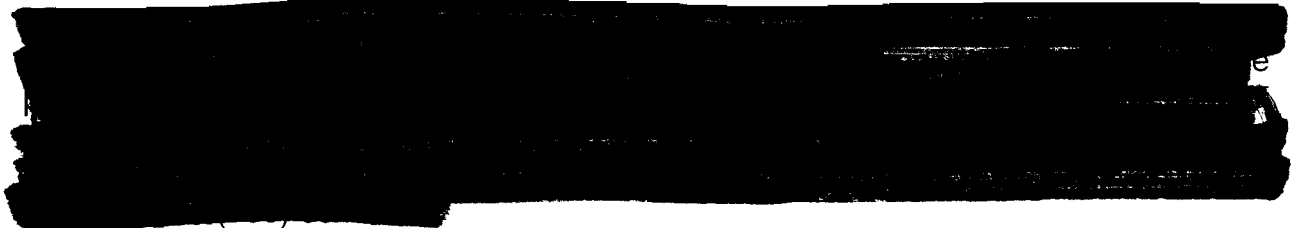
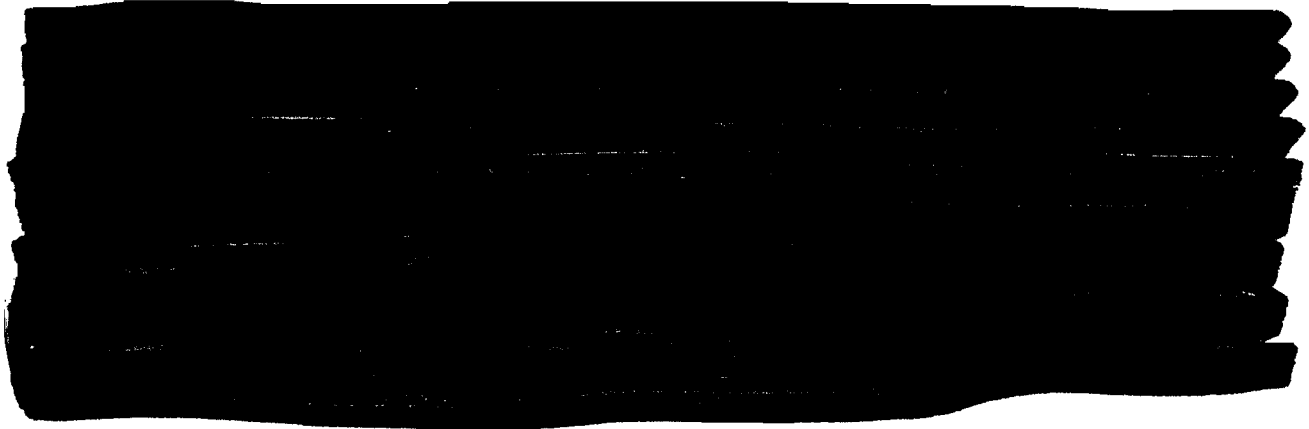
23.1 General.

(a) (1) Inspection of passengers and crewmembers in a seaport environment differs significantly from airport or land border inspection. Many of the procedures have been only slightly modified from inspectional procedures developed many years ago, before the advent of commercial airlines. Most vessels inspected nowadays are cargo vessels, with only crewmembers on board. Passenger vessels are predominantly cruise ships, with most passengers beginning and ending their trips in the United States. Cruise ship inspection, involving a large volume of U.S. citizen passengers and crewmembers who may have made several entries in just a few weeks, is handled either upon arrival or en route, using a relatively small inspection staff. Cargo vessels are inspected in port or "in-stream," based on arrangements made by the vessel's agent.

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(b) A list of ports of entry for arrival of international vessels is included in 8 CFR 100.4(c)(2). The Commissioner of U.S. Customs and Border Protection designates and approves the inspection of aliens at such ports of entry for international arrival.

(c) Primary sea inspection procedures. See Chapter 23.3 of the IFM for primary inspection procedures.



(g) In-stream boardings. In-stream boardings can be more hazardous and time-consuming, and are typically used when a ship will be at anchor for a prolonged period prior to docking or will proceed to a docking facility which is distant from the major port area. Such boardings are generally arranged to accommodate the needs of the vessel's operator, at the convenience of the government. A boarding party, consisting of CBP officers and the ship's agent, meet the ship at a prearranged anchorage, using a tug, launch, or helicopter, as arranged by the agent. The inspecting officer must exercise judgment in deciding whether the boarding conditions are safe or whether the inspection should be delayed until docking.

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(h) Dockside inspections. Dockside inspection of vessels is arranged by the shipping agent. Inspection must be complete before any other activities commence, such as cargo off loading, conducting business with ship chandlers, etc. Ordinarily, the CBP inspectors are at the dock when the ship's gangway is lowered and are the first to board. Others waiting to do business should be directed to refrain from such activities until the inspection is substantially completed, to avoid interference with the clearance process. Ships are usually in port for a limited time, incurring substantial charges for stevedores and other related activities. It is critical that the Federal inspection procedures are promptly and efficiently handled to avoid needless delays and increases to these costs.

(i) En route inspections. (1) General. Because of the large volume of passengers and crew on many cruise vessels and the rapid turnaround time required for off loading passengers from one cruise and loading for the next, cruise lines may request that CBP conduct the immigration inspection while the ship is en route from the last foreign port back to the United States. This type of inspection, while both cost-effective and customer-service oriented, is subject to scrutiny by the media as well as internally, since the prolonged presence of the inspector on a cruise vessel can easily give the outward appearance of being improper acceptance of a gift by a government employee. Because of this risk, policy on the conduct of en route inspections has been strictly laid out and must be followed in every detail. Following 9/11, en route inspections were suspended. Directors of field operations may authorize en route inspections on a case-by-case basis after an assessment of local security and risk factors.

(2) Carrier requests for en route inspectional services. All requests for en route inspection service must be submitted by the carrier or agent to the director of field operations having jurisdiction over the first port of arrival. Requests must be in writing; they must be prospective in nature; and they must specify the circumstances requiring an en route inspection. Under no circumstances may a request be initiated by a CBP field office. Each request must specify the detailed reasons why an en route inspection is being requested and contain sufficient details to enable the director to determine if an en route inspection is the best and most cost-effective inspectional procedure.

(3) Criteria for providing en route inspectional services. In situations involving long cruises (defined as any cruise where one or more inspectors perform official duties on board a cruise ship and away from their official duty station for more than 24 hours), directors shall consider en route inspections on a case-by-case basis (each sailing of a cruise ship on a specific date). The use of a consolidated request is not appropriate in such cases. Consolidated requests are limited to one-day cruises and may be submitted monthly, to coincide with the calendar month. Such consolidated requests shall list the days of the month on which the cruise ship is scheduled to operate.

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The director of field operations shall review the request and base his or her decision on one or more of three factors:

- Availability of on-duty personnel
- Availability of adequate dockside inspectional facilities
- Minimization of overtime expenses

En route inspections shall not be conducted if reasonable and cost effective alternatives exist for conducting the inspection dockside. Scheduling of CBP inspectors performing en route inspections shall be done in a manner which maximizes their use during duty hours.

If, due to unique circumstances, a director of field operations believes that an en route inspection is warranted notwithstanding the fact that it does not satisfy one of the requisite factors, he or she may seek an exception by submitting a written request to Headquarters Office of Field Operations. Such request shall contain an in-depth justification which shall be considered and evaluated by Headquarters.

Delegation of authority for approval of en route inspections shall not be below the level of port director.

(4) Documentation of en route inspection. Approval of en route inspection requests must be documented. A separate Form I-856, the En Route Cruise Inspection Report, must be prepared for and completed by each officer conducting such inspection. The authorizing section of the form must be completed in advance and signed by the official who approves and authorizes the en route inspection. The remaining portions of the I-856 are to be completed by the inspecting officer. Each I-856 must be reviewed by the official who authorizes the inspection to ensure the inspection was conducted in a manner consistent with the managerial objectives discussed above.

Officers conducting en route inspections are also required to have travel orders. In item 5 of the G-250, indicate the minimum amount of time necessary to complete the en route inspection. In item 6, indicate: "en route inspection" followed by the name of the cruise ship, shipping line and ship's agent. In item 7, transportation, reflect the means of transportation most cost-effective for the government. This means that the transportation should provide the maximum number of working hours for assigned personnel to complete the inspection. Down time, overtime and actual transportation costs to the foreign port where the inspector boards the vessel should be minimized. Employees are prohibited from sailing out on assigned ships when less costly means of arriving at the foreign port are available. Also note item 7: "See item 12." In item 8, the itinerary shall clearly state the location in the U.S. from which travel begins, the means of transportation to be used for departure from the U.S., the foreign port to which the employee is destined, the last foreign port from which the vessel will depart for the U.S. and the means of transportation to be used in returning to the U.S. (normally the assigned cruise ship). In item 12, include

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the following language: "All transportation, travel, lodging, meals and incidental expenses necessary for completion of this assignment are the responsibility of the cruise ship line and/or its designated agents." In item 13, indicate: "Appropriated funds not authorized."

(5) Record keeping requirements. Documentation relating to approved en route inspections shall be maintained in a subject file at the field office. Documents within the file shall be maintained on a fiscal year basis and shall contain, at a minimum, all approved en route inspection requests, all Forms I-856 and all discrepancy memoranda. Such files shall be maintained for a five-year period and shall be readily available at any time during this period of audits which may be conducted. Travel authorizations (Forms G-250) for en route inspections shall be separately maintained in chronological order. The suffix "(E)" shall be included in the authorization number, for example: "97-MIA-(E)-001."

Unusual delays or other discrepancies in the performance of an en route inspection shall be documented in writing in memorandum form to the appropriate regional office. Any corrective actions proposed or taken by managerial personnel shall also be referenced by memorandum.

(6) Commencement of en route inspection. Officers are prohibited from commencement of the inspection until the vessel is actually en route, i.e., free from moorings and under its own power

(7) Program monitoring. Directors shall institute local procedures for monitoring the conduct of en route inspections. Officers conducting such inspections shall be given periodic refresher training on the ethical standards which employees must uphold in the performance of their official duties. Instruction on the standard schedule of disciplinary offenses and penalties for employees shall be included in this refresher training. The importance of the role which local supervisors and managers play in the maintenance of ethical standards, both their own and that of their subordinates, shall also be emphasized. Local procedures shall be established to closely monitor en route inspection activity. These procedures shall be designed to facilitate early detection of procedural improprieties and prohibited practices. Procedures used to achieve these goals include the initiation of locally designed monitoring activities and procedures as well as information-sharing liaison activities between CBP officials and cruise ship line representatives. A positive public relations posture regarding these issues is a responsibility of all local supervisors and managers.

First-line supervisors play a vital role in assuring that en route inspections are conducted in a cost effective manner. Information relating to assigned work schedules, actual hours worked, the numbers of passengers and crew inspected and the most cost efficient use of salary and overtime resources should be retained by each field office and provided to Headquarters officials upon request. This information should also be considered when making en route assignments and monitoring such activities.

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Inquiries shall be conducted in all instances in which management personnel become aware of noncompliance with en route inspection policies and procedures. Such inquiries shall be conducted by one or more management officials who are at least one managerial level above the managerial official who authorized the inspection. Written inquiry results shall be forwarded, through channels, to the director of field operations. In situations where such inquiry reveals that CBP policy has been violated, directors of field operations shall institute appropriate corrective action, including disciplinary action, if warranted.

Headquarters shall promptly be notified of all instances of noncompliance and apprised of corrective or disciplinary actions proposed or taken with respect to such incidents. Unusual circumstances affecting the conduct of en route inspections, such as those which would attract media attention or congressional interest should be reported promptly.

(8) Presence of family members on en route inspections. It is prohibited, pursuant to 18 U.S.C. 201(c)(1)(B), for accompanying family member or friends of CBP officers conducting en route inspections to travel with the employee either for free or at a substantially discounted fare not available to the general public. Such fares constitute benefits of value, which would not be received, were it not for the position and authority of the officer to inspect passengers and crew. Further, 5 CFR 2635.202(a)(2) states that employees shall not, directly or indirectly, solicit or accept a gift because of the employees official position. Also, 5 CFR 2635.502(a) prohibits employees of the federal government from participating in a matter which would cause a reasonable person to question such employees' impartiality.

23.2 Exceptions to Inspection Requirements.

(a) General. Statute requires the inspection of every arriving passenger and crewmember upon arrival in the United States. See section 235 of the Act and 8 CFR 235.1. Service policy interpretation provides some clarification regarding persons whose comings to the U.S. are not treated as "arrivals," thereby not requiring inspection. Service policy excludes the following from the ordinary inspectional procedures:

(1) Any person, including an alien crewman, passing through the Panama Canal on board a vessel which enters and clears at the Canal port only to transit, refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage;

(2) Any person, including an alien crewman, on board a vessel which after arrival at a U.S. port-of-entry passes the Great Lakes seaway en route to another U.S. port and which enters and clears at points in Canada only to transit the seaway, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage;

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(3) Any person seeking to enter the U.S., including an alien crewman, on board a vessel en route from one U.S. port to another U.S. port shall not be regarded as coming from a foreign port solely by reason of the vessel's stop at Freeport, Bahamas, for bunkering only;

(4) Any person, including an alien crewman on board a vessel en route to the U.S. solely for bunkering purposes or an aircraft en route to the U.S. solely for refueling purposes, who does not seek to enter the U.S., shall be regarded as not arriving for purposes of immigration; and,

(5) Any crewmember previously inspected and permitted to land, continuing to serve as a crewmember on board a cruise vessel which has been inspected within the preceding 90 days and who has not spent an aggregate of more than 29 days in the U.S. since his or her last inspection, unless the master or agent requests such reinspection or unless, in the discretion of the district director, more frequent inspection is warranted.

(b) Limited Inspection of Great Lakes Vessels. Inspection of certain vessels of U.S., British, or Canadian registry plying the Great Lakes is limited. Refer to 8 CFR 251.1 concerning manifest requirements and 8 CFR 252.3 concerning inspectional requirements.

(c) Vessels Traveling to International Waters. Under interpretation of current INS and Department of State regulations, sailing from a United States port into international or foreign waters, without a call at a foreign port, does not satisfy the foreign departure requirement. Therefore, alien crewmembers onboard lightering vessels, certain fishing vessels, cruises to nowhere, or any vessel that sails from a United States port and returns without calling a foreign port or place, has not departed the United States. Crewmen onboard vessels that sail from a United States port into international waters, return to the United States, and have not touched a foreign place within 29-days of the vessel's initial arrival (in the United States from a foreign place), have remained beyond their authorized period of stay.

This provision does not apply to fishing vessels in Guam that sail to international waters. Pursuant to Public Law 99-505, such a vessel is considered to have departed the United States.

The inspecting officer's authorities regarding coastwise vessels, including (but not limited to): performing musters, revoking shore-passes or granting 29-day vessel extensions, remain unchanged. These topics are addressed in Chapter 23.9, Chapter 23.10 and Chapter 23.13, respectively, of this field manual.

23.3 Inspecting Cargo Vessels.

Following are the general steps which you must take to complete inspection of a cargo vessel.

(a) I-418 Review. The master, agent, or other official will have prepared, in advance, Form

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I-418, Passenger List-Crew List, with the names and biographic data for each member of the crew. A separate I-418 is required for any passengers and stowaways. The master is required to make a notation on the crew list indicating whether or not members of the crew will be performing any longshore work and the exceptions under which any such longshore work will be performed. [See 8 CFR 251.1 for exceptions and proper notations.] Often, the list will have a "D" visa placed on it by an American Consulate, unless individual members of the crew have their own visas. Each crewmember's name should be checked in the Portable Automated Lookout System (PALS), or IBIS (if it is available). As each crewmember enters for inspection, use the "Inspection Status" column to enter the action taken during inspection: "ARC" or "R/P" for returning residents, "USC" for citizens, the appropriate visa symbol for each nonimmigrant (D-1 or D-2), "Refused" for persons detained on board, or "Parole" for aliens paroled. Also indicate any "A" number obtained during inspection. Place a line stamp or the written notation 'Above crew inspected at arrival' on the first available blank line following the last listed crewman.

(b) Visa and Passport Waivers. If a visa is required, and neither individual nor crew list visas are presented, consider eligibility for a visa waiver. See visa requirements in Chapter 15.3. Often, crew list visas cannot be obtained because the ship received orders to sail for the U.S. while at sea or because the ship sailed from a port where there was no U.S. consulate. If there is a valid reason for failing to obtain the necessary visa, execute a waiver on Form I-193, Application for Waiver of Visa and/or Passport, collecting one fee for the entire crew list [See procedures described in Chapter 17.5.]. If there is no valid reason for failure to obtain a visa, detain the crew, following procedures described in Chapter 23.7. No fine proceeding is appropriate in either instance. The Department of State does not need to be advised, either in advance or after the fact, concerning crew list visa or individual passport waivers for crewmembers, since a blanket concurrence agreement between INS and DOS already exists for this situation.

(c) Inspection of Admissible Crewmembers. Each individual crewmember must appear for inspection, with every nonimmigrant presenting a passport or seaman's book, if required, and Form I-95, Crewman's Landing Permit or Form I-184, Crewman's Landing Permit and Identification Card (laminated card issued prior to 1976) [See nonimmigrant passport requirements in Chapter 15.2.]. Once you are satisfied of the admissibility of a crewmember, line stamp (date, port, and inspector number) the reverse of a previously issued I-95 (make sure it is for the same vessel), or execute the admission block on a new I-95, using a D-1 stamp and line stamp for each new crewmember or returning crewmember whose prior I-95 is damaged or has no endorsement space remaining on the reverse. If the crewmember has been granted a waiver of inadmissibility, note the grounds of inadmissibility in the admission block of the I-95. United States citizen merchant seamen will normally carry a "Z-card" (Merchant Mariner's Document), an identity card issued by the Coast Guard, in lieu of a passport. A lawful permanent resident alien may also be issued a Z-card with his/her "A" number on the reverse of the card; however, a lawful permanent resident alien must also present a Form I-551 or reentry permit. Verify the continuing lawful resident status before admitting a returning resident. Return the I-184, Z-card, I-551 or endorsed I-95 as you inspect each crewmember, but retain the travel document of any D crewmember for the ship's master. Note the block on the I-418 indicating action taken, as described in paragraph (a) above.

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(d) Family Members of Crew Included on Crew List. You may encounter persons listed on the I-418, even a visaed I-418, who are not bona fide crewmembers. These are often spouses or children of ship's officers and may be listed as "supernumeraries," "stewardesses" or other such occupations, but are not essential to the operation of the ship. Unless such persons are regular, paid crewmembers they cannot be admitted as such, regardless of the fact that a consular official may have visaed a crew list including their names [See Matter of M/T Rajendra Prasad, 16 I&N Dec. 705 (BIA 1979).]. Such persons are to be separately manifested, inspected as passengers and admitted or paroled following the procedures for inspection of other vessel passengers and as described in Chapters 11 through 16. They may be granted a visa waiver on a discretionary basis if they do not hold a valid nonimmigrant visa or are improperly included on the crewlist visa. Inadmissible passengers are handled in accordance with procedures in Chapter 17. Consider section 273(b) fine proceedings, described in Chapter 43.

(e) Passengers on Cargo Vessels. On occasion, you will encounter passengers on board a cargo vessel. Follow inspectional procedures for passengers on cruise vessels, described below in Chapter 23.4. Note that although cargo vessels are not generally signatory to the Visa Waiver Program, since they are not typically engaged in the transportation of passengers, inspectors should check the current list of carriers signatory to the VWP. If the carrier is not signatory, then passengers, even those from VWP countries must possess appropriate valid visas. (Revised IN99-09)

(f) Receipt for Crew List. Complete the "RECEIPT FOR CREW LIST" area of Form I-418 by assigning a unique I-418 Receipt Number in the appropriate block. This receipt number will aid in later matching the updated departure copy of the I-418 to the arrival copy. The format for an I-418 Receipt Number, as outlined above the block, consists of: the 3-letter port code; the current date [YYMMDD]; the inspecting officer's stamp number and; the current time in military format.

I-418 Receipt Number Example: A vessel arrives at the port of New York (NYC) on March 12, 2002, and the inspection is completed at 9:45 PM by an inspector with stamp number 565. The Receipt Number would be: **NYC-020312-565-2145.**

Advise the master of his obligation to notify the nearest INS office of proposed crew changes, desertions, illegal landings, or suspicious crew activities which may indicate a planned desertion. Provide a copy of the I-418 to the master or agent. Review the I-418 to insure that all crewmembers have been inspected and the manifest properly noted. Collect arrival Forms I-95, and other documents submitted with the manifest or prepared during your inspection. Return all crewmembers' travel documents to the master with a copy of the I-418. This copy will remain on the vessel and serve as a "traveling manifest," to be updated as appropriate until the vessel departs the United States, at which time the updated copy will serve as the vessel's departure manifest.

23.4 Inspecting Cruise Ships.

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(a) Crewmembers. Procedures for inspecting the crew of a cruise ship are essentially the same as those for cargo vessel crews, although the crews are considerably larger. Because of the frequency of admission and the size of the crews, Service policy provides for a relaxation of the ordinary inspection procedures for returning crewmembers on such vessels. See Chapter 23.2(a)(5), above. A separate manifest or addendum to the manifest will be provided by the master, containing the names of crew who must be inspected. Once crew inspection has been completed, issue Form I-410 in the same manner as for a cargo vessel.

A member of the crew of a vessel may not be admitted in any other capacity, even if he or she holds another type of visa. However, a "deadhead" crewmember, one who is not listed in the ship's articles and did not perform duties as a member of the crew during the vessel's voyage to the U.S., may be inspected and admitted as a passenger.

(b) Passenger Inspection. Except where an en route inspection has been arranged, passengers will be inspected after docking. Some port facilities have a passenger terminal, with inspection booths provided similar to those at airports. In either case, there are often a large number of passengers requiring inspection in a relatively short time span. The master or purser of the vessel will provide a manifest, usually on Form I-418, of all passengers. A lookout query is required of all passengers, either at the time of arrival or in advance, using APIS. To minimize inspection time, U.S. citizen passengers who departed on the same cruise vessel are not required to report for inspection, but should be briefly examined upon disembarkation. An oral declaration of citizenship is usually sufficient, unless further inquiry appears warranted. All other passengers must appear for inspection by an immigration officer, at an appropriate location on the ship provided by the master, with any required passport, visa, or Form I-94. As each passenger appears, note the manifest with the action taken, as described in Chapter 23.3(a), executing Forms I-94 as necessary. Once all required passengers have appeared and been inspected, coordinate with Customs to authorize departure from the ship. Inadmissible passengers are processed as prescribed in Chapter 17. Prepare Form I-92, Aircraft/Vessel Report and bundle it with the I-94s collected during the inspection. Forward these for data entry. Passenger lists on Form I-418 are no longer retained after inspection [See Chapter 22.7 for I-92/I-94 forwarding instructions.].

23.5 Payoff and Discharge of Crewmembers.

(a) General. Crewmembers who are leaving a vessel to return home or to join another vessel may be permitted to land as D-2, if required information is available at the time of inspection, or they may be granted a change to D-2 status later, after being permitted to land as D-1. In the latter instance, ordinarily the ship's agent will bring the alien and required documentation to the INS office for processing. Local policies may restrict hours and other conditions for processing D-2 requests. Application is made in accordance with the requirements stated in 8 CFR 252.1 and the instructions on Form I-408. When reviewing the documentation, ensure that the alien has a confirmed transportation ticket to leave the U.S. or a written notification of acceptance by the master of the vessel which he or she will join. Upon approval, endorse a new I-95 and collect the previously issued D-1 Form I-95 (do not collect Form I-184). Ensure that the separation date for the crewmember is reflected in the "Date Separated" column of the vessel's copy of I-418. Return the first and third copies of the I-408 to the master or agent, one to be

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filed with the vessel's departure manifest, the other to be retained by the master or agent. Route the second copy to the port of arrival address on the I-418. If there is reason to believe that a crewmember will not comply with the terms for departure indicated in the D-2 request, deny the request and revoke the conditional landing permit, following the procedures described in Chapter 23.10.

(b) Exception for Certain Crewmembers Rejoining a Vessel. Ordinarily, a D-1 crewmember serving on a vessel is expected to depart with the same vessel from each U.S. port, unless he or she obtains D-2 status. However, with permission from the ship's master, a crewmember can depart the ship and rejoin it at another U.S. port, without obtaining D-2 status, if neither the vessel nor the crewmember will depart the U.S. and the crewmember will rejoin the vessel within his or her initial period of D-1 permission to land.

23.6 Refusals.

A decision to refuse a crewmember is not reviewable; your decision as the inspecting officer is, for all practical purposes, final. Occasionally, the master or other ship's officer may advise you of crewmembers whom they suspect are likely to abscond. Consider this information carefully when making your decision whether to permit landing or to detain the crewmember. Although local policy in some offices is to detain "first-trippers" new crewmembers on cargo vessels, as high-risk applicants, this is not Service policy. A decision to detain should be based on clear, articulable facts. If you refuse a landing permit for any reason, endorse the I-95 (Conditional Landing Permit) with the "Refused" stamp and the code "P" for invalid passport, "V" for invalid visa, "M" for malafide crewmember, or the appropriate subsection of section 212 of the Act for inadmissible aliens. Return a copy to the master or agent. Enter the alien's name on Form I-418 (Arrival Manifest) and void the alien's I-184 (Alien Crewman Landing Permit and Identification Card), unless the refusal is solely based on passport or visa validity. Note the action taken on the I-418. Prepare and serve the master or agent with Form I-259 (Notice to Detain, Remove, or Present Aliens). Retain one copy of the I-259 to be included with the other paperwork for the vessel. In all cases where any of the crew have been refused a landing permit and ordered detained on board the vessel, notification shall be sent to the onward port. Notification shall be sent to the onward port as soon as possible after completion of the ship inspection by faxing the Form I-418. The Form I-418 shall be faxed prior to the vessel's estimated time of arrival at the onward port. Also, fax all pertinent information on issues related to the vessel or the crew of which the onward port should be aware.

23.7 Deserters and Abscondees.

(a) An "abscondee" is a crewmember that has been refused a landing permit and ordered detained on board, and who departs the vessel without permission.

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(b) A "deserter" is a crewmember who has been granted D-1 or D-2 status and a landing permit, and who does not depart when required.

(c) Immediately upon being notified that a crewman has deserted or absconded, relay the information relating to the deserter or abscondee to the appropriate local law enforcement personnel (including City Police, Harbor Police, State Police), the appropriate ICE office responsible for recovering the crewman, the local Border Patrol Office, U.S. Coast Guard and to the Federal Bureau of Investigation (FBI) at the port where the desertion took place. Prepare a Report of Deserting Crewman, Form I-409 for every deserter or abscondee. Appropriately annotate the Form I-418 (Arrival Manifest), Form I-419 (Ship Intelligence Card) indicating that the crewman absconded or deserted.

Open an "A" file, and place all pertinent information in the "A" file. Make copies of documents necessary to support a fine recommendation, if applicable. Initiate fine recommendations utilizing Form I-849 (Report to National Fines Officer of Possible Violation of the INA), as appropriate.

(1) In the event the vessel has not departed, collect the deserter's or abscondee's travel documents from the master of the vessel, including Form I-95 (crewman landing permit). Obtain a sworn statement containing the facts surrounding the incident from the master of the vessel, the vessel agent and/or any other persons who have information regarding the incident, and conduct a search of the abscondee's or deserter's cabin.

(2) In the event the vessel has sailed coastwise prior to the discovery or the report that a crewman has deserted or absconded, immediately contact the CBP office at the next port of call, advise them of all information related to the abscondee or deserter. The office at the next port of call shall obtain a sworn statement from the appropriate crewmembers and conduct a search of the abscondee's or deserter's cabin, and collect the deserter's or abscondee's travel documents, and forward the information to the agencies (ICE and Border Patrol) having jurisdiction over recovering the abscondees or deserters, as well as reporting all of the information to the local law enforcement (including City Police, Harbor Police, State Police), U.S. Coast Guard and to the FBI in their area.

(3) In the event the vessel has sailed foreign prior to the discovery or the report that a crewman has deserted or absconded, collect the deserter's or abscondee's travel documents from the local shipping agent, if available, and obtain a statement from the local shipping agent and any other individuals that may have information related to the desertion and forward to the agencies having jurisdiction over recovering the aliens.

(d) In all cases where any of the crew have been refused a landing permit and ordered detained on board the vessel, notification shall be sent to the onward port. Notification shall be sent to the onward port by faxing the Form I-410 (Receipt for Crew List). The Form I-410 shall be faxed prior to the vessel's estimated time of arrival at the onward port. Also, all pertinent information or issues related to the vessel or the crew that the onward port should be aware of shall be

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faxed.

A Significant Incident Report (SIR) will be prepared on every case where a crewmember has deserted or absconded.

(e) Initiation of Security Procedures. In a concerted effort to ensure that crew detained aboard vessels do not abscond and pose a possible threat to the security of the port, the Service will work jointly with the U.S. Coast Guard at the sea ports-of-entry to insure that proper security exists to "reduce potential opportunities" (see paragraph (a) of this chapter) for deserters and abscondee. The Service will follow the procedures below to coordinate its security efforts with the local U.S. Coast Guard Captain of the Port (COTP).

After CBP (local PAU and/or NTC) has received and processed crew lists through the law enforcement databases and is fully satisfied that crewmembers do not pose any security risks to the United States, the U.S. Coast Guard will be advised that CBP does not have any information that raises initial security concerns about that vessel, in terms of the Coast Guard approving the vessel to enter or dock at the port. When making a determination whether a *crewman* may pose a "security risk" the following factors should be considered:

- [REDACTED]
- [REDACTED]
- [REDACTED]

If the CBP identifies security concerns, CBP will withhold the inspection of the entire crew until such time that the CBP receives written notification from the agent, owner, or master of the vessel stating that sufficient security services have been arranged to ensure the security of the vessel during its entire stay in port. (The cost for this security is to be borne by the agent, owner, or master of the vessel.) At that time the CBP will advise the U.S. Coast Guard that it is prepared to inspect the crew.

If sufficient security cannot be provided, CBP will notify the COTP. The Service will request that the COTP forward a letter to the owner, agent, or master requiring that the vessel remain outside the port area. In those instances where a vessel is permitted to proceed to port and, upon CBP inspection or any time during the vessel's stay in port, it is determined that certain crew pose a security risk to the United States, the COTP may be asked to exercise its authority in the issuance of a letter requiring immediate departure of the vessel, unless acceptable security measures have been promptly provided to ensure that all detained individuals remain on board the ship.

(f) Standard Operating Procedures for Detained Crew Coastwise Vessels. When Forms I-259, Notice to Detain, Remove, or Present Alien; I-410, Receipt of Crew List; or, I-418, Passenger

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List and Crew List, are received from a previous port indicating that a vessel will arrive coastwise with detained crew on board, a copy of both forms should be faxed to the Coast Guard's Marine Safety Officer (MSO). In addition, onward port officials (CBP, ICE and USCG) should be notified when enhanced security has been required at a prior port.

Upon receipt of these forms, CBP may request written notification from the agent, owner, or master of the vessel stating that sufficient security services have been arranged to ensure the security of the vessel during its entire stay in port. If sufficient security cannot be provided, CBP will notify the COTP. CBP will request that the COTP forward a letter to the agent, owner, or master requiring that the vessel remain outside the port area.

When the COTP letter is received, a copy of the letter and a copy of the *Standard Operating Procedures Security Services for Detained Crew* (see paragraph (g) below) should be faxed to the agent of the vessel. The agent for the vessel is then required to notify CBP when guard service has been arranged.

When notification has been received from the agent and a determination is made that the arranged security is acceptable, CBP will forward by fax and/or e-mail a letter to the MSO notifying him that the vessel will be in compliance of the COTP letter when the ship arrives. A copy of the letter from CBP will also be forwarded to the vessel's agent for his information. Each port-of-entry should maintain a folder for each vessel for which Forms I-259, I-410, or I-418 are received.

(g) Guidelines. A copy of the following guidelines should be made available to the contracted security company. All relevant points-of-contact and phone numbers should also be provided.

Contracted security assigned to provide security services are to ensure that only those crewmembers authorized to disembark are allowed to do so. CBP will identify to the security services each alien crewman who must be detained on board. Contracted security assigned to provide security services at vessels on which CBP has detained crewmembers are to ensure that:

- Any attempt to disembark a vessel by crewmembers not authorized to land shall be reported immediately to local security services (facility guard posts, facility managers), the CBP, ICE the United States Coast Guard, the Federal Bureau of Investigation, local police department(s), and the vessel's agent.
- Questions related to whether a particular crewmember is allowed to disembark shall be forwarded to the ship's agent and, if necessary, CBP.

