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and Nationality Act and this chapter as other transportation lines or companies arriving or departing over the land borders of the United States.

[22 FR 9795, Dec. 6, 1957. Redesignated and amended at 62 FR 10353, Mar. 6, 1997]

§ 234.4 International airports for entry of aliens.

International airports for the entry of aliens shall be those airports designated as such by the Commissioner. An application for designation of an airport as an international airport for the entry of aliens shall be made to the Commissioner and shall state whether the airport: (a) Has been approved by the Secretary of Commerce as a properly equipped airport, (b) has been designated by the Secretary of the Treasury as a port of entry for aircraft arriving in the United States from any place outside thereof and for the merchandise carried thereon, and (c) has been designated by the Secretary of Health, Education, and Welfare as a place for quarantine inspection. An airport shall not be so designated by the Commissioner without such prior approval and designation, and unless it appears to the satisfaction of the Commissioner that conditions render such designation necessary or advisable, and unless adequate facilities have been or will be provided at such airport without cost to the Federal Government for the proper inspection and disposition of aliens, including office space and such temporary detention quarters as may be found necessary. The designation of an airport as an international airport for the entry of aliens may be withdrawn whenever, in the judgment of the Commissioner, there appears just cause for such action.

[22 FR 9795, Dec. 6, 1957]

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

Sec.

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§ 235.1 Scope of examination.

(a) *General.* Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection, or as otherwise designated in this section.

(b) *U.S. Citizens.* A person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport or alternative documentation as required by 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien. A U.S. citizen must present a valid unexpired U.S. passport book upon entering the United States, unless he or she presents one of the following documents:

(1) *Passport card.* A U.S. citizen who possesses a valid unexpired United States passport card, as defined in 22 CFR 53.1, may present the passport card when entering the United States from contiguous territory or adjacent islands at land or sea ports-of-entry.

(2) *Merchant Mariner Document.* A U.S. citizen who holds a valid Merchant Mariner Document (MMD) issued by the U.S. Coast Guard may present an unexpired MMD used in conjunction with official maritime business when entering the United States.

(3) *Military identification.* Any U.S. citizen member of the U.S. Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces, may present a military identification card

and the official orders when entering the United States.

(4) *Trusted traveler programs*. A U.S. citizen who travels as a participant in the NEXUS, FAST, or SENTRI programs may present a valid NEXUS program card when using a NEXUS Air kiosk or a valid NEXUS, FAST, or SENTRI card at a land or sea port-of-entry prior to entering the United States from contiguous territory or adjacent islands. A U.S. citizen who enters the United States by pleasure vessel from Canada using the remote inspection system may present a NEXUS program card.

(5) *Certain cruise ship passengers*. A U.S. citizen traveling entirely within the Western Hemisphere is permitted to present a government-issued photo identification document in combination with either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services for entering the United States when the United States citizen:

(i) Boards a cruise ship at a port or place within the United States; and,

(ii) Returns on the return voyage of the same cruise ship to the same United States port or place from where he or she originally departed.

On such cruises, U.S. Citizens under the age of 16 may present an original or a copy of a birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services.

(6) *Native American holders of an American Indian card*. A Native American holder of a Form I–872 American Indian Card arriving from contiguous territory or adjacent islands may present the Form I–872 card prior to entering the United States at a land or sea port-of-entry.

(7) *Native American holders of tribal documents*. A U.S. citizen holder of a tribal document issued by a United States qualifying tribal entity or group of United States qualifying tribal entities, as provided in paragraph (e) of this section, who is arriving from contiguous territory or adjacent islands may present the tribal document prior to entering the United States at a land or sea port-of-entry.

(8) *Children*. A child who is a United States citizen entering the United States from contiguous territory at a sea or land ports-of-entry may present certain other documents, if the arrival falls under subsection (i) or (ii).

(i) *Children under Age 16*. A U.S. citizen who is under the age of 16 is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at land or sea ports-of-entry.

(ii) *Groups of Children under Age 19*. A U.S. citizen, who is under age 19 and is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization is permitted to present either an original or a copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving from contiguous territory at land or sea ports-of-entry, when the group, organization, or team is under the supervision of an adult affiliated with the group, organization, or team and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person age 19 or older. The following requirements will apply:

(A) The group or organization must provide to CBP upon crossing the border, on organizational letterhead:

(*1*) The name of the group, organization or team, and the name of the supervising adult;

(*2*) A list of the children on the trip;

(*3*) For each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (b)(8)(ii)(A) of this section that he or she has obtained for each

child the consent of at least one parent or legal guardian.

(C) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the removal provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected and his or her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his or her entry shall not be recorded.

(d) *Enhanced Driver's License Projects; alternative requirements.* Upon the designation by the Secretary of Homeland Security of an enhanced driver's license as an acceptable document to denote identity and citizenship for purposes of entering the United States, U.S. and Canadian citizens may be permitted to present these documents in lieu of a passport upon entering or seeking admission to the United States according to the terms of the agreements entered between the Secretary of Homeland Security and the entity. The Secretary of Homeland Security will announce, by publication of a notice in the FEDERAL REGISTER, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

(e) *Native American Tribal Cards; alternative requirements.* Upon the designation by the Secretary of Homeland Security of a United States qualifying tribal entity document as an acceptable document to denote identity and citizenship for purposes of entering the United States, Native Americans may be permitted to present tribal cards upon entering or seeking admission to the United States according to the terms of the voluntary agreement entered between the Secretary of Homeland Security and the tribe. The Secretary of Homeland Security will announce, by publication of a notice in the FEDERAL REGISTER, documents designated under this paragraph. A list of the documents designated under this paragraph will also be made available to the public.

(f) *Alien applicants for admission.* (1) Each alien seeking admission at a United States port-of-entry must present whatever documents are required and must establish to the satisfaction of the inspecting officer that the alien is not subject to removal under the immigration laws, Executive Orders, or Presidential Proclamations, and is entitled, under all of the applicable provisions of the immigration laws and this chapter, to enter the United States.

(i) A person claiming to have been lawfully admitted for permanent residence must establish that fact to the satisfaction of the inspecting officer and must present proper documents in accordance with § 211.1 of this chapter.

(ii) The Secretary of Homeland Security or his designee may require any alien, other than aliens exempted under paragraph (iv) of this section or Canadian citizens under section 101(a)(15)(B) of the Act who are not otherwise required to present a visa or be issued Form I–94 or Form I–95 for admission or parole into the United States, to provide fingerprints, photograph(s) or other specified biometric identifiers, documentation of his or her immigration status in the United States, and such other evidence as may be requested to determine the alien's identity and whether he or she has properly maintained his or her status while in the United States and/or whether he or she is admissible. The

failure of an alien at the time of inspection to comply with any requirement to provide biometric identifiers may result in a determination that the alien is inadmissible under section 212(a) of the Immigration and Nationality Act or any other law.

(iii) Aliens who are required under paragraph (d)(1)(ii) to provide biometric identifier(s) at inspection may also be subject to the departure requirements for biometrics contained in § 215.8 of this chapter, unless otherwise exempted.