Non-crew may, with proper identification, leave the vessel. This may include vendors and service providers contracted to the ship (i.e., stevedores, agents). A visitor's log shall be maintained of all persons leaving or joining the ship.

The CBP and/or the U.S. Coast Guard shall conduct random checks of security services and inadequate security services may result in initiation of administrative penalties against the agent

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and/or the vessel and may result in a determination that the contracted security service cannot be used for future crew detention.

(h) Sample letter to U.S. Coast Guard.

The following sample format may be used as notification to the U.S. Coast Guard:

Pursuant to your Captain of the Port Order dated _____, 2003, to the vessel _____, the vessel's agent, _____, has made adequate security arrangements to ensure the security of the vessel and its crew while in _____. The agent shall ensure security at the vessel and shall contact U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement, the United States Coast Guard (USCG), the Federal Bureau of Investigation, and the _____ Police Department in the event of any attempt by unauthorized crew to disembark. CBP has notified the agent that the disembarkation of unauthorized crew shall result in the initiation of fines against the vessel and/or its agent by CBP and notification to the USCG for initiation of administrative and/or criminal penalties as appropriate.

If additional information is required, please contact [INSERT OFFICER'S NAME], CBP officer, at [INSERT PHONE NUMBER]. Thank you in advance for your assistance in this matter. We look forward to working closely with you to address national security issues.

Sincerely,

Port Director

[INSERT NAME OF PORT]

23.8 Stowaways.

(a) General. An alien stowaway is inadmissible to the United States and is not entitled to a hearing or review of an order to remove. [See section 235(a)(2) of the Act and 8 CFR 235.1(d)(4).]

An alien stowaway may be ordered removed on the vessel or aircraft of arrival, or the master may request that the stowaway be removed from the vessel and repatriated by other means of transportation. Often, this is requested for reasons of great importance to the carrier, including, but not limited to:

- The health of the stowaway;
- Maintaining insurance coverage (often if several stowaways are on board, a vessel may exceed capacity and be considered by insurers to be unseaworthy, and so would lose insurance coverage);

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- Maintaining the safety and welfare of the crew (especially if the number of stowaways exceeds the number of crew);
- Sanitary conditions cannot be maintained for the stowaway;
- The vessel's departure is delayed for repairs or the vessel goes into dry-dock;
- The stowaway is a minor or female;
- The vessel is discharging cargo and going off charter and cannot obtain a new charter because the new charterer will not assume a vessel with stowaways aboard;
- The vessel is of U.S. registry and is not departing the United States;
- The vessel will not be returning in the near future to the port where the stowaway boarded the vessel.

Removal of the stowaway by other means should be favorably considered when the removal may be accomplished expeditiously and the carrier has made, or will make, the necessary transportation arrangements, including obtaining any necessary travel documents. Although the statute places responsibility for obtaining travel documents with the carrier, when necessary, the Service may assist the carrier in obtaining travel documents. See 8 CFR 241.11.

An "A" file must be prepared for all stowaways encountered. If an "A" file does not exist, one shall be opened. To determine if an "A" file exists, a query of the Central Index System (CIS) should be made. If there is an existing "A" file, all documentation shall be placed in a temporary "A" file. Prepare Form I-213, Record of Deportable/Inadmissible Alien, and take a photograph of the stowaway. Fingerprint the alien using three sets of criminal cards (FD-249). Forward the first set of fingerprints to the FBI Identification Division. Forward the second set of prints to the Biometric Support Center in accordance with the procedures set forth in Chapter 18.9. Retain the third set of fingerprints and copies of all documents for inclusion with the other paperwork in the "A" file. Post a lookout in the National Automated Immigration Lookout System (NAIIS).

If the stowaway is to be removed on the vessel of arrival, detain him or her on board using Form I-259. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the stowaway will depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the stowaway does depart the United States. Prepare an I-94 endorsed "Stowaway--refused, detained on board."

If the stowaway cannot be removed immediately, any detention pending removal, other than that incidental to the actual removal, must be in Service custody, at the expense of the owner of the vessel or aircraft of arrival. If extended detention is required pending removal, be sure to ascertain that detention space is available before granting permission to remove by alternate means. Serve Form I-259 on the master or agent of the vessel or aircraft. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the stowaway will

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depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the stowaway does depart the United States. Complete Form I-94 endorsed "Stowaway--refused, detained by INS pending removal". If the stowaway requests asylum, follow procedures described in Chapter 23.18 and 8 CFR 253.1.

(b) Absconded stowaways. The master or agent is required to report the escape of a stowaway. Immediately upon being notified that a stowaway has absconded, relay the information relating to the abscondee to the appropriate local law enforcement personnel (including City Police, Harbor Police, State Police), the appropriate INS office responsible for recovering the stowaway, and to the Federal Bureau of Investigation (FBI). Appropriately annotate the Form I-419 (Ship Intelligence Card) indicating that the stowaway absconded. Take a sworn statement as described in Chapter 43.3 and institute fine proceedings under section 243(c) utilizing Form I-849 (Report to National Fines Officer of Possible Violation of the INA), as appropriate. A Significant Incident Report (SIR) will be prepared on every case involving a stowaway.

23.9 Mustering.

Service officers may re-board a vessel at any time after the initial inspection to insure that detained crewmembers remain on board or that a vessel preparing to depart has all crewmembers present. Inspections personnel should coordinate with other local INS enforcement personnel for this activity. Ordinarily, departure mustering of crew is conducted only on vessels that have a history of immigration violations or where there are multiple crewmembers detained on board the vessel.

A crew muster is recommended for all coastwise vessels. A crew muster is required on all coastwise vessels when there is detained crew onboard. Local INS (Border Patrol, Criminal Investigations, and Inspections) shall take a coordinated approach for mustering crew. When a vessel's crew is mustered at an onward port, and it is discovered that crewmembers are missing, follow current guidance on deserters and abscondees in Chapter 23.7 of the Inspectors Field Manual (IFM). Initiate fine recommendations utilizing Form I-849 (Report to National Fines Officer of Possible Violation of the INA), as appropriate.

23.10 Revocation of Landing Permits.

Inspectors should be familiar with the procedures for revocation of landing permits provided in 8 CFR 252.2 and perform or assist with this function, as necessary. Prepare and serve Form I-99 on the alien, collect the previously issued I-95, advise the master or agent of the action taken and advise him/her of his/her responsibility for detaining the revoked crewmember on the vessel. Revoke any valid I-184. Prepare and serve Form I-259 on the master or agent. The I-259 will normally require departure on the vessel of arrival, but circumstances may warrant departure by other means of transportation. Appropriate safeguards (guard service escort, letter from the shipping agent guaranteeing the crewman will depart when required, etc.) must be in place and annotated on the Form I-259 to insure that the crewmen do depart the United States. If an "A" file does not exist, one shall be opened. To determine if an "A" file exists, a query of the Central Index System (CIS) should be made. If there is an existing "A" file, all

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documentation shall be placed in a temporary "A" file. Prepare Form I-213, Record of Deportable/Inadmissible Alien, and take a photograph of the violator. Fingerprint the alien using three sets of criminal cards (FD-249). Forward the first set of fingerprints to the FBI Identification Division. Forward the second set of prints to the Biometric Support Center in accordance with the procedures set forth in Chapter 18.9. Retain the third set of fingerprints and copies of all documents for inclusion with the other paperwork in the "A" file. A lookout shall be posted in the National Automated Immigration Lookout System (NAILS). A Significant Incident Report (SIR) will be prepared on every crewmember that has their landing permit revoked.

In the event the vessel will be sailing coastwise, contact the INS office at the next port of call, and advise them of all information related to the revocation. Follow procedures described in Chapter 23.7.

23.11 Performance of Longshore Work by Crewmembers.

Section 258 of the Act, added in 1990, limited, but did not completely prohibit, longshore activities by crewmembers of vessels. These restrictions are specified in the Act and in 8 CFR 258. Obligations of the master or agent, including reporting requirements are detailed in 8 CFR 251.1. At the conclusion of the inspection, note on the Form I-418 whether or not nonimmigrant crewmen will perform longshore work in the United States, and if so:

- under which exception in section 258 of the Act it will be performed (See 22 CFR 89 for countries eligible for reciprocity exception); and,
- what type of documentation accompanied the manifest to support the exception invoked.

Sign the I-418 and indicate the date of the inspection following the last entry on the form. (**Note:** If new crewmembers subsequently join the vessel while it is in the United States, the master or agent should add them to next available space from this point on the I-418 and record the appropriate date(s) in the "Date Joined" column.)

23.12 Parole of Alien Crewmembers.

(a) Initial Parole. Parole and revocation of parole of crewmembers are discussed in 8 CFR 253.1. Parole is generally appropriate for handling sick or injured crewmembers and shipwreck survivors, among others. Parole for a limited number of ship's personnel to conduct essential business is also appropriate in situations where a crew is detained on board due to lack of a visa. When a parole is granted for other than medical reasons or to conduct essential ship's business, prepare Form I-160 for inclusion with the manifest. Collect the parole fee provided in 8 CFR 103.7 for each paroled crewmember. Generally, requests for such paroles should be accompanied by documentation supporting the request. Prepare an I-94, endorsed as prescribed in Chapter 16, for each paroled crewmember. Update the vessel's copy of Form I-418 by checking the box in the "Inspection Status" column of the form that pertains to the

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crewmember being paroled. Prepare Form I-510, Guarantee of Payment, in duplicate, for crewmembers paroled for medical treatment. Give one copy of the I-510 to the master or agent, retain the other with the manifest and other documents collected during the inspection. Prepare an I-259, endorsed to require the alien's departure (if the alien is to depart within the period of parole) or presentation at an INS office (if the alien is likely to require reparole for additional time). Serve the I-259 on the master or agent.

(b) Reparole. Parole of crewmembers is generally limited to less than 30 days. If additional time is needed, reparole in increments of 30 days is appropriate, upon presentation of documentation such as medical evidence.

23.13 Vessels Remaining beyond 29 Days.

(a) The landing period for D-1 crewmembers is limited to 29 days, and cannot be extended. However, there will be instances where a vessel and its crew will remain in the U.S. for a longer period of time. In such instances, the master or agent will present the vessel's copy of I-418 and the I-95s for each crewmember. Prepare Form I-253, Letter to Master or Agent of Vessel, in duplicate and endorse each Form I-95 with the voluntary departure period. Return the I-418 and original I-253 to the master or agent, along with the I-95 forms. Promptly route the I-418 copy and the duplicate I-253 to the arrival port for attachment to the I-418 copy from the vessel's arrival. No docket control is required, but include a count of such crewmembers on the G-23.18 and G-23.20.

(b) Vessels Traveling to International Waters. Under interpretation of current INS and Department of State regulations, sailing from a United States port into international or foreign waters, without a call at a foreign port, does not satisfy the foreign departure requirement. Therefore, alien crewmembers onboard lightering vessels, certain fishing vessels, cruises to nowhere, or any vessel that sails from a United States port and returns without calling a foreign port or place, has not departed the United States. Crewmen onboard vessels that sail from a United States port into international waters, return to the United States, and have not touched a foreign place within 29-days of the vessel's initial arrival (in the United States from a foreign place), have remained beyond their authorized period of stay. Such a vessel must request a 29-day extension, pursuant to part (a) of this section, prior to the expiration of the expiration of their authorized period of stay.

This provision does not apply to fishing vessels in Guam that sail to international waters. Pursuant to Public Law 99-505, such a vessel is considered to have departed the United States.

The inspecting officer's authorities regarding coastwise vessels, including (but not limited to): performing musters, revoking shore-passes or granting 29-day vessel

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extensions, remain unchanged. These topics are addressed in the Chapter 23.9, Chapter 23.10 and Chapter 23.13, respectively, of this field manual.

23.14 Ship Intelligence Cards.

Service offices with seaport operations maintain Ship Intelligence Cards, Form I-419, for each vessel arriving at the port. Pertinent information, such as previous detentions, desertions, or stowaways is included on the cards. Consult the cards prior to boarding and add information to the cards when you complete inspection of the vessel.

23.15 Departure Manifests.

Arrival manifests for crew are maintained at the port-of-entry for 6 months. If no "departure manifest" (an updated copy of the original I-418 showing crewmember separations and additions) is received within 60-90 days of the vessel's arrival, contact the Service Inspections Unit at the last scheduled U.S. port (from the I-418) or the vessel's agent to determine the reasons. It is important that manifests be processed timely and accurately to avoid improper institution of fine proceedings when a carrier has complied with the requirements for submission. If you receive a departure manifest from an agent for a vessel that was not inspected at your port, immediately forward it to the Service office which conducted the inspection. Upon receipt of a departure manifest for a vessel which was inspected at your port, use the I-418 Receipt Number to match it with the arrival manifest to insure accountability for all crewmembers. After 6 months, forward the manifests in accordance with Appendix 15-8.

Forward Forms I-95 on a regular basis in accordance with Appendix 15-8

Prepare Form I-92 and bundle it with Forms I-94 and forward for data entry in the same manner as aircraft departure forms [See Chapter 22.7 for I-92/I-94 forwarding instructions.].

If there are missing or incomplete manifests or if there are crewmembers whose departure cannot be verified, consider institution of fine proceedings.

23.16 United States-Based Fishing Vessels.

Nonresident aliens may not be employed aboard any U.S.-based fishing vessel as "D" crewmembers. An alien seeking permission to land as a D crewmember should be detained on board, unless parole is warranted. In rare instances other nonimmigrant categories which include employment, such as H-1B, H-2B or L-1, may be possible.

23.17 Vessels Serving on the Outer Continental Shelf (OCS).

Crewmembers for vessels working on the Outer Continental Shelf commonly enter the U.S. as B-1 nonimmigrants to join the vessel. The B-1 visas of such nonimmigrants will ordinarily

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contain the consular notation "OCS". Vessels coming from the OCS are not subject to immigration inspection unless they have landed in foreign territory since last arriving in the United States. Similarly, a departure solely to the OCS is not a departure from the U.S. for immigration purposes. This can cause technical problems for a vessel with a D-1 crew which leaves a U.S. port, spends time on the OCS and returns to a U.S. port without touching foreign territory. Such a vessel would not be reinspected but frequently would require processing as described in Chapter 23.13, since its crew would almost certainly remain beyond the 29-day admission limit for alien crew.

The Service has held that the INA does not apply on the OCS, and the Department of Labor will not issue a labor certification for work on the OCS beyond the three-mile limit. Regulations for work on the OCS are administered by the Coast Guard.

23.18 Asylum Claims by Vessel Crewmembers or Stowaways.

If a crewmember or stowaway requests asylum, remove the alien from the vessel or aircraft and place him or her in INS custody. Provide an alien crewmember claiming asylum with the appropriate application forms. The crewmember has 10 days in which to file the application with the district director, during which time the Service will not remove the alien. If the crewmember files a timely asylum application, the district director will refer the alien to the immigration judge using Form I-863, Notice of Referral to Immigration Judge. In this case, the officer executing the I-863 will check Box #2 and the appropriate box indicating the status of the crewmember when he or she made the asylum claim.

A stowaway who seeks asylum will be detained in Service custody and referred to an asylum officer for an interview to determine whether the stowaway has a credible fear of persecution under section 235(b)(1)(B). Although stowaways are not covered under the entire section 235(b)(1) of the Act (expedited removal provisions), if it is deemed necessary to take a sworn statement from the stowaway claiming asylum or a fear of persecution, Form I-867A&B may be used. Indicate at the top of the Form I-867A that this is a stowaway case, rather than a 235(b)(1) case. Arrange for detention of the stowaway and notify the appropriate asylum office that the stowaway requires a credible fear interview. If the asylum officer finds that the stowaway has a credible fear of persecution, he or she will refer the stowaway to the immigration judge using Form I-863, checking Box # 3 and the box indicating "Stowaway: credible fear determination attached". If the asylum officer determines that the stowaway does not have a credible fear of persecution, and the stowaway requests a review of that determination, the asylum officer will refer the stowaway to the immigration judge using Form I-863, checking Box #2. If an adverse determination is made on the asylum claim by the immigration judge, the alien will be returned to the custody of the carrier for removal. [8 CFR 241.11]

Detention and parole policy regarding asylum applicants who are crew members or stowaways is discussed in 8 CFR 208.5(b). While parole of a stowaway claiming asylum is within the discretion of the district director, it should not normally be considered until after the stowaway has been determined to have a credible fear of persecution, unless parole is required for a

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medical emergency or is necessary to further a legitimate law enforcement objective.

23.19 Special Interest Vessels/non-Entrant Countries. (Chapter 23.19 revised 11-1-05; CBP 12-06)

Non-entrant countries are those countries designated by the Department of State as having been found to have provided support for acts of terrorism or against whom diplomatic sanctions have been imposed. Vessels registered to, owned or operated by, or chartered by such countries are prohibited from entering United States waters or ports. The United States Coast Guard (USCG) has jurisdiction to grant access to United States ports to vessels of restricted or non-entrant countries. Authority for this is found in the Magnuson Act, Title 50, United States Code, Section 191, 1950.

The current list of non-entrant countries includes: Cuba, Iran, Iraq, Libya, People's Republic of Korea (North Korea), Syria and Sudan. There are no blanket restrictions placed on nationals of non-entrant countries arriving on free-flag vessels. Such crewmen may be issued a landing permit, in the discretion of the inspecting officer, if in possession of a valid passport and visa, and if otherwise admissible.

Ports of entry, or other programs responsible for seaport duties, should contact the local USCG Port Captain to discuss the respective responsibilities and communication system between the agencies.

23.20 Seaport database queries.

Officers performing primary inspection duties at sea ports-of-entry (POE) must query all applicants for admission to the United States using the Interagency Border Inspection System (IBIS) This applies to all persons over the age of fourteen, without a maximum age limit. See IFM section 22.3 (Primary Inspection Procedures).

Current Threat Level One (TL1) guidance can be found in the memorandums, "Inspection of Crew Arriving to Board Merchant and Cruise Vessels," dated September 30, 2001, and "Threat Level One Clarification on Conducting Seaport Inspections," dated April 3, 2002.



- **PALS Failure at Sea (cruise or non-cruise) POEs:** If PALS becomes unavailable, first I-LINK

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- **System Failure of IBIS and INS Systems to include Electrical Outages:** In the event of a system failure of IBIS and NAILS, all air and sea POEs and land border secondary offices must query applicants for admission in the PALS system, made accessible per the aforementioned procedure. If IBIS, NAILS, and PALS are not accessible in these locations and the National Lookout Unit is unable to provide previously obtained APIS passenger manifests, no person shall be admitted to the United States without prior consent of the Assistant Commissioner for Inspections.

Regions, districts and local POEs are encouraged to establish their own system of backup contacts to process IBIS, NAILS and PALS queries. These plans should be forwarded to the National Lookout Unit for consolidation. Any questions or concerns regarding these operating procedures should be directed to National Lookout Unit at (202) 514-4034.

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Chapter 24: Preinspection and Preclearance (Added INS - TM2)

- 24.1 General
- 24.2 Preinspection and Preclearance Procedures
- 24.3 Departure Controls at Guam, Puerto Rico, and the U.S. Virgin Islands
- 24.4 Emergency Procedures during Canadian Air Traffic Controller Strikes

References:

INA: Sections 212(d)(7), 233, 235, 235A, 286.

Regulations: 8 CFR 103.1(d), 212.1(e), 221.1, 223.2 (b) (2) (ii), 233.4, 235.5, 286.2(a), 299.1.

24.1 General.

(a) Preinspection. Preinspection is the procedure whereby the Service conducts, in the host country, inspection of passengers and crewmembers as required by United States immigration and public health laws and regulations for entry into the United States.

Preinspection offers distinct advantages.

It is cost effective both to the U.S. government (fewer detention and deportation costs) and the transportation carrier (fewer fines and better scheduling opportunities).

It is facilitative as passengers are spared waiting in long lines at domestic airports and connecting travel is made easier.

It is good law enforcement as contraband, drugs, and criminal aliens do not enter the United States and intelligence information sharing exists between the United States and the host country.

First established at Toronto, Canada, in 1952, preinspection services are currently provided at 11 different sites in addition to Toronto (Calgary, Edmonton, Montreal, Ottawa, Vancouver, Victoria, Winnipeg, the Bahamas, Bermuda, Aruba, and Ireland).

(b) Preclearance. In preclearance INS performs immigration and public health inspections while U.S. Customs performs customs and agriculture inspections. Preclearance is operational in Calgary, Edmonton, Montreal, Ottawa, Toronto, Vancouver, Winnipeg, the Bahamas, Bermuda, and Aruba.

(c) Preinspection in Aruba. Preinspection is conducted at the international airport in Oranjestad, Aruba. This office falls within the jurisdiction of the District Director at Mexico City.

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The Port Director at Aruba administers day-to-day operations at this location.

(d) Preclearance in Bahamas. Preclearance is conducted at the international airports in both Freeport and Nassau in the Bahamas. Both locations fall within the jurisdiction of the District Director at Miami, FL. The Area Port Director at Nassau administers day-to-day operations of these two locations.

(e) Preclearance in Bermuda. Preclearance is conducted at the international airport in Hamilton, Bermuda. This office falls within the jurisdiction of the District Director at New York, NY.

(f) Preclearance in Canada. Preclearance is conducted at international airports at Calgary, Edmonton, Montreal, Ottawa, Toronto, Vancouver, and Winnipeg, as well as at the seaport in Victoria. The preclearance offices at Toronto, Montreal, and Ottawa fall within the jurisdiction of the District Director at Buffalo, NY. The office in Winnipeg reports to the District Director in St. Paul, MN. Calgary and Edmonton both fall within the jurisdiction of the District Director in Helena, MT. The District Director in Seattle, WA has both Vancouver and Victoria within his area of responsibility. All Canadian preclearance offices have local Area Port Directors overseeing the day-to-day operations at their respective sites.

Preclearance in Canada is governed by the Agreement Between the United States of America and Canada signed at Ottawa on May 8, 1974 and entered into force on May 8, 1974. Preinspection at Montreal, Toronto, Vancouver, and Winnipeg were already in existence at the time of the Agreement. [See Appendix 24-1 for text of the bilateral agreement, and annexes.]

It should be noted that the Agreement Between the United States and Canada on Aviation Preclearance can be amended or revised by an exchange of diplomatic notes. Since the effective date of the Agreement, Canada and the U.S. have had a number of consultations reviewing the operations of the Preclearance Agreement. Such consultations have involved preclearance facility construction projects at Toronto, Vancouver, Calgary, Winnipeg, Montreal, and Edmonton; a report on Downstream Duty-Free Experiment and Future of Duty-Free Facilities; Discussion of Preclearance Costs, their Allocation and Staffing Levels; Consideration of Extending Preclearance to Commuter Airlines; In-Transit Lounges; and the Status of U.S. Inspection Agency Personnel (including such issues as general status, immunity from private suits, employment of dependents, Immigration documentation, Customs Treatment and Privileges). The basic Agreement of May 8, 1974 between the two Governments remains as the cornerstone of INS operations in Canada, as evidenced by the Service's newest Preclearance Facility, which opened in Ottawa on July 7, 1997.

(g) Preinspection in Ireland. Preinspection in Ireland is conducted at the international airports at both Shannon and Dublin. Both locations fall within the jurisdiction of the of the District Director at Rome and the Officer-In-Charge at London. The Port Director at Shannon administers the day-to-day operation of these facilities.

(h) New initiatives. Section 123 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) calls for the establishment and maintenance of 5 preinspection sites at

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foreign airports that serve as last points of departure for the greatest numbers of inadmissible alien passengers and 5 additional sites determined to most effectively reduce the number of aliens who are inadmissible.

The decision to establish a preinspection or preclearance site involves certain considerations. The political and social climate must be such that no unreasonable risk is posed to Service officers, their spouses, and families. The volume of passenger traffic departing the foreign site for major U.S. port(s)-of-entry must be such that some measurable facilitative and/or enforcement effect can be realized. Adequate inspectional facilities must be available. The level of host government and air carrier(s) interest and a weighing of prospective benefits against cost are important considerations.

The Service will employ automation and continual technological advances in its preinspection process, thus minimizing personnel requirements, reducing costs, and improving enforcement effectiveness.

24.2 Preinspection and Preclearance Procedures.

(a) Official Conduct. Personnel stationed at these locations must be particularly careful to be courteous, as they are "guests" in that country and should present a positive image of the people and government of the United States. INS personnel, as government employees, perform their duties under the auspices of the U.S. Ambassador, pursuant to section 207 of the Foreign Service Act of 1980.

(b) Passenger and Crew Inspection. The procedures for inspection at both preinspection and preclearance stations are largely the same as for stateside inspection; however, there may be some variations depending on port policy and the routines established at those stations. One major exception is that expedited removal procedures described in 8 CFR 235.3 may not be applied at preinspection or preclearance stations abroad. Inspectors should be aware that at both preinspection and preclearance stations, they have no authority to arrest. (However, as a result of negotiations with the Canadian Government, inspectors stationed in Canada will have certain limited enforcement powers with the passage of Canadian legislation to that effect. The legislation is expected to be enacted into law by June 1998.)

INS cannot refuse boarding to any passenger. Rather, persons who are determined to be inadmissible are advised of this determination and are given the option of not traveling or of being placed in exclusion proceedings or expedited removal proceedings, as appropriate, upon arrival in the United States.

Since INS has limited enforcement authorities overseas, violators detected are usually identified for the local law enforcement agencies, a significant benefit for the host country. Preinspection, therefore, provides an added layer of counter-terrorist screening. Cooperation with host country law enforcement agencies can result in the apprehension of wanted criminals or other persons engaged in criminal activities.

(c) Carrier Agreements. Transportation lines requesting inspection services at points in foreign

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countries enter into agreements with the Service, on Form I-425, which sets forth the terms and conditions under which inspection is granted. Only carriers who are signatory to specific preinspection agreements can have passengers processed at these stations. A list of signatory carriers at each preinspection or preclearance station is included in Appendix 42-4.

24.3 Departure Controls at Guam, Puerto Rico and the U.S. Virgin Islands.

Departure control inspection at these locations is conducted pursuant to 8 CFR 235.5(a). Inspectors are stationed in the departure terminal area, where they conduct a cursory inspection, except for I-94 issuance and lookout query, of passengers bound for the U.S. mainland. Inspection is not required of 100% of arriving passengers; depending upon available manpower the intensity of inspection may vary. If an illegal entrant or status violator is encountered, the alien is detained and processed for deportation. Other arrests may be made involving U.S. citizens or resident aliens involved in drug or alien smuggling.

Statistics for departure inspections are counted in the G-22.1, port code "D" in PAS. Since not every passenger on every flight will be inspected individually and no I-92 is provided, it is necessary to estimate actual volumes of citizens and aliens inspected. Copies of Forms I-213 for mala fide aliens intercepted are sent monthly to Investigations for inclusion in district apprehension statistics.

24.4 Emergency Procedures during Canadian Air Traffic Controller Strikes.

[See Chapter 22.9.]

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Chapter 25: Private Aircraft and Vessels (Added INS - TM2)

- 25.1 Canadian Border Small Boat Permit Program.
- 25.2 Procedures for Inspecting Private Aircraft.
- 25.3 Inspection of Private Vessels.
- 25.4 Snowmobiles
- 25.5 GATE Program

References:

INA: Sections 235, 239

Regulations: 8 CFR 235.1, 8 CFR 239.2.

25.1 Canadian Border Small Boat Permit Program.

(a) General. A special program exists to facilitate the entry of small craft making frequent entries into the U.S. from Canada. Commonly referred to as the I-68 program, regulations outlining terms and conditions are contained in 8 CFR 235.1(e). Form I-68 may be issued to U.S. citizens or lawful permanent residents, Canadian nationals, and other residents of Canada having a common nationality with Canadians, who enter the United States from Canada in small pleasure craft of less than five net tons, to facilitate brief pleasure trips between the U.S. and Canada. Under the program, persons are inspected only at the time of application for the permit and may thereafter enter the United States along the immediate shore area without further inspection during the remainder of the boating season. The I-68 must be in the possession of the permit holder each time they enter the United States under the provisions of this program. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I-68 shall be valid only for visits of less than 72 hours and only if the alien remains in the immediate shoreline area, although that includes those nearby shopping and residential areas. If the alien intends to enter the United States for any other purpose, they must apply for admission at a staffed port-of-entry.

(b) Initial Application. Except as indicated below, every person on the boat must apply for or hold a separate Form I-68. Minor children can be added to a parent's Form I-68 (if the parent is in possession of the minor's birth certificate at time of application). Parents of either the principal permit holder or the holder's spouse may also be included on the same application. Every applicant must be in possession of government issued photo identification, evidence of citizenship and residence, and a completed Form I-68, with the fee provided in 8 CFR 103.7. Note there is a family cap of double the base fee for each family group.

The Form I-68 is prepared in triplicate. If approved, each copy will be stamped with the officer's admission stamp and the original given to the applicant. The other copies will be forwarded for processing according to local procedures.

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If it is determined that an applicant is inadmissible to the United States, the application for Form I-68 will be denied. Each copy will be stamped with the officer's line stamp and marked "DENIED" and the original given to the applicant. The other copies will be forwarded for processing according to local procedures. If appropriate, a determination will be made by the shift supervisor as to whether the applicant will be processed for an exclusion hearing or refused entry and issued a Form I-192 waiver packet.

(c) I-68 Renewal. The I-68 must be renewed annually. Some offices manage their renewal applications by mailing the new applications to prior permit holders before the beginning of the boating season. Other offices process renewals only on a walk-in basis. The fee requirements and family cap are the same as for initial applications.

25.2 Procedures for Inspecting Private Aircraft.

(a) General. Private aircraft are aircraft which are not regularly engaged in transporting goods or passengers on a commercial basis. Inspection of persons on board private aircraft is accomplished jointly by INS and Customs, according to local procedures. With the exception of those aircraft participating in the GATE program, all private aircraft entering the United States are required to notify Customs or Immigration (following established local procedures), generally at least one hour before anticipated arrival, to request the presence of an Immigration or Customs inspector. [See 8 CFR 239.2.1] Inspect all persons on board in the same manner as those on commercial flights. (Query NAILS, TECS or the Service Lookout Book on all persons arriving by private aircraft). Prior to the actual inspection, if information and systems access are available, private flights should be queried through EPIC for possible lookouts or potential problems. This is a safety factor as well as a means to make timely interceptions of illegal aliens and/or drugs.

A pilot who is the owner or operator of a private aircraft which is not regularly engaged in the transportation of goods and/or passengers for hire is not considered a "crewmember" and may be admitted as a B-1. If a pilot or passenger is found to be inadmissible to the United States under § 212(a) of the Act, prepare and serve Form I-259 on the pilot, if departure arrangements are immediate. Arrange locally to verify that the aircraft, and inadmissible alien, have departed the country.

(b) Manifest Requirements. All pilots will complete a Form CF-178 (PAIRS) upon entry into the United States. It is essential to add the pilot's and owner's area codes and telephone number to the form for informational purposes. In instances involving small commercial aircraft, the crew will present a General Declaration Form CF-7507 and Cargo Manifest to the inspecting officer. The arrival information for these private aircraft is recorded on Form I-577. After necessary statistics and other data are recorded, submit Form CF-178 to the local Customs office. Customs will notify EPIC of the arrival based on the CF-178 data.

(c) Customs User Fee Decal. The Inspecting officer will assure that the Customs user fee decal is properly affixed to the aircraft. If a new decal is needed, the inspector must complete a Form CF-339, collect the required fee, and issue a receipt (Form G-211). In the "For" block

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write, "User Decal for the calendar year for private aircraft (and list tail number)". This is to ensure that the receipt cannot be presented as proof of decal purchase for another aircraft. The Form G-211 will be used in lieu of a valid decal until the Customs Service mails the decal to the applicant. Forward Form CF-339, the fee, Form G-211 and Form CF-178 immediately to Customs. Follow local procedures regarding transference of the fee to Customs personnel.

(d) Failure to Provide Advance Arrival Information. If the notice of arrival has not been reported within the specified time frame, fine proceedings should be initiated as discussed in Chapter 43. Execute a sworn statement from the pilot concerning the facts of the arrival and reasons for failure to give proper notice. Prepare a detailed memo describing incident, including arrival time, name of all passengers, their dates of birth and counties of citizenship. This packet will be sent to the National Fines Office in Falls Church, VA.

25.3 Inspection of Private Vessels.

As with private aircraft, inspection of private vessels is generally accomplished by a single officer acting on behalf of all inspecting agencies. Persons on board private vessels not regularly engaged in commercial carriage of goods or passengers are inspected under the general provisions of section 235 of the Act. Persons engaged in the operation of such vessels are not considered crewmembers and must be in possession of a nonimmigrant visa (where visas are required) that meets the intent of their trip to the United States. Persons applying for admission, solely to operate such a vessel, may be classified under section 101(a)(15)(B) of the Act, if otherwise admissible. Persons engaged in the operation or employment onboard a private vessel, which is home ported in the United States, must be in possession of an appropriate nonimmigrant visa (where visas are required), authorizing employment in the United States. Such a nonimmigrant visa could include, but is not limited to, the H2-B visa classification.