(iv) The requirements of paragraph (d)(1)(ii) shall not apply to:

(A) Aliens younger than 14 or older than 79 on date of admission;

(B) Aliens admitted on A–1, A–2, C–3 (except for attendants, servants, or personal employees of accredited officials), G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5, or NATO–6 visas, and certain Taiwan officials who hold E–1 visas and members of their immediate families who hold E–1 visas unless the Secretary of State and the Secretary of Homeland Security jointly determine that a class of such aliens should be subject to the requirements of paragraph (d)(1)(ii);

(C) Classes of aliens to whom the Secretary of Homeland Security and the Secretary of State jointly determine it shall not apply; or

(D) An individual alien to whom the Secretary of Homeland Security, the Secretary of State, or the Director of Central Intelligence determines it shall not apply.

(2) An alien present in the United States who has not been admitted or paroled or an alien who seeks entry at other than an open, designated port-of-entry, except as otherwise permitted in this section, is subject to the provisions of section 212(a) of the Act and to removal under section 235(b) or 240 of the Act.

(3) An alien who is brought to the United States, whether or not to a designated port-of-entry and regardless of the means of transportation, after having been interdicted in international or United States waters, is considered an applicant for admission and shall be examined under section 235(b) of the Act.

(4) An alien stowaway is not an applicant for admission and may not be admitted to the United States. A stowaway shall be removed from the United States under section 235(a)(2) of the Act. The provisions of section 240 of the Act are not applicable to stowaways, nor is the stowaway entitled to further hearing or review of the removal, except that an alien stowaway who indicates an intention to apply for asylum, or expresses a fear of persecution, a fear of torture, or a fear of return to the country of proposed removal shall be referred to an asylum officer for a determination of credible fear of persecution or torture in accordance with section 235(b)(1)(B) of the Act and § 208.30 of this chapter. An alien stowaway who is determined to have a credible fear of persecution or torture shall have his or her asylum application adjudicated in accordance with § 208.2(b)(2) of this chapter.

(g) *U.S. citizens, lawful permanent residents of the United States, and other aliens, entering the United States along the northern border, other than at a port-of-entry.* A citizen of Canada or a permanent resident of Canada who is a national of a country listed in § 217.2(a) of this chapter may, if in possession of a valid, unexpired, Canadian Border Boat Landing Permit(Form I–68) or evidence of enrollment in any other Service Alternative Inspections program (e.g., the Immigration and Naturalization Service Passenger Accelerated Service System (INSPASS) or the Port Passenger Accelerated Service System (PORTPASS)), enter the United States by means of a pleasure craft along the northern border of the United States from time-to-time without further inspection. No persons other than those described in this paragraph may participate in this program. Permanent residents of Canada who are nationals of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter must be in possession of a valid, unexpired passport issued by his or her country of nationality, and an unexpired multiple entry Form I–94W, Nonimmigrant Visa Waiver Arrival/Departure Form, or an unexpired passport, valid unexpired United States visa and I–94 Arrival/Departure Form. When an entry to the United States is made by a person who is a Canadian citizen or a permanent resident of Canada who is a

national of a designated Visa Waiver Program country listed in § 217.2(a) of this chapter, entry may be made under this program only for a purpose as described in section 101(a)(15)(B)(ii) of the Act as a visitor for pleasure. Persons seeking to enter the United States for any other purpose must do so at a port-of-entry staffed by immigration inspectors. Persons aboard a vessel which has crossed the international boundary between the United States and Canada and who do not intend to land in the United States, other than at a staffed port-of-entry, are not required to be in possession of Form I–68, Canadian Border Boat Landing Permit, or evidence of enrollment in an Alternative Inspections program merely because they have crossed the international boundary. However, the Service retains the right to conduct inspections or examinations of all persons applying for admission or readmission to or seeking transit through the United States in accordance with the Act.

(1) *Application*. An eligible applicant may apply for a Canadian Border Boat Landing Permit by completing the Form I–68 in triplicate. Application forms will be made readily available through the Internet, from a Service office, or by mail. A family may apply on a single application. For the purposes of this paragraph, a family is defined as a husband, wife, unmarried children under the age of 21, and the parents of either husband or wife, who reside at the same address. In order for the I–68 application to be considered complete, it must be accompanied by the following:

(i) For each person included on the application, evidence of citizenship, and, if not a citizen of the Untied States or Canada, evidence of legal permanent resident status in either the United States or Canada. Evidence of residency must be submitted by all applicants. It is not required that all persons on the application be of the same nationality; however, they must all be individually eligible to participate in this program.

(ii) If multiple members of a family, as defined in paragraph (e)(1) of this section, are included on a single application, evidence of the familial relationship.

(iii) A fee as prescribed in § 103.7(b)(1) of this chapter.

(iv) A copy of any previously approved Form I–68.

(v) A permanent resident of Canada who is a national of a Visa Waiver Program may apply for admission simultaneously with the Form I–68 application and thereby obtain a Form I–94 or I–94W.

(2) *Submission of Form I–68*. Except as indicated in this paragraph, Form I–68 shall be properly completed and submitted in person, along with the documentary evidence and the required fee as specified in § 103.7(b)(1) of this chapter, to a United States immigration officer at a Canadian border Port-of-Entry located within the district having jurisdiction over the applicant's residence or intended place of landing. Persons previously granted Form I–68 approval may apply by mail to the issuing Service office for renewal if a copy of the previous Form I–68 is included in the application. At the discretion of the district director concerned, any applicant for renewal of Form I–68 may be required to appear for an interview in person if the applicant does not appear to be clearly eligible for renewal.

(3) *Denial of Form I–68*. If the applicant has committed a violation of any immigration or customs regulation or, in the case of an alien, is inadmissible to the United States, approval of the Form I–68 shall be denied. However, if, in the exercise of discretion, the district director waives under section 212(d)(3) of the Act all applicable grounds of inadmissibility, the I–68 application may be approved for such non-citizens. If the Form I–68 application is denied, the applicant shall be given written notice of and the reasons for the denial by letter from the district director. There is no appeal from the denial of the Form I–68 application, but the denial is without prejudice to a subsequent application for this program or any other Service benefit, except that the applicant may not submit a subsequent Form I–68 application for 90 days after the date of the last denial.

(4) *Validity*. Form I–68 shall be valid for 1 year from the date of issuance, or until revoked or violated by the Service.

(5) *Conditions for participation in the I–68 program.* Upon being inspected and positively identified by an immigration officer and found admissible and eligible for participation in the I–68 program, a participant must agree to abide by the following conditions:

(i) Form I–68 may be used only when entering the United States by means of a vessel exclusively used for pleasure, including chartered vessels when such vessel has been chartered by an approved Form I–68 holder. When used by a person who is a not a citizen or a lawful permanent resident of the United States, admission shall be for a period not to exceed 72 hours to visit within 25 miles of the shore line along the northern border of the United States, including the shore line of Lake Michigan and Puget Sound.