If you learn that a private vessel has arrived and persons have disembarked the vessel without inspection, or persons arriving on such vessels are not in possession of the required travel documents, prepare a memorandum of facts and complete Form I-849 for submission to the National Fines Office (NFO). In some cases a fine will not be imposed on the first offense; nevertheless, all cases must be documented and reported to the NFO. [See also Chapter 25.1 of this field manual, relating to the I-68 program, which may apply in some situations.]

25.4 Snowmobiles.

The Service and the United States Customs Service are experimenting with an I-68 like program for snowmobilers in North Dakota. At the present time, only snowmobilers within the programs test area are authorized to participate in the program. Should the two Services decide to expand the program, a revision to this Section will be made.

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25.5 GATE Program.

The United States Customs Service, with the concurrence of the Service, has been conducting an I-68 like program for the operators and passengers of small aircraft entering the United States from Canada. Like the I-68 program, participation is limited to United States citizens, lawful permanent residents of the United States, Canadian citizens, and landed immigrants of Canada having a common nationality with Canadians.

Enrollment is handled by the United States Customs Service; although any Immigration Inspector may have access to the enrollment applications of any program participant.

Program participants are required to call the Customs GATE Operations Center at 1 (800) 98CLEAR prior to departing from the United States. The Customs officer on duty will verify participation in GATE and determine if that specific flight will be approved for GATE. If approved, the pilot is issued a control number and authorized to proceed to the United States. The specific details of the flight are then entered into IBIS.

An Immigration Inspector interested in obtaining information related to any GATE flight may obtain that information from IBIS by selecting IO40/Option6/Option 4/Option 3: Inspection Operations, Private Aircraft Enforcement Systems/Maintain Overflight Exemptions/Query Overflight Exemptions. In accordance with the agreement between Customs and the Service, Immigration Inspectors may inspect any Gate flight.

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Chapter 26: Special Programs (Added INS - TM2)

- 26.1 INS Port Passenger Accelerated Service System (PORTPASS, DCL, APP and SENTRI)
- 26.2 Advance Passenger Information System (APIS)
- 26.3 Carrier Consultant Program (CCP) (Reserved)
- 26.4 Inspections Response Teams (IRT)
- 26.5 Immigration and Naturalization Service Passenger Accelerated Inspection System (INSPASS)
- 26.6 Inspections Canine Program

References:

INA: Section 286(q)

Regulations: 8 CFR 235.13, 286.8

26.1 INS Port Passenger Accelerated Service System (PORTPASS, DCL, APP and SENTRI)

(a) Background. The Service has long recognized the need to develop and implement new methods for rapid inspection of low-risk vehicular traffic at land border ports-of-entry without compromising the security and integrity of the inspection process. In recent years there have been several initiatives which targeted this segment of land border traffic. The most widely used version, referred to as Dedicated Commuter Lanes (DCL), are special lanes at busier land border ports-of-entry which are set apart from the normal flow of traffic. These lanes provide an accelerated inspection for frequent, low-risk travelers. The DCL project is a joint project of the Immigration and Naturalization Service (INS) and the United States Customs Service (USCS). The DCL project is part of a larger umbrella project named Port Passenger Accelerated Service System (PORTPASS).

At small ports in remote areas along the northern border, a different approach is being considered. Referred to as Automated Permit Ports (APP), the concept envisions that certain local residents will be issued cards which allow entry to the U.S. at times when the port is closed. The APP concept will be tested, using several types of technology, during the late FY 1995. Several small ports are being considered for APP pilots, including: Scobey, MT, Ambrose, Antler and Sherwood, ND, Morse's Line, VT and Forest and Orient, ME.

Another initiative, one which would take advantage of emerging technology by installing radio transponders in the vehicles of frequent travelers, is in the developmental stage. Known as the Secure Electronic Network for Traveler's Rapid Inspection (SENTRI), this initiative has been designated as a Reinvention Laboratory under the Administration's National Performance Review.

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Congress included language in the Service's 1990 Appropriations Act which allows for a test of the inspection fee concept on the land borders. This law authorizes the Attorney General to establish pilot projects which include the charging of a fee and provides that the fee collected may be used only to enhance inspection services. Such pilot projects are to be developed by the Attorney General after consultation with the Secretary of the Treasury and with Congress. All such pilot projects were scheduled to terminate on September 30, 1993, but were extended by Congress until September 30, 2000. This law also limited these projects only to the northern and California borders. In the FY95 Appropriations Act the restriction of operating a DCL on the southern border was lifted for California only. Because of the revenue available to the Service as a result of this new Land Border User Fee Account, there is a great potential for expanding these programs and employing new technology.

(b) The DCL Programs. There are four DCLs now in operation: One at Blaine, Washington (since June of 1991, referred to locally as Peace Arch Crossing Entry (PACE)); one at Point Roberts, Washington (since October 1994); and one each at Detroit's Ambassador Bridge and Windsor Tunnel (as of March, 1995). The programs are open to citizens and permanent residents of the United States, citizens and landed immigrants (commonwealth nationality) of Canada, and other nonimmigrants determined eligible by the Commissioner. In addition to the DCL ports, a similar program called AUTOPASS has been in use at the Peace Bridge in Buffalo, NY since 1982. Once accepted into the program, users need only slow for a visual inspection of the decal/ identifier affixed to the vehicle which indicates participation in the program. A proposed enhancement for FY95 would involve issuing a PORTPASS identification card. [Regulations controlling DCL program participation and adjudication of Forms I-823 are contained in 8 CFR 286.8.]

(c) Automated Permit Ports (APP). At small ports in remote areas along the northern border, a different approach is being considered. Referred to as Automated Permit Ports (APP), enrolled local residents are issued cards which allow entry to the U.S. at times when the port is unstaffed. APPs are currently in operation at Scobey, MT; Orient and Forest City, ME.

Users will encounter a variety of APPs as each site will determine specific equipment based on the physical layout of the port and other operational considerations. Some APP users will face a kiosk type structure into which they may insert a card or pin number and a biometric sample for verification which will control a gate. Other users may simply be registered with the PORTPASS program and carry only a identifying card. Because this is a pilot project, several different technologies are being tested.

A similar project is also underway at northern border ports-of-entry. This project is called Remote Video Inspection System (RVIS) which uses video conferencing techniques to help inspectors determine admissibility to the United States. Currently, this technology is being tested in Whitetail, MT; Champlain, NY; and Skagway, AK. Participants may either be enrolled or not, depending upon the traffic volume and risk.

(d) Future Enhancements; SENTRI Planning. The Department of Justice (DO) has selected the PORTPASS project as a Reinvention Lab as part of the second round of the National

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Performance Review (NPR). This the first joint Reinvention Lab involving the Department of Justice and Department of Treasury, and is among the first interagency labs since the NPR initiative began. Also assisting in identifying systems requirements are the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and United States Attorney for the Southern District of California. The system being developed by this interagency working group is called the Secure Electronic Network for Travelers' Rapid Inspection (SENTRI). This initiative will expand the current DCL concept to the southern border and exploit newly emerging technology, including radio frequency (RF) tags and expanded use of biometrics. The first DCL in California will be located at Otay Mesa. The system installed at Otay Mesa will be the prototype for future DCL systems and will be technologically more advanced than the current DCL systems. It is envisioned that once initially processed, vehicles and passengers accepted into the program will not need to stop at the border, except for "spot" compliance checks which may be performed by the border inspection agencies at any time. AUTOPASS may also be enhanced by automating the process with the use of radio frequency tags.

SENTRI will employ an experimental process for border inspections. The process will apply to a defined, and initially limited, group of low-risk border crossers. SENTRI will permit federal inspection personnel to screen, select and enroll applicants for participation in the SENTRI pilot using a set of criteria developed to satisfy law enforcement needs at the border. When low-risk participants approach the border to enter the United States, they will travel over a dedicated, vehicular lane, and the SENTRI system will electronically inspect the enrolled drivers and/or passengers, and their vehicles. This project should substantially accelerate border crossings through the application of technology.

Participants' vehicles will be outfitted with radio frequency (RF) transponders. When a transponder is activated, it will initiate a computer query of the enrollment database and perform a lookout query of the individuals and the vehicle and retrieve previously recorded digitized photographic images of the participants. These images will be displayed on a computer screen located before an inspector in the inspection booth who will make a visual comparison between the images and the individuals in the car.

Beginning in March or April of 1996 SENTRI will begin off-site testing of an in-vehicle voice verification system. The driver and any occupants will speak into the device which will contain a pre-recorded, digitized template of their voice print. The live voice prints will then be compared to those stored in the device. This process of biometric measurement, while the car is in motion, will provide positive identification of those persons who properly use the voice verification device. This process will also satisfy current proposed regulation 8 CFR 235.13 for immigration purposes.

Participants will be issued a PVC-based identification card which contains a digitized photograph integrated onto the card. Biographic data resides on the front of the card with the photograph. The reverse side contains data formatted in accordance with the International Civil Aviation Organization (ICAO) standard 9303 for a TD1 document.

The SENTRI program has a distinctive logo, to appear on its documents, consisting of a red "S" in a box with blue background, and blue "entri" on a standard-colored United States flag.

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(e) Border Facilitation Programs Application Procedures.

(1) General. A standard process for application filing and handling has been developed for all PORTPASS programs. All applications for participation in DCL, APP or SENTRI programs are filed on Form I-823, Application for Border Facilitation Program. INSPASS applications, discussed in Chapter 26.7, are also filed on the same form. Applications are available at all ports with PORTPASS programs. There is no limit to the number of vehicles a person enrolled in the program may select for PORTPASS use, but each vehicle is limited to four persons per entry via a DCL.

(2) Application Filing and Fee Receipting. Those eligible for participation in the DCL, APP or SENTRI programs must file Form I-823, with the fee provided in 8 CFR 103.7, at the port-of-entry where they will be crossing. The cost for use of the APP is currently \$25 per year. However, the fee will be waived initially, in accordance with an agreement with the Government of Canada. Each person in a family group is charged the fee, up to the family cap. No fee is required of persons under the age of 14. Fees must be remitted in the form of cash or a cashier's check. At PORTPASS locations, fees will be collected by either a designated inspector or by an inspections aide or fee clerk. [Requirements for fee collection and deposit are discussed in AM 4.1.307 and AM 4.1.304.] The inspector or aide receiving the application should review it for completeness, and fingerprint and photograph each applicant before accepting the application for processing. After review and acceptance, the inspector or aide must give the applicant a date upon which to return for further processing.

(3) Initial Processing. Upon receipt of the application, the adjudicating inspector checks several databases, including the Treasury Enforcement Communications System (TECS), National Automated Immigration Lookout System (NAILS), Nonimmigrant Information System (NIIS), and the National Crime Information Center (NCIC). If no information prejudicial to the applicant is obtained, the applicant must appear as scheduled for interview by a Customs and an Immigration officer. The interview is a more formal, intensive process than the traditional land border inspection. If the applicant is found admissible by both agencies, the vehicle(s) are inspected by Customs, and may be weighed or X- rayed. Note the application file with the names of the inspecting officers and the results of the interview.

(4) Decision. If an applicant is determined to be ineligible for the program, he or she will be so advised at the time of interview, but need not be given a specific reason for denial. If approved, the applicant will be advised of the validity dates of the approval and issued the appropriate identity card, decal or vehicle transponder, upon payment of any required systems fee. Decals and transponders must be affixed to the vehicle by agency personnel or persons specifically under contract for that purpose. The approving officer must also collect all required data and insure update of specified automated systems. Participants must be clearly advised of the terms of their enrollment, advised of the consequences of misuse and instructed on how the system operates.

(5) Terminating Enrollment. Participants in PORTPASS may have their enrollment terminated for any failure to adhere to program requirements. Upon termination of

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enrollment, collect all identification cards, transponders or decals and make appropriate entries in the systems database. Other enforcement actions, such as prosecutions or administrative fines may be considered apart from terminating the enrollment.

26.2 Advance Passenger Information System (APIS)

(a) General. The INS began implementing APIS in conjunction with the U.S. Customs Service (USCS) in 1989 as an effort to meet airport inspectional challenges (increased passenger volumes, especially during peak hours and seasons, combined with staffing and facilities limitations) during the 1990's and beyond. The system has its roots in a 1988 agreement between the New Zealand and Australian Customs Services that established a pilot program for the electronic exchange of biographical information on passengers traveling between those two countries. Shortly following this initial agreement, the USCS and INS agreed to take part in a related pilot program involving the transmission of passenger information for direct U.S. bound flights departing from New Zealand and Australia.

The idea behind APIS is simple. Normally, passenger data is entered into computer terminals by inspectors at the arrival port-of-entry to initiate primary lookout system queries in real-time as the passenger is being inspected. If this passenger data could instead be collected at the foreign point of departure and electronically transmitted to the U.S. for batch lookout query processing, and the query results be made available to the destination port-of-entry in advance of the arrival of the flight, the border inspection process at the port-of-entry would become much more streamlined.

The U.S. program began with a single carrier inputting data manually from paper manifests for arrivals at three air ports-of-entry. Although entirely voluntary on the part of the carriers, the program has expanded rapidly.

The popularity of APIS with the airline industry is largely due to the system's facilitative potential. The system has the potential to substantially expedite the processing of bona fide air travelers at U.S. ports-of-entry by eliminating the need for an inspector to perform a full primary computer query.

The APIS also furnishes the INS with an invaluable enforcement tool by providing inspectors at ports-of-entry with advance notification of arriving passengers who are the subjects of lookouts. Many ports-of-entry have been able to further optimize the benefits of this time advantage by organizing joint INS/USCS Passenger Analysis Units (PAUs) which utilize APIS data to perform initial intelligence analysis prior to passenger arrival, thus greatly improving enforcement selectivity.

In addition to the enforcement and facilitation benefits provided by APIS, the INS also views APIS as the cornerstone for future processing advances at air ports-of-entry. The program has enormous potential in the area of passenger processing automation and, with continued systems development, has the capacity to act as a catalyst for future re-engineering of the airport inspections process.

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(b) Memoranda of Understanding (MOUs). Currently two MOUs govern the administration of the APIS program. The first MOU is an inter-governmental agreement between the Department of Immigration, Local Government and Ethnic Affairs (DILGEA) of Australia and the INS (see Appendix 26-1). This MOU went into effect in 1991 and sets forth procedures whereby the government of Australia assumes the responsibility for collecting and transmitting passenger data for all non-stop U.S. bound flights departing from Australian ports. The MOU further requires that stickers be placed on passengers' travel documents identifying them as passengers for whom advance passenger information (API) has been collected, and that the INS facilitate the processing of these passengers through INS "Blue Lanes." This MOU directly effects only a small group of carriers (such as Qantas) which operate routes between Australia and the U.S. On these routes, the Australian government collects and transmits API on behalf of the carriers.

The second MOU governing the administration of the APIS program is a formal agreement between the three U.S. Federal Inspections Services (FIS) agencies (the USCS, INS and USDA- APHIS) and participating air carriers (see Appendix 26-2). This MOU (referred to as the "APIS MOU") is effective April 1, 1998, and applies to carriers which operate routes destined to the U.S. from anywhere in the world other than Australia. The APIS MOU remains in effect for three years and will expire on March 31, 2001, unless extended.

The APIS MOU sets forth the terms and conditions of APIS as a voluntary program between the FIS agencies and participating carriers. Although not legally binding, the APIS MOU is important in that it specifies national performance standards which apply to all parties.

The APIS MOU is structured as a quid pro quo arrangement whereby benefits accrue only if performance standards are met. The primary benefit for the government is the receipt of increasingly high levels of high quality API. The primary benefit for participating carriers is a corresponding decrease in FIS processing times for bona fide passengers.

The APIS MOU is unique in that through this vehicle three separate government agencies jointly enter into an agreement with the participating carrier. This effectively restrains any one of the three FIS agencies from acting unilaterally on an issue that effects joint government performance required by the APIS MOU.

The APIS MOU is divided into six sections. A brief overview of each section follows:

Section 1: Provider (carrier) Data Responsibilities

The first section of the APIS MOU enumerates the data elements which the carrier must collect. Initially, only basic data elements are required. Additional required data elements are phased in over an eighteen month period beginning April 1, 1998. Ultimately, eleven data elements are required to be collected for each passenger (five flight related elements and six biographical elements). As of April 1, 1998, the following eight data elements must be collected: airline IATA code, flight number, passenger last name(s), passenger first name(s), passenger date of birth, departure location IATA code, U.S. arrival location(s) IATA code(s), and date of flight arrival. As of January 1, 1999, passenger travel document nationality (or passenger nationality when

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exempt documentary requirements) and travel document number (except when the passenger is exempt documentary requirements) must also be collected. Beginning October 1, 1999, passenger gender is required.

In order to qualify for benefits under the program, the carrier must not only collect an increasing number of data elements but must also collect more, and more accurate, API. As of April 1, 1998 (when eight data elements are required), the data accuracy rate ("sufficiency rate") must meet or exceed 60%, on a flight-by-flight basis. When the number of required data elements increases to ten on January 1, 1999, the minimum sufficiency rate increases to 75%. When the final required data element is added on October 1, 1999, the minimum sufficiency rate increases to 80%. Six months later, on April 1, 2000, the minimum sufficiency rate increases to 90%.

The term "sufficiency rate" is a key term used throughout the APIS MOU. The sufficiency rate is defined in detail in section 4 of the APIS MOU. Generally speaking, the sufficiency rate is the percentage of accurate, error-free API records transmitted in relation to the total number of on-board passengers on each APIS flight. Calculation of the sufficiency rate is based on the assumption that API should be transmitted for 100% of all on-board passengers. Arriving passengers for whom no API records have been transmitted, excess records (except duplicates) and records which contain data errors or omissions all reduce the sufficiency rate. Also, it should be noted that the minimum sufficiency rates specified in the APIS MOU are set standards and will not be lowered to encourage new carrier participation.

Section 2: Provider (carrier) Operational Responsibilities

This section addresses carrier operational issues bearing on the quality of data collected. The carrier is required to utilize, where feasible, document readers to collect information from machine readable travel documents. Carrier staff is also required to compare the data collected to that contained on the travel document to ensure accuracy. Additionally, not later than April 1, 2000, the carrier is required to transmit APIS data for all of its non- precleared U.S. bound flights, and not later than April 1, 2001, the carrier must transmit APIS data for its crew members.

Section 2 of the APIS MOU also addresses primary queue management and passenger processing support at the port-of-entry. Although individual responsibility is not assigned per se, this section requires the carrier to agree to participate in joint carrier, government and airport authority working groups at the local level. These working groups are responsible for ensuring that appropriate signage and lane segregation devices (to include appropriate queue management personnel), as well as passenger processing support personnel, are available for each APIS flight at each port-of-entry.

Section 3: Government Responsibilities

This section lists the responsibilities of the three FIS agencies. Government performance of each of these responsibilities equates to a benefit for qualifying "Blue Lane eligible" flights.

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Blue Lane eligibility is another key term used throughout the APIS MOU. There are two requirements, both of which must be met, for a flight to be considered Blue Lane eligible: (1) the carrier must be signatory to the APIS MOU (national level approval) and (2) the individual flight arriving at the port-of-entry must meet the current minimum sufficiency rate required by the APIS MOU (local approval). If a particular flight of a signatory carrier does not meet the current minimum sufficiency rate, it is not Blue Lane eligible and will not receive benefits outlined in the APIS MOU. Also, regardless of the sufficiency rate of individual flights, if a carrier is not signatory to the APIS MOU, none of its flights are Blue Lane eligible.

Section 3 of the APIS MOU eliminates the requirement for Blue Lane stickers to be affixed to passengers' travel documents. Although the Blue Lane sticker is required by the INS/Australian MOU, the INS is eliminating the sticker requirement for all carriers on all routes (including those which are covered by the INS/Australian MOU), effective April 1, 1998.

The INS will provide dedicated primary inspectional "Blue Lanes" for processing passengers on Blue Lane eligible flights. All passengers arriving on Blue Lane eligible flights will be processed through these lanes. The language in this section of the APIS MOU prohibits the mixing of passengers arriving on Blue Lane and non-Blue Lane eligible flights in these lanes.

Flight processing cycle time goals, from the first passenger's entry into the FIS arrivals area to the last passenger, requiring only primary inspection, through the facility exit, will be reduced in three phases. Beginning January 1, 1999, the processing cycle time goal for passengers arriving on Blue Lane eligible flights is reduced to 40 minutes. On October 1, 1999, this goal is reduced to 35 minutes, and effective April 1, 2000, the goal is finally reduced to 30 minutes. These times include all FIS primary processing, not just INS primary processing.

The government agrees to meet these processing cycle time goals for all Blue Lane eligible flights which operate within "the normal course of actions." In the normal course of actions, APIS data is received in advance of the flight and there are no unusual problems or excessive delays with deplaning passengers, with the passengers arriving at the FIS arrivals area from the gate, or with the delivery of checked baggage. Late flight arrivals and flight diversions are considered to occur within the normal course of actions to the extent that the APIS data is available in advance of the flight's arrival, passengers deplane normally, checked baggage is delivered normally, etc. Local issues involving staffing shortages, details, etc., while obviously of concern to the FIS agencies as well as to the carriers, are also considered to occur within the normal course of actions for the sake of the APIS MOU.

Given the current airport environment, measurement of the processing cycle time specified in the APIS MOU is problematic. Although flight block time is recorded on the General Declaration, there is no accurate time stamp which establishes when the first passenger on a given flight actually enters the FIS arrivals area. Similarly, although IBIS establishes the time of the first and last INS primary queries for each flight, there is no standard procedure to collect the time the last passenger on a given flight actually clears the USCS control point and exits the facility. Due to these operational constraints, the following cycle time measurement methodology has been adopted until such time that a more accurate, automated measurement solution can be developed:

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Processing Cycle Time: Processing cycle time begins when the "average" passenger on the flight enters the FIS arrivals area and ends when the "average" passenger on the flight exits the facility (USCS collects the Customs declaration). Start time (passenger enters FIS arrivals area) begins "X" number of minutes after the flight block time. "X" is a terminal average walk time and equals to the time it takes the middle passenger on a flight arriving at the middle gate to deplane and walk to the FIS arrivals area. The terminal average walk time is established locally through informal time studies conducted by POE management. Carriers at the POE should be involved in measuring this time and must agree that the walk time number to be used is a reasonable estimate.

The USCS is responsible for establishing the time the average passenger exits the facility. This may be determined by using a sampling technique. Until such time that this can be automated, USCS at each port-of-entry is responsible for providing FIS cycle time reports to the carriers and to INS. Due to the manual nature of this report, it will not include breakdowns (i.e., time from first passenger entry into the FIS to first INS primary query, from first INS primary query to last INS primary query, baggage delivery time, time from baggage delivery to passenger exit from the FIS, etc.). The USCS Data Center will work to incorporate block times and terminal average walk times into IBIS in the future.

Section 3 of the APIS MOU also requires the FIS agencies to work with the local airport authorities to provide preferential baggage carousel assignments to Blue Lane eligible flights and to develop and test of a variety of automated systems and procedures to further streamline passenger processing at the ports-of-entry. The USCS also agrees to continue providing the carriers with document readers on a no-fee loan basis.

Section 4: Data Accuracy

This section of the APIS MOU specifies the types of API data errors which will be counted against carriers. The sufficiency rate, which is the primary statistical measurement of carrier data integrity, is arithmetically defined. The stipulation that, when used to determine Blue Lane eligibility, sufficiency rates will be calculated on a flight-by-flight basis, using a weekly (7 day) average (regardless of the number of times the flight arrives during the weekly period) is contained in this section, as well as the requirement that the government provide carriers, on request, daily, weekly and monthly carrier performance reports.

Section 5: Administration

Section 5 of the APIS MOU establishes a government/industry administrative structure to support the APIS program. For the FIS agencies, the INS Assistant Commissioner, Office of Inspections, is the overall program administrator. Each of the FIS agencies also designates national APIS coordinators responsible for the day-to-day administration of the APIS MOU, as well as field APIS coordinators at each of the ports-of-entry servicing APIS flights. Each carrier must designate a corresponding national (corporate) APIS coordinator as well as field APIS coordinators at each of the ports-of-entry to which the carrier transmits APIS data. When a carrier begins transmitting APIS data to a new port-of-entry, the carrier must designate a field

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APIS coordinator at that new port-of-entry. When a carrier adds or deletes APIS flights, notification is required to be provided locally through the APIS coordinators to the INS Port Director.

Local management, implementation and problem resolution is to be accomplished through Port Quality Improvement Committees (PQICs) or other ad hoc joint management committees composed of local representatives from the three FIS agencies, carriers and port authority.

Section 6: Performance

The final section of the APIS MOU outlines procedures for removing non-compliant flights from Blue Lane eligible status. Basically, written notice must be served locally on non-compliant flights by the INS Port Director. This written notice must include examples (data accuracy reports) of the deficient performance. The notice places the flight in a "probationary status" for 60 days. (In actuality, this 60 day period consists of 8 weekly reporting periods - 56 days). During the probationary period, the flight remains eligible for Blue Lane processing. However, following the 8 week probationary period, the flight's performance is reviewed. Any flight that has not improved to the minimum sufficiency rate in effect at that time will be served written notice by the INS Port Director and removed from Blue Lane eligible status. Reinstatement can be accomplished by the carrier providing a written request to the INS Port Director. The written request must outline the problem and measures taken to correct the problem. Following receipt of the request, reinstatement is contingent upon the flight meeting the sufficiency rate currently in effect.

(c) APIS airport procedures. In accordance with the provisions of the APIS MOU and pursuant to HQINS policy, the following airport primary passenger processing procedures shall be implemented effective April 1, 1998:

(1) Elimination of Blue Lane stickers. Effective April 1, 1998, the requirement for carriers participating in the APIS program to affix Blue Lane stickers to the travel documents of passengers for whom API is collected is eliminated.

(2) Blue Lane eligibility. Only those APIS flights which meet the criteria of "Blue Lane eligibility" will receive special processing benefits outlined in the APIS MOU. This determination will be made on a flight-by-flight basis locally at the port-of-entry. All flights which are Blue Lane eligible will receive the special processing benefits outlined in the APIS MOU. No flights which are non-Blue Lane eligible flights will receive these benefits.

There are two requirements for Blue Lane eligibility, both of which must be satisfied:

The carrier must be signatory to the APIS MOU (national-level approval)

and

The signatory carrier's flights arriving at the port-of-entry must meet the minimum
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sufficiency rate currently required by the APIS MOU (port-level approval)

(3) Carriers signatory to the APIS MOU (national-level approval). Effective April 1, 1998, only those carriers signatory to the national APIS MOU will be eligible for the processing benefits outlined in the APIS MOU. The APIS MOU is a national-level agreement which is executed at the Headquarters level. The INS Assistant Commissioner, Office of Inspections, is authorized to sign the APIS MOU on behalf of the three FIS agencies. An appropriate airline corporate level officer will sign the APIS MOU on behalf of his/her carrier. Regardless of whether or not a carrier transmits APIS data, no carrier which is not signatory to the APIS MOU will be eligible for the processing benefits outlined in the MOU.

Note: Effective April 1, 1998, all flights of signatory APIS carriers will be marked with asterisks immediately to the left of the two letter carrier code on the port-of-entry flight list, which is accessed through the IBIS "IOPI" (IBIS Advance Passenger Information) function. No flights of non-signatory carriers will have asterisks to their left in IOPI. Blue Lane processing will not be provided for any flight which is not marked with an asterisk in IOPI.

(4) Blue Lane eligible flights (port-of-entry level approval). If a carrier is signatory to the APIS MOU, processing benefits outlined in the MOU are NOT automatically granted to all of that carrier's flights. Processing benefits outlined in the APIS MOU are granted on a flight-by-flight basis at the port-of-entry depending on each flight's APIS sufficiency rate. This requires that the port-of-entry routinely monitor (at least weekly) the sufficiency rates for all APIS flights. Blue Lane eligibility is then granted only to those signatory carriers' flights which meet or exceed the current sufficiency rate specified in the APIS MOU.

Note: Although all flights for signatory carriers will be marked with an asterisk immediately to the left of the two letter carrier code on the arrival flight list in IOPI, currently the asterisk does NOT indicate that the flight is Blue Lane eligible, only that the carrier as a whole is signatory to the APIS MOU. System enhancements are being developed that will eventually allow for system identification of Blue Lane eligible flights on a flight-by-flight basis. However, until such time that these enhancements are in place, for flights which have been marked with an asterisk, the determination as to the flight's Blue Lane eligibility must still be made at the port-of-entry, based on the flight's sufficiency rate.

Even if all carriers at a given port-of-entry are signatory to the APIS MOU (all flights in IOPI have an asterisk to the left of the two letter carrier code), not all flights arriving at that port-of-entry may necessarily be Blue Lane eligible. Each signatory carrier's flight is evaluated individually, based on its sufficiency rate. Only those signatory carrier's flights which meet or exceed the current minimum sufficiency rate specified in the APIS MOU qualify as Blue Lane eligible. The goal of granting and denying Blue Lane eligibility locally on a flight-by-flight basis rather than carrier-wide is to focus appropriate carrier attention on specific flight routes which are not providing the minimum acceptable level of APIS data.

(5) Blue Lane processing: all passengers on a flight or none. The APIS MOU requires that the INS process passengers arriving on Blue Lane eligible flights through dedicated primary inspectional lanes (Blue Lanes). ALL passengers on Blue Lane eligible flights will be

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processed through Blue Lanes. NO passengers on non-Blue Lane eligible flights will be processed through Blue Lanes during the time that passengers on Blue Lane eligible flights are being processed.

(6) Determination of Blue Lane eligibility: weekly sufficiency rate. Each port-of-entry must determine, on a weekly basis, which flights are Blue Lane eligible. This determination is based on each flight's sufficiency rate. Signatory carriers' flights which meet the current minimum sufficiency rate will be granted Blue Lane eligibility.

The APIS MOU requires that a weekly (7 day) average sufficiency rate be used to determine Blue Lane eligibility. A weekly average sufficiency rate report is available in IBIS. The report may be accessed by selecting item number 3 (Weekly Carrier Sufficiency Reports) in the IOPF (API Processed Flights) sub-menu of the IO (Inspection Operations) menu. To ensure that a standard weekly Blue Lane eligibility reporting period is used nationally, all ports-of-entry should enter a 7 day date range beginning on a Monday and ending on a Sunday when generating the report.

The APIS utilizes on-board passenger counts from the USCS Automated Commercial System's Entrance and Clearance Reporting subsystem (ECAR) to calculate sufficiency rates. Sufficiency rates cannot be reported until the on-board passenger counts for each flight have been entered. On-board passenger counts are entered into ECAR by U.S. Customs personnel locally at each port-of-entry. Data entry is usually performed daily for the preceding day.

The INS and USCS APIS coordinators at the ports-of-entry must work together to ensure that accurate and complete on-board passenger counts have been entered into the system prior to generating carrier performance reports. It is the responsibility of the INS APIS coordinators at each port-of-entry to review the on-board passenger counts and correct any errors or omissions prior to generating carrier performance reports. Passenger counts can be edited through IOPS - Process API Statistics. When errors are encountered, the INS APIS coordinator should contact his/her USCS counterpart to ensure that local ECAR data entry problems are addressed.

(7) Granting initial Blue Lane eligibility. Each new flight entering the APIS program must meet the current minimum APIS sufficiency rate in effect for two consecutive weeks prior to being granted initial Blue Lane eligibility. Notification of this initial grant of Blue Lane eligibility can be made verbally to the carrier's local APIS coordinator. No formal written notification for the initial grant of Blue Lane eligibility is required.

For those carriers which are signatory to the APIS MOU on April 1, 1998, ports-of-entry will, on April 1, 1998, grant Blue Lane eligibility to those flights which have met or exceeded a 60% sufficiency rate for the two consecutive weekly reporting periods prior to April 1, 1998.

(8) Notification to carrier of failure to meet minimum sufficiency rate. If any Blue Lane eligible flight fails to meet the current minimum sufficiency rate for one weekly reporting period, the port-of-entry must provide a verbal or informal written notice to the carrier's local

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APIS coordinator. A copy of the weekly sufficiency rate report outlining the flight's deficient performance should also be provided.

(9) Placing a Blue Lane eligible flight on probationary status. If a flight fails to meet the current minimum sufficiency rate for two consecutive weekly reporting periods, including the period covered by the informal notice (above), a formal written warning notice shall be served on the carrier's local APIS coordinator by the INS Port Director or designee (see sample notice in Appendix 26-3). A copy of the weekly sufficiency rate report outlining the flight's deficient performance must also be provided with the notice. This formal written notice places the flight in a probationary status for 8 weekly reporting periods, beginning that week. Regardless of the flight's sufficiency rate, the flight cannot be removed from Blue Lane eligibility during this 8 week probationary period unless agreed to by the carrier (see voluntary temporary removal below).

(10) Revoking Blue Lane eligibility. All flights which have been served formal written warning notices placing them on probation for 8 weeks will have their performance reviewed at the end of that period. For any flight which does not meet the minimum sufficiency rate in effect for the final four consecutive weekly reporting periods of that period, the INS Port Director or designee will provide written notice to the carrier's local APIS coordinator, formally revoking the flight's Blue Lane eligibility (see sample notice in Appendix 26-3). At that time, the flight will be immediately removed from Blue Lane eligible status and no passengers on that flight will be processed through the Blue Lanes.

Any flight which has been placed on probation for 8 weeks and has met the minimum sufficiency rate for the last 4 consecutive weekly reporting periods will be automatically returned to full Blue Lane eligible status.

(11) Reinstating Blue Lane eligibility. In order to reinstate a flight which has had its Blue Lane eligibility revoked, the carrier's local APIS coordinator must submit a written request to the INS Port Director asking for reinstatement. The written request must outline the problem which caused the poor performance and the measures taken by the carrier to correct the problem.

The first time that a flight's Blue Lane eligibility is revoked, reinstatement is contingent upon the flight meeting the minimum sufficiency rate in effect for 4 consecutive weekly reporting periods prior to reinstatement. For any flight which has had its Blue Lane eligibility revoked more than once, reinstatement is contingent upon the flight meeting the minimum sufficiency rate in effect for 6 consecutive weekly reporting periods prior to reinstatement.

(12) Voluntary temporary removal. Any carrier which is aware that it is (or will be) facing significant systems outages or long term telecommunications problems beyond its control (facility fire, extreme weather conditions, etc.), may request from the INS Port Director that a flight or flights be immediately removed from Blue Lane eligible status. By immediately removing flights which are temporarily unable to transmit APIS data from the Blue Lanes, the carrier is providing a service to other APIS carriers, as well as to the FIS agencies, by helping to maintain the level of passenger data integrity in the Blue Lanes.

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Under these circumstances, the INS Port Director will, upon request, immediately remove the flight(s) from Blue Lane processing without issuing any type of formal written notice. The flight(s) will continue to be ineligible for Blue Lane processing until such time that the problem is fixed and the carrier requests the INS Port Director to begin processing the flight through the Blue Lanes again. Upon receiving this request, the INS Port Director will immediately resume processing the flight through the Blue Lanes and return the flight to the status it had at the time of voluntary removal (i.e., if the flight was Blue Lane eligible, it returns as Blue Lane eligible; if the flight was in the third week of probation, it returns in the third week of probation, etc.).

(13) Continued Blue Lane eligibility: sufficiency rate increases. Beginning April 1, 1998, the minimum sufficiency rate for Blue Lane eligibility is 60%. The APIS MOU specifies future dates on which higher minimum sufficiency rates for Blue Lane eligibility become effective:

January 1, 1999	75% sufficiency rate
October 1, 1999	80% sufficiency rate
April 1, 2000	90% sufficiency rate

Each of these dates fall somewhere in the middle of the standard Monday-Sunday weekly sufficiency rate reporting period. For flights that do not meet the higher standard on these dates, no adverse action will be taken until that weekly period is over and the weekly sufficiency rate report has been generated. Flights which meet or exceed the new, higher rate for the reporting period will continue to be Blue Lane eligible. Flights that do not meet the higher sufficiency rate will be handled in accordance with standard procedures outlined above.

(14) Accessing carrier performance reports through IBIS. Ports-of-entry are responsible for providing daily, weekly and monthly APIS carrier performance reports to carrier representatives upon request, and for providing reports when issuing formal warning and revocation notices. Summary APIS carrier statistics, as well as detailed flight level error reporting, are available through the IOPF sub-menu of the IBIS IO menu. IOPF contains three options:

1. Daily Port Summary of Carrier Performance (Display Only)
2. Carrier APIS Daily Error Reports (Print)
3. Weekly Carrier Performance Report (Print)

As stated earlier, the weekly sufficiency rate report used to determine Blue Lane eligibility is generated via item 3. Although this report provides a statistical summary of carrier performance, it does not contain the detailed information necessary for carriers to identify specific types of APIS errors. The best method of identifying the types of APIS errors that are being encountered on a particular flight is to generate a list of the actual transmission errors (incorrect names, dates of birth, etc.). This list, which can be released to carrier representatives, may be generated through the following procedure:

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Access IOPF menu item 1 (Daily Port Summary of Carrier Performance)

Enter the date for the report, the carrier code and flight number (or scroll through the screen to the flight)

Enter a "V" (View Pax) to the left of the carrier code and press ENTER

This screen lists only those APIS records for the flight that are identified as errors. Press F16 to print this list

To display the entire flight list (all accurate and error APIS records transmitted) press F15. This screen lists the entire APIS passenger list for the flight and includes errors and corrections. Press F16 to print this list.

Note: The above procedure is the only authorized procedure for generating detailed APIS passenger lists which can be released to carrier representatives. APIS passenger lists which contain IBIS query results cannot be released. The release of any passenger lists which contain IBIS query results is a security violation. The above procedure produces passenger lists which do not contain IBIS query results.

(15) Blue Lane queue management. One key to the success of the APIS program is proactive INS management of the Blue Lanes at ports-of-entry. Blue Lanes must be managed in such a way as to ensure that:

1. Only those passengers on Blue Lane eligible flights are processed through the Blue Lanes
2. All flights processed through Blue Lanes meet the processing goal times specified in the APIS MOU
3. Passengers on non-Blue Lane eligible flights continue to be processed within the 45 minute Congressionally mandated time.

When a port-of-entry is simultaneously processing Blue Lane and non-Blue Lane eligible flights, it is recommended that, in order to ensure that the Blue Lane eligible flights are provided the necessary resources to meet the processing time goals specified in the APIS MOU, to the extent possible, the staffing of lanes for non-Blue Lane eligible flights shall not exceed that necessary to meet the 45 minute Congressionally mandated time.

Under no circumstances should passengers on Blue Lane eligible flights be queued behind passengers on non-Blue Lane eligible flights. When clearing passengers on non-Blue Lane flights through empty Blue Lanes, passengers should be moved over one or two at a time (or in family groups) from the front of the non-Blue Lane queues to the empty Blue Lanes. Entire non-Blue Lane flights should not be moved en masse to form queues in the Blue Lanes.

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Facility constraints such as shallow queuing areas, too few primary booths, etc. may severely limit the number of queue management techniques that can be employed at some ports-of-entry. However, physically separating Blue Lane eligible flights from non-Blue Lane eligible flights is critical to the success of the APIS program. At locations where separating flights is problematic, to the extent practical, consideration should be given to changes in existing queue configurations (such as changing the lanes from single lanes feeding a single booth to bank lanes feeding a number of booths, or a combination of both, or locating the Blue Lanes near an entrance utilized primarily by Blue Lane eligible flights, etc.). If the three FIS agencies, carriers and port authority at a port-of-entry all agree that Blue Lane separation cannot be accomplished at INS primary, the group must continue to work together to provide enhancements at other points in the passenger clearance process which clearly benefit the passengers on Blue Lane eligible flights.

(16) APIS FIS processing cycle times. The definition of the FIS processing cycle time is contained in paragraph 3.3 of the APIS MOU: "Processing cycle time will begin with first passenger entry into the FIS arrivals area and will end with last passenger, requiring only primary inspection, through the facility exit." Due to the operational complexities of accurately measuring the cycle time as defined by the APIS MOU, a cycle time estimation methodology has been adopted. This methodology assumes a processing cycle time that begins when the "average" passenger on the flight (rather than the first passenger) enters the FIS arrivals area and ends when the "average" passenger on the flight (rather than the last passenger) exits the facility.

The method for establishing the time the "average" passenger on a flight enters the FIS arrivals area is to add a "terminal average walk time" to the flight block time. For simplicity, a single average walk time will be used for each arrivals terminal. The terminal average walk time equates to the time it takes the middle passenger on a flight arriving at the middle gate to deplane and walk to the FIS arrivals area.

The terminal average walk time will be established locally through informal time studies conducted jointly by port-of-entry management. Carriers and the port authority at the port-of-entry should be involved in measuring this time and all parties must agree that the walk time number to be used is a reasonable estimate. The terminal average walk time must be established for each arrivals terminal prior to April 1, 1998. The walk time should be re-measured as necessary when conditions change or when it appears to be providing inaccurate estimates.

The USCS is responsible for establishing the time the "average" passenger on a flight exits the facility. This may be determined by using one of a number of a sampling techniques or other agreed upon methodologies. Until such time that this process can be automated through IBIS, USCS at each port-of-entry is responsible for providing FIS cycle time reports to the carriers and to INS management.

(17) IBIS processing times (first to last primary query). Because the system collects flight information for all passengers on all flights (APIS and non-APIS) queried on primary, the

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system can calculate the time from the first INS primary query to the last INS primary query for all flights processed through the port-of-entry. However, it is important to note that the first-to-last passenger query time does not necessarily equate to the actual INS flight processing time. The system simply calculates the elapsed time from the first query associated with a particular flight time to the last query associated with that flight. If, for example, a group of VIPs are expedited, the time will start with the first query of the expedited passengers, even though the bulk of the passengers may not be presented for inspection for some time.

(18) Accessing port-of-entry primary processing statistics through IBIS. Port-of-entry primary processing reports which contain processing information for every flight processed at the port-of-entry (APIS and non-APIS) are available in IBIS. These reports contain information on passenger counts, number of lanes through which passengers were processed, first-to-last query time, and a 24 hour time line that graphically displays terminal-wide processing volume. Primary processing reports are available through the MIYO (IBIS On-Demand Reports) sub-menu of the IBIS MI (Management Information) menu. On-demand reports must be submitted to the mainframe and then re-accessed a short time later to obtain the results. The procedure for submitting and retrieving a port-of-entry primary processing report is as follows:

Select item number 5 (Submit On-Demand API Confirmation Report) from the MIYO menu.

Enter the dates for the report and accept the rest of the defaults. Press ENTER then press F4 to return to the initial MIYO menu.

After several minutes, select item number 1 (View On-Demand Report) from the MIYO menu. A list of reports which you have previously submitted will display.

If the code to the right of the report is "C" the report is ready for viewing. If the code is "S" the report has not yet been processed by the mainframe.

If the code to the right of the report is "C," enter a "V" in the space to the left of the report to be viewed. Press ENTER.

The report is a wide format report and does not display on a single screen. The best way to view the report is to print it on a wide carriage printer. Press F16 to print the report.

26.3 Carrier Consultant Program (CCP)

(a) Background. Section 124 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) required the Service to provide training to airline personnel in the detection of fraudulent documents. This section of IIRIRA amended Section 286(h)(2)(A) of the Immigration and Nationality Act (INA) and specifically required that expenses incurred under the user fee account shall include "the detection of fraudulent documents used by passengers

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traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection." In addition, the new law requires that for any fiscal year, not less than five percent of the total revenues collected shall be used for this purpose. The Immigration and Naturalization Service (INS) designated the management for carrier training within the Office of Inspections, Field Operations, Carrier Affairs Office (CAO). This activity is designated the Carrier Consultant Program (CCP).

(b) Mission and Goal. The mission of the CCP is to provide national guidance and assistance to all Government officials involved in the assisting of air transportation industry on issues of admissibility and fraud document detection in order to encourage carrier compliance with United States immigration laws. A goal of the CCP is to reduce illegal migration by means of training airline personnel on how to identify inadmissible aliens before arrival in the United States and to provide standardized training in order to maintain the equitable treatment of carriers in the assessment, defense and collection of fines and liabilities. In addition the goal includes the reductions of the number of fines assessed as a result of airlines transporting inadequately documented individuals to the United States.

(c) Carrier Consultant Program Responsibilities. The CCP provides national guidance and assistance to members of the air transportation industry on issues of admissibility and document fraud in order to encourage carrier compliance with United States immigration laws. The goal of the CCP is to reduce or eliminate the arrival of improperly documented passengers at the ports-of-entry (POEs). These efforts include the development of national policy on the relationship between the INS and the transportation industry, the creation and implementation of a standardized training curriculum on international travel documents, the initiation of training instructors who are INS personnel, and the creation of a central database for all carrier training-related information and intelligence for use in planning a world-wide program.

(d) CCP Strategy. The basic strategy of the CCP is to work with members of the transportation industry to reduce or eliminate the arrival of improperly documented passengers at United States air ports-of-entry by intercepting inadmissible passengers prior to their departure to the United States. This strategy uses two approaches, first, by providing training to airline personnel in the detection of fraudulent documents; and second, by insuring that this training is standardized in order to maintain the equitable treatment of carriers in the assessment, defense, and collection of fines and liabilities by the National Fines Office (NFO) under Sections 233 and 280 of the Act.

(e) Three Levels for Interdiction Training. The program provides for three levels of interdiction training. The first is overseas locations, the second at domestic ports-of-entry and the third at centralized operation with a carrier response center located in Washington, D.C. At the overseas offices, specially trained officers conduct training and respond to inquiries from the carriers at various overseas locations. The second line of interdiction occurs at ports-of-entry where specialized units conduct training at the major air ports-of-entry and are available to respond to the unique conditions or patterns of fraud at that port and once again be available to the airlines to respond to airline carrier inquiries. The third and final line of interdiction is at the national level where staff develops standardized training, trains instructors who serve at the ports-of-entry and at the overseas offices, and at a twenty-four hour seven day a week facility

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will be fully staffed to respond immediately to any inquiries coming from airline carriers anywhere in the world.

(f) Carrier Consultant Program Staffing. The CCP is staffed with Immigration Inspector (Carrier Consultants) [GS-1816 - 12] and a Director [GS-1816-13].

(g) Carrier Consultant Program Steering Committee. The steering committee advises the Director of the Carrier Affairs Office on issues that impact on the Carrier Consultant Program. The committee is comprised of program managers from Carrier Affairs Office, Carrier Consultant Program, Field Operations, Inspections, International Affairs, Intelligence, Personnel, Training, and the Department of State Office of Fraud Prevention Programs.

(h) Carrier Consultant Working Group (CCWG). The CCWG is comprised of staff from the INS Headquarters Offices of Field Operations, International Affairs, Inspections, Intelligence, Carrier Affairs Office, Carrier Consultant Program, Forensic Document Lab; the Department of State Bureau of Consular Affairs Office of Fraud Prevention Program, the Bangkok, Mexico City and Rome District Offices; Central, Eastern and Western Regional Inspections, the ports-of-entry of Atlanta, Chicago, Dallas, Hawaii, Long Beach, Los Angeles, Miami, Newark, New York, Orlando, San Francisco, San Juan, and Washington. Reports on carrier training programs are presented at the meetings along with continued introduction of the program to INS program managers and filed input to the continuing development of the program.

(i) Communication within and outside the Service.

(1) CAO Bulletin Board / SITA: The bulletin board was established on November 12, 1998. Bi-weekly articles are posted that deal with distribution of information to intercept inadmissible travelers prior to their arrival in the United States. CCP has requested SITA terminals at the CAO, Headquarters Inspections, and 15 ports-of-entry. The SITA terminal will provide immediate access to the carriers, as it is the carrier's method of communication between their organizations and each other.

(2) Airline Working Group / Inspections User Fee Advisory Group / IATA/CAWG Meetings: The CCP presents reports on projected plans to our partners in the airline industry at these meetings.

(j) Yearly Strategic Plan. An initial methodology was developed to determine how to select sites for training carriers. Data from the National Fines Office System (NFOS), Record of Inadmissible Passengers (RIPS), and Intelligence recommendations were utilized. Future plans will include data collected from carrier intercepts.

(k) Standardized Training. The CCP has the basic responsibility for the development and formulation of policy and training materials to accomplish the above strategy. The CCP manages overall training of INS personnel and carriers, both domestic and overseas. It determines and develops training content, proposes standard training and core curriculum, develops an annual training schedule, and trains trainers who conduct seminars on a routine basis throughout the world and respond immediately to special problems as they occur at

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domestic and foreign locations. The overseas operations staff accomplishes the majority of the field training of carrier and foreign officials. The NFO and the Forensic Document Lab (FDL) are used to provide expertise in the development of the training materials. Coordination and oversight is a major responsibility of the CCP. This includes working with the carriers and carrier organizations to identify training and other needs, providing assistance to the carriers in the development of their own training programs, and providing follow-up support and guidance to carriers on inspectional issues.

(l) Training Curriculum. The CCP developed an Interim Training Program to be used until the permanent training curriculum development is completed in 1999. It consists of modules on basic document examination, United States documents from INS and the Department of State, passenger assessment, and detecting impostors. It incorporates material for both basic and advanced lesson plans designed for presentations to airline and aviation security personnel. The emphasis is on the introduction of standard processes and procedures for examining documents and identifying document security features. The training also includes an advanced lesson plan for personnel with significant experience examining travel documents. The emphasis is on building a proper knowledge of standard processes and procedures for examining documents and identifying document security features.

The CCP is in the process of establishing a professionally designed "Carrier Training Course" with both a Distance Learning Program and Instructor Led course. The course covers topics such as Advanced Passenger Information System (APIS), Entry Requirements, Document Examination, Fraudulent Document Detection, Passenger Assessment, Impostor Identification, and Current Trends. The courseware will allow trainers the freedom to evaluate their learning audience and select modules that provide the most benefit to the students. The proposed Distance Learning Course will be CD-ROM based and is intended for new carrier employees requiring general guidelines and basic information. A comprehensive guide is also being developed for an Instructor Led course that will be used by all U.S. Government officials who are presenting the courseware to individuals who have completed the Distance Learning training or have some measure of field experience. A sample passport is also being developed as a training aid. It will contain the majority of security features common to all travel documents in the world.

The CCP plans to train INS Officers in a series of Interim Training Program Familiarization Conferences. These chosen by their District Director or Port Director will comprise the initial cadre of carrier instructors at domestic ports-of-entry and overseas locations. After completion of the final training product, the CCP will host a Train-the-Trainer course on the new curriculum. This cadre of carrier instructor is an alternative method the CCP developed to expand the effectiveness of the Carrier Consultant Program, both domestically and internationally without additional permanent positions.

(m) Carrier Training for Mitigation of Fines. Section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, dated October 25, 1994, provides procedures carriers must undertake for the proper screening of aliens at the port of embarkation. Carriers must demonstrate that they have taken reasonable steps to prevent the boarding of improperly documented aliens destined to the United States, and are willing to

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participate in INS training programs. The CCP designed and published training aids (the Carrier Information Guide, the Quick Check Guide and Easy Come, Easy Go) for distribution to the carriers in support of the fines mitigation Memorandum of Understanding. Carriers may request training by submitting a written request to the Director of the Carrier Affairs Office. The CAO will coordinate with the overseas offices, the ports-of-entry, and the Department of State to facilitate the most efficient method to provide training to the carrier.

Examples of the reasonable steps a carrier must undertake to show proper screening of passengers includes: 1) providing information regarding the carrier's document screening training program, including attendance of the carrier's personnel in any Service, Department of State, or other training programs, the number of employees trained, and a description of the training program; 2) information regarding the date and number of improperly documented aliens intercepted by the carrier at the port(s) of embarkation, including, but not limited to, the alien's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, and port of embarkation, unless not permitted by local law or local competent authority, in such instances, the carrier shall notify the Service of this prohibition and shall propose alternative means for meeting this objective; and 3) any other evidence to demonstrate the carrier's efforts to properly screen passengers destined to the United States. The CCP will maintain this information in databases to evaluate the effectiveness of the CCP training programs, for the reduction of fines under Section 273, and to develop the annual strategic plan.

(n) Carrier Questions, 24 hours-per-day / 7 days-per-week. The Service will provide a variety of locations for carriers to consult prior to boarding a passenger to travel to the United States. Carriers will be able to have their questions concerning the authenticity of a passenger's documentation or in determining whether a person is properly documented answered. The domestic and overseas offices of the INS will be available for consultation with carriers 24 hours-per-day.

In addition, a 24 hour-per-day, worldwide carrier response center will be established. This will be the primary contact point at the national level for transportation companies who are assisting INS in the enforcement of our immigration laws. This center will provide definitive guidance regarding issues of admissibility and carrier liability. The domestic and foreign district directors will be part of this worldwide operation to handle local issues. Immigration Officers with decision-making authority will be on duty and will respond to all carrier inquiries. These activities typically occur at airport ticket counters and boarding gates overseas minutes before a scheduled flight departure

(o) Expansion of Carrier Consultant Program. The CCP has proposed to strengthen the INS's ability to reduce illegal migration, facilitate field-headquarters communication, and support carrier-training requirements. This proposal will provide resources to insure worldwide guidance and assistance to domestic and overseas offices and the transportation industry on issues of admissibility, fraud deterrence, and carrier responsibilities in order to encourage carrier compliance with U.S. immigration laws. This increased staffing will expand the programs at both the domestic and international level. The proposed expenditure of five percent from the Inspections User Fee Account will include enhancements to the Carrier

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Consultant Program, domestic ports-of-entry (POEs), International Affairs, and the Forensic Document Laboratory and provide for funding to other government organizations such as the Department of State on an as needed basis.

(Added IN99-18)

26.4 Inspections Response Teams (IRT)

(a) Background. On June 19, 1996 the Commissioner approved the Enforcement Standards for Service Special Response Teams (SRT's). At that time IRT was recognized and designated as one of two national INS SRT's. Formed at the same time was the INS Special Response Review Board which was tasked with many authorities and responsibilities, one of which is the approval of each SRT's standard operating procedures. The IRT's SOP was approved late in 1996.

(b) Mission. The mission of IRT is to plan, coordinate, lead or assist in the continuance of the inspection process or in the protection of persons and or property under the control of this Service, domestic or foreign. The IRT was formed as an answer to the growing number of emergency situations, arising at ports of entry, which required an immediate and organized response from Inspections personnel. The team is a highly mobile, fully trained unit capable of meeting the need of a district during a defined incident or emergency. IRT will afford a level of expertise which will complement other INS operating components which might also respond to a given situation.

(c) Structure. The IRT is composed of a commander, deputy commander, and three regional assistant commanders. Within each regional IRT there are four squads of seven inspectors each and an alternate roster of 12 members. Each squad has a squad leader appointed by the respective regional assistant commander. When not active IRT falls under the direction of the assistant commissioner for Inspections. Once activated IRT is under the direction of either the executive associate commissioner for operations or a regional director.

All Inspections Canine Teams are ad hoc members of the IRT. Most IRT operations utilize canine teams to perform searches for both concealed aliens and narcotics.

(d) Membership. IRT members are volunteers selected from the Inspections ranks and must be full time permanent employees and graduates of either IOBTC or the Border Patrol Academy. Membership is limited to GS-9 Inspectors, Senior Inspectors, Special Operations Inspectors, GS-11 Supervisory Inspectors and GS- 12 first line Supervisory Inspectors. An application for membership is submitted to an appropriate regional assistant commander. The application must include a first line supervisor's recommendation which includes the concurrence of the port director and district office concurrence. Attached to the application must be a list of the applicant's special skills, abilities, training, and previous detail experience. All applicants are required to pass the FLETC Physical Evaluation Battery (PEB) which will be administered by a certified IRT evaluator. Additionally, all IRT candidates must submit copies of firearms qualification scores demonstrating that they have, or can, qualify at the 85% minimum for IRT.

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IRT has the capability of responding to an emergency situation at or near a port of entry, conducting special operations on a national or regional basis, and performing threat assessments at ports of entry.

(e) Training. IRT members attend Basic IRT training at Artesia and Port of Entry Readiness Training (PORT) at BORTAC headquarters in El Paso, Texas. Additionally all IRT members are required to attend 8 hours of training per month or 24 hours within a quarter.

26.5 Immigration and Naturalization Service Passenger Accelerated Inspection System (INSPASS)

(a) General. INSPASS is the combination of an enrollment procedure, automation, and biometrics (the precise measurement of one or more biological characteristics) which allows approved frequent travelers (both United States citizens and aliens) to bypass the normal one-on-one inspection in favor of a fully automated process. Participants, in effect, inspect themselves upon arrival at an INSPASS equipped port-of-entry to the United States. The INSPASS, a mainframe-based application, is a joint project of INS and the U.S. Customs Service (USCS). The INSPASS is a facilitation initiative within the PORTPASS program discussed in Chapter 26.1. The PortPASS/INSPASS card contains three lines of information written in Optical Character Recognition, Type B (OCR-B) font. Data is printed in the OCR-B zone that will be used at the time the cardholder returns to the United States.

(b) Application procedures. Those eligible must apply by filing Form I-823, Application - Alternative Inspection Services, with the INS, at an INSPASS Enrollment Office. Application forms are available and may be filed at any INSPASS or PORTPASS-equipped port-of-entry, or by mail. The application requests information relating to the purpose and frequency of travel to the United States. In addition, the applicant's signature is required, certifying the accuracy of the information.

(c) Initial Processing. Upon receipt of an application, check lookout databases including the Interagency Border Inspection System (IBIS), and as appropriate, the National Automated Immigration Lookout System (NAIIS), Nonimmigrant Information System (NIIS), and the National Crime Information Center (NCIC). If no information prejudicial to the applicant is obtained, retain the application pending appearance of the applicant before an immigration officer.

(d) Decision. When an applicant appears for inspection and card issuance, conduct an interview to verify admissibility, take a digital photograph, collect his/her hand geometry and two index fingerprints using the various biometric image collection devices incorporated in the INSPASS enrollment system. The captured biometric measurements, with other data, are encoded into an OCR-B format for scanning by document readers. In addition, the magnetic stripe located on the reverse of the card contains basic information that can be machine read

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and used to access the corresponding enrollment record. After satisfactory checks have been made and the applicant is found to be eligible for the program, complete INSPASS enrollment processing, save the completed enrollment record, and proceed to issue a PortPASS/INSPASS card. Possession of the PortPASS/INSPASS card does not relieve the holder from complying with any currently existing documentary requirements or from inspection by other Federal agencies. The Service retains the right to conduct a full inspection of the user at any or every time he or she seeks entry into the United States. This is made known to the traveler on the enrollment form and again at the time of enrollment.

(e) Conduct of an Inspection Using an INSPASS card. At the time of arrival at an INSPASS equipped port-of-entry, the INSPASS user proceeds to the automated inspection stand for accelerated inspection processing. The captured biometrics and enrollment data are the basis for establishing identity, admissibility and participation in the program. In practice, this means the INSPASS user places his/her machine-readable card in the document reader. Participation in INSPASS is then confirmed against the enrollment database. If confirmed, the traveler is instructed to place his/her hand on the hand geometry reader, which confirms that the person being inspected is the same individual who was enrolled into the INSPASS Program. If the user's identity is confirmed and the database checks are satisfactory, a receipt is printed for U.S. citizens and non-controlled aliens. The departure portion of Form I-94 /I-94W is printed for controlled aliens. At some INSPASS ports-of-entry, removing the receipt or I-94 form from the printer causes an electrically locked gate to open and the traveler is allowed to exit the INS portion of the Federal inspection area. At most INSPASS ports-of-entry gates are no longer used. In this scenario, the screen message that directs the traveler to remove his/her receipt also instructs his/her to proceed to USCS. A record of the INSPASS user's entry to the United States is noted in the IBIS travel history database and subsequently added to NIIS. The printed receipt or form must be shown to a security person to exit the Federal Inspection Services (FIS) area. At most INSPASS locations, this is a USCS officer stationed at the exit from the FIS who usually collects customs declarations from travelers departing the FIS. There are security features and a daily randomly generated code printed on the paper is used to preclude counterfeiting of the receipt. Additionally, the computer selects a random sample of persons to be inspected manually to ensure compliance with all requirements of the program. This allows the Service to detect instances of abuse of the system or failure to comply with all program requirements.

(Revised IN99-19)

26.6 Inspections Canine Program

(a) Background. The inspections Canine Program was initiated during 1986 in the San Diego District after several instances of aliens being injured during searches of large vehicles. It was decided that the canines would be trained in the detection of human beings and specific narcotics. A further consideration was that the canines would be trained to "alert" to either human beings or narcotics in a passive manner to avoid injury to humans and damage to vehicles. Three canines entered on duty at San Ysidro and one at Calexico Ports of Entry. Immigration inspectors informally competed for the positions and once selected accepted the assignment as a collateral duty.

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(b) Training. During the early years of the program different contractors trained both canines and handlers. During this period of time a facility was under development in El Paso, Texas. In 1992 the National Canine Facility (NCF) opened and all Service canine teams are now trained at this site. The NCF is currently staffed by Border Patrol personnel. Training for handlers consists of a six-week program which is both physically and mentally demanding. A series of written tests are required of the handlers as well as continuous evaluation of their skills with the canine. The final three days of the training is a written test taking a full eight hours and two days of evaluation by canine instructors in the handling of their canine in the detection of both concealed humans and narcotics. If successful the handler and canine are certified as a team for a period of one year. Once back at their respective port of entry all canine teams train a minimum of 16 hours per month under the direction of an Inspections Canine Instructor.

(c) Inspections Canine Handlers. Handlers are selected from the ranks of Immigration inspectors, seniors and special operations inspectors. The selection process considers motivation, previous experience, physical condition and skills that have been determined desirable in the handling of animals. The handler is required to safely use a canine in an area generally occupied by many civilians as well as by other law enforcement agencies.

(d) Canines. Canines currently purchased by the Service originate in Europe and are provided by a vendor under contract to the Service. The canines of choice are Belgian Malinois, Dutch Shepherds and German Shepherds. These particular breeds have historically demonstrated the required drives necessary in a detection canine. Once delivered to the NCF each animal is tested to determine that that possess the required drives that will insure their success in the inspections environment. Only those canines that pass all phases of testing are retained for training.

(e) Inspections Canine Instructors. Canine instructors are required to complete an eleven week training program at the NCF. The training includes recognition of canine drives, canine physiology, correction of unacceptable behavior, canine first aid and the relationships between the canine and the handler. Case law affecting canine teams as well as legal responsibilities of the teams are thoroughly studied. During the course all instructors are required to perform the preliminary training of canines before the arrival of a handler class. Once certified as an instructor they will be detailed to the NCF to conduct the training of new Inspections canine teams. At their port of entry the instructors conduct the required biweekly maintenance training of all canine teams at the port. Additionally they conduct the required annual testing of all teams for recertification. Every two years the instructors are required to return to the NCF for a one week recertification course.

(f) Utilization. Canine teams perform a variety of functions including the searching of vehicles and trucks at ports of entry, searching of vessels at seaports, luggage searches at airports, assisting various law enforcement task forces in the searches of residences and out buildings and drug searches of Service detention facilities.

The canine teams are used in drug education programs at local schools and civic organization functions. Several of the teams compete in local, state and national canine trials. Trophies

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adorn the offices of several ports of entry where their teams have been very successful in competition. Following the earthquake in San Francisco three canine teams were sent in the effort to locate victims believed to be buried in building rubble.

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Chapter 27: Departure Controls (Added INS - TM2)

- 27.1 General
- 27.2 Prevent Departure Procedures
- 27.3 Aliens Seeking to Depart without Evidence of Compliance with Federal Income Tax Laws
- 27.4 Protective Custody
- 27.5 Verification of Departure
- 27.6 Departure Controls at Guam, Puerto Rico and the U.S. Virgin Islands

References:

INA: Sections 215, 231(b), 251(c).

Regulations: 8 CFR 215, 22 CFR 46.

27.1 General. (Revised IN02-34)

Section 215 of the Act includes broad authority to regulate the departure of aliens and citizens from the U.S. Sections 231 and 251 of the Act require operators of vessels and aircraft departing the U.S. to submit departure manifests in order for the Service to obtain information regarding the departure of persons from the U.S. Although as a general rule the Service does not formally inspect persons departing the United States, regulations provide for departure control in several specific instances:

- (a) Departure control of persons leaving Guam, Puerto Rico and the U.S. Virgin Islands for other parts of the US are subject to departure inspection. [See Chapter 24.3.]
- (b) Crewmembers of vessels departing may be inspected upon departure to insure compliance with the INA. [See Chapter 23.9.]
- (c) Special departure provisions apply to persons falling under the National Security Entry Exit Registration System (NSEERS). The regulatory authority for the NSEERS program can be found at 8 CFR 264.1(f). [See Appendix 15-9(a).]
- (d) In an instance where it is deemed prejudicial to the national interests, the Service may direct, with certain exceptions, that an alien not depart from the U.S.