(ii) Participants must be in possession of any authorization documents issued for participation in this program or another Service Alternative Inspections program (INSPASS or PORTPASS). Participants over the age of 15 years and who are not in possession of an INSPASS or PORTPASS enrollment card must also be in possession of a photographic identification document issued by a governmental agency. Participants who are permanent residents of Canada who are nationals of a Visa Waiver Program country listed in § 217.2(a) of this chapter must also be in possession of proper documentation as described in paragraph (e) of this section.

(iii) Participants may not import merchandise or transport controlled or restricted items while entering the United States under this program. The entry of any merchandise or goods must be in accordance with the laws and regulations of all Federal Inspection Services.

(iv) Participants must agree to random checks or inspections that may be conducted by the Service, at any time and at any location, to ensure compliance.

(v) Participants must abide by all Federal, state, and local laws regarding the importation of alcohol or agricultural products or the importation or possession of controlled substances as defined in section 101 of the Controlled Substance Act (21 U.S.C. 802).

(vi) Participants acknowledge that all devices, decals, cards, or other Federal Government supplied identification or technology used to identify or inspect persons or vessels seeking entry via this program remain the property of the United States Government at all times, and must be surrendered upon request by a Border Patrol Agent or any other officer of a Federal Inspection Service.

(vii) The captain, charterer, master, or owner (if aboard) of each vessel bringing persons into the United States is responsible for determining that all persons aboard the vessel are in possession of a valid, unexpired Form I–68 or other evidence of participation in a Service Alternative Inspections program (INSPASS or PORTPASS) prior to entry into the territorial waters of the United States. If any person on board is not in possession of such evidence, the captain, charterer, master, or owner must transport such person to a staffed United States Port-of-Entry for an in-person immigration inspection.

(6) *Revocation.* The district director, the chief patrol agent, or their designated representatives may revoke the designation of any participant who violates any condition of this program, as contained in paragraph (e)(5) of this section, or who has violated any immigration law or regulation, or a law or regulation of the United States Customs Service or other Federal Inspection Service, has abandoned his or her residence in the United States or Canada, is inadmissible to the United States, or who is otherwise determined by an immigration officer to be ineligible for continued participation in this program. Such persons may be subject to other applicable sanctions, such as criminal and/or administrative prosecution or deportation, as well as possible seizure of goods and/or vessels. If permission to participate is revoked, a written request to the district director for restoration of permission to participate may be made. The district director will notify the person of his or her decision and the reasons therefore in writing.

(7) *Compliance checking.* Participation in this program does not relieve the holder from responsibility to comply

with all other aspects of United States Immigration, Customs, or other Federal inspection service laws or regulations. To prevent abuse, the United States Immigration and Naturalization Service retains the right to conduct inspections or examinations of all persons applying for admission or readmission to or seeking transit through the United States in accordance with the Immigration and Nationality Act.

(h) *Form I–94, Arrival-Departure Record.* (1) Unless otherwise exempted, each arriving nonimmigrant who is admitted to the United States will be issued a Form I–94 as evidence of the terms of admission. For land border admission, a Form I–94 will be issued only upon payment of a fee, and will be considered issued for multiple entries unless specifically annotated for a limited number of entries. A Form I–94 issued at other than a land border port-of-entry, unless issued for multiple entries, must be surrendered upon departure from the United States in accordance with the instructions on the form. Form I–94 is not required by:

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.33 who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under § 212.1(b) of this chapter;

(iii) Except as provided in paragraph (f)(1)(v) of this section, any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1)(i) of this chapter and is admitted for a period not to exceed 30 days to visit within 25 miles of the border; or

(B) In possession of a valid visa and passport or exempt from a visa and passport pursuant to § 212.1(c)(1)(ii) of this chapter; and is admitted for a period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Bearers of Mexican diplomatic or official passports described in § 212.1(c) of this chapter; or

(v) Any Mexican national admitted as a nonimmigrant visitor who is:

(A) Exempt from a visa and passport pursuant to § 212.1(c)(1)(i) of this chapter and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 30 days; or

(B) In possession of a valid visa and passport or exempt from a visa and passport pursuant to § 212.1(c)(1)(ii) of this chapter; and is admitted at the Mexican border POEs in the State of Arizona at Sasabe, Nogales, Mariposa, Naco or Douglas to visit within the State of Arizona within 75 miles of the border for a period not to exceed 72 hours.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I–94, endorsed with the parole stamp.

[62 FR 10353, Mar. 6, 1997, as amended at 62 FR 47751, Sept. 11, 1997; 64 FR 8494, Feb. 19, 1999; 64 FR 36561, July 7, 1999; 64 FR 68617, Dec. 8, 1999; 67 FR 71449, Dec. 2, 2002; 68 FR 5193, Jan. 31, 2003; 69 FR 480, Jan. 5, 2004; 69 FR 50053, Aug. 13, 2004; 69 FR 53333, Aug. 31, 2004; 69 FR 58037, Sept. 29, 2004; 71 FR 68429, Nov. 24, 2006; 73 FR 77491, Dec. 19, 2008; 74 FR 2837, Jan. 16, 2009; 73 FR 18416, Apr. 3, 2008]

§ 235.2 Parole for deferred inspection.

(a) A district director may, in his or her discretion, defer the inspection of any vessel or aircraft, or of any alien, to another Service office or port-of-entry. Any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was deferred, shall be regarded as an applicant for admission at that onward port.

(b) An examining immigration officer may defer further examination and refer the alien's case to the district director having jurisdiction over the place where the alien is seeking admission, or over the place of the alien's residence or destination in the United States, if the examining immigration officer has reason to believe that the alien can overcome a finding of inadmissibility by:

(1) Posting a bond under section 213 of the Act;

(2) Seeking and obtaining a waiver under section 211 or 212(d)(3) or (4) of the Act; or

(3) Presenting additional evidence of admissibility not available at the time and place of the initial examination.

(c) Such deferral shall be accomplished pursuant to the provisions of section 212(d)(5) of the Act for the period of time necessary to complete the deferred inspection.

(d) Refusal of a district director to authorize admission under section 213 of the Act, or to grant an application for the benefits of section 211 or section 212(d) (3) or (4) of the Act, shall be without prejudice to the renewal of such application or the authorizing of such admission by the immigration judge without additional fee.

(e) Whenever an alien on arrival is found or believed to be suffering from a disability that renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his or her family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

[62 FR 10355, Mar. 6, 1997]

§ 235.3 Inadmissible aliens and expedited removal.

(a) *Detention prior to inspection*. All persons arriving at a port-of-entry in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required. The owner, agent, master, commanding officer, person in charge, purser, or consignee of such vessel or aircraft shall deliver every alien requiring examination to an immigration officer for inspection or to a medical officer for examination. The Service will not be liable for any expenses related to such detention or presentation or for any expenses of a passenger who has not been presented for inspection and for whom a determination has not been made concerning admissibility by a Service officer.