27.2 Prevent Departure Procedures.

Authority to prevent the departure from the U.S. of persons whose departure would be prejudicial to the national interests is contained in section 215 of the Act. The specific reasons for prevention of departure and the rules for the conduct of proceedings are detailed in that

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section and in 22 CFR 46. Form I-281 is used to notify carriers of the provisions of section 215 of the Act and to advise them that they may be required to prevent the departure of particular individuals from time to time. Prevention of departure can be accomplished most effectively through informal liaison with carriers to obtain advance departure flight information, including both passenger manifests and general departure flight schedules. Notices to prevent departure at the request of other agencies are maintained locally and should be rescinded at the end of one year or after they have served their purpose.

27.3 Aliens Seeking to Depart without Evidence of Compliance with Federal Income Tax Laws.

Any alien, other than a nonimmigrant A, C-2, C-3, G or NATO, seeking to depart the U.S., in whose case a district director of the Internal Revenue Service has advised in writing that information indicates the alien may intend to depart in violation of the IRS code, and has requested prevention of the alien's departure without a certificate of compliance with 26 U.S.C. 6851(d)(1), shall be served with a written temporary order pursuant to 8 CFR 215.2. The order shall direct the alien not to depart or attempt to depart from the U.S. until the order is lifted. A final order preventing departure shall be revoked upon notice from the district director of IRS that the subject's presence in the U.S. is no longer required under 8 CFR 215.3(g) or (h), or upon presentation by the subject of an IRS certification that he or she has complied with income tax laws.

27.4 Protective Custody.

Protective custody may be provided to any consenting alien falling within the purview of 8 CFR 215.3(j) and 22 CFR 46.3(j), upon authorization from Headquarters, following a request from the Department of State or, where urgent circumstances warrant it, without such a request. In the latter instance, Headquarters must be notified of the facts surrounding the decision as soon as practicable.

27.5 Verification of Departure.

In certain instances, immigration officers will be requested to specifically verify the departure of a particular person. Such requests are typical in situations where the alien is under a departure bond, the alien is departing pursuant to an order of deportation or voluntary departure with an alternate order of deportation or where a carrier has been served with an order to remove the alien. You may be requested to particularly note the back of the departure I-94 or execute Form I-392. In any such instance, be sure that you verify the identity of the person departing, comparing the passport photograph to the person departing. Verify that the individual actually departs, either across the land border into Canada or Mexico or boards the aircraft or vessel immediately prior to actual departure.

27.6 Departure Controls at Guam, Puerto Rico and the U.S. Virgin Islands.

[See Chapter 24.3.]

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Chapter 28: Missing or Abducted Children and Runaways (Added INS - TM2)

- 28.1 Introduction
- 28.2 Related Legislation
- 28.3 Abductions, International Abductions and Runways
- 28.4 Primary Inspection
- 28.5 Secondary Inspection
- 28.6 Lookouts
- 28.7 Sources of Assistance
- 28.8 Child Sex Tourism

References:

INA: Sections 212(a), 235, 287.

28.1 Introduction.

According to research by the National Center for Missing and Exploited Children (NCMEC) and the Department of Justice, each year there are more than 350,000 family abductions, over 4,000 non-family abductions, and 114,600 attempted non-family abductions. Of the non-family abductions 300 children were gone for long periods of time or murdered. Since 1983, over 140 infants have been abducted from both hospitals and homes, 450,700 children ran away, 127,200 were intentionally thrown away or abandoned, and 438,200 were lost, injured or otherwise missing. In addition to the domestic problem of missing and abducted children, the abduction of children across international borders is increasing.

The NCMEC annually reports hundreds of cases involving international abductions, and the Department of State Office of Children's Issues (DOS/CA/OCI) has about 1,000 international abduction cases open at any time. In response, several pieces of legislation have been passed, and over 46 nations have signed the Hague Convention on the Civil Aspects of International Child Abduction.

Immigration officers working at U.S. ports-of-entry are ideally situated to help identify and interdict missing or abducted children and to assist local authorities in returning these persons.

This chapter provides the officer with background information on abductions and runaways, procedures for conducting primary and secondary inspections and reference material to assist the officer. Included are techniques on identifying abductions or runaways, basic psychological profiles, and questions and procedures for handling positive identification of an abductee or a runaway. The reference material covers legislation, organizations, and lookouts.

28.2 Related Legislation.

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- (a) The Missing Children Act of 1982 (28 U.S.C. § 534a) - Requires entry into the National Crime Information Center (NCIC) system of any information that would assist in identifying a deceased or missing person.
- (b) The Missing Children's Assistance Act of 1984 (42 U.S.C. § 5771, et. seq.) - Established the National Center for Missing and Exploited Children (NCMEC) to provide technical assistance and to coordinate recovery efforts.
- (c) The Uniform Child Custody Jurisdiction Act (no federal citation) - Eliminates nationwide incentives for forum shopping and child snatching by parents, and encourages communication, cooperation, and assistance between state courts to resolve interstate child custody conflicts (see state legal code(s)).
- (d) The Parental Kidnapping Act of 1980 (28 U.S.C. § 1738A) - Requires states to enforce and not modify custody determinations made by other states, allows for the application of the Federal Fugitive Felon Act, and the issuance of a Federal Unlawful Flight to Avoid Prosecution Warrant.
- (e) The National Child Search Assistance Act (42 U.S.C. §§ 5779-5780) - Prohibits law enforcement agencies from maintaining policies requiring waiting periods before a child can be declared missing. Also requires that information be entered directly into the NCIC system immediately.
- (f) The Hague Convention on the Civil Aspects of International Child Abductions - Is an international treaty governing the return of internationally abducted children.
- (g) The International Child Abduction Remedies Act (42 U.S.C. §§ 11601-11610) - Established procedures to implement Hague Convention provisions in the United States.
- (h) The International Parental Kidnapping Act of 1993 (18 U.S.C. § 1204) - Makes it a federal felony to take or detain a child outside the United States with intent to obstruct a parental right.

28.3 Abductions, International Abductions and Runaways.

- (a) Types of abductions identified. Abductions can be divided into five major categories: parental abductions; non-parental family member; acquaintance abduction; stranger abduction; and, neonatal or newborn abduction. In addition to these categories, this material focuses on the unlawful taking of children across United States international borders at ports-of-entry. This material also addresses the issue of runaway children, as these individuals could be encountered at most ports-of-entry at any time.
- (b) Parental abduction. The taking, keeping, or concealing, without permission, of a child by a parent or a person acting on behalf of the parent, from another parent or legal guardian. Also called child snatching, child abduction, custodial interference, or family kidnapping. Research

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shows that the primary motive for taking a child is revenge against the parent left behind. Research shows that abductors and abductions typically possess the following characteristics:

Abductor:

- either parent may abduct the child;
- the age range is 25 to 50 years;
- on the low end of the income and education scale;
- may or may not have a criminal record;
- mothers tend to abduct after custody has been determined while the father will abduct prior to issuance of the custody order;
- the abducting parent is likely to have had a negative encounter with the criminal justice system and know little of their legal rights under the law; other actions indicating flight.

Child:

- the abducted child is generally between the ages of 2 to 7 years;
- the male or female child is equally likely to be abducted; and,
- the abducted child may experience physical or sexual abuse, emotional neglect, name change(s), frequent moving, frequent changes in residences and schools, mistrust of authority figures, or told that the other parent is bad or dead.

Abductions:

- usually occur two or more years after the breakdown of the relationship;
- take place at the end of a vacation or weekend visits;
- usually transported by vehicle; and,
- the majority of cases may involve attempts at disguising the child.

(c) Non-parental family member, acquaintance and stranger abductions,

This manner of abduction usually occurs when the child is abducted by a person other than a parent, or person with lawful charge of the child. This can be a relative, a non-related person known to the child or family (a neighbor or friend) or a stranger. Motives for this type of

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abduction include: concern for the child because of neglect or abuse; sexual purposes (usually females); a childless couple or person seeking their own child; refused visitation rights (grandparents); and, assisting in a parental abduction.

The following characteristics are present (statistics include incidents of rape):

- half the victims are over 12 years of age;
- over half are female;
- two-thirds of the cases involve sexual assault;
- force is involved in 87 percent of cases, and weapons in 75 percent;
- abductions usually occur on weekday afternoons;
- the abductions usually last one day;
- child molesters may use force, lures, or manipulation;
- child pornography and erotica may be present; and,
- a child may view a molester as a friend.

(d) Neonatal kidnapping or newborn abduction.

This type of abduction usually involves the abduction of a child under the age of seven days. Listed below are the typical characteristics of the abductor, victim and the abduction:

Abductor:

- usually a woman, overweight, 15 to 44 years old, employed, no criminal record, married or cohabiting and resides in the local community;
- wants to replace lost infant or experience a vicarious birthing, may be infertile or afraid companion will desert her; and,
- announces phantom pregnancy and may wear maternity clothes.

Child:

- perceived by the abductor as her own newborn;
- race or complexion of the infant reflects abductor's companion.

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Abduction:

- plans abduction and may use birth announcements to locate victim;
- visits the nursery prior to the abduction and asks detailed questions of the hospital staff;
- may impersonate a nurse or other hospital staff and visit more than one hospital; and,
- may be precipitated by impulse and opportunity.

(e) International abductions.

The illegal taking of minors across international borders is increasing as the result of the rise in marriages between citizens of different countries. The typical profile on an international abduction includes the following:

- abductor is usually foreign born and destined to the birth country;
- abductor has strong family and cultural ties to birth country;
- abductor has no return ticket, baggage may reflect lack of intent to return;
- child may have dual nationality and a passport issued by embassy of abductor's birth;
- child may be destined for a vacation or holiday;
- family members may be providing assistance while residing in birth country;
- main destinations for international abductions are: Central and South America, Canada, Mexico, Moslem countries, and the United Kingdom.

(f) Runaways.

Runaways constitute the majority of missing children and the category most likely to be encountered at a land border port. In addition, about 20 percent of all runaways are throwaways. A throwaway occurs when the parents have left and abandoned the child, may not want the child back, or do not care where the child is. The key concept is that a throwaway results from parental choice, whereas a runaway situation occurs when the child takes independent action to leave. The typical profile of a runaway minor includes:

Reasons:

- running from abuse;
- for adventure;

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- school problems;
- struggles over rules;
- drugs & alcohol;
- independence;
- poverty;
- neglect; and
- parental substance abuse.

Age - Nearly all runaways are teenagers:

- 24% between 16 & 17 years of age;
- 46% between 14 to 15 years of age; and
- 28% between 10 and 14 years of age;

Other facts:

- More than half (58%) are female;
- Approximately 52% will have a prior history of being a runaway;
- 22% will have runaway six or more times;
- the majority of the runaways stay close to home;
- approximately 66% go to a friend's house;
- one-half of the runaways stay away for under 24 hours;
- 75% stay away for less than three days,
- 25% stay for one week or more;

approximately half the runaways support themselves by illegal activities; the typical runaway feels isolated, demoralized, unable to trust authority figures, has high anxiety, no commitment to people or places and is defensive.

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28.4 Primary Inspection.

(a) Basis of INS authority regarding missing or abducted children.

Section 235 of the INA states that all aliens who are applicants for admission, readmission or in transit through the United States shall be inspected by immigration officers. Section 287 of the INA authorizes an officer to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States. Thus, the officer has the authority to determine the admissibility of a child and to determine the legitimacy of the relationship between the adult and the child. If the child or the adult is determined to be a citizen of the United States, then the officer should follow local port procedures governing United States citizens who may be in violation of federal or state law.

(b) Identifying missing or abducted children, and their abductors. The officer should focus on the following indicators when questioning the applicants:

(1) Documentation. Although not specifically required, is the adult in possession of acceptable identification for the child (birth certificate, passport, hospital records, baptismal records, custody agreement, adoption papers, a letter from the other parent or court records, etc.)?

(2) Behavior.

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- (3) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

28.5 Secondary Inspection.

(a) Objectives for secondary inspection. The essential objectives for secondary inspection are to ensure that the child is:

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- a bona fide applicant to the United States;
- not endangered; and
- released to the proper authorities, if necessary.

It is the policy of the INS to treat minors with dignity and respect. If a minor is detained by the INS, the child will be placed in a least restrictive setting appropriate to his/her age and special needs. However, the setting must be consistent with the need to ensure the minor's timely appearance and to protect his/her well-being and that of others. Service officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor, or fail to present him/her to the INS or immigration courts when requested to do so.

Secondary inspection allows the officer the opportunity to question the adult and child separately, examine luggage thoroughly, complete more extensive record checks, and telephonically confirm the child's or runaway's status. Separation of the applicants allows the officer to obtain information for comparison. The officer should use caution when interviewing a child. A second officer may be required as a witness or the interview should be video-taped. The secondary officer should be concerned about gender and may want to request an officer of the same gender in some cases.

(b) Children's communication abilities. When interviewing a child, the officer must be aware of certain limits imposed on the ability of the child to communicate, including:

- limited cognitive abilities;
- immature emotional development;
- presence of trauma;
- limited communication skills;
- limited social skills (child may be shy or embarrassed);
- mistrust of authority figures; and,
- genuine attachment to the offender.

(c) Juvenile communication and cognitive skills. In general, a two-year old child is only starting to develop adult speech patterns and memory. A two to four-year old has greater language skills but still believes in magic. A four to seven-year old can question, experiment and engage in primitive problem solving. A 7 to 12-year old is concerned with the present and has developed some defenses to cope with anxiety. A 12 to 18-year old understands cause and effect, may engage in irresponsible acts and is subject to strong peer pressure. The ability to

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communicate is closely related to the cognitive development of the child.

(d) Interview guidelines for officers interviewing a child.

- show interest in what the child is saying;
- lean forward without invading the child's personal space;
- face the child and use nodding, smiling and affirmative exclamations;
- allow the child to complete his/her statements or thoughts;
- do not dominate the interview;
- avoid emotional involvement or pity;
- avoid inappropriate humor or insensitivity; and,
- avoid passing judgment or placing any blame on the child.

(e) The National Crime Information Center (NCIC) The National Child Search Assistance Act of 1990 prohibits law enforcement agencies from maintaining policies requiring waiting periods before a child could be declared missing, and requires that information about missing children be entered immediately into the NCIC system.

The primary data base for missing children within the NCIC is the Missing Persons File. This file can be accessed utilizing two methods:

- by a unique inquiry (QW) which requires a name and one or more numeric identifiers;
- by a non-unique inquiry incorporating as many identifiers as possible, including: age; sex; race; eye color; hair color; and, approximate height and weight. This method can be useful since the abductor will often attempt to disguise the child, including dressing him/her as a member of the opposite gender.

In addition to the indicators discussed in the primary section ([REDACTED])
[REDACTED] the primary officer should look for the following indicators:

- [REDACTED]
- [REDACTED]
- [REDACTED]

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- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Does the adult have a criminal record for sex offenses or domestic disputes?
- Does the child know the adult(s), how? The molester is often known to the child: family friend, relative, or employed in a position where s/he can have access to children (teacher, baby-sitter, dentist, minister, scout leader, coach, etc.).
- Is there a custodial dispute in progress or a recent dispute between the parents?

(f) Other points to consider.

- [REDACTED]
- Often the parent or guardian will not be aware that the child is missing. The inspector can contact the other parent, guardian, appropriate law enforcement agency or non-profit agency for assistance.

(g) What to do when you find a missing, exploited or runaway child. If a determination is made that the child has been abducted, is a runaway, or is an endangered child, the officer should take the following actions:

- All INS lookout and NCIC procedures should be followed for confirming the record;
- When an unaccompanied minor (a person under the age of 18) appears to be inadmissible under section 212(a)(6)(C) or (7) of the Act, officers should first try to resolve the case under existing guidelines. Existing guidelines permit granting a waiver, deferring the inspection, or employing other discretionary means, if applicable, including withdrawal of application for admission. Additional guidance is provided at Chapter 17.15(f) of the Inspector's Field Manual (IFM);
- When an unaccompanied minor (a person under the age of 18) appears to be otherwise inadmissible under the Act, officers should first try to resolve the case under existing guidelines;

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- If the child is entitled to enter the United States, appropriate local or onward authorities should be notified and arrangements coordinated for the child's return to proper custody;
- If the minor is to be detained by the INS, the officer must follow INS and local instructions on the processing, treatment and placement of minors. Officers should treat all minors with dignity and sensitivity to their age and vulnerability. Processing of minors should be accomplished as quickly as possible. As with all persons being temporarily detained at ports-of-entry, officers must provide the minor access to toilets and sinks, drinking water and food, and medical assistance if needed. Minors may not be placed in short-term hold rooms, nor may they be restrained, unless they have shown or threatened violent behavior, they have a history of criminal activity, or there is a likelihood the juvenile(s) will attempt to escape. Unaccompanied minors should not be held with adults; and,
- Under no circumstances should the officer return a child to another country, or release a child into the United States, before ensuring that custody of the child is returned to the appropriate authority, and that the child's safety and well-being are assured.

28.6 Lookouts.

As a general rule lookouts should originate only with legitimate law enforcement agencies which have created a record of the case and entered it in the NCIC system. Lookouts from non-profit organizations in the form of posters may be accepted for display either in the public area or dissemination to Service personnel only. Lookouts from individuals may be tainted by motives of revenge or fear. Often no law has been broken and the informant can only articulate a fear that something may happen. Informants should be advised to contact the appropriate local, state or provincial, or federal law enforcement agency and request that agency to contact the Service. It is contrary to Service policy to enter a lookout record to Servicewide databases based on a request from any entity that is not in the law enforcement or intelligence community.

A lookout for a missing child should contain the following information:

- name of the requesting agency, contact name and 24-hour contact phone number(s);
- name, physical description and biographical information for the child;
- whether the child was believed to have been abducted, is missing or is a runaway;
- whether the child is believed to be in danger;
- suspected abductor's name, relationship, physical description and biographical data;
- vehicle information, including the: year; make; model; color; vehicle identification number; state of registration (tags) and license plate number; and any distinguishing characteristics (i.e. pickup bed cap or liner, roof rack, towing hitch, fog lights, etc.); and/or

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- supporting documentation (warrant, etc.).

The information should be as complete as possible, and is critical for motor vehicle identification if there is any possibility of the child crossing across a land border.

28.7 Sources of Assistance.

(a) General Use:

National Center for Missing and Exploited Children, USA	(24 hours) 1-800-843-5678
Office of Passport Services, U.S. Department of State	1-202-326-6168
Office of Consular Services, U.S. Department of State	1-202-647-5225
Operation Child Intercept USINS (Toronto Airport)	1-905-676-2563
U.S. State Clearinghouses	(various)

- Child Find Canada, Inc.
1-800-387-7962
- Project Return, Canada (Contact local Canadian Customs office)

(b) Law enforcement agencies only:

- [REDACTED]
- [REDACTED]

28.8 Child Sex Tourism

[REDACTED]

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[REDACTED]

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

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Chapter 31: Service Records (Added INS - TM2)

- 31.1 Introduction to Service Records Systems
- 31.2 Systems Security Requirements
- 31.3 Introduction to Service Automated Systems
- 31.4 Image Storage and Retrieval System
- 31.5 Posting, Maintaining, and Cancellation of Lookouts
- 31.6 Lookout Intercepts
- 31.7 Responding to Inquiries Concerning Lookout Records
- 31.8 Regional Random Quality Review of INS Permanent Lookout Records

31.1 Introduction to Service Records Systems.

A major asset of the Service and a critically important tool for you as an inspector is the Service system of records. The Service must maintain a wide variety and large volume of records relating to individual aliens, schools, businesses which petition for alien workers, and many other things. A detailed explanation of the Service's records system and how to use it is contained in the Records Operations Handbook, included as a part of INSERTS. You should familiarize yourself with the types of records available, how they may be accessed and what you must do to insure the Service maintains correct records relating to actions which you, as an officer of the Service, undertake. In addition, the Service participates in a number of multi-agency information initiatives, sharing agency information with other law enforcement agencies and accessing the data collected by others to better carry out the agency's mission.

31.2 Systems Security Requirements.

Service records are a critical part of the agency's successful operation. As an officer of the Service you have a critical need to access information from the agency's records, but you also have an obligation to protect those records from unauthorized release, tampering or destruction. INS systems have security features including user passwords, audit trails to identify unauthorized access and limited access to systems, based on operational needs. Safeguard your passwords and regularly change them in accordance with systems requirements. Special requirements for accessing and safeguarding information from interagency systems are discussed in Chapter 33. [See also AM 3.2.209 regarding ADP security and AM 3.2.204 regarding ADP password requirements. See also Chapter VI of the Security Officer's Handbook.]

31.3 Introduction to Service Automated Systems.

The Service has developed, and continues to improve, a significant number of automated systems and ADP-related programs. As these systems and programs

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have evolved and grown, they have become essential tools necessary for you to successfully fulfill your role as an immigration officer. Not all systems are available in all locations, nor will you have need for all of them in your day-to-day activities, but you should be familiar with their existence or planned development. User manuals or instructions are available for each operational system and systems access is available for personnel with an operational need. In addition, INS maintains a "Help Desk" to assist with systems- related problems you may encounter. [See AM 3.2.203.]

A catalog of systems including acronym, system name, a brief description and the name and telephone number of a technical and programmatic point of contact, is located on the INS Intranet site. To access this catalog, go to the Intranet site and use the following procedure:

- click on the Table of Contents
- scroll down the screen and click on the entry "HQIRM", in the right-hand column
- click on the button marked "Field and Program Management"
- in the horizontal bar at the top, click on "INS Information"
- scroll down the right column and click on "Systems Information"
- scroll down the right column and click on "Systems Catalog"
- click on "HTML Document"

A complete list of INS systems is included in the table which appears. This list is divided into three areas: Enforcement systems, Examinations systems and Management and Administration systems. Each area contains a complete list of systems, in alphabetical order by system acronym.

31.4 Image Storage and Retrieval System

(a) Background: The Image Storage and Retrieval System (ISRS) is a web-based system that permits an on-line immediate query and retrieval of biometric image sets and associated biographical data. Each biometric image set pertains to a specific individual and consists of a photograph, signature, and fingerprint used to produce an identity document issued by the INS. The system is available via the INS Intranet and has a database [REDACTED]

[REDACTED] indexed data fields include the alien registration number, receipt number, applicants name and date of birth, and card serial number. These data fields will aid the inspector to initiate a timely query, retrieval and display of the stored images.

(b) Documents contained in the ISRS. The ISRS provides digitized photograph, fingerprint, and signature images of the Resident Alien Card, Form I-551 issued from 1989 (revised and optical version) to present.

- If an alien obtained residency from 1984 to 1989, a microfilm image may be available by

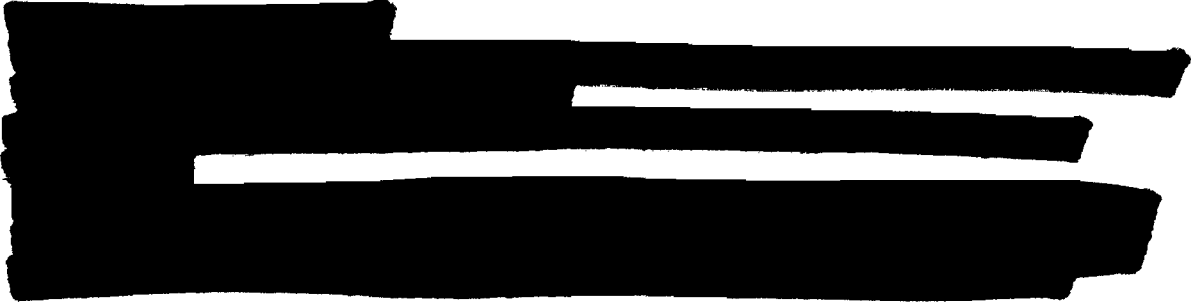
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contacting the Forensic Document Laboratory (FDL) at (703) 285-2482.

- Images not in the ISRS or on microfilm can be obtained from the alien's file at the File Control Office (FCO) or National Record Center (NRC) as indicated in the Central Index System (CIS).
- The original (White) Forms I-551 are being digitally converted from microfilm to the ISRS.

Note: Images for the Nonresident Alien Border Crossing Card, Form I-586 - Revised (November 1990 until March 1998) and the Employment Authorization Document, Form I-766 are being downloaded into the ISRS and may be available.

(c) Guidelines on Secondary Referral for ISRS Record Checks. Bearers of the following documents may be referred to secondary for the ISRS record checks under the situations indicated:

- 

- Transportation letter claiming to be a Lawful Permanent Resident (LPR) or Conditional Permanent Resident.
- Alien Documentation Identification and Telecommunication (ADIT) stamp.
 - Adjustment of status: Applicants for adjustment of status receive an ADIT stamp when the application has been approved. There is a delay between the time the data is forwarded for card production and when the images appear in the system. The Computer Linked Adjudication Information Management System (CLAIMS) may reflect that the application has been approved giving an indication of when the ADIT stamp may have been issued.
 - Immigrant Visa: When an individual is processed for immigrant status at the POE, an ADIT stamp is issued. The immigrant visa (IV) is forwarded to the service center (SC) where the photograph and biometrics are scanned for card production. Once the IV is received at the SC, it will take approximately 4 to 6 days for the image set to be captured in the ISRS.
 - Replacement of Form I-551: There is a delay between the time an ADIT stamp is issued and the photograph and biographical data associated with the Application to

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Replace Alien Registration Receipt Card, Form I-90 appears in the ISRS. If the CIS record indicates that the person immigrated after 1989, the POE should refer to the images and corresponding applications to determine the true identity of the LPR. To obtain the earliest known image of an alien that immigrated prior to 1989 requires review of the original A-file or microfilm as noted above.

(d) Secondary Inspection of Primary Inspection Referrals. If used properly, the ISRS can be a great tool to identify fraud. When conducting an ISRS check:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(e) ISRS User Guide. Refer to the Web-ISRS User Guide by clicking "ABOUT" located on the ISRS menu for specific search, retrieval, display, print, and download user query result procedures.

(f) Evaluating IRSR Image. Although the ISRS provides images on documents that have been issued, it does not guarantee that the image provided is the true LPR. If an alien has only been issued one Form I-551, then the image more than likely should be that of the true bearer of the document.

The ISRS images are not always displayed in chronological order, nor do they always reflect the date an image was captured. It may be possible to create a history by using the receipt number provided in the ISRS to review information about the applications filed to obtain the benefit and/or document.

If an ISRS query displays multiple images that do not match, obtain the original image from the A-file.

[REDACTED]

(1) CIS –


[REDACTED]

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(B) Number of Forms I-551 issued; and,

(C) Location of the alien's file.



(2) CLAIMS – Check for any indications that a Form I-90 has been filed under this A Number. There are various reason for applying for a new card: to replace a lost, stolen or destroyed card; renew a 10-year expiring card, comply with the 14 years of age registration requirement, reissue an original card produced with incorrect biographic data.

(g) Obtaining an A-File.

(1) National Records Center (NRC). The NCR's Information Liaison Division (ILD) is available 24 hours a day, 7 days a week at (816) 350-5560 to research, analyze, and provide information and/or documents contained within any A-File held at the NRC. This service is for CBP use only, and this telephone number should not be given to the public or to employees of other government organizations. For routine requests, an electronic message can be sent to "NRCINFO, NRC". Include the A-file number, subject's name, date of birth, information needed, the POE telephone number and fax number. A response will be returned within 3 days.

(2) CIS: In general, requests for an A-file are generated in CIS using 9501. Regular deliveries are sent within three days from receipt.

For expedited service, request the A-file in CIS using 9506. Expedited requests are processed within 24hours of receipt. The requesting office is required to pay the shipping costs associated with overnight delivery.

(h) Supervisory Role and Responsibilities. All cases involving the ISRS data that may result in an adverse action (e.g. approval of expedited removal recommendations) require supervisory review. If adverse action is taken, the supervisor will be responsible for signing off on the case by endorsing the case file checklist or memorandum to the file. Supervisors are responsible to ensure that a printout of the ISRS record search documenting an adverse action is in the file. The supervisor is also responsible for determining when periodic training becomes appropriate for secondary officers or other POE personnel who may perform the ISRS search procedures.

(i) Saving and Transmitting Images. The ISRS has a simple or complex search capability and has the ability to execute batch retrievals. The biometric image sets are in industry-standard

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formats, (Tagged Image File Format [TIFF], Joint Photographic Experts Group [JPEG], Wavelet Scale Quantization [WSQ] Fingerprint Image Compression) which can be saved, printed and readily included in electronic mail messages.

Therefore, a POE with access to the ISRS will have the capability to share information contained in the system with other POEs via email.

(j) Third Party Requests for ISRS Record Checks. The ISRS permits intra-agency and inter-agency sharing of biometric images. Requests for ISRS information from Federal, state, or local law enforcement agencies must be made in writing to the port director. All ISRS information disseminated to a law enforcement agency must have a disclaimer stating that the information provided from the ISRS is for informational purposes only and dissemination to a third party is prohibited.

31.5 Posting, Maintaining, and Cancellation of Lookouts.

(a) Criteria for creating lookout records. Lookout records for persons and/or lost or stolen passports may be created in the lookout system under the following circumstances:

- (1) For persons who are inadmissible to the United States under one or more of the grounds described in Section 212(a) of the Act, as amended, and who might attempt entry into the United States;
- (2) For aliens who have been convicted of crimes involving moral turpitude (CIMT);
- (3) For citizens of the United States who have violated or are suspected of violating the criminal or civil provisions of the Immigration and Nationality Act, as amended;
- (4) For persons that may be of interest to other Federal law enforcement agencies, their requests for the creation of lookouts may be directed to the National Targeting Center (NTC);
- (5) For any person who overstays or is refused admission into the United States under the provisions of the Visa Waiver Program (VWP) under section 217 of the Act, because of an administrative reason or an applicable ground of inadmissibility under section 212 of the Act;
- (6) For any person who withdraws his or her application for admission to the United States;
- (7) Information pertaining to lost or stolen passports must be forwarded to the NTC for immediate entry in the Lookout System. If lost or stolen passport information is

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received at a field office, it must be faxed immediately to the NTC at (703) 391-1983. The NTC will enter the information into the appropriate lookout system at once.

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(b) Creation of lookout record for a United States citizen. CBP may create lookout records on U.S. citizens who have violated or are suspected of violating the criminal or civil provisions of the Immigration and Nationality Act (INA). 8 U.S.C. 1103(a). While there is no specific statutory or regulatory provision authorizing the creation of lookout on U.S. citizens, Congress has charged the Secretary of DHS with the administration and enforcement of the INA. The Secretary of DHS may delegate any of those powers to the Commissioner of CBP, who, in turn, is authorized to delegate those powers to CBP officers. 8 U.S.C. 1103(b); 8 CFR 2.1.

There is no distinction made between U.S. citizens and aliens in describing individuals who can be arrested by immigration officials for felonies arising under the immigration laws. Specific enforcement authority is also found at INA section 274, 8 U.S.C. 1324, which makes it a criminal offense for any 'person' to engage in alien smuggling, civil document fraud and violations of employment laws. It authorizes officers designated by the Secretary of Homeland Security to effect arrests for violations arising under this section.

The lookout record for a U.S. citizen is created pursuant to the procedures described in this chapter.

(c) Documentary evidence used for the creation of lookout records. The type of documentary evidence that is gathered as the basis for the creation of lookout records may vary depending on the type of case that is being considered for addition to the lookout system. Generally, the A-file will contain copies of immigration documents such as documents served to the person, sworn statements, warrants of arrest, deportation orders, detention orders, authorization to withdraw application for admission, memoranda to the file.

In cases where other law enforcement agencies request that a lookout record be created on their behalf, the formal request must be in writing. Such agency requests for lookout posting must meet the criteria for posting unless there are outstanding warrants of arrest, or any other documentary evidence that originated with a legal entity such as, but not limited to, a recognized court, foreign or domestic, or police department, or where the request for action is limited to notifying the appropriate authority of the facts of arrival of the individual.

(d) Guidelines and standards for the creation of lookout records in NAILS and IBIS.

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(1) General. CBP lookout records for persons entered directly on-line in IBIS remain in IBIS for 72 hours. After 72 hours, those lookout records are deleted automatically from IBIS. Since NAILS interfaces nightly with IBIS under the IBIS agreement, any lookout record posted in NAILS is available in IBIS to all users within 24 hours. In the event that there is an urgent lookout record that needs to be disseminated immediately through IBIS, the lookout record may be created on-line in IBIS. If that lookout record is needed for longer than 72 hours, it also needs to be created in NAILS.

(2) Lookouts for vehicles. CBP vehicular lookout records entered directly in IBIS will remain in IBIS for 12 months. After 12 months, the system will delete the vehicular lookout records automatically. However, the originating officer may extend the validity of the lookout record beyond 12 months. This may be accomplished using the review function (MSOM) in IBIS.

(3) Lookouts for persons. Effective August 19, 1994, CBP officers create all lookout records for persons directly in NAILS. Only a lookout record that is time-sensitive may be entered also in IBIS for immediate dissemination to all ports-of-entry. A lookout record created in IBIS will require a local supervisor's review and approval within 24 hours of the posting of the lookout record in IBIS.

(4) Lookouts for lost or stolen passports. The NTC shall enter lookouts for lost or stolen passports. If the information pertains to blank lost/stolen passports, the information will be entered directly into IBIS. The number and nationality of the blank lost or stolen passport will be entered. If the passport is lost or stolen, but has already been issued to a person, with name and biographical information, the lookout record will be placed in NAILS.

(Revised IN99-27)

(e) Procedure for the creation of lookout records. The following is a brief description of the integral elements that constitute a basic and complete lookout record. Certain lookout records may require other information depending on the nature of the lookout.

(1) Enter all available data in the appropriate data element fields;

(2) Enter relating A-file Number;

(3) If the information used in the creation of the lookout record originates with the A-file, and there is no controversy or doubt as to the validity of the dates, events or facts, and other information, the case code need not be preceded by the letter P for Possible;

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(4) Enter other relating record numbers, if any, such as FBI, FPS, NCIC, Driver's License, etc. in the comments field;

(5) The comments field must contain, at a minimum, the following information elements:

- Full date of event;
- Port-of-entry, or DHS office;
- Brief explanation of event;
- Explanation of actions taken at the time of the event, including officer's specific reasons used in the determination of the case;
- Citation of the applicable section(s) of law;
- Action to be taken if the person is encountered again;
- Name, telephone number (24 hours if needed), and office/agency of case agent, if appropriate, for further contact;
- Subsequent update of the case, if deferred or paroled into the United States, to appear at another port of entry.

The writer provides information that explains fully the reason for the creation of the lookout in the Comments field of the lookout, or notifies an originating port-of-entry or DHS office with the Message Function that the subject of the lookout was intercepted or encountered.

In composing the comments of the lookout record, the writer must consider the audience that will have access to the lookout information. It may be used by officers at ports-of-entry, or at DHS offices in the United States or abroad, or by officers from other law enforcement agencies, where the subject may appear to request a benefit or apply for admission to the United States.

The facts of the case and its disposition shall be written clearly and concisely so that they answer any questions from the reader. The comments describe the purpose of the lookout information, and the actions that are being requested from any officer that may intercept the subject. The comments include a brief description of the contents of the A-file such as sworn statements taken, legal orders issued by any competent authorities, and any documents retained.

The writer shall avoid jargon, technical terminology, abbreviations, acronyms, or codes unless they are terms well known throughout DHS or routinely used in written communications. The writer will provide a succinct narrative that will eliminate or reduce the need to contact an originating officer for additional basic information to complete the ongoing proceedings. However, there may be exceptions where unusual circumstances arise, or the user is requested to contact specific individuals

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or offices.

The most crucial facts of the narrative are contained within the first four lines of the comments. These are the only lines that are copied in the PALS CD that provides lookout information via laptops for use during seaport and remote sites inspections.

(f) Creation of Record File (A-file) for Permanent Lookout Records. A search of the Central Index System (CIS) is necessary to verify whether an A-file already exists. If no record file exists, one must be created. There must be an A-file for every permanent CBP lookout posted to NAILS. The documentary evidence used to provide the information for the lookout record will be contained in the A-file.

There are some exceptions:

- (1) A temporary lookout record created for 90 days or less;
- (2) A permanent lookout record created for 90 days or less;
- (3) Lost or stolen passports; or
- (4) A lookout record created by request of another law-enforcement agency.

As mentioned in the exceptions above, the creation of an A-file is not required for any CBP lookout record that is needed for 90 days or less. The lookout record may be given permanent status, within the 90-day temporary period, upon supervisory review without the need to create an A-file. The documentary evidence used to create a permanent 90-day lookout record may be contained in a chronological file maintained at the local port-of-entry that created the lookout record. The chronological file designation will be referenced in the appropriate record number field on the screen.

(g) Worksheet for the creation of lookout records based on information received from law enforcement agencies other than CBP. It is well recognized that local offices have established good working relationships with local law enforcement offices and agencies to enhance border security. As part of this relationship, the offices and agencies occasionally request that CBP create lookout records for persons that are of interest to these agencies.

The worksheet included as Appendix 31-1 standardizes the procedure used to document the receipt of such requests through telephone calls, faxed requests, or any other type of communication received from local agencies such as state police, sheriff's department, local police department, or local office of the Federal Bureau of Investigation.

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The contact person information refers to the requesting law enforcement agency's contact person that will be included in the comments. The officer that creates the lookout record completes the routine contact information field on the second page of the lookout record.

The worksheet must be attached to any materials and documents received from the agency; it will be filed in the chronological monthly folders maintained at each port or Service office, as described above.

(h) Supervisory review of temporary lookout records. When a CBP officer creates a CBP lookout it will remain in temporary status in NAILS for 90 days. During that 90-day period, the supervisory CBP officer will review the temporary lookout record to determine whether the information conforms to the standards established in the following paragraphs. Upon approval by the reviewer, the lookout record has permanent status in NAILS. Supervisors may delegate the authority to review lookout records to senior officers who have experience in lookout activities.

The reviewing officer will review the lookout record in NAILS through the NAILS on-line Review Function. The lookout record may be approved, updated, returned to the originating officer, deleted, or bypassed for later review. When the lookout record is approved it has permanent status and remains in NAILS for the validity period programmed for each lookout case code used. Some case codes are programmed to be valid for one, five, or twenty years or until a certain age of the person for whom the lookout record is created. In cases where several case codes are used in one lookout record, the case code with the longest validity will give the lookout record its expiration date. The NAILS Simplified Operating Instructions (rev. October 1995) includes additional information on this topic.

(i) Maintenance of record files for lookout records. Record files (A-files) will be maintained at the National Records Center. No active lookout file will be sent to the Federal Record Center (FRC), since the intercept of an alien who is the subject of a lookout may result in a removal hearing. In such cases material from the A-file may become the record of proceeding and should be readily available.

CBP officers will ensure that the local Systems Control Officer (SCO) has updated the necessary user level to access NAILS at his/her authorized level.

(j) Responsibility for initiating lookouts. Field offices are responsible for the timely initiation of lookout records.

(k) Responsibility for updating lookouts. Field offices are responsible for the timely update of lookout records on persons who have been granted relief from removal. Any officer who encounters new information on the subject of a lookout may update the

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record on-line, if the lookout is under that port-of-entry's or office's jurisdiction, or notify the originating officer that additional information on the person is available. The notification may be done on-line in NAILS by using the Message Function.

(l) Clearance for lookouts on subversive cases. Headquarters CBP/OFO shall review all lookout records on subversive cases. The A-file containing the information shall be forwarded to Headquarters CPB/OFO for review and approval. Emergency lookouts on subversive cases may be cleared through Headquarters CBP/OFO by telephone to be followed by the submission on the A-file containing the source material such as the investigative report or a request from another agency detailing the derogatory information.

The lookout system is not a 'classified system'; its information is considered sensitive. Reference to confidential source information shall be limited to a general reference only.

(m) Expiration and/or deletion of lookout records. All DFOs will receive monthly 30-60-90 day warning notices from Headquarters on lookouts that are about to expire from NAILS. A separate monthly notice on lookouts that have expired will also be sent to all DFOs.

When expiration or warning notices are received, each DFO is responsible for the review of the files listed to determine whether posting, amendment, or deletion is necessary.

No action is necessary when the lookout is to be deleted by the expiration date. If a lookout is to be amended after a file review, or if the file control office is to be amended, the file control office that received the lookout record on its expiration list is responsible for taking appropriate action.

Lookouts may be removed before the expiration date at the request of the originating agency, or if the alien's ineligibility is permanently waived through the granting of a waiver or if the alien is determined not to be excludable.

(n) Codes used in the lookout system.

(1) Soundex. A coding system of putting a numeric value of 0 to 6 to the letters in the alphabet is explained in detail in Chapter 5(C) of the Records Operations Handbook. A summarized guide to Soundex coding is also available on Form M-114 that is included as Appendix 31-4 of this manual.

(2) Nationality codes. Codes used in the Service lookout system to denote nationality are listed in the INSERTS **Statistics Handbook, Statistical Codes**,

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Country and Nationality Codes. A list is also found in NAILS by using key PF-11. The screen provides a list of tables available to the user.

(3) Case codes. Codes are used to label the lookout by type. A list of the case codes with the definition of each is on Lookout Case Codes, Form M- 114. A copy of Form M-114 is included in the NAILS Simplified Operating Instructions, rev. October 25, 1995. A list is also found in NAILS by using key PF-11. The screen provides a list of tables available to the user.

CBP Case Codes are separated on the form **M-114** into two categories, "Case Codes Keyed to Section 212 of the Immigration and Nationality Act (INA)" and, "Special Case Codes". Field users may use any of the codes designated as keyed to the sections of the INA. Use of Special case codes, with a few exceptions listed below, are restricted for exclusive use by the Headquarters Lookout Unit.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

The list two codes are for use when no other code fits the case or action desired. A full list of codes is included in Appendix 31-4. (Revised IN99-20)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

31.6 Lookout Intercepts.

Effective immediately, the NAILS Message Function will be used to prepare reports on all intercepts of lookout records, except in the circumstance described above. As a result, any port or DHS office that created lookout records will be notified that there is more information relating to lookout records that originated at those sites, as well as any additional offices that may have some interest on the same lookouts. The officer at the originating port or DHS office will append any new information to the existing comments in the lookout record. The information is automatically converted into a new paragraph in the Comments field of the lookout, with a heading that includes the sending officer's name, location, telephone number, date and time of the message.

The NAILS Message Function is used with key PF7 - Send Message from any of the NAILS Inquiry/Search screens to communicate with a port or DHS office that originated the lookout record or any other office that is interested in the lookout record. There are on-screen instructions that provide guidance to the user. The NAILS Simplified Operating Instructions (Revised October 1995) provides detailed instructions.

Any officer who is authorized to conduct queries or searches in NAILS may use the Message Function. Any officer who reviews or updates lookout records created by other officers at the originating port or DHS office can append a message to an existing lookout record that originated at that port or DHS office.

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The port or DHS office that intercepts the subject of a lookout record will maintain a local record of the lookout intercept by making a screen copy of the message sent to the originating office or officer. The copies may be used for statistical analysis and other necessary record keeping.

As in the case of any other office, the Headquarters Office of Field Operations (Office Code - COW) creates its own lookout records in NAILS. Intercepts on lookout records created by Headquarters that specifically request notification from the field will continue to be reported to Headquarters CBP/OFO via the NTC (703) 621-7700, as requested in the lookout record. Otherwise a notice of intercept and action will be done through the NAILS Message Function.

Additionally, all lookout record intercepts originating from the Consular Lookout and Support System (CLASS), the Non-Immigrant Inspection System (NIIS), or the Deportable Alien Control System (DACS) in NAILS will be sent to COW through the Message Function for proper disposition.

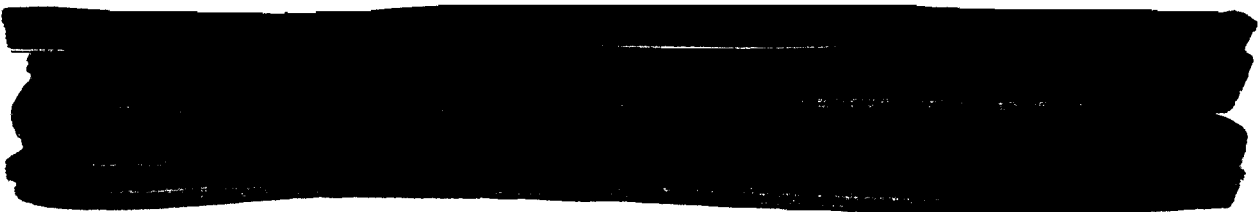
In the case of lookout records that originated from CLASS, each POE or office will maintain a record of such intercept by making a screen copy of the message. If the intercepting office needs to send documentary materials to the Visa Office, make a screen copy of the message, attach the relating documents, and send the package directly to the following address:

Chief, Systems Liaison Division, CAVO/F/S
Visa Office, SA-1
Department of State
Washington, DC. 20522-0116

or, by facsimile, to: (202) 663-3897.

(Revised IN99-20)

(a) Intercept of lookout record during primary inspection. During primary inspection, a lookout intercept will be processed according to the case codes in the record, generally the case codes specify whether the person is to be detained or not. One of two actions will take place when a person is intercepted:



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During the secondary inspection, a full NAILS query must be made to

(b) Secondary inspection of persons with lookout intercepts. Secondary inspection of persons who are the subjects of lookout intercepts includes gathering all possible information from a full NAILS query and from all other available automated systems. When available, the A-file should be reviewed to obtain comprehensive information.

Intercepts on every lookout posted by Headquarters requesting notification shall be reported to OFO through the NTC at (703) 621-7700 or as specified in the lookout record.

Lookout intercepts that appear sensitive because of national security concerns or because of potential public interest shall be immediately brought to the attention of NTC (preferably while the subject is still at CBP secondary inspection). (IN99-20)

[illegible]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

31.7 Responding to Inquiries Concerning Lookout Records.

CBP has implemented an agency-wide procedure to respond to inquiries from the public concerning the existence of lookout records in the National Automated Immigration Lookout System (NAILS) for certain individuals who may be inadmissible to the United States. The procedure is designed to standardize the manner and content of the CBP responses regarding this type of inquiry.

The criteria to create lookout records for individuals encompass two categories of persons. First, CBP creates lookout records for nonimmigrant aliens, or lawful permanent residents, who may be inadmissible to the United States under Section 212 of the INA, or other persons who may be violating the immigration laws of the United States. Second, CBP creates lookout records for persons who are of interest to another law enforcement agency.

Private individuals and attorneys occasionally request explanations or information related to the possible reasons for an individual having been questioned at the time of application for admission to the United States. If an individual was questioned as part of the normal inspectional process, the response should be drafted accordingly. However, in those cases when lookout information was the reason for the referral to secondary inspection, the director having jurisdiction over the port-of-entry where the event occurred shall evaluate and answer any subsequent inquiry using the guidance set forth below.

The lookout database is considered a law enforcement system of records of which CBP is not the sole proprietor. The records to which CBP officers have access during the inspection process include entries made by other law enforcement and government agencies.

CBP may not disclose lookout information that has been provided by another law enforcement agency or government agency. CBP will forward the inquiry to the agency that owns the record. Without making any reference to the agency when responding to the inquiring party, the CBP response to the inquiring party will be limited to stating that the inquiry is being taken under consideration. [REDACTED]

[REDACTED] A copy of the CBP response will be included with the inquiry that is forwarded to the appropriate agency.

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Section 601(c) of the Immigration Act of 1990 states that the Attorney General and the Secretary of State shall develop protocols and guidelines for updating lookout systems and similar mechanisms for the screening of individuals applying for visas for admission, or for admission, to the United States. Such protocols and guidelines are to be developed to ensure that in the case of an individual whose name is in such a system, and who either applies for admission or requests a review, without seeking admission, for the continued inadmissibility under the INA, if the individual is no longer inadmissible, his/her lookout record shall be removed from the lookout system and the individual shall be informed of such removal. If the individual continues to be inadmissible, the individual shall be informed of such determination.

Section 601(c) of the Immigration Act of 1990 authorizes CBP to disclose information relating to an individual's inadmissibility when the pertinent content of the record indicates that grounds already exist to support removal proceedings against the individual. The disclosure of an individual's lookout record is limited to information that confirms specific removal grounds, such as prior or final deportation from the United States, conviction for crimes that render the individual inadmissible from the United States, prior withdrawal of an application for admission to the United States and prior refusal of entry to the United States.

Any inquiries generated by lookout records created by the Department of State (DOS) may be forwarded to DOS for appropriate action. The DOS intends to implement an analogous procedure to respond to inquiries posed at the time of application for admission where an individual has been entered into the DOS CLASS database. Appendix 31-2 contains copies of the DOS letter that may be given to any individual who asks for information or assistance if his/her name appears in CLASS.

The sample letters contained in Appendix 31-2 contain suggested language for a variety of situations.

- Letter 1- Letter from the Office of Chief Counsel, when no specific information may be provided to the requester
- Letter 2- Letter from the Office of Chief Counsel, when grounds for removal exist
- Letter 3- Letter when grounds for removal exist
- Letter 4- Letter when grounds for removal exist
- Letter 5- Letter when no specific information may be provided to the requester

Appendix 31-3 contains an information notice used by the Department of State concerning procedures for inquiring about their lookouts.

31.8 DFO Random Quality Review of CBP Permanent Lookout Records.

The development of a quality review function for NAILS is a key part of the continuing effort to restructure CBP lookout system procedures that began in Fiscal Year 1993. In March 1994, the Office of the Inspector General (OIG) issued a NAILS Inspection Report that listed as one of its

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recommendations the need to institute a routine systematic assessment of the content and the quality of the information used to create an INS lookout record. The implementation of this procedure is in response to that recommendation.

The reviewing officer contacts the reviewing officer at the field office in cases when a lookout record appears to be lacking sufficient information. After discussing any outstanding issues concerning the lookout record, the reviewing officer at the field office corrects any deficiencies in the record, approves it, and notifies the reviewing officer that the correction has been completed. In the event that the deficiency of the lookout record cannot be corrected, the record must be deleted immediately.

Chapter 31.9 [REDACTED] (Added 2/16/06; CBP 18-06)

[REDACTED]

[REDACTED]

[REDACTED]

1.

[REDACTED]

2.

[REDACTED]

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4.

5.

Accountability

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3.

Types of Records

Chapter 32: Intelligence (Added INS - TM2)

- 32.1 INS Intelligence Program - General
- 32.2 Intelligence Collection Requirements; Instructions for Completing an Intelligence Report (Forms G-392 and G-392A)
- 32.3 The OASIS Database (Reserved)
- 32.4 Headquarters INS Intelligence Bulletin Board
- 32.5 INS Forensic Document Laboratory (INS/FDL)
- 32.6 EPIC Operations; Instructions for Completing Report of Documented False Claim to Citizenship (Form G-329)
- 32.7 Interpol

32.1 INS Intelligence Program - General.

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(Revised December 1999)

- (a) Organization. Under the general direction of the Associate Commissioner, Enforcement, the Assistant Commissioner Intelligence is responsible for administering the Service intelligence program. The program is directed in each region by the Regional Intelligence Officer who is assisted in its execution by intelligence officers in the major districts and Border Patrol sectors, by designated intelligence officers at the smaller districts and interior suboffices, and by Senior Immigration Inspectors and Special Operations Immigration Inspectors at ports-of-entry.
- (b) Mission. The Intelligence Program provides support to the Enforcement, Benefits, and Inspections operating divisions as well as to the Commissioner. The primary program missions are:
 - (1) Supply reports which allow managers to make decisions on a national and international level in support of the Service mission;
 - (2) Provide tactical intelligence support and analytical reports for use by INS field units and other law enforcement organizations in the detection and disruption of smuggling operations and fraud schemes;
 - (3) Provide strategic analyses measuring the scope and nature of domestic and foreign illegal immigration activities which affect the United States;
 - (4) Provide fraud detection training to INS operational components, international immigration and enforcement agencies and international air carriers to maximize INS' deterrence effort;
 - (5) Furnish forensic laboratory support required for the enforcement of INS statutes;
 - (6) Carry out Service liaison commitments with federal law enforcement agencies and with members of the intelligence community responsible for the national security of the United States;
 - (7) Maintain liaison with foreign law enforcement agencies via Interpol; and
 - (8) Achieve Service commitments through use of EPIC's joint data bases.
- (c) Headquarters Intelligence Division (HQINT). HQINT develops and implements the Service's intelligence policy and provides operational and administrative program oversight. Service intelligence collection requirements are established to obtain information which will aid policy makers in identifying trends which significantly impact on the operation of the Service. HQINT efforts are also designed to aid enforcement personnel by providing investigative and enforcement leads.

Liaison between INS and intelligence community agencies is authorized in 8 U.S.C. 1105. The purpose of this liaison is to exchange information for use in enforcing the provisions of the

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Immigration and Nationality Act in the interest of the internal security of the United States.

Direct communication with districts, sectors, and sub-offices is authorized in connection with intelligence matters.

- (d) Inspections Officers' Contributions. Immigration Inspectors play a vital role in identifying foreign and domestic based smuggling/vending operations through careful questioning of persons and examination of physical evidence such as business cards and stationery, address books, travel tickets, etc. Inspections is a key source of information on fraudulent and counterfeit documents and visas used to attempt fraudulent entry.
- (e) The Intelligence Cycle. The Intelligence Cycle consists of four basic steps:
 - (1) Planning/Direction of Target Selection - A target (which can be a person, organization, or any issue of intelligence value) is selected, based on the needs of the Service, to support both enforcement and management objectives. Intelligence Collection Requirements have been developed to assist Intelligence Program elements in this step;
 - (2) Collection - The collection cycle starts with the gathering of raw or unprocessed information from a variety of sources including: public records, newspapers, foreign radio reports, travelers, refugees, confidential informants, physical and electronic surveillance, businesses, law enforcement services, foreign governments, military services, and other organizations;
 - (3) Processing Information - The information gathered (raw data) is organized (collated) into a logical sequence or pattern in such a way that relationships may be seen and acted upon. The potentially valuable information is separated from the raw data and converted into a finished product (report) which clearly distinguishes between facts and assumptions; and
 - (4) Dissemination - The finished product of the Intelligence Cycle is distributed to all entities of the Service that could benefit from the information, on a need to know basis.

32.2 Intelligence Collection Requirements; Instructions for Completing an Intelligence Report (Forms G-392 and G-392A).

- (a) Standard Intelligence Collection Requirements. These standard Intelligence Collection Requirements (ICRs) relate to individuals and organizations, and their methods of operations and assets. These general ICRs apply to all threat categories which have been designated for intelligence collection.
 - (1) Organizations. The identity, role, and background of key figures, members, associates, and cooperating corrupt officials; member selection and recruitment criteria; organization history, purpose, strategy, and goals; hierarchy and geographic structure; front organizations; associations with other organizations and supporting groups; political, economic, and other influences exerted; rivalries, weaknesses, and other factors which

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contribute to organizational instability and limit operations.

(2) Method of Operation.

- (A) Operations: The areas, patterns, and methods of operation; the times, frequency, and sequence of actions in planning and conducting operations; capabilities and intentions for future criminal activities; false documents and information used in operations; transportation and travel patterns, routes, areas, and methods, use of commercial carriers, and corruption of carrier personnel; border crossing sites and methods; indicators of preparation for criminal activities; characteristics of clientele, methods, and locations for recruiting clients; cost of criminal services to clients, methods and schedules of obtaining payment; means of collecting, transporting, and laundering money; use of firearms and violence; other criminal activities and enterprises; political or other unusual motivation for criminal activities.
 - (B) Management: The means of organizational control and management; location, procedures, and roles in planning, decision-making, training, and preparing for activities; recruitment, advancement, discipline, and training methods; intelligence gathering against rivals; security methods and devices; methods of identifying, evading, and countering rival organizations.
 - (C) Communications: The methods of communication; types, operational characteristics and locations of communication equipment used, radio frequencies and range; telecommunication numbers; code words; encryption devices, and methods; computer software and passwords.
 - (D) Countermeasures: The methods of intelligence gathering against law enforcement; methods of soliciting and rewarding official corruption; means of identifying, evading, and countering law enforcement; countermeasures to INS patrols, inspections, and investigations; methods to access, review, create, alter, or destroy files in official record systems.
- (3) Assets. The source, location, physical characteristics, ownership, identification, and registration identifiers of property and resources used or controlled by an organization or individual, including business, residence, safe house, and other facilities, conveyances, equipment, weapons, bank accounts, credit accounts, safe deposits, investments, real property, business records, currency, and other forfeitable property.

(4) Individuals.

- (A) Persons: Identity, biographic data, fingerprint classification, physical features; locations associated with the individual's activities; marital status and family relationships; Social Security and law enforcement file numbers; criminal record and use of violence; identity and travel documents used and travel history; false identities and documents used; motivation, strategy, and goals; front organizations; associations with other individuals, organizations and supporting groups; political, economic, and other influence exerted; rivalries, weaknesses and other factors which limit individual operations.

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(B) Aliens: Immigration admission record, prior removal, exclusion or deportation, current immigration status, equities in the United States, eligibility for asylum and other relief.

(b) Threat-Related Intelligence Collection Requirements. These threat-related ICRs identify specific information needs for each threat category. They apply to all individuals, organizations, methods of operations, and assets involved in the events and actions which constitute the threat.

(1) Foreign Conditions Affecting Immigration.

(A) Socio-economic conditions: Political, social, economic, public health, and similar conditions in foreign countries, and violent, severe, or rapid changes in those conditions, that may have an effect on: claims for refuge or asylum; resettlement in third countries; immigration, illegal, or fraudulent entry to the United States; and overstays or violations of status by nonimmigrants.

(B) Government policies: Attitudes and intentions of high level foreign government officials and international organizations towards emigration, refugee resettlement, and the transit of third country nationals for entry to the United States; cooperation with State Department and Service immigration control operations; and the creation of special benefits or programs for aliens.

(C) Corruption: Official corruption which facilitates immigration fraud, smuggling, counterfeiting, or illegal entry to the United States.

(2) Domestic Conditions Affecting Immigration.

(A) Socio-economic conditions: Political, social, economic, public health, and similar conditions in the United States, and violent, severe, or rapid changes in those conditions, that may have an effect on immigration, illegal, or fraudulent entry to the United States, and overstays or violations of status by nonimmigrants.

(B) Government policies: Attitudes and intentions of high level United States Federal, State, or local government officials toward immigration quotas and preferences, refugee resettlement, nonimmigrant entry, immigration control, border security, Service enforcement operations and resources, and the creation of special benefits or programs for aliens.

(C) Corruption: Official corruption which facilitates immigration fraud, smuggling, counterfeiting, or illegal entry to the United States.

(3) Fraud to Obtain Immigration Benefits and Naturalization.

(A) Method of Operation: The type of fraud scheme; type and source of documents used to support fraud claims; false issuance or creation of supporting documents or issuance of

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quasi-official documentation; instructions to clients.

- (B) Individuals: The identity, location, background, and characteristics of petitioners and beneficiaries involved in fraud; relationship to other persons involved in fraud schemes; place and manner of meeting fraud arranger; knowledge of fraud arranger operations before meeting; source of documents used to support fraud claim; means of obtaining funds for payment of arranger, and amount paid to arranger and others; intended destination, and arrangements for employment and residence; purpose of fraud scheme, if other than for permanent residence.
 - (C) Aliens: Immigration admission record, prior removal, exclusion or deportation, current immigration status, equities in the United States, eligibility for asylum and other relief.
- (4) Alien Smuggling.
- (A) Method of Operation: The places and means of entry; use and location of staging areas or facilities; associations with employers, document vendors, and other smugglers.
 - (B) Smuggled Aliens: The demographic characteristics of smuggled aliens; relationship to other smuggled aliens; route and means of alien's travel to and from the border; place and means of entry; place and manner of meeting smuggler and knowledge of smuggler operations; source of travel documents; means of obtaining funds for payment of smuggler and amount paid to smuggler and others; intended destination, and arrangements for employment and residence; purpose of entry if other than employment.
- (5) Counterfeiting Immigration-Related Documents.
- (A) Method of Operation: The type and cost of documents loaned, altered, or counterfeited; documents included in package deals; ordering, production, and delivery times, locations, and methods; instructions to clients when documents are delivered; method of retrieving documents to be used again; means of obtaining valid documents for alteration; methods to falsely issue or certify documents, or access, review, create, alter, or destroy files in record systems to support counterfeiting; actions to assist or encourage alien noncompliance with alien registration requirements; issuance of quasi-official identification or travel documentation.
 - (B) Stolen, Compromised, or Missing Documents: Characteristics of forged, altered, fraudulently used, compromised, missing, and stolen documents, security forms, stamps, seals, printing materials, and equipment; description, quantity, serial number and other identifying data; security identifiers and methods of detecting fraudulent documents; identity of person or entity from whom stolen or lost; date, circumstances, and location of theft or loss; description, quantity, and identifiers of lost or stolen documents which are recovered.
 - (C) Method of Production: Methods of production or alteration of documents; source and types of inks, stamps, paper, and other materials, equipment, and processes used; production site.

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- (D) Individuals: The identity of a person or entity from whom a counterfeit, compromised, or stolen document was recovered or confiscated; date, circumstances, and location of recovery; characteristics and identities of other persons who may be in possession of similar documents; purposes for which the document was obtained or used; means of obtaining the document; relationship to other individuals using or in possession of fraudulent documents; route and means of travel using fraudulent documents; place and manner of meeting counterfeiter; knowledge of counterfeiter operations before meeting; means of obtaining funds for payment, and amount paid to counterfeiter and others.
 - (E) Aliens: Characteristics of aliens using or in possession of fraudulent documents; intended destination, and arrangements for employment and residence if used for entry.
- (6) Terrorism.
- (A) Method of Operation: Identity and location of a target of terrorist action; reason for selecting the target person, place, or time; means, nature, place, and time of attack; method of gaining access to target; use of warnings, timing, and nature of warnings.
 - (B) Devices: Types of weapons, explosives, chemical agents, and other destructive devices used by terrorists; triggering mechanism; sources and means of obtaining or producing devices; means of transportation, emplacement, and concealment; means of detection, and disarming; safety measures to take during a search for a device and when encountered.
 - (C) Terrorist Individual or Entity: Motivation, beliefs, values, strategy, and goals of terrorism activity; prior terrorism actions alleged, claimed, or proved; association with other terrorism or criminal organizations, or individuals; association with other criminal organizations or individuals.
- (7) Drug Trafficking.
- (A) Method of Operation: The activities which indicate preparations for drug production, smuggling, or distribution operations or other criminal acts; selection criteria and methods of recruiting couriers for drug smuggling.
 - (B) Drugs: The location, type, amount, purity level, form, and value of drugs to be smuggled into or sold in the United States, or seized by, found, purchased as evidence, or surrendered to INS; source, route, and destination of raw materials, precursor chemicals, and drugs.
 - (C) Method of Concealment: The methods of concealment for drug production, storage, and transportation; source and type of materials used for packaging, labeling, concealing, and transporting; the location of facilities used to construct or alter containers and conveyances for concealment; the location of facilities and identification of persons who provide packaging, storage, and concealment services; indicators of concealment and means of detection.

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(8) Entry Without Inspection and Mass Migration.

- (A) Illegal Entry Infrastructure: Staging areas, lodging, travel, transportation, and other facilities which are available to and used by aliens prior to, during, and after entry without inspection.
- (B) Method of Operation: Routes and methods of entry without inspection; knowledge of and countermeasures to Service patrols, inspections, and investigations; activities which indicate the preparation for illegal entry; indications of the presence of aliens, especially in large numbers, who may seek to be smuggled or attempt illegal entry.
- (C) Aliens: Demographic characteristics of aliens who enter without inspection; number of times aliens have previously attempted entry or entered without inspection; time elapsed from prior visa denial, port-of-entry refusal, exclusion, filing or approval of visa petition, or prior deportation or other removal; employment and other living conditions in home country, knowledge of conditions in the United States, and the relative importance of factors which caused aliens to seek entry and choose their intended destination in the United States; source and type of information leading to the alien's choice of time, place, and manner of entry, route to and from the border, and means of travel; relationship to persons in the United States or other aliens attempting illegal entry; arrangements for residence and employment after entry.

(9) Employment of Unauthorized Aliens.

- (A) Method of Operation: The hiring methods and employment practices of employers; type of employment violations committed; methods of committing violations; other employment discrimination, labor law or related laws violated; methods of transporting, harboring, or concealing unauthorized alien employees; methods of inducing or encouraging the illegal entry of aliens, or encouraging or soliciting the use of smugglers or counterfeiters, to obtain unauthorized aliens for employment; efforts to resist or obstruct the enforcement of employer sanctions, or encourage employer noncompliance.
- (B) Employers and Facilitators: The identity, location, and characteristics of employers who engage in the employment of unauthorized aliens; job markets, entities or individuals which assist unauthorized aliens to obtain employment; the relationship of employer violators to other employers; employees involved in committing violations.

(10) Aliens Involved in Crime.

- (A) Organizations: The hierarchy, methods of operation, and assets of criminal organizations and groups which are led by or composed largely of aliens, and the characteristics, background, location, role, and identity of alien leaders, members, and associates.
- (B) Criminal aliens previously deported: The identity, location, and characteristics of criminal aliens who have previously been excluded, deported, or removed at government expense,

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and are likely or attempting to seek reentry to, or have reentered, the United States; the intention of such aliens to reenter.