(b) *Expedited removal*—(1) *Applicability*. The expedited removal provisions shall apply to the following classes of aliens who are determined to be inadmissible under section 212(a)(6)(C) or (7) of the Act:

(i) Arriving aliens, as defined in § 1.1(q) of this chapter, except for citizens of Cuba arriving at a United States port-of-entry by aircraft;

(ii) As specifically designated by the Commissioner, aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled following inspection by an immigration officer at a designated port-of-entry, and who have not established to the satisfaction of the immigration officer that they have been physically present in the United States continuously for the 2-year period immediately prior to the date of determination of inadmissibility. The Commissioner shall have the sole discretion to apply the provisions of section 235(b)(1) of the Act, at any time, to any class of aliens described in this section. The Commissioner's designation shall become effective upon publication of a notice in the FEDERAL REGISTER. However, if the Commissioner determines, in the exercise of discretion, that the delay caused by publication would adversely affect the interests of the United States or the effective enforcement of the immigration laws, the Commissioner's designation shall become effective immediately upon issuance, and shall be published in the FEDERAL REGISTER as soon as practicable thereafter. When these provisions are in effect for aliens who enter without inspection, the burden of proof rests with the alien to affirmatively show that he or she has the required continuous physical presence in the United States. Any absence from the United States shall serve to break the period of continuous physical presence. An alien who was not inspected and admitted or paroled into the United States but who establishes that

he or she has been continuously physically present in the United States for the 2-year period immediately prior to the date of determination of inadmissibility shall be detained in accordance with section 235(b)(2) of the Act for a proceeding under section 240 of the Act.

(2) *Determination of inadmissibility*—(i) *Record of proceeding.* An alien who is arriving in the United States, or other alien as designated pursuant to paragraph (b)(1)(ii) of this section, who is determined to be inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act (except an alien for whom documentary requirements are waived under § 211.1(b)(3) or § 212.1 of this chapter), shall be ordered removed from the United States in accordance with section 235(b)(1) of the Act. In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien. This shall be accomplished by means of a sworn statement using Form I–867AB, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act. The examining immigration officer shall read (or have read) to the alien all information contained on Form I–867A. Following questioning and recording of the alien's statement regarding identity, alienage, and inadmissibility, the examining immigration officer shall record the alien's response to the questions contained on Form I–867B, and have the alien read (or have read to him or her) the statement, and the alien shall sign and initial each page of the statement and each correction. The examining immigration officer shall advise the alien of the charges against him or her on Form I–860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges in the sworn statement. After obtaining supervisory concurrence in accordance with paragraph (b)(7) of this section, the examining immigration official shall serve the alien with Form I–860 and the alien shall sign the reverse of the form acknowledging receipt. Interpretative assistance shall be used if necessary to communicate with the alien.

(ii) *No entitlement to hearings and appeals.* Except as otherwise provided in this section, such alien is not entitled to a hearing before an immigration judge in proceedings conducted pursuant to section 240 of the Act, or to an appeal of the expedited removal order to the Board of Immigration Appeals.

(iii) *Detention and parole of alien in expedited removal.* An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal, except that parole of such alien, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(3) *Additional charges of inadmissibility.* In the expedited removal process, the Service may not charge an alien with any additional grounds of inadmissibility other than section 212(a)(6)(C) or 212(a)(7) of the Act. If an alien appears to be inadmissible under other grounds contained in section 212(a) of the Act, and if the Service wishes to pursue such additional grounds of inadmissibility, the alien shall be detained and referred for a removal hearing before an immigration judge pursuant to sections 235(b)(2) and 240 of the Act for inquiry into all charges. Once the alien is in removal proceedings under section 240 of the Act, the Service is not precluded from lodging additional charges against the alien. Nothing in this paragraph shall preclude the Service from pursuing such additional grounds of inadmissibility against the alien in any subsequent attempt to reenter the United States, provided the additional grounds of inadmissibility still exist.

(4) *Claim of asylum or fear of persecution or torture.* If an alien subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred

for an interview by an asylum officer in accordance with 8 CFR 208.30. The examining immigration officer shall record sufficient information in the sworn statement to establish and record that the alien has indicated such intention, fear, or concern, and to establish the alien's inadmissibility.

(i) *Referral*. The referring officer shall provide the alien with a written disclosure on Form M–444, Information About Credible Fear Interview, describing:

(A) The purpose of the referral and description of the credible fear interview process;

(B) The right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government;

(C) The right to request a review by an immigration judge of the asylum officer's credible fear determination; and

(D) The consequences of failure to establish a credible fear of persecution or torture.

(ii) *Detention pending credible fear interview*. Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained. Parole of such alien in accordance with section 212(d)(5) of the Act may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective. Prior to the interview, the alien shall be given time to contact and consult with any person or persons of his or her choosing. Such consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained, shall be at no expense to the government, and shall not unreasonably delay the process.

(5) *Claim to lawful permanent resident, refugee, or asylee status or U.S. citizenship*—(i) *Verification of status*. If an applicant for admission who is subject to expedited removal pursuant to section 235(b)(1) of the Act claims to have been lawfully admitted for permanent residence, admitted as a refugee under section 207 of the Act, granted asylum under section 208 of the Act, or claims to be a U.S. citizen, the immigration officer shall attempt to verify the alien's claim. Such verification shall include a check of all available Service data systems and any other means available to the officer. An alien whose claim to lawful permanent resident, refugee, asylee status, or U.S. citizen status cannot be verified will be advised of the penalties for perjury, and will be placed under oath or allowed to make a declaration as permitted under 28 U.S.C. 1746, concerning his or her lawful admission for permanent residence, admission as a refugee under section 207 of the Act, grant of asylum status under section 208 of the Act, or claim to U.S. citizenship. A written statement shall be taken from the alien in the alien's own language and handwriting, stating that he or she declares, certifies, verifies, or states that the claim is true and correct. The immigration officer shall issue an expedited order of removal under section 235(b)(1)(A)(i) of the Act and refer the alien to the immigration judge for review of the order in accordance with paragraph (b)(5)(iv) of this section and § 235.6(a)(2)(ii). The person shall be detained pending review of the expedited removal order under this section. Parole of such person, in accordance with section 212(d)(5) of the Act, may be permitted only when the Attorney General determines, in the exercise of discretion, that parole is required to meet a medical emergency or is necessary for a legitimate law enforcement objective.

(ii) *Verified lawful permanent residents*. If the claim to lawful permanent resident status is verified, and such status has not been terminated in exclusion, deportation, or removal proceedings, the examining immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. The examining immigration officer will determine in accordance with section 101(a)(13)(C) of the Act whether the alien is considered to be making an application for admission. If the alien is determined to be seeking admission and the alien is otherwise admissible, except that he or she is not in possession of the required documentation, a discretionary waiver of documentary requirements may be considered in accordance with section 211(b) of the Act

and § 211.1(b)(3) of this chapter or the alien's inspection may be deferred to an onward office for presentation of the required documents. If the alien appears to be inadmissible, the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iii) *Verified refugees and asylees.* If a check of Service records or other means indicates that the alien has been granted refugee status or asylee status, and such status has not been terminated in deportation, exclusion, or removal proceedings, the immigration officer shall not order the alien removed pursuant to section 235(b)(1) of the Act. If the alien is not in possession of a valid, unexpired refugee travel document, the examining immigration officer may accept an application for a refugee travel document in accordance with § 223.2(b)(2)(ii) of this chapter. If accepted, the immigration officer shall readmit the refugee or asylee in accordance with § 223.3(d)(2)(i) of this chapter. If the alien is determined not to be eligible to file an application for a refugee travel document the immigration officer may initiate removal proceedings against the alien under section 240 of the Act.

(iv) *Review of order for claimed lawful permanent residents, refugees, asylees, or U.S. citizens.* A person whose claim to U.S. citizenship has been verified may not be ordered removed. When an alien whose status has not been verified but who is claiming under oath or under penalty of perjury to be a lawful permanent resident, refugee, asylee, or U.S. citizen is ordered removed pursuant to section 235(b)(1) of the Act, the case will be referred to an immigration judge for review of the expedited removal order under section 235(b)(1)(C) of the Act and § 235.6(a)(2)(ii). If the immigration judge determines that the alien has never been admitted as a lawful permanent resident or as a refugee, granted asylum status, or is not a U.S. citizen, the order issued by the immigration officer will be affirmed and the Service will remove the alien. There is no appeal from the decision of the immigration judge. If the immigration judge determines that the alien was once so admitted as a lawful permanent resident or as a refugee, or was granted asylum status, or is a U.S. citizen, and such status has not been terminated by final administrative action, the immigration judge will terminate proceedings and vacate the expedited removal order. The Service may initiate removal proceedings against such an alien, but not against a person determined to be a U.S. citizen, in proceedings under section 240 of the Act. During removal proceedings, the immigration judge may consider any waivers, exceptions, or requests for relief for which the alien is eligible.

(6) *Opportunity for alien to establish that he or she was admitted or paroled into the United States.* If the Commissioner determines that the expedited removal provisions of section 235(b)(1) of the Act shall apply to any or all aliens described in paragraph (b)(2)(ii) of this section, such alien will be given a reasonable opportunity to establish to the satisfaction of the examining immigration officer that he or she was admitted or paroled into the United States following inspection at a port-of-entry. The alien will be allowed to present evidence or provide sufficient information to support the claim. Such evidence may consist of documentation in the possession of the alien, the Service, or a third party. The examining immigration officer will consider all such evidence and information, make further inquiry if necessary, and will attempt to verify the alien's status through a check of all available Service data systems. The burden rests with the alien to satisfy the examining immigration officer of the claim of lawful admission or parole. If the alien establishes that he or she was lawfully admitted or paroled, the case will be examined to determine if grounds of deportability under section 237(a) of the Act are applicable, or if paroled, whether such parole has been, or should be, terminated, and whether the alien is inadmissible under section 212(a) of the Act. An alien who cannot satisfy the examining officer that he or she was lawfully admitted or paroled will be ordered removed pursuant to section 235(b)(1) of the Act.

(7) *Review of expedited removal orders.* Any removal order entered by an examining immigration officer pursuant to

section 235(b)(1) of the Act must be reviewed and approved by the appropriate supervisor before the order is considered final. Such supervisory review shall not be delegated below the level of the second line supervisor, or a person acting in that capacity. The supervisory review shall include a review of the sworn statement and any answers and statements made by the alien regarding a fear of removal or return. The supervisory review and approval of an expedited removal order for an alien described in section 235(b)(1)(A)(iii) of the Act must include a review of any claim of lawful admission or parole and any evidence or information presented to support such a claim, prior to approval of the order. In such cases, the supervisor may request additional information from any source and may require further interview of the alien.

(8) *Removal procedures relating to expedited removal.* An alien ordered removed pursuant to section 235(b)(1) of the Act shall be removed from the United States in accordance with section 241(c) of the Act and 8 CFR part 241.

(9) *Waivers of documentary requirements.* Nothing in this section limits the discretionary authority of the Attorney General, including authority under sections 211(b) or 212(d) of the Act, to waive the documentary requirements for arriving aliens.

(10) *Applicant for admission under section 217 of the Act.* The provisions of § 235.3(b) do not apply to an applicant for admission under section 217 of the Act.

(c) *Arriving aliens placed in proceedings under section 240 of the Act.* Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act. Parole of such alien shall only be considered in accordance with § 212.5(b) of this chapter. This paragraph shall also apply to any alien who arrived before April 1, 1997, and who was placed in exclusion proceedings.

(d) *Service custody.* The Service will assume custody of any alien subject to detention under paragraph (b) or (c) of this section. In its discretion, the Service may require any alien who appears inadmissible and who arrives at a land border port-of-entry from Canada or Mexico, to remain in that country while awaiting a removal hearing. Such alien shall be considered detained for a proceeding within the meaning of section 235(b) of the Act and may be ordered removed in absentia by an immigration judge if the alien fails to appear for the hearing.

(e) *Detention in non-Service facility.* Whenever an alien is taken into Service custody and detained at a facility other than at a Service Processing Center, the public or private entities contracted to perform such service shall have been approved for such use by the Service's Jail Inspection Program or shall be performing such service under contract in compliance with the Standard Statement of Work for Contract Detention Facilities. Both programs are administered by the Detention and Deportation section having jurisdiction over the alien's place of detention. Under no circumstances shall an alien be detained in facilities not meeting the four mandatory criteria for usage. These are:

(1) 24-Hour supervision,

(2) Conformance with safety and emergency codes,

(3) Food service, and

(4) Availability of emergency medical care.

(f) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to § 236.1(e) of this chapter apply when an inadmissible alien is detained for removal proceedings, including for purpose of conducting the credible fear determination.

[62 FR 10355, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999; 65 FR 82256, Dec. 28, 2000; 69 FR 69490, Nov. 29, 2004]

§ 235.4 Withdrawal of application for admission.

The Attorney General may, in his or her discretion, permit any alien applicant for admission to withdraw his or her application for admission in lieu of removal proceedings under section 240 of the Act or expedited removal under section 235(b)(1) of the Act. The alien's

decision to withdraw his or her application for admission must be made voluntarily, but nothing in this section shall be construed as to give an alien the right to withdraw his or her application for admission. Permission to withdraw an application for admission should not normally be granted unless the alien intends and is able to depart the United States immediately. An alien permitted to withdraw his or her application for admission shall normally remain in carrier or Service custody pending departure, unless the district director determines that parole of the alien is warranted in accordance with § 212.5(b) of this chapter.

[62 FR 10358, Mar. 6, 1997; 62 FR 15363, Apr. 1, 1997; 65 FR 82256, Dec. 28, 2000]

§ 235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, the Commonwealth of the Northern Mariana Islands (beginning November 28, 2009), Puerto Rico, or the United States Virgin Islands destined directly and without touching at a foreign port or place, to any other of such places, or to one of the States of the United States or the District of Columbia, the examination of the passengers and crew required by the Act may be made prior to the departure of the aircraft, and in such event, final determination of admissibility will be made immediately prior to such departure. The examination will be conducted in accordance with sections 232, 235, and 240 of the Act and 8 CFR parts 235 and 240. If it appears to the immigration officer that any person in the United States being examined under this section is prima facie removable from the United States, further action with respect to his or her examination will be deferred and further proceedings regarding removability conducted as provided in section 240 of the Act and 8 CFR part 240. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible will be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person will be permitted to depart on such aircraft until and unless he or she is found to be admissible as provided in this section.