(11) Sensitive Events.

- (A) Visits, Meetings and Other Events: The date, place, duration, sponsors, purpose, and parties involved in international competitions, festivals, conferences, diplomatic or political visits and meetings, or other events to be held in the U.S. or adjacent countries; the number and characteristics of aliens who are likely to participate or attend as spectators and will seek entry to or transit through the U.S.; incidents which may require the Service to control or prohibit the entry or departure of an alien or group of aliens; actions, preparations, and intentions of citizens or aliens to oppose or disrupt visits, meetings, and other events.
- (B) Individuals: The identity, characteristics, and travel plans of foreign heads of state, government officials, celebrities, or other well-known or notorious persons whose presence in or travel through the United States is likely to arouse the interest of or opposition by citizens, aliens or groups in the United States; the identity and characteristics of aliens who have been denied a visa to seek entry to or transit the U.S. to attend conferences or other events.

(12) Threats Against Service Operations.

- (A) Method of Operation: Identification and location of Service personnel, detainees, facilities, or operations which are the target of a threat; place, time, and nature of hostile or disruptive action; means of access to Service personnel, operations, and facilities; use of warnings, and the timing and nature of warnings.
- (B) Devices: Types of weapons, explosives, chemical agents, traps, and other hazardous or destructive devices used; source and means of obtaining or producing devices; triggering mechanism; means of transportation, emplacement, concealment, and detection of devices; safety measures to take during a search for a device and when encountered.
- (C) Threat Individual or Entity: Motivation, beliefs, values, strategy, and goals of activity; prior disruptive or threatening actions alleged, claimed, or proved.

(13) Excludable or Deportable Aliens.

- (A) Excludable or Deportable Aliens, and Refugees and Other Aliens: The identity, location, and characteristics of aliens who are excludable or deportable, or are likely to seek to be removed from the U.S. at government expense, or are likely to seek refuge, asylum, or temporary protected status in the United States.
- (B) Aliens Previously Deported: The intentions and preparations of such aliens to reenter.

(14) Threats to National Security.

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- (A) Method of Operation: Identity and location of a target of terrorist action; reason for selecting the target person, place, or time; means, nature, place and time of attack; method of gaining access to target; use of warnings, timing and nature of warnings.
 - (B) Devices: Types of weapons, explosives, chemical agents, and other destructive devices used by terrorists; triggering mechanism; sources and means of obtaining or producing devices; means of transportation, emplacement, and concealment; means of detection and disarming; safety measures to take during a search for a device and when encountered.
 - (C) Terrorist Individual or Entity: Motivation, beliefs, values, strategy, and goals of terrorism activity; prior terrorism actions alleged, claimed, or proved; association with other terrorism or criminal organizations or individuals; association with other criminal organizations, or individuals.
- (c) Intelligence Reports.
- (1) Preparation. Please assure that all of the following categories are filled in appropriately before the report is submitted to HQINT or the field for distribution. An Intelligence Report that is properly and completely filled out is of greater value than ones which contain missing or incomplete information.
 - (A) File Number: This space may be used by the reporting office for their own internal reference and file codes. HQINT does not currently use this space. Preparing officers should NOT use an alien's file number for this purpose.
 - (B) CCX: Cross-references may be listed in this space. At a later date, this space may be used by HQINT for a referencing and indexing system.
 - (C) Date of Information: The date of the occurrence of the event being reported or the date the information is first received by the writer of the G- 392. This is not necessarily the same as the date the report is written. The Date of Info. is always a date earlier or equal to the Date of Report.
 - (D) Subject: The major topic of the report. Generally, the subject should be the same as the Collection Requirements, e.g., Alien Smuggling, Drug Trafficking, Document Fraud, Illegal Entry, etc. Aliens names are not to be used as the subject of a report.
 - (E) Country: This space is used to provide the country of birth of the alien(s) involved in the incident being reported. Intelligence Reports are reviewed by HQINT analysts based upon the nationality (country of birth, not citizenship). The nationality of the smugglers/arrangers or the country of citizenship of the alien(s), as additional information, is beneficial; but the most important country indicator for intelligence purposes is the country of birth of the alien(s). Do not put U.S. or USA in this space unless the individual was actually born in the United States.

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- (F) OASIS and OASIS ID No: The report writer should indicate whether or not OASIS was checked. If the information is checked in OASIS and there is an existing record, the OASIS ID Number should be recorded on the Form G-392. If no existing information is found, but a new record is created, the new OASIS ID Number should be recorded on the Form G-392.
- (G) Databases Checked: Any databases checked for information related to individuals involved in the incident should be noted. This will eliminate duplication of efforts. Information derived from any positive hits should be included in the body of the report.
- (H) Synopsis: A brief description of the incident or intelligence reported under Details.
- (I) Details: A description of a single event or topic which responds to a Collection Requirement. A continuation sheet, Form G-392A, may be used if more space is needed. The body of the report should begin with a narrative assessment of the reliability of the source of the information and the accuracy or validity of the information itself. The report should contain specifics of the incident, the nationalities of the parties involved, any associated trends, and the outcome of the incident.

Review the intelligence collection requirements which relate to the information you are reporting. Be timely, specific, and complete. Provide information in the Details section in the following order.

Include in the first paragraph of details a reference to any previous reports submitted on the same incident or subject, or identify the specific request for information which the report answers.

Evaluate, and provide a brief statement indicating the reliability of the source of the information. The statement should indicate the source's record, if any, for providing reliable information, and the method or closeness of the source's access to the information. Do not identify sources of information by name, address, position in an organization, relationship to another person, or any other information which may compromise the identity or location of the source. However, if the source is a representative of another agency, indicate the agency and the level within the agency, such as headquarters, field office, etc. If the source is the one of the subjects of the report, describe the source's actions or statements from the viewpoint of a third party observer.

To the greatest extent possible, provide background information which reveals and explains methods of operation, capabilities, intentions, vulnerabilities, and interrelationships of individuals and organizations, and specifically identifies individuals, organizations, conveyances, assets, and locations involved.

If appropriate, explain unusual terms or practices, or provide a brief assessment of the information reported. This can include a prediction of future actions or trends, a comparison to past actions, or an estimate of the significance of the reported information.

Conduct record system checks relating to all persons, organizations, and, if applicable,

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addresses, conveyances, and telephone numbers listed in the report. Identify systems checked and provide file numbers or other data, or indicate that there is no record. If possible, attach a printout.

- (J) Writer: The writer of the report should type their full name, job title, and telephone number. All inspectors should identify the type of inspector that they are, i.e. II, SRI, SOI, IIO, etc. HQINT has been tasked with providing HQINS with a monthly status report on Inspectors' participation in the G-392 reporting program. Investigators should put INV after their names. Border patrol agents should put BPA after their names, as a monthly status report is also provided to HQBOR. Telephone numbers should be given so that if additional information is needed, the writer can be contacted.
 - (K) Date of Report: The date the report is written. This should not be confused with the Date of Information, which is the date the information was received or the date the incident occurred. The Date of Report is always equal to or later than the Date of Information.
 - (L) Reporting Office/Activity: The three-letter office code assigned to the writer's location. For example, if the writer is assigned to New York City, the code would be NYC. If the writer is assigned to Swanton, the code would be SWB. If the location has a suboffice, then the code would be, for example, Toronto, TOR/BUF. Do not use numbers for program elements in this space. In the past, writers have used 1221, for example. This could be any Border Patrol location and does not specifically designate a single writer's location. Please use only specific three-letter codes. It is very important to fill in this space correctly so that HQINT will know where to return the evaluation of the report and any other correspondence relating to a report.
 - (M) Additional Pages: If addition pages are required, use Form G-392.1 (Intelligence Report Continuation Page). Indicate the topic which was entered in the same block on the first page of the report and (if applicable) cite the Request For Information (RFI). Since the synopsis of the report is written on the first page, it should not be repeated on any continuation page.
 - (N) Attachments: Attach other reports, record check printouts, maps, photographs, or other materials. Cite attachments in the report. Do not repeat large amounts of information reported in attached documents.
 - (O) National Security Information: Call HQINT (number below) or the Headquarters Command Center (202-514-8289) by secure telephone if the information reported relates to national security and may require security classification.
- (2) Distribution: Routine distribution is indicated on the bottom right corner of the various multi-part copies of Form G-392, as follows:

Original - HQINT,
Copy 1 - ROINT,
Copy 2 - District or Sector,

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Copy 3 - EPIC, and

Copy 4 - Originator.

Copy 2 is for use when Form G-392 is prepared in offices under the jurisdiction of a district or sector, i.e., border patrol stations, ports-of-entry, suboffices within a district, etc.

When additional distribution is made, the offices to which the form is sent should be identified at the top of the form. Examples of supplementary distribution include FDL, ROINTs, other than the one with jurisdiction over the reporting office, neighboring districts and/or sectors, etc.

All reports containing drug trafficking information must be forwarded to EPIC. EPIC has been designated as the primary office with responsibility for collection of intelligence relating to drug trafficking. Analysis and evaluation of all drug reports is performed at EPIC. Please forward these reports to:

EPIC

11339 SSG Sims Street

El Paso, TX 79908-8098

Attn: R&A Trends.

These reports may also be faxed to EPIC, Attention: R&A Trends, at (915) 564-2102.

Forward copies of the report immediately to HQINT, ROINT, EPIC, and the district or sector. Also forward copies immediately to any other INS office or other agency which has jurisdiction over, or a likely interest in, the reported information. Notify receiving offices by telephone if appropriate, and send time-sensitive information by telefacsimile or teletype. Retain the Originator copy in the local office intelligence files. Do not place a copy of this report in any alien file or case file.

(3) Obtaining Intelligence Reports. HQINT generates a number of reports in various formats which are disseminated through the Service as indicated. Each month a list of reports and bulletins issued during that month is published in the Immigration Monthly Summary, along with information on obtaining copies of any reports which might have been missed.

(A) Officer Safety Bulletin Document Intelligence Alert - This report describes dangers or threats to line officers. It may involve terrorist threats, concealed weapons, particular diseases to which officers may be exposed. It is disseminated to all offices as soon as the threat or danger becomes known.

(B) Executive Intelligence Brief FDL Reference Paper - This ad hoc report deals with priority issues and is normally distributed to the INS Executive Staff, to Main Justice, and to district directors and chief patrol agents. Although not targeted to individual officers, any officer needing a particular copy may request it through HQINT.

(C) Intelligence Bulletin - This ad hoc report describes trends in various illegal entry and
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smuggling schemes. It is targeted to the Inspector and other line officers.

- (D) Strategic Assessment - This is a rather lengthy type of report which is very analytical and detailed. It provides information on particular large scale smuggling trends and similar issues.
- (E) Operations Analysis - This case support report deals with a particular case, problem, or issue affecting an individual office. It is only distributed beyond the office involved upon the permission of that particular office.
- (F) Immigration Monthly Summary - This is the only report which is published on a scheduled basis. In addition to the listing of the reports and bulletins issued during the preceding month, it also contains summaries of reports issued by regional intelligence officers, with contact points. On a semi-annual basis, it also contains a listing of all reports and bulletins issued during the immediately preceding six month period.

A listing of recent document alerts and other intelligence information is contained in Appendix 32-1.

32.3 The OASIS Database. [reserved.]

32.4 Headquarters INS Intelligence Bulletin Board.

- (a) General. Headquarters Intelligence established a Intelligence Bulletin Board (HQINSINTEL) on the Treasury Enforcement Communications System (TECS) on March 21, 1996. All TECS users have read only access to the bulletin board. Posting capability to the system is limited to selected INS personnel. The purpose of the bulletin board is to exchange pertinent and timely Immigration intelligence.
- (b) Rules for Bulletin Board Operation.
 - (1) HQINT is final authority on article content, length, duration of posting, and officer access.
 - (2) No national security information or case sensitive information will be posted.
 - (3) Articles must be short and concise (usually less than two screens).
 - (4) Articles must have value for INS readers outside of writer's district or sector.
 - (5) The title of the article must describe the article content.
 - (6) The bulletin board will rarely be used for lookout entries, such as for terrorists.
 - (7) Posting articles does not alleviate the responsibility to submit G-392s as required.

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32.5 INS Forensic Document Laboratory (INS/FDL).

- (a) General. The Forensic Document Laboratory (FDL) provides a wide variety of forensic document analysis and law enforcement support services for the Immigration and Naturalization Service. The FDL Forensic Section conducts scientific examinations of questioned document evidence and testifies to their findings as expert witnesses in judicial proceedings. On a case by case basis, forensic examinations are conducted for other Federal, State, and local law enforcement agencies. The FDL Intelligence Section develops and presents training programs in the detection of fraudulent documents, assists field personnel in identifying fraudulent documents, and conducts ongoing liaison with other Federal, State, local agencies and foreign governments to promote common efforts to combat international document fraud.

The FDL provides the following primary services and products:

- (1) A full range of forensic support through the scientific examination of handwriting, hand printing, stamps, seals, printing, typewriting, the restoration of obliterated or altered documents, the examination of suspected counterfeit documents, and the processing of evidence for latent fingerprints.
- (2) Expert witness testimony by qualified forensic personnel in judicial proceedings and hearings on the examinations they conducted. Preparation of photographic court charts to support the prosecution of these cases.
- (3) Technical advice and assistance in developing major cases involving fraudulent documents. This includes support to approved undercover operations.
- (4) Training programs in detecting fraudulent documents, and recognizing and handling documentary evidence. Training programs can be geared to specific programs or areas of concern. In order to request a training program, contact the FDL Intelligence Staff at (703) 285-2482 during business hours. A listing of several recent training programs is contained in Appendix 32-2.
- (5) Preparation and distribution of Document Intelligence Alerts (high quality, color photo bulletins distributed worldwide to assist field personnel in the identification of fraudulent documents recently encountered at the FDL). The FDL currently distributes over 500 copies of Document Intelligence Alerts worldwide to INS offices, U.S. Embassies, and other law enforcement agencies. If your INS office is not receiving copies or if you would like to request previously distributed copies, please contact the FDL's Intelligence Section at (703) 285-2482. An updated listing of the *Alerts* can be found on the cc:Mail Forensic Document Laboratory Bulletin Board.

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- (6) Maintenance of an extensive library of exemplars of visas, passports, vital statistics documents, immigration documents, and other documents for use by both Forensic Document Examiners and Intelligence Officers for comparison with questioned documents. Copies of documents and other material needed in connection with a specific case may be obtained upon request. Field personnel are encouraged to submit intercepted fraudulent documents to the FDL for the FDL Library and for use in document training and in the production of Document Intelligence Alerts. Whenever possible, original documents should be provided to the FDL.
- (7) Assistance via Photophone in resolving questions concerning suspect travel documents on a real-time basis. Extended hours of service to INS field by Senior Intelligence Officers seven days a week.
- (8) A close working liaison with the Office of Fraud Prevention Programs (CA/FPP) and the Bureau of Diplomatic Security (DS), U.S. Department of State.
- (b) Requests to FDL for Forensic Examination of Evidence.
 - (1) Assistance in Preparation of Evidence for Submission. For assistance and advice in the preparation of a case for submission to the FDL for forensic examination, submitters are encouraged to contact the Chief Forensic Document Examiner at (703) 285-2482 or fax (703) 285-2208.
 - (2) Transmission of Evidence to FDL. Each transmission of evidence to the FDL must be accompanied by a "Request For Laboratory Examination" (G-1021). Form G-1021 is available in electronic format on the FDL Bulletin Board, or may be obtained by contacting the FDL as above.

All evidence must be transmitted inside a sealed inner envelope, with the completed G-1021 attached to the outside of that inner envelope. Multiple cases may be submitted in a single Federal Express mailer or other mail medium, but each case within the outside envelope must be separately packaged exactly in the manner described above.

Any cases that do not adhere to these instructions will be returned to the requestor, accompanied by instructions on submitting the case in the prescribed manner. Requests and evidence should be sent via registered U.S. Mail, Certified U.S. Mail, or the current courier/package delivery service (e.g., Federal Express) in order to maintain tracking of the chain of evidence. Requests and evidence must be addressed to:

Chief Forensic Document Examiner

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INS Forensic Document Laboratory
Warren Building, Suite 325
8000 Westpark Drive
McLean, VA 22102-3108

In keeping with standard legal requirements, the FDL will return the examination report and the evidence to the same person who submitted and signed the "Request For Examination", unless other specific instructions are received.

- (c) Preparation for Court. In the event that a case is scheduled for a trial or hearing, it is very important that the following procedures be followed.

The case officer who submitted the evidence must immediately contact the FDL Forensic Document Examiner or Fingerprint Specialist who examined the evidence.

The evidence must be returned to the FDL at least two weeks (if possible) before the trial to permit preparation of court charts.

A subpoena for the Forensic Document Examiner or Fingerprint Specialist must be obtained and should be faxed to the FDL. The FDL case control number should be included on the subpoena.

- (d) FDL Support of Undercover Operations.

- (1) Guidelines. The FDL provides technical support upon request for undercover operations that have been properly authorized in accordance with the Attorney General's Guidelines on INS Undercover Operations. FDL Policy Memorandum #3 (April 1997), a copy of which can be provided upon request, provides guidance in the submission and handling of requests from INS officers for FDL support for approved undercover operations.

- (2) Approval. FDL is authorized to support INS undercover operations only in those cases where the proposed undercover operation has been approved at the appropriate level in accordance with The Attorney General's Guidelines for INS Undercover Operations. The three categories of approved undercover operations are:

- Those undercover operations which must be authorized by the INS Commissioner, with the concurrence of the Assistant Attorney General for the Criminal Division;
- Those which must be authorized by the INS Regional Director; and
- Those which must be authorized by the appropriate District Director or Chief Patrol Agent.

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(3) Preliminary Feasibility Discussions. When an INS officer is planning an undercover operation which will require support from the FDL in the form of "operational documents", that officer should call the Chief Intelligence Officer to discuss the technical feasibility of the proposed request. If the proposed action is considered technically feasible to carry out, the Chief Intelligence Officer will inform the FDL Director, and will advise the requesting officer to take the following steps:

- Ensure that a generalized statement is included in Form G-819 (or addendum to the G-819, if the decision to utilize an undercover document was made subsequent the preparation of the G-819) that the proposed operation will use documents which will be provided by the FDL. The G-819 or addendum should clearly state how the documents will be used in the operation.
- Once the G-819 is approved, a written request from the Assistant District Director, Investigations or the Appropriate Assistant Chief Patrol Agent must be forwarded to the Director, INS Forensic Document Laboratory, which will include the following:
- A copy of the approved G-819, including the approval signatures;
- A statement as to precisely what is needed (as previously discussed in the preliminary feasibility discussions);
- Both the cover data and genuine identifying data of the person for whom the document is to support;
- A statement as to who will be the responsible INS officer to control and return the documents; and

(4) Approval for FDL Production. Upon receipt of the request from the field with the approvals as described above, the request will be reviewed and considered for approval both by the Director, FDL and the Assistant Commissioner, Intelligence (HQINT). This final approval will be attached to the incoming request and becomes a part of the FDL case file. Actual production and delivery of operational documents to support approved INS undercover operations will be carried out only after the above approval process, and in consideration of other INS cases pending.

(e) Undercover Support to Agencies Other than INS. Support to agencies other than INS will be subject to:

- (1) Case load,
- (2) Feasibility, and

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- (3) Review by the Chief Intelligence Officer and approval on a case-by-case basis by the Director, FDL and the Assistant Commissioner, Intelligence. (Requests must come from an appropriate level official at the requesting agency's headquarters.)

Priority will be given to supporting INS operations and INS forensic casework. It is a general policy of FDL to support only INS undercover operations.

- (f) FDL Points of Contact. Questions concerning FDL should be addressed to:

Forensic Document Laboratory
8000 Westpark Drive, Suite 325
McLean, VA 22102-3108

Address the query to the attention of the appropriate FDL staff person(s), as follows:

RE: FDL policy matters: Director,

RE: Forensic and Fingerprint matters: Chief Forensic Document Examiner,

RE: Support to INS Undercover Operations: Chief Intelligence Officer,

RE: Document Intelligence matters: Intelligence Staff, or

RE: Fraudulent Document Training: Intelligence Staff.

- (g) FDL Communications Capabilities. Any of the following communications media may be used in contacting the FDL.

- Telephone at (703) 285-2482 (7am – 8:30pm, Monday – Friday and 10am – 6:30pm, Saturday/Sunday/Holidays).
- Photophones: [REDACTED]
- STU-III Secure Telephone: Call in advance to set up a secure telephone link.
- Facsimile Machine: [REDACTED] NEC NEFAX-D800 high resolution terminal).
- INS Headquarters 24-Hour Emergency Number: (202) 616-5000 (INS Command Center). Ask for assistance in reaching an FDL representative if unable to reach at FDL numbers above.

- (h) Guide for the Collection and Submission of Exemplars in Cases of Suspected Passport Fraud. If you suspect that a passport may have been fraudulently altered,

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be sure to collect handwriting and fingerprints from the person who is carrying that passport. You should do the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The use of this guide when submitting a passport for examination will help ensure that the Forensic Document Laboratory will be able to provide the very strongest conclusion possible from the evidence provided.

FOR ANY ASSISTANCE PRIOR TO COLLECTION OR SUBMITTING EVIDENCE, PLEASE CONTACT THE CHIEF FORENSIC DOCUMENT EXAMINER AT 703-285-2482.

(Revised IN00-10)

32.6 EPIC Operations; Instructions for Completing Report of Documented False Claim to Citizenship (Form G-329).

- (a) General. - The El Paso Intelligence Center (EPIC) is a multi-agency tactical and operational intelligence facility located in El Paso, Texas. The EPIC Charter has three basic tenets for the coordination of tactical and operational intelligence as it relates to:

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- Narcotics trafficking,
- Alien smuggling and other related immigration violations, and
- Weapons trafficking.

INS is a full-member agency of EPIC, and provides staff through its Intelligence Division. The INS Advisory Board Member is the Assistant Commissioner for Intelligence, and INS is represented at EPIC by a Senior Special Agent of the Intelligence Division who also functions as the agency Program Coordinator.

- (b) INS Mission at EPIC. EPIC was established to collect, process and disseminate intelligence information concerning illicit drug and currency movement, alien smuggling, weapons trafficking, and related activity. These EPIC intelligence requirements are connected directly or indirectly to the duties of INS officers in the field. Individual INS officers may query EPIC for intelligence on these topics in support of their enforcement activities in the field. If there is information on file or if there is a negative response to a query, EPIC will respond directly to the requestor. If there is an active case involving the subject of the query by a participating agency, EPIC will advise both the requestor and original owner of any information or record deposited with EPIC. EPIC will not release information pertaining to an active investigation (unless the subject is armed and dangerous), but will facilitate contact between the requester and the relevant case officer.

The INS mission functions at EPIC are listed below:

- (1) INS Special Agents support the EPIC Watch Command. The EPIC Watch Command is operated 24 hours a day, 365 days a year and responds to telephonic, wire, and computer inquiries from member agencies. EPIC provides real time access to member agency databases and the El Paso Intelligence Database (EID).
- (2) INS staffs the Nationality Identification Search Unit (NISU) which is a sub-unit of the Watch Command. This unit provides a wide variety of services to INS and member agencies, as listed below:

NISU receives and databases into OASIS between 6,000 and 9,000 Alien Smuggler Data Input Sheets (Form G-170s) per year. The G-170 is a standard form used by Border Patrol Agents to report events involving the apprehension of individuals involved in alien smuggling. It is an excellent source of information for intelligence purposes.

NISU maintains the Fraud Document Index and Database. This system has been in existence at EPIC for 22 years and is an index of documented false claims to citizenship. The system presently has 550,000 database records and 1,600,000 documents on microfilm.

INS maintains a staff of Intelligence Analysts who conduct analysis of all smuggling organizations based on multi-source reporting (i.e., G-170s, G-166s, and I-392s). Additionally, all I-44s of drug seizures are evaluated and databased.

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- (c) Access to EPIC Information. INS officers, since they work for a member agency, can have a variety of database and lookout systems searched by EPIC if they are not immediately accessible to the officer in the course of his duties. These include CIS, NIIS, TECS/IBIS, STSC, NAILS, DACS, and CLAIMS. EPIC itself owns a system known as the "Fraudulent Document Index System" or FDIS. FDIS contains information on more than 500,000 cases involving fraudulent documents. More than 1.6 million individual documents connected to these cases have been microfilmed.

EPIC is also the home of the Nationality Identification Search Unit (NISU). The NISU stores and maintains case files relating to individuals who have presented documents in support of false claims to U.S. citizenship, the true names of impostors, suspect issuing officials, individuals who have fraudulently filed birth certificates, and other situations incident to false claim activity.

- (d) Contacting EPIC. An INS officer can contact the EPIC General Watch at 1-800-351-6047 (outside of Texas) or 1-800-527-4062 (inside Texas) for general inquiries. The NISU can be contacted through the General Watch (NISU is a sub-unit of the Watch Command) or directly at 915-564-2140/2142/2143 for assistance.

- (e) Instructions for Reporting False Claims and the Fraudulent Use of Documents, and Related Matters.

- (1) Use of Form G-329. Form G-329 provides a statistical and case record of the confiscation of documents used or produced fraudulently, and a summary of information about the arrest or identification of an alien who can be charged for a criminal violation involving a false claim to a lawful status or citizenship in the United States, or other fraudulent production, use, or possession of a document. Data on Form G-329 is used by INS and other agencies for intelligence purposes, and may be reported to the Uniform Crime Reports System.

Form G-329 should be executed immediately when a false, altered, counterfeit, or fraudulently used document is seized, collected, or purchased as evidence by a Service employee during a law enforcement activity, or when it is determined that an alien has made a false claim to a lawful status in the United States.

Form G-329 is a record of information obtained through direct observation by a Service officer, provided by an arrestee, or derived from other sources, concerning the type, source, and manner of acquisition and use of documents, and the circumstances in which a false claim was made by an alien. The original or photocopy of reported fraudulent documents must always be submitted with Form G-329. Therefore, data reflected on the document, such as name, registration number, or issuing agency, does not need to be recorded on Form G-329, and space is not provided for this information. **Classified national defense security information should NOT be entered on Form G-329.**

- (2) Preparation of Form G-329. To ensure legibility Form G-329 should be typed, but may be printed by hand. Preparing officers are requested to heed the following comments.

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- (A) Checklists. Checklists and block formats on Form G-329 generally provide all possible choices and indicate whether only one choice or several choices can be checked. When information is checked off on a checklist, or provided in a block on the form, it is not necessary to repeat the information in the narrative, unless additional identifying details are available.
- (B) Negative Responses. When Form G-329 is prepared there should not be any narrative block or checklist section left blank except when specifically allowed in paragraphs f and g below, or when the information is included in an attached report on another form, such as Form I-213 or Form I-44. Generally, negative responses will be indicated by entering the word "None", "N/A" or "Unknown", or checking a block labeled "No", "Not Applicable", "None", or "Unknown".
- (C) Abbreviations. Some blocks require the entry of abbreviations. Care should be used to ensure that abbreviations are clearly legible and not written in a manner which would cause the answer to be confused with another possible answer.
- (D) Date and Time. Dates should be reported in the format mmddyy or mm- dd-yy or mm/dd/yy with leading zeroes. Times should be reported on the basis of a 24 hour clock, e.g. 4:25 p.m. would be stated as 1625.
- (E) Other Information. When the space available in the narrative block or other blocks on Form G-329 is not adequate to contain all the pertinent information, provide the additional information on an attached memo, G-166 or other report.
- (F) Redundant Information on Form I-213. When Form I-213 is used to report the apprehension of an alien relating to a document reported on Form G-329, enter the Subject name, and Suspected of Using blocks, and leave the rest of the Subject section of Form G-329 blank. Complete the remaining sections of Form G-329. It is not necessary to include in the Narrative information which is included in the Narrative of Form I-213.
- (G) Definitions of Block Headings: Most blocks on Form G-329 are self- explanatory and these instructions are therefore general in nature. These instructions follow the sequence of blocks as they appear on the form.
- Program, Office, INS File Number. Indicate the program responsible for completing the Form G-329. Enter the three letter code designating the district or sector, and the suboffice, station, port, or other location of the reporting office. Enter the number of the Service "A" file or case file relating to the principal person or case.
 - False Claim to (Checklist). Indicate the type of false claim made by the alien, or for which the document was used or is intended to be used. Check all blocks which apply, and enter a two or three word description of any other false claim or fraudulent use. Identify the location, date, and time when the false claim or fraud occurred.

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- Subject. Provide summary information about the person who was in possession of the document, or who made the reported false claim. Report as much identifying information as is known. If an arrest report such as Form I-213 is attached, enter name, date of birth, and file number to assist in cross referral to the arrest report, and complete only those blocks not included in the attached report.
- Suspected of Using. Indicate whether the subject was under the influence of drugs or alcohol, or used a computer in the commission of the false claim or fraud offense.
- Document Data. Provide information relating to the form of the document and apparent alterations, and the purposes for which the form has been used. Each checklist indicates the correct number of blocks to check.
- Narrative. The narrative should clearly state the information which will support administrative or judicial revocation or forfeiture, and prosecution. If pertinent information is contained in other reports or memoranda, refer to those reports. Provide a brief description of the articulable facts which gave rise to probable cause for the search, arrest, or apprehension which led to the reported document. Report other significant information which is not reported or not completely reported elsewhere on Form G-329.
- Source. Provide information about the identity of the source of the document, and the place and manner in which the document was obtained from the source.

Type of Location. Briefly describe the type of location where the document was obtained. Use terms such as "travel agency," "convenience store," "street corner," and similar phrases.

Other person involved. Identify any other person who was involved in producing or obtaining the document.

Summary of Documents Provided by the Source (Checklist). Indicate each type of document provided by the source. Check as many blocks as apply, and enter in the blank spaces any other type of document not listed.

- Other Documents In Possession of the Subject (Checklist). Indicate each type of document found in the subject's possession, whether or not provided by the source. Check as many blocks as apply. The first section relates to documents which are known or believed to be valid and relate to the true identity of the subject, and the second section relates to documents which are known or suspected to be fraudulently obtained, produced, or altered. If the Subject was not in possession of documents, check "None" and leave these sections blank.

- Disposition. Indicate the administrative and criminal proceedings authorized against the subject of the report. Enter the Title and Section of the United States Code and number of counts charged against the Subject of the report. If prosecution was accepted by a State or local jurisdiction, indicate the State by abbreviation, and enter a short title for the criminal violation charged, e.g. "NY - use false DL".

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- (3) Disposition of seized documents. Valid documents relating to an arrested subject should be stored with the subject's other personal property and turned over to the appropriate custodial agency. Documents which will be used in evidence should be inventoried and stored in a secure cabinet. Documents which must be forensically examined should be forwarded to the INS Forensic Document Laboratory.
- (4) Filing and distribution of Form G-329. Place the original Form G-329 in the relating Service A file or case file. Send a photocopy to HQINT and EPIC.

32.7 Interpol. (Revised 2/10/06; CBP 17-06)

(a) General. INTERPOL stands for the International Criminal Police Organization, the worldwide law enforcement confederation created to facilitate international police investigative inquiries on individuals, groups, businesses, and organizations involved in international crime. INTERPOL headquarters are referred to as the Office of the General Secretariat (SG), and are located at Lyons, France.

INTERPOL has 182 member countries, whose police forces cooperate with those of other member countries to combat international crime. INTERPOL communications occur through National Central Bureaus (NCBs) established and maintained by member countries. The U.S. National Central Bureau of INTERPOL (INTERPOL - USNCB) is located at Washington, DC, and is an agency within the Department of Justice [Member Countries Listed in Appendix 32-3].

The INTERPOL organization has no police powers or arrest authority. Instead, INTERPOL member country NCBs exchange information with other member country NCBs, each of which relays incoming investigative requests to the appropriate police agencies in their respective countries. The receiving police agency then handles the investigative request in accordance with its country's laws and regulations.

(b) History. The concept of achieving cooperation among police agencies in different countries was realized with the creation of the International Criminal Police Organization (ICPO) in 1923. Initially conceived as a means for a small number of European countries to facilitate reciprocal police matters, INTERPOL has grown to a worldwide consortium of 182 member countries.

In 1938, appropriate legislative authority permitted the Attorney General to accept membership in INTERPOL on behalf of the United States. The Federal Bureau of Investigation was initially designated as the U.S. agency to perform INTERPOL functions. Shortly thereafter, however, INTERPOL operations ceased under German domination of Europe during World War II. In 1946, INTERPOL was re-established under a new constitution, which provided for elected directors and other safeguards to prevent usurpation by any single member country.