(b) *In foreign territory.* In the case of any aircraft, vessel, or train proceeding directly, without stopping, from a port or place in foreign territory to a port-of-entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in the foreign territory and shall have the same effect under the Act as though made at the destined port-of-entry in the United States.

[62 FR 10358, Mar. 6, 1997, as amended at 74 FR 2836, Jan. 16, 2009; 74 FR 25388, May 28, 2009]

§ 235.6 Referral to immigration judge.

(a) *Notice*—(1) *Referral by Form I–862, Notice to Appear.* An immigration officer or asylum officer will sign and deliver a Form I–862 to an alien in the following cases:

(i) If, in accordance with the provisions of section 235(b)(2)(A) of the Act, the examining immigration officer detains an alien for a proceeding before an immigration judge under section 240 of the Act; or

(ii) If an asylum officer determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and refers the case to the immigration judge for consideration of the application for asylum, except that, prior to January 1, 2015, an alien arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but the immigration judge may consider eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iii) If the immigration judge determines that an alien in expedited removal proceedings has a credible fear of persecution or torture and vacates the expedited removal order issued by the asylum officer, except that, prior to January 1, 2015, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is not eligible to apply for asylum but an immigration judge may consider eligibility for withholding of removal

pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture.

(iv) If an immigration officer verifies that an alien subject to expedited removal under section 235(b)(1) of the Act has been admitted as a lawful permanent resident refugee, or asylee, or upon review pursuant to § 235.3(b)(5)(iv) an immigration judge determines that the alien was once so admitted, provided that such status has not been terminated by final administrative action, and the Service initiates removal proceedings against the alien under section 240 of the Act.

(2) *Referral by Form I–863, Notice of Referral to Immigration Judge.* An immigration officer will sign and deliver a Form I–863 to an alien in the following cases:

(i) If an asylum officer determines that an alien does not have a credible fear of persecution or torture, and the alien requests a review of that determination by an immigration judge; or

(ii) If, in accordance with section 235(b)(1)(C) of the Act, an immigration officer refers an expedited removal order entered on an alien claiming to be a lawful permanent resident, refugee, asylee, or U.S. citizen for whom the officer could not verify such status to an immigration judge for review of the order.

(iii) If an immigration officer refers an applicant described in § 208.2(b)(1) of this chapter to an immigration judge for an asylum hearing under § 208.2(b)(2) of this chapter.

(b) *Certification for mental condition; medical appeal.* An alien certified under sections 212(a)(1) and 232(b) of the Act shall be advised by the examining immigration officer that he or she may appeal to a board of medical examiners of the United States Public Health Service pursuant to section 232 of the Act. If such appeal is taken, the district director shall arrange for the convening of the medical board.

[62 FR 10358, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999; 74 FR 55739, Oct. 28, 2009]

§ 235.7 Automated inspection services.

(a) *PORTPASS Program*—(1) *Definitions*—(i) *Port Passenger Accelerated Service System (PORTPASS).* A system in which certain ports-of-entry (POEs) are identified and designated by the Service as providing access to the United States for a group of identified, low-risk, border crossers. Alien participants in the PORTPASS program are personally inspected, identified, and screened in advance of approval for participation in the program by an immigration officer, and may apply to enter the United States through a dedicated commuter lane (DCL) or through an automated permit port (APP). Such advance inspection and identification, when the enrolled participant satisfies the conditions and requirements set fourth in this section, satisfies the reporting requirements of § 235.1(a). Each successful use of PORTPASS constitutes a separate and completed inspection and application for entry by the alien program participants on the date PORTPASS is used. United States citizens who meet the eligibility requirements for participation are subject to all rules, procedures, and conditions for use set forth in this section.

(ii) *Automated Permit Port (APP).* A POE designated by the Service to provide access to the United States by an identified, low-risk, border crosser through the use of automation when the POE is not staffed. An APP has limited hours of operation and is located at a remote location on a land border. This program is limited to the northern border of the United States.

(iii) *Dedicated Commuter Lane (DCL).* A special lane set apart from the normal flow of traffic at a land border POE which allows an accelerated inspection for identified, low-risk travelers. This program is limited to the northern border of the United States and the California-Mexico border.

(iv) *DCL system costs fee.* A fee charged to a participant to cover the cost of the implementation and operation of the PORTPASS system. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed an *additional vehicle fee* for each additional vehicle enrolled. Regardless of when the additional vehicle is enrolled, the expiration date for use of that vehicle in the DCL will be the same date that the respective participant's authorized

use of the lane expires, or is otherwise revoked.

(2) *Designation of POEs for PORTPASS access.* The following criteria shall be used by the Service in the selection of a POE when classifying the POE as having PORTPASS access:

(i) The location has an identifiable group of low-risk border crossers;

(ii) The institution of PORTPASS access will not significantly inhibit normal traffic flow;

(iii) The POE selected for access via a DCL has a sufficient number of Service personnel to perform primary and secondary inspection functions.

(3) *General eligibility requirements for PORTPASS program applicants.* Applicants to PORTPASS must be citizens or lawful permanent residents of the United States, or nonimmigrants determined to be eligible by the Commissioner of the Service. Non-United States citizens must meet all applicable documentary and entry eligibility requirements of the Act. Applicants must agree to furnish all information requested on the application, and must agree to terms set forth for use of the PORTPASS program. Use of the PORTPASS program constitutes application for entry into the United States. Criminal justice information databases will be checked to assist in determining the applicant's eligibility for the PORTPASS program at the time the Form I–823, Application—Alternative Inspection Services, is submitted. Criminal justice information on PORTPASS participants will be updated regularly, and the results will be checked electronically at the time of each approved participant's use of PORTPASS. Notwithstanding the provisions of 8 CFR part 264, fingerprints on Form FD–258 or in the manner prescribed by the Service may be required.

(4) *Application.* (i) Application for PORTPASS access shall be made on Form I–823, Application—Alternative Inspection Services. Applications may be submitted during regular working hours at the principal Port-of-Entry having jurisdiction over the Port-of-Entry for which the applicant requests access. Applications may also be submitted by mail.

(ii) Each person seeking PORTPASS access must file a separate application.

(iii) The number of persons and vehicles which can use a DCL is limited numerically by the technology of the system. For this reason, distribution of applications at each POE may be limited.

(iv) Applications must be supported by evidence of citizenship, and, in the case of lawful permanent residents of the United States, evidence of lawful permanent resident status in the United States. Alien applicants required to possess a valid visa must present documentation establishing such possession and any other documentation as required by the Act at the time of the application, and must be in possession of such documentation at the time of each entry, and at all times while present in the United States. Evidence of residency must be submitted by all applicants. Evidence of employment may be required to be furnished by the applicant. A current valid driver's license, and evidence of vehicle registration and insurance for the vehicle which will be occupied by the applicant as a driver or passenger when he or she uses the DCL or APP must be presented to the Service prior to approval of the application.

(v) A completed Form I–823 must be accompanied by the fee as prescribed in § 103.7(b)(1) of this chapter. Each PORTPASS applicant 14 years-of-age or older must complete the application and pay the application fee. Applicants under the age of 14 will be required to complete the application, but will not be required to pay the application fee. An application for a replacement PORTPASS card must be made on the Form I–823, and filed with the fee prescribed in § 103.7(b)(1). The district director having jurisdiction over the POE where the applicant requests access may, in his or her discretion, waive the application or replacement fee.

(vi) If fingerprints are required to assist in a determination of eligibility at that POE, the applicant will be so advised by the Service prior to submitting his or her application. The applicant shall also be informed at that time of the current Federal Bureau of Investigation fee for conducting a fingerprint check. This fee must be paid by the applicant to the Service before

any processing of the application shall occur. The fingerprint fee may be not be waived.

(vii) Each applicant must present himself or herself for an inspection and/or positive identification at a time designated by the Service prior to approval of the application.

(viii) Each vehicle that a PORTPASS participant desires to register in PORTPASS must be inspected and approved by the Service prior to use in the PORTPASS system. Evidence of valid, current registration and vehicle insurance must be presented to the Service at the time the vehicle is inspected. If the vehicle is not owned by the participant, the participant may be required to present written permission from the registered owner authorizing use of the vehicle in the PORTPASS program throughout the PORTPASS registration period.

(ix) An applicant, whether an occupant or driver, may apply to use more than one vehicle in the DCL. The first vehicle listed on the Form I–823 will be designated as the applicant's primary vehicle. The second vehicle, if not designated by another applicant as his or her primary vehicle, is subject to the additional vehicle charge as prescribed by the Service.

(x) An application may be denied in the discretion of the district director having jurisdiction over the POE where the applicant requests access. Notice of such denial shall be given to the applicant. There is no appeal from the denial, but denial is without prejudice to reapplying for this or any other Service benefit. Re-applications, or applications following revocation of permission to use the lane, will not be considered by the Service until 90 days have passed following the date of denial or revocation. Criteria which will be considered in the decision to approve or deny the application include the following: admissibility to the United States and documentation so evidencing, criminal history and/or evidence of criminality, purpose of travel, employment, residency, prior immigration history, possession of current driver's license, vehicle insurance and registration, and vehicle inspection.

(xi) Applications approved by the Service will entitle the applicant to seek entry via a designated PORTPASS Program POE for a period of 2 years from the date of approval of the application unless approval is otherwise withdrawn. An application for a replacement card will not extend the initial period of approval.

(5) By applying for and participating in the PORTPASS program, each approved participant acknowledges and agrees to all of the following:

(i) The installation and/or use of, in the vehicle approved for use in the PORTPASS program, any and all decals, devices, technology or other methodology deemed necessary by the Service to ensure inspection of the person(s) seeking entry through a DCL, in addition to any fee and/or monetary deposit assessed by the Service pending return of any and all such decals, devices, technology, and other methodology in undamaged condition.

(ii) That all devices, decals, or other equipment, methodology, or technology used to identify or inspect persons or vehicles seeking entry via any PORTPASS program remains the property of the United States Government at all times, and must be surrendered upon request by the Service. Each participant agrees to abide by the terms set forth by the Service for use of any device, decal, or other equipment, method or technology.

(iii) The payment of a system costs fee as determined by the Service to be necessary to cover the costs of implementing, maintaining, and operating the PORTPASS program.

(iv) That each occupant of a vehicle applying for entry through PORTPASS must have current approval from the Service to apply for entry through the PORTPASS program in that vehicle.

(v) That a participant must be in possession of any authorization document(s) issued for PORTPASS access and any other entry document(s) as required by the Act or by regulation at the time of each entry to the United States.

(vi) That a participant must positively identify himself or herself in the manner prescribed by the Service at the time of each application for entry via the PORTPASS.

(vii) That each use of PORTPASS constitutes a separate application for

entry to the United States by the alien participant.

(viii) That each participant agrees to be responsible for all contents of the vehicle that he or she occupies when using PORTPASS.

(ix) That a participant may not import merchandise or transport controlled or restricted items using PORTPASS. The entry of any merchandise or goods must be in accordance with the laws and regulations of all other Federal inspection agencies.

(x) That a participant must abide by all Federal, state and local laws regarding the importation of alcohol or agricultural products or the importation or possession of controlled substances as defined in section 101 of the Controlled Substance Act (21 U.S.C. § 802).

(xi) That a participant will be subject to random checks or inspections that may be conducted by the Service at any time and at any location, to ensure compliance.

(xii) That current vehicle registration and, if applicable, current permission to use the vehicle in PORTPASS, and evidence of current vehicle insurance, shall be in the vehicle at all times during use of PORTPASS.

(xiii) Participant agrees to notify the Service if a vehicle approved for use in a PORTPASS program is sold, stolen, damaged, or disposed of otherwise. If a vehicle is sold, it is the responsibility of the participant to remove or obliterate any identifying device or other authorization for participation in the program or at the time of sale unless otherwise notified by the Service. If any license plates are replaced on an enrolled vehicle, the participant must submit a properly executed Form I–823, without fee, prior to use of the vehicle in the PORTPASS program.

(xiv) That APP-approved participants who wish to enter the United States through a POE other than one designated as an APP through which they may pass must present themselves for inspection or examination by an immigration officer during normal business hours. Entry to the United States during hours when a Port of Entry is not staffed may be made only through a POE designated as an APP.

(b) *Violation of condition of the PORTPASS program.* A PORTPASS program participant who violates any condition of the PORTPASS program, or who has violated any immigration law or regulation, or a law or regulation of the United States Customs Service or other Federal Inspection Service, or who is otherwise determined by an immigration officer to be inadmissible to the United States or ineligible to participate in PORTPASS, may have the PORTPASS access revoked at the discretion of the district director or the chief patrol agent and may be subject to other applicable sanctions, such as criminal and/or administrative prosecution or deportation, as well as possible seizure of goods and/or vehicles.

(c) *Judicial review.* Nothing in this section is intended to create any right or benefit, substantive or procedural, enforceable in law or equity by a party against the Department of Justice, the Immigration and Naturalization Service, their officers or any employees of the Department of Justice.

[61 FR 53831, Oct. 16, 1996. Redesignated at 62 FR 10358, Mar. 6, 1997; 68 FR 10145, Mar. 4, 2003]

§ 235.8 Inadmissibility on security and related grounds.

(a) *Report.* When an immigration officer or an immigration judge suspects that an arriving alien appears to be inadmissible under section 212(a)(3)(A) (other than clause (ii)), (B), or (C) of the Act, the immigration officer or immigration judge shall order the alien removed and report the action promptly to the district director who has administrative jurisdiction over the place where the alien has arrived or where the hearing is being held. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I–147, Notice of Temporary Inadmissibility, of the action taken and the right to submit a written statement and additional information for consideration by the Attorney General. The district director shall forward the report to the regional director for further action as provided in paragraph (b) of this section.