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The United States resumed participation in 1947, with the FBI again designated to perform INTERPOL functions. The FBI withdrew from this role in 1950. The U.S. Treasury Department, however, wanted to maintain international police contacts for its far-ranging enforcement responsibilities over currency, customs, and narcotics violations, and continued an informal liaison with INTERPOL. In 1958, the Attorney General officially designated the U.S. Treasury Department to perform the INTERPOL role for the United States.

Early in 1977, a Memorandum of Understanding was effected between the U.S. Departments of Justice and Treasury to share official U.S. INTERPOL representation and operating activities. The memorandum was subsequently amended, and in 1981 the INTERPOL - U.S. National Central Bureau (USNCB) was designated as an agency within the U.S. Department of Justice. In the spring of 2003, this memorandum was again revised to share official U.S. INTERPOL representation and operating activities and outline the relationship between the U.S. Department of Justice and the Department of Homeland Security.

The INTERPOL network utilizes the support of a permanent administrative and technical staff at the Office of the General Secretariat (SG) at Lyons, France. The Lyons SG headquarters maintains an extensive and sophisticated, state-of-the-art telecommunications system, which provides rapid exchange of information between and among the member countries and the General Secretariat. The United States also has several investigative personnel seconded to the General Secretariat.

(c) National Central Bureaus (NCBS). Each INTERPOL member country establishes a point of contact and coordination to perform INTERPOL functions. Generally, this activity is undertaken by a component of the national police in the capital city of each country. The designated agency of the member country is then identified as the INTERPOL National Central Bureau (NCB).

Each INTERPOL member country operates its NCB within the parameters of its respective national law and polices, and within the framework of the INTERPOL constitution. As previously stated, the INTERPOL U.S. National Central Bureau is an agency with the U.S. Department of Justice. Known within the international community as INTERPOL-Washington, the USNCB fills a unique role within the complex network of U.S. police and federal enforcement jurisdictions, serving as a point of contact for both domestic and foreign police seeking assistance in criminal investigations, which extend beyond national boundaries.

(d) USNCB Staffing. The USNCB is staffed by federal and state law enforcement agency representatives, complemented by full-time case analysts and telecommunications specialists. CBP presently has one Senior Program Manager

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assigned to the USNCB. Investigative personnel are also detailed from: Bureau of Alcohol, Tobacco, and Firearms (ATF); Drug Enforcement Administration (DEA); Federal Bureau of Investigation (FBI); U.S. Food and Drug Administration (FDA); Immigration and Customs Enforcement (ICE); Department of Defense/Counter Intelligence Field Activity (DoD/CIFA); Environmental Protection Agency (EPA); U.S. Mint (USM); U.S. Department of State (DOS/Office of Diplomatic Security); Internal Revenue Service (IRS); U.S. Marshals Service (USMS); U.S. Postal Inspection Service (USPIS); U.S. Secret Service (USSS); and various State police agencies.

(e) USNCB Divisions. Special agents from participating agencies are assigned to duty in one of four INTERPOL-USNCB Investigative Divisions. The divisions correspond to the types of criminal cases typically conducted under the statutory authority of the respective member agencies staffing the USNCB. The four INTERPOL-USNCB divisions are: Alien/Fugitive, Criminal, Drugs, and Financial Fraud. The CBP representatives are assigned in the Alien/Fugitive division.

The USNCB-INTERPOL organizational scheme is intentionally broad. By nature, many foreign and domestic inquiries have overlapping areas of investigative interest. Requests for investigative assistance received by the USNCB cover a wide range of offenses - from murder and violent crimes, narcotics and robbery violations, large-scale economic fraud and counterfeiting, to the location and apprehension of international fugitives and immigration-related offenses, such as document and visa fraud, and human smuggling.

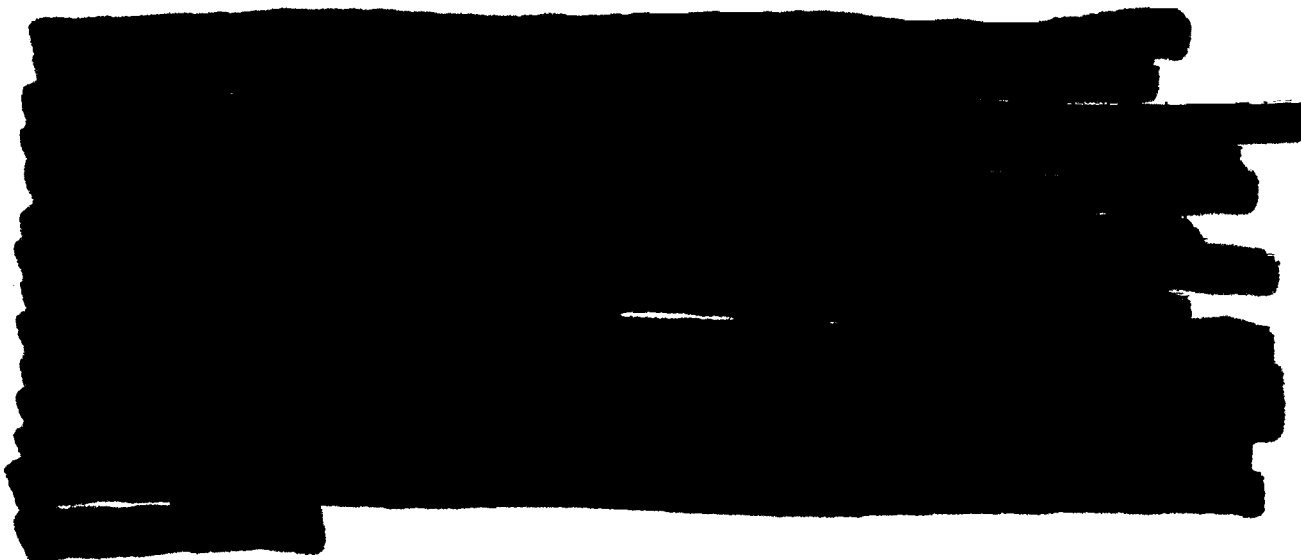
Some limitations exist, however: Article 3 of the INTERPOL Constitution states, "It is strictly forbidden for the Organization to undertake any activities of a political, military, religious, or racial character." Requests for information placed through INTERPOL are thus evaluated against an agreed standard of operation. Similarly, member countries restrict processing requests to areas of investigative interest, which are recognized violations of their criminal statutes.

(f) CBP Requests Via Interpol. The USNCB's statistics reflect that CBP has consistently made the greatest number of requests among participating U.S. agencies using INTERPOL's communication channels to conduct foreign inquiries. This occurs for good reason, as CBP officers routinely encounter foreign nationals in the course of their assignments. Many of these foreign nationals will either have violated their immigration status, be unlawfully seeking entry or some benefit under the INA, or are under investigation by law enforcement agencies for other reasons.

The USNCB facilitates CBP requests for foreign criminal histories, records of conviction and outstanding warrants, and assists in the positive identification of foreign nationals, as well as procurement of travel documents. In addition, INTERPOL has recently provided its cache of fingerprints to US-VISIT, which will in turn

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lead to more interdictions of transnational criminals at our ports of entry. Often, the USNCB is the sole means available to CBP officers to obtain the information required to proceed in pending criminal or administrative investigations. CBP officers are encouraged to take advantage of the facilities available to them through the USNCB.



The INTERPOL - USNCB is accessible 24 hours a day/seven-days-a-week, by telecommunications (via NLETS and JUST), telefax, letter, DHS e-Mail, and telephone.

Communications references are listed below. When requesting or providing information, please follow the guidance listed below.

Plainly state the reason for your request (e.g., TECS/US-VISIT Hits, criminal investigation, unlawful application for benefits, visa/passport fraud), and indicate where you want your inquiry directed (i.e., to which countries).

Refer to the INTERPOL -USNCB case file number assigned, if applicable, to your inquiry, as this is the method by which INTERPOL matters are referenced.

Provide CBP file references (alien file number, I-94 admission number, naturalization number, etc.) and provide the following information, if known, for each subject of inquiry: name, aka(s), D/POB, COB, passport number, country of issue, visa information, last foreign residence, and parent names, together with any additional lead information which would assist foreign police in responding.


Telephone contacts - identify yourself as a CBP officer and ask for the CBP - INTERPOL representative (your request will be processed whether or not CBP representatives are available).

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Please note that countries receiving requests for information typically request fingerprints and photos to assist in confirming a subject's identity and the record information they provide. Information supplied by member countries for individuals in the absence of fingerprints is subject to caveat.

Please note that your request for information will likely require your office to provide a disposition in the matter for forwarding to the responding country (e.g., deportation information, U.S. criminal convictions, etc.). Failure to reciprocate with the responding countries severely jeopardizes future CBP requests.

(g) INTERPOL Communications.

- Telephone: (202) 616-9000
- Telefax: (202) 616-8400
- NLETS address: DCINTEROO
- JUST address: JIPOL
- CBP e-Mail address: 

Mailing Address: INTERPOL- USNCB
U.S. Department of Justice
1301 New York Ave. N.W., 3rd Floor
Washington, DC 20530

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Chapter 33: Multi-Agency Automated Systems (Added INS - TM2)

- 33.1 Interagency Border Inspection System (IBIS)
- 33.2 National Crime Information Center (NCIC)
- 33.3 National Law Enforcement Telecommunications System, Inc. (NLETS)
- 33.4 The California Law Enforcement Telecommunication System (CLETS)

33.1 Interagency Border Inspection System (IBIS). (Revised by CBP 3-04)

(a) Background. The Interagency Border Inspection System (IBIS), a multi-agency database of lookout information, was initiated in 1989 to improve border enforcement and facilitate inspection of individuals applying for admission to the United States at ports-of-entry and preinspection facilities. The IBIS initiative began in response to both legislative and administrative mandates, as well as to evolving agency needs for a more efficient primary inspection at land, air and sea ports-of-entry.

IBIS resides on the Treasury Enforcement Communication Systems (TECS) at the CBP Data Center. Field level access is provided by an IBIS network with more than 24,000 computer terminals located at air, land, and sea ports of entry. A portable system using CD ROM drives is referred to as the Portable Automated Lookout System (PALS) and is discussed in Chapter 31.4(b).

IBIS provides the law enforcement community with access to computer-based enforcement files of common interest. IBIS contains information on suspect individuals, businesses, vehicles, aircraft, and vessels. It also provides access to the FBI's National Criminal Information Center (NCIC) and allows its users to interface with all fifty states via the National Law Enforcement Telecommunications Systems (NLETS). NCIC access includes records on wanted persons, stolen vehicles, license information, criminal histories, and previous Federal inspections.

CBP also has the authority to collect passenger name record information on all travelers entering or leaving the United States. This information is strictly used for preventing and combating terrorism and serious criminal offenses, with the principal purpose of facilitating CBP's mission to protect the borders through threat analysis to identify and interdict persons who have committed or may potentially commit a terrorist act.

In addition to CBP, law enforcement and regulatory personnel from 20 other federal agencies or bureaus use IBIS, including the FBI, Interpol, DEA, ATF, IRS, the Coast Guard, FAA, and Secret Service, among others. [See MOU in Appendix 33-1.]

Because of the multi-agency participation, as well as the system requirements to

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provide, in addition to its basic lookout capability, a wide range of other special user requirements such as intelligence, investigative and other law enforcement activities, IBIS has evolved to provide a wide range of special features, including:

- Imagery
- Electronic Mail
- On-line Help
- Query Notifications
- Commercial Directories
- Primary Query History
- On-Line User Manual
- Machine-Readable Documents
- Biometric ID Technology

(b) IBIS Policy. Data in IBIS is "Law Enforcement Sensitive." Access to data is granted on a need-to-know basis for official use only. All IBIS users must be certified through an on-line security certification test and must be certified every two years. Abuse or misuse of IBIS could result in loss of access, termination of employment, and may include criminal prosecution.

(1) The restrictions in the use of IBIS are as follows:

Never leave your terminal unattended. If you must step away, log off completely.

- (A) Do not leave IBIS materials unattended in unprotected places.
- (B) Ensure that IBIS printouts are secured or destroyed.
- (C) Never confirm or deny the existence of an IBIS record to the public or unauthorized user. This includes oral, handwritten and printout information.
- (D) Only use IBIS to perform official duties required by your job. Browsing is not permitted. Never access IBIS information out of curiosity. Do not query your friends or members of your family.
- (E) Information released outside of DHS must be accompanied by a Customs Form 191 (CF 191) and must be approved by a supervisor. Mark IBIS information "Law Enforcement Sensitive" when releasing to an authorized use outside of DHS.
- (F) Do not disclose your password.
- (G) Do not store IBIS information or records on the hard drive.
- (H) If any IBIS data is stored on diskettes, label diskettes with "Law Enforcement Sensitive" and secure the diskettes while not in use.
- (I) Report violations to your supervisor or to the Office of the Inspector General (OIG).

(2) Policy regarding IBIS equipment at a POE is as follows:

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- (A) POE and field office technical support staff will follow the guidelines outlined in memorandum entitled "IBIS Technical Support Guidelines at POE's" dated March 2, 2001.
- (B) Internet access at a POE is to be restricted to one or two workstations that do not have access to IBIS. Designated Internet access workstations should be labeled appropriately, including a warning not to configure or provide access to IBIS from these workstations. All workstations at a POE, where practical, are required to have access to the intranet. Only approved browser software is permitted on designated internet workstations.
- (C) All workstations' Virtual Terminal Access Module (VTAM) identification (ID) addresses and Internet Protocol (IP) addresses will be statically assigned and coordinated with IBIS personnel prior to installation or changes.

(c) Planned IBIS Enhancements. [reserved]

(d) Availability of IBIS training. PHOENIX is the computer-based training system which resides on the TECS mainframe computer. It is used to administer self-guided specialized training to field users. All TECS/IBIS users have the capability of accessing PHOENIX and taking courses offered. Many of the TECS/IBIS courses are optional. However, if you are a TECS/IBIS user, you must take the TECS Security Certification Test and, if you are an NCIC/NLETS user, you must take the NCIC Certification test. Your local Systems Control Officer has been issued a manual which will show you how to access and use the PHOENIX system. Additionally, a training region of the mainframe applications is available to simulate real-time events at ports-of-entry.

(e) Procedures for Computer System Failures

This section clarifies and documents the standard operating procedures to be followed in circumstances where the primary system, Interagency Border Inspection System (IBIS) becomes unavailable at ports of entry (POEs). All officers performing inspectional duties are required to be proficient with IBIS, to include the Advance Passenger Information System (APIS), and all other systems available, e.g., National Automated Immigration Lookout System (NAILS) and Portable Automated Lookout System (PALS), which support the inspectional process. These procedures must be followed in sequential order when access to the IBIS database is unavailable.

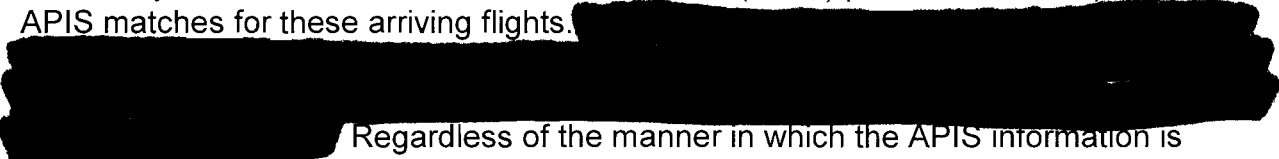
All system problems and outages must be reported to the Customs and Border Protection (CBP) Help Desk at [REDACTED]

(1) IBIS/APIS Failure at Air Ports of Entries (POEs):

If IBIS/APIS becomes unavailable at an individual air POE, inspectors must query all arriving passengers in NAILS. Directors, Field Operations (or Port Directors) should

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ensure that all officers performing inspectional duties have access to NAILS and are proficient in the use of NAILS. If for any reason APIS is unavailable, port managers should obtain the APIS manifest and the "short list" (this list will consist of all primary, secondary and National Crime Information Center (NCIC) possible matches) of possible APIS matches for these arriving flights.



Regardless of the manner in which the APIS information is received, officers conducting inspections must confirm that each passenger's APIS data is complete and accurate. If the data is not complete and accurate, the data must be modified and queried through the available systems.

(2) IBIS and NAILS Failures at Air POEs:

In situations where both IBIS and NAILS become unavailable, inspectors must query arriving passengers in PALS. Ports are directed to immediately identify how PALS can be made accessible, either by the local area network or on stand-alone computers. Steps must be in place so that PALS may be accessed rapidly and correctly when required.



(3) IBIS Failure at Land POEs:



(4) IBIS and NAILS Failure at Land POEs:



- (5) IBIS/APIS Failure at Sea (cruise or non-cruise) POEs:
- 

33.2 National Crime Information Center (NCIC).

- (a) General. The National Crime Information Center (NCIC) is a nationwide computerized information system established as a service to all criminal justice agencies--local, state, and federal. The goal of NCIC is to assist the criminal justice community in the performance of its duties by providing and maintaining a computerized filing system of accurate and timely documented criminal justice information readily available to as many criminal justice agencies as possible. For NCIC purposes, "criminal justice information" is defined as: "information collected by criminal justice agencies that is needed for the performance of their legally authorized, required function. This includes: wanted person information, stolen property information; criminal history information; information compiled in the course of investigation of crimes that are known or believed on reasonable grounds to have occurred, including information on identifiable individuals; and information on identifiable individuals compiled in an effort to anticipate, prevent, or monitor possible criminal activity."

General policy concerning the philosophy, concept, and operational principles of the system is based upon the recommendations of the NCIC Advisory Policy board to the Director of the FBI. The Board is composed of the top administrators from local, state, and Federal criminal justice agencies throughout the United States. Through Board input, changes in current file applications, the addition of new files, and new procedures (edits, codes, validations, etc.) are coordinated with all NCIC participants.

Through the use of computer equipment located at FBI Headquarters in Washington DC, the NCIC System stores vast amounts of criminal justice information which can be instantly retrieved and furnished through an NCIC terminal to any authorized agency. The NCIC data bank can best be described as a computerized index of documented criminal justice information concerning crimes and criminals of nationwide interest and a locator-type file for missing persons.

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The NCIC serves criminal justice agencies in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the US Virgin Islands and Canada.

- (b) Use of NCIC information. The data stored in the NCIC is documented criminal justice information and this information must be protected to ensure correct, legal, and efficient dissemination and use. The individual receiving a request for criminal justice information must ensure that the person requesting the information is authorized to receive the data. The stored data in NCIC is sensitive and should be treated accordingly, and unauthorized request or receipt of NCIC material could result in criminal proceedings.

A Secondary Dissemination Log must be kept if a criminal report is ever given to a second party. If a criminal history report is requested, the attention field in the query is "filled in" with the requesting party. If the report is given to someone other than what was entered in the attention field, an entry in a secondary dissemination log must be entered providing the date, the name of the person to whom the report is given, signature and which criminal history was disseminated. A safe policy to adopt is to give a party just enough information to run the report themselves so that there is no need to maintain a dissemination log. But, just in case the day comes and a criminal history is given to someone other than the requesting party the log will be available and on site.

33.3 National Law Enforcement Telecommunications System, Inc. (NLETS).

The National Law Enforcement Telecommunications System, Inc. (NLETS) is made up of representatives of law enforcement agencies from each of the 50 states, District of Columbia, Puerto Rico and several Federal law enforcement agencies. The purpose of the organization is to provide for an improved interstate law enforcement and criminal justice communications system.

The NLETS system provides a communications link to law enforcement systems across the US, through a switching computer located in Phoenix, Arizona. NLETS queries may be made on state criminal history, vehicle registration, and drivers license information. Administrative messages are also supported.

NLETS is comprised of eight regions representing six or seven states that are grouped together to represent a regional community of interest. The Board of Directors meets at least once each year to conduct the organization's business. All policy decisions are made by the Board of Directors. The policy decisions range from how the system is to be operated to how the Corporation's general business will be handled. The offices phone number is (602)-224-0744.

Authorized INS personnel may access NLETS through IBIS.

33.4 The California Law Enforcement Telecommunication System (CLETS).

The California Law Enforcement Telecommunication System (CLETS) allows California IBIS

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users direct access to California state motor vehicle information and other California criminal justice systems information.

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Chapter 34: Tools and Equipment (Added INS - TM2)

- 34.1 General
- 34.2 Firearms and Other Defensive Equipment
- 34.3 Ultraviolet and Infrared Viewing Equipment
- 34.4 Magnifying Devices
- 34.5 3-M Verification System Device
- 34.6 High-Intensity Light
- 34.7 Photophones
- 34.8 Machine-Readable Document Readers
- 34.9 CU-5 Camera Equipment
- 34.10 Admission Stamps and Security Ink
- 34.12 Government Vehicles
- 34.13 Audio-Visual Equipment

References:

AM 2.2.100, AM 1.5.215

34.1 General.

As an inspector, you will have available a wide variety of tools and equipment essential to the effective performance of your job. As new technologies are developed, you will have to continue to upgrade your inspectional skills to fully make use of them. Each new device which the Service purchases for use by its officers requires training in proper operation and maintenance. Much of this equipment requires special precautions to insure its security.

34.2 Firearms and Other Defensive Equipment.

(a) Firearms. There is one Servicewide policy relating to firearms. This policy encompasses a wide range of topics including such things as:

- authorization to carry weapons
- issuance and control of weapons
- use of firearms (deadly force policy)
- firearms training and qualification
- acquisition of firearms and ammunition
- reporting and investigating shooting incidents

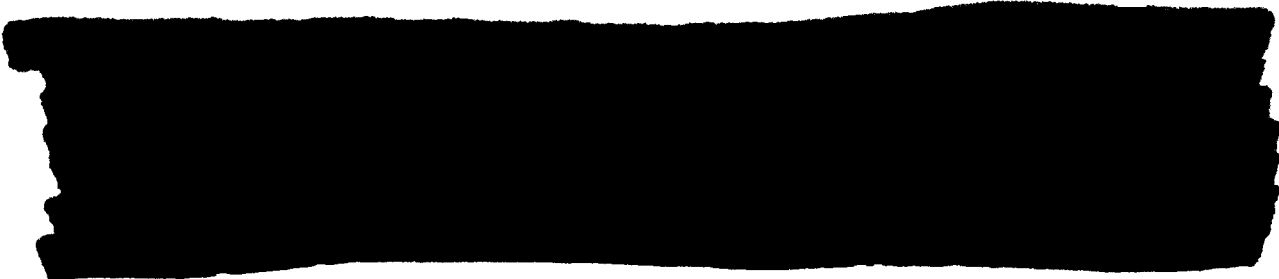
The entire firearms policy is included as Appendix 34-1 of this manual. (IN99-24)[See
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Chapter 21 of the Personal Property Handbook (M-429)]

- (b) Oleoresin Capsicum (OC) Spray Devices. Extreme caution shall be exercised in the use of OC spray, a form of less than lethal force, which immigration inspectors may have to use under certain circumstances. Authorization to be issued and to use OC devices shall be granted only to immigration officers, including immigration inspectors, who have received appropriate INS training and certification on the use, maintenance, and safeguarding of these devices. All OC spray devices made available to INS employees shall be INS-issued and shall be properly safeguarded at all times. If used, OC spray devices shall be utilized only after less invasive less than lethal use of force options have been considered and/or used. The use of OC spray devices shall be in conformity with policies and/or procedures established by INS governing their use.
- (c) Batons. Immigration Inspectors may be authorized to carry one or more types of batons which may need to be used in specific instances while in the performance of official duties. Authorization to be issued and to use batons shall be granted only to immigration officers, including immigration inspectors, who have received appropriate INS training and certification in their use. All batons made available to INS employees shall be INS-issued and shall be properly safeguarded at all times. As an impact weapon and because its improper use can result in serious bodily injury and/or death, the decision to use a baton requires careful judgment. An affirmative decision to use a baton should be based on articulable facts which, if considered by any reasonable person, would support the use of this type of less than lethal force.
- (d) Body Armor. The use of bullet-resistant body armor is a personal choice issue left to the discretion of individual immigration inspectors. While Inspections Program officers are not administratively mandated to use this type of equipment, the INS has nevertheless encouraged its use by making units of bullet-resistant body armor available to immigration inspectors on a funds-available basis. The INS is also evaluating the practicality and feasibility of including bullet-resistant body armor as an optional purchase item which uniformed INS officers can obtain under the INS Uniform Contract.
- (e) Other Tools and Equipment. The INS will also consider making other equipment available to Inspections Program personnel on an as-needed basis. Examples of such equipment include, but are not limited to, flashlights, buoyant life preservers, and special purpose footwear.

34.3 Ultraviolet and Infrared Viewing Equipment.



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

34.8 Machine-Readable Document Readers.

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A growing number of countries are now issuing machine-readable passports or visas. Most documents use an international standard established by the International Civil Aviation Organization (ICAO) and are readable by a standard electronic scanning device. In most locations, these devices are connected to the IBIS system. The reader serves to automate the lookout name query.

34.9 CU-5 Camera Equipment.

The CU-5 camera and accessories are used to make copies of documents for port records, for intelligence collection and for posting lookouts. The camera can also enlarge a document or fingerprint image. With the use of a filter, the camera can be used to examine glossy finishes. The camera can also be used to make 35mm slides for slide presentations.

34.10 Admission Stamps and Security Ink.

a) Admission Stamps

Historically the Service has permitted individual ports-of-entry (POE) to acquire and maintain inspector admission stamps. This policy and procedure has led to numerous versions and styles of admission stamps that are susceptible to fraud.

In May 2001, the Service replaced all admission stamps utilized by its inspection staff with a standardized admission stamp. Additionally, the Service centralized the issuance of replacement stamps, and provided for maintenance of the stamps. The design of the standardized admission stamp incorporates several security features.

These features are described in the Forensic Document Laboratory (FDL) Document Intelligence Alert #2001A-45 illustrated this new stamp design. For additional information pertaining to the new INS admission stamp contact the Intelligence staff at the FDL.



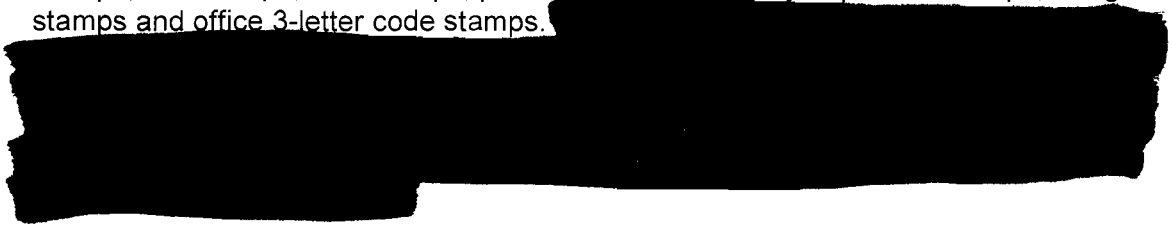
The Service has contracted with the vendor for the maintenance of the stamps. This includes the mechanical condition of the stamping unit (carrier) as well as the quality of the plate text and the digits within the rotating head. Admission stamps can be returned to the vendor for maintenance and/or replacement of the plate text, rotating dater or carrier. There is no expense to the Service for maintenance of the admission stamps (except for costs of shipping the stamp to the contractor). The shipping of stamps to the vendor for repair should be done through a mail system that permits tracking of the package (i.e., FEDEX, UPS, certified mail/return receipt). A brief memorandum that

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includes the return mailing address and the point of contact must be included in the container used to ship the stamp to the vendor. The memorandum must also provide a description of what repairs are required or the reason for return.

b) Security Ink

All stamps used to endorse documents that show evidence of status or immigration benefits must use security ink. Examples include admission stamps, "temporary I-551" stamps, line stamps, I-95 stamps, parole stamps, voluntary departure stamps, refugee stamps and office 3-letter code stamps.



c) Control of Admission Stamps

1. Tracking.

A record of each Service admission/approval stamp must be kept on an individual Form G-570, Record Receipt-Property Issued to Employee, and maintained numerically according to the stamp number. The Form G-570 must be executed upon receipt of each new stamp by the office controlling the stamp.

2. Distribution:

In offices where stamps are procured centrally and distributed to more than one location, the office controlling the stamp, or the procurement/ordering official, must maintain either individually or by block of numbers a record indicating the controlling location and date of shipment. The receiving station must then create an individual Form G-570.

3. Tracking Requirements:

The Form G-570 for each stamp must contain the following information:

a) Stamp type and number

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(e.g., line date NYC-1 or admission stamp NYC-1);

- b) Date received at POE or controlling location;
 - c) Date issued to officer;
 - d) Receiving officers name, typed or printed, and signature;
 - e) Date returned to Property Custodian;
 - f) Date of destruction, loss, theft, or withdrawal from use, if any; and
 - g) Supervisor's name, typed or printed, and signature.
- d) Lost, Stolen or Compromised Admission Stamps or other Secure Property

Every effort must be made to ensure that admission stamps and other secure property are guarded from being lost, stolen or compromised. Guidance on handling secure property can be found in Chapter 10 of the Security Officers Handbook. If an admission stamp or other secure property item --such as security ink or a pad-- is lost, stolen or compromised, it will be immediately reported orally to supervisory personnel, and reported in writing to supervisory personnel within 24 hours of the incident. Port Directors are responsible for ensuring that the actions in subparagraph "e" below, and in the Security Officers Handbook for reporting lost or stolen equipment, are initiated as expeditiously as possible. The Security Officers Handbook is available on INSERTS.

- e) Preparation of Intelligence Report Concerning Loss, Theft, or Compromise of Secure Property
1. A Form G-392 Intelligence report on each incident involving a lost, stolen, compromised admission stamp, and stamps that have been permanently removed from use is to be prepared and routed to the Offices of Intelligence, Internal Audit, Investigations and the INS FDL within 24 hours of the detection of the loss, or theft, or the discovery of a compromised admission stamp or other secure property such as ink pads or security ink.
 2. The INS FDL will maintain a listing of all lost, stolen, compromised stamps or stamps that have been permanently removed from use.

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3. The report on a lost, stolen, or compromised admission stamp, or related security property, must include all pertinent data, such as the date, time, and place of the loss, theft, or the discovery of the compromised admission stamp, the name of the officer to whom the stamp was assigned, what efforts were made to recover the lost stamp, or the circumstances surrounding the discovery of the compromised stamp and any other pertinent facts relating to the incident.

34.12 Government Vehicles.

Inspectors may be assigned to use a government vehicle (or they may use their privately owned vehicle) to perform inspections or inspections-related activities. Service policies governing vehicle use are included in AM 2.2.101 and the Personal Property Handbook (M-429).

34.13 Audio-Visual Equipment.

Some ports-of-entry use either tape recorders or video cameras to record certain activities such as sworn statements or secondary interrogations. Use of such equipment may provide evidence to support a case and may also be helpful to defend Service employees against allegations of improper conduct. Service policy governing use of audio-visual equipment is included in AM03.400.

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Chapter 41: Liaison Activities; Facilities (Added INS - TM2)

- 41.1 Liaison with Federal Inspection Agencies
- 41.2 International Border Liaison
- 41.3 Liaison with International Air and Sea Carriers and Foreign Governments
- 41.4 Liaison with Other Federal Agencies
- 41.5 Liaison with Port Authorities; Inspectional Facilities

References:

INA: Section 239.

Regulations: 8 CFR 239.

41.1 Liaison with Federal Inspection Agencies.

- (a) General. Several Federal agencies share responsibility for inspection of international passengers and the items in their possession at the time of arrival. Besides INS, the Customs Service, Animal and Plant Health Inspection Service and Public Health Service all have responsibilities for the inspection of international travelers. These agencies are referred to collectively as the Federal Inspectional Services (FIS). In recent years, the roles of these agencies have evolved from each agency operating relatively independently to a more cooperative, joint effort. This joint effort has resulted in more efficient and effective inspectional procedures. The Interagency Border Inspection System (IBIS) is a prime example of this cooperative effort.
- (b) Port Quality Improvement Committees. In June and July of 1995, the Federal Inspection Services (FIS), consisting of the Immigration and Naturalization Service (INS), the United States Customs Service (USCS), the Animal and Plant Health Inspection Service (APHIS), and the Bureau of Consular Affairs of the Department of State (DOS), participated in a National Performance Review (NPR) Border Process Reengineering conference with a common purpose of reengineering the primary inspection process at air and land border Ports-of-Entry (POEs). Three teams convened to develop recommendations to improve efficiency, effectiveness, and cycle times of primary travelers and vehicle processing through integrated inspection processes at airports and at both land borders.

In the Fall of 1995, the Executive Oversight Committee, comprised of agency representatives at the Deputy Commissioner/Administrator level of each FIS, and the Senior Implementation Group, comprised of agency representatives from the national unions as well as executive level managers, were formed to monitor and evaluate the testing of BPR recommendations.

In January 1996, nine pilot sites were selected to further test the NPR recommendations and five additional sites were identified shortly thereafter. A total of eight airport and six land border sites were chosen. In addition, Miami was designated a NPR Reinvention Lab.