(b) *Action by regional director*. (1) In accordance with section 235(c)(2)(B) of the Act, the regional director may deny any further inquiry or hearing by an immigration judge and order the alien removed by personal service of Form I–148, Notice of Permanent Inadmissibility, or issue any other order disposing of the case that the regional director considers appropriate.

(2) If the regional director concludes that the case does not meet the criteria contained in section 235(c)(2)(B) of the Act, the regional director may direct that:

(i) An immigration officer shall conduct a further examination of the alien, concerning the alien's admissibility; or,

(ii) The alien's case be referred to an immigration judge for a hearing, or for the continuation of any prior hearing.

(3) The regional director's decision shall be in writing and shall be signed by the regional director. Unless the written decision contains confidential information, the disclosure of which would be prejudicial to the public interest, safety, or security of the United States, the written decision shall be served on the alien. If the written decision contains such confidential information, the alien shall be served with a separate written order showing the disposition of the case, but with the confidential information deleted.

(4) The Service shall not execute a removal order under this section under circumstances that violate section 241(b)(3) of the Act or Article 3 of the Convention Against Torture. The provisions of part 208 of this chapter relating to consideration or review by an immigration judge, the Board of Immigration Appeals, or an asylum officer shall not apply.

(c) *Finality of decision*. The regional director's decision under this section is final when it is served upon the alien in accordance with paragraph (b)(3) of this section. There is no administrative appeal from the regional director's decision.

(d) *Hearing by immigration judge*. If the regional director directs that an alien subject to removal under this section be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 240 of the Act and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer. In a case where the immigration judge ordered the alien removed pursuant to paragraph (a) of this section, the Service shall refer the case back to the immigration judge and proceedings shall be automatically reopened upon receipt of the notice of referral. If confidential information, not previously considered in the matter, is presented supporting the inadmissibility of the alien under section 212(a)(3)(A) (other than clause (ii)), (B) or (C) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again order the alien removed under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

(e) *Nonapplicability*. The provisions of this section shall apply only to arriving aliens, as defined in § 1.1(q) of this chapter. Aliens present in the United States who have not been admitted or paroled may be subject to proceedings under Title V of the Act.

[62 FR 10358, Mar. 6, 1997, as amended at 64 FR 8494, Feb. 19, 1999]

§ 235.9 Northern Marianas identification card.

During the two-year period that ended July 1, 1990, the Service issued Northern Marianas Identification Cards to aliens who acquired United States citizenship when the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States entered into force on November 3, 1986. These cards remain valid as evidence of United States citizenship. Although the Service no longer issues these cards, a United States citizen to whom a card was issued may file Form I–777, Application for Issuance or Replacement of Northern Marianas Card, to obtain replacement of a lost, stolen, or

mutilated Northern Marianas Identification Card.

[62 FR 10359, Mar. 6, 1997]

§ 235.10 U.S. Citizen Identification Card.

(a) *General*. Form I–197, U.S. Citizen Identification Card, is no longer issued by the Service but valid existing cards will continue to be acceptable documentation of U.S. citizenship. Possession of the identification card is not mandatory for any purpose. A U.S. Citizen Identification Card remains the property of the United States. Because the identification card is no longer issued, there are no provisions for replacement cards.

(b) *Surrender and voidance*—(1) *Institution of proceeding under section 240 or 342 of the Act*. A U.S. Citizen Identification Card must be surrendered provisionally to a Service office upon notification by the district director that a proceeding under section 240 or 342 of the Act is being instituted against the person to whom the card was issued. The card shall be returned to the person if the final order in the proceeding does not result in voiding the card under this paragraph. A U.S. Citizen Identification Card is automatically void if the person to whom it was issued is determined to be an alien in a proceeding conducted under section 240 of the Act, or if a certificate, document, or record relating to that person is canceled under section 342 of the Act.

(2) *Investigation of validity of identification card*. A U.S. Citizen Identification Card must be surrendered provisionally upon notification by a district director that the validity of the card is being investigated. The card shall be returned to the person who surrendered it if the investigation does not result in a determination adverse to his or her claim to be a United States citizen. When an investigation results in a tentative determination adverse to the applicant's claim to be a United States citizen, the applicant shall be notified by certified mail directed to his or her last known address. The notification shall inform the applicant of the basis for the determination and of the intention of the district director to declare the card void unless within 30 days the applicant objects and demands an opportunity to see and rebut the adverse evidence. Any rebuttal, explanation, or evidence presented by the applicant must be included in the record of proceeding. The determination whether the applicant is a United States citizen must be based on the entire record and the applicant shall be notified of the determination. If it is determined that the applicant is not a United States citizen, the applicant shall be notified of the reasons, and the card deemed void. There is no appeal from the district director's decision.

(3) *Admission of alienage*. A U.S. Citizen Identification Card is void if the person to whom it was issued admits in a statement signed before an immigration officer that he or she is an alien and consents to the voidance of the card. Upon signing the statement the card must be surrendered to the immigration officer.

(4) *Surrender of void card*. A void U.S. Citizen Identification Card which has not been returned to the Service must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(c) *U.S. Citizen Identification Card previously issued on Form I–179*. A valid Form I–179, U.S. Citizen Identification Card, continues to be valid subject to the provisions of this section.

[62 FR 10359, Mar. 6, 1997]

§ 235.11 Admission of conditional permanent residents.

(a) *General*—(1) *Conditional residence based on family relationship*. An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of 2 years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Form I–751, Petition to Remove the Conditions on Residence, within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

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

(b) *Correction of endorsement on immigrant visa.* If the alien is subject to the provisions of section 216 of the Act, but the classification endorsed on the immigrant visa does not so indicate, the endorsement shall be corrected and the alien shall be admitted as a lawful permanent resident on a conditional basis, if otherwise admissible. Conversely, if the alien is not subject to the provisions of section 216 of the Act, but the visa classification endorsed on the immigrant visa indicates that the alien is subject thereto (e.g., if the second anniversary of the marriage upon which the immigrant visa is based occurred after the issuance of the visa and prior to the alien's application for admission) the endorsement on the visa shall be corrected and the alien shall be admitted as a lawful permanent resident without conditions, if otherwise admissible.

(c) *Expired conditional permanent resident status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Form I–751, Petition to Remove the Conditions on Residence or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), Form I–829, Petition by Entrepreneur to Remove Conditions. Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in §211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under removal proceedings. However, in a case where conditional residence was based on a marriage, removal proceedings may be terminated and the alien may be admitted as a returning resident if the required Form I–751 is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, removal proceedings may be terminated and the alien admitted as a returning resident if the required Form I–829 is filed by the alien entrepreneur and approved by the Service.

[62 FR 10360, Mar. 6, 1997]

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

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AUTHORITY: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

SOURCE: 62 FR 10360, Mar. 6, 1997, unless otherwise noted.