

**§ 1415.15 Agreements.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) (i) \* \* \*
- (ii) For the target price equivalent strike price level for corn, purchase at least one December 1995 CBOT put option on or before June 15, 1995; for wheat in Kansas and Nebraska, purchase at least one September 1995 KCBOT put option on or before May 15, 1995; for wheat in North Dakota, purchase at least one September 1995, MGE put option on or before May 15, 1995; and for wheat in Ohio, purchase at least one September 1995 CBOT put option on or before May 15, 1995. \* \* \*
- (2) (i) For price support participation, purchase at least one March 1996 CBOT put option at a strike price equivalent to the county price support price for corn;
- (ii) For soybeans, purchase at least one March 1996 CBOT put option contract at a strike price equivalent to the county soybean price support price;
- (iii) For wheat producers in Kansas and Nebraska, purchase at least one December 1995 KCBOT put option at a strike price equivalent to the county price support price for wheat;
- (iv) For wheat producers in North Dakota, purchase at least one December 1995 MGE put option at a strike price equivalent to the county price support price for wheat;
- (v) For wheat producers in Ohio, purchase at least one December 1995 CBOT put option at a strike price equivalent to the county price support price for wheat;

(e) A producer must have a corn or wheat, respectively, crop acreage base in order to participate in the program at the target price strike price level for corn or wheat. However, a producer planting corn on a farm with a grain sorghum crop acreage base, who reports that such acreage is corn for purposes of participating in the acreage reduction program for grain sorghum, may participate in the Options Program at the price support strike price level for corn.

(f) With respect to each producer, the maximum quantity eligible for target price put options is limited to the quantity determined by multiplying the participant's production adjustment payment acreage times the crop payment yield. \* \* \*

(g) \* \* \*

(h) If a producer enrolled in the program is not in compliance with the provisions of the production adjustment program for wheat or corn, as applicable, the producer will be required to repay any premiums and

incentive payments made, in addition to any interest determined in accordance with the provisions of such program agreement.

22. Section 1415.20 is amended by revising paragraphs (f) and (g) to read as follows:

**1415.20 Premium and incentive payments.**

\* \* \* \* \*

(f) CCC will collect the excess premium issued at the time the actual payment acreage is reported by the producer, and no incentive payment will be issued with respect to the overstated acreage if, for target price participation, the acreage enrolled in the production adjustment program which is used in determining deficiency payments is less than the intended payment acreage specified in the agreement. However, the producer will be allowed to keep the put option with respect to the additional bushels.

(g) The producer will not be allowed to increase the quantity of the commodity enrolled in the program if, for target price participation, the acreage enrolled in the production adjustment program, which is used in determining deficiency payments, is more than the intended payment acreage specified in the agreement.

\* \* \* \* \*

**PART 1416—VOLUNTARY PRODUCTION LIMITATION PROGRAM**

23. The authority citation for Part 1416 continues to read as follows:

**Authority:** 7 U.S.C. 1444f, 1445b-3a, 15 U.S.C. 714b and 714c.

24. Section 1416.100(a) is amended by revising the introductory text to read as follows:

**§ 1416.100 Eligible VPLP Counties.**

(a) The VPLP shall be effective for the 1995 crops of wheat and feed grains in:

\* \* \* \* \*

25. Section 1416.101 is amended by revising paragraph (a) to read as follows:

**§ 1416.101 Basic program provisions.**

(a)(1) The enrollment period for this program will coincide with the period established for the Acreage Reduction Program (ARP) signup, which will be January 30 through May 31, 1995.

(2) In order to participate in VPLP, a producer must purchase at least the minimum catastrophic level of crop insurance, according to part 400 of this chapter, for each crop of economic significance grown on each farm in the county in which the producer has an interest, if such insurance is available in the county for the crop.

\* \* \* \* \*

26. Section 1416.103 is amended by revising paragraphs (b) and (e) to read as follows:

**§ 1416.103 Production evidence for actual yields.**

\* \* \* \* \*

(b) Producers with an interest in enrolled crops on more than one farm shall certify the production from any farm not enrolled in VPLP and may be subject to a spotcheck for such certifications. \* \* \*

(e) (1) Documents showing the amount of production shall be reviewed to determine moisture content and dockage associated with the production. If the document does not show that the production has been reduced to standard moisture levels and shows:

(i) Specific moisture that is greater than standard;

(ii) Dockage; or

(iii) Both excess moisture and dockage, the net amount shall be adjusted on standard moisture levels and applicable dockage standards as determined by CCC.

(2) [Reserved]

\* \* \* \* \*

27. Section 1416.400 is amended by revising paragraph (b) to read as follows:

**§ 1416.400 Program payments and price support loans and loan deficiency payments.**

\* \* \* \* \*

(b) Producers of enrolled CAB's shall be eligible to earn deficiency payments on the number of acres planted to such CAB's or the maximum payment acres for the CAB's including CAB's planted to an enrolled wheat or feed grain crop different from the CAB assigned to the crop.

Signed at Washington, DC, on August 16, 1995.

**Bruce R. Weber,**

*Acting Administrator, Consolidated Farm Service Agency and Acting Executive Vice President, Commodity Credit Corporation.*

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**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service**

**8 CFR Parts 208, 212, 214, 236, 242, 245, 248, 274a, and 299**

[INS No. 1683-94; A.G. Order No. 1986-95]

RIN 1115-AD86

**Entry of Aliens Needed as Witnesses and Informants; Nonimmigrant S Classification**

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

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

**SUMMARY:** This regulation establishes procedures by which federal and state law enforcement authorities ("LEAs") may secure from the Immigration and Naturalization Service ("the Service") and the Department of State ("State") nonimmigrant classification for alien witnesses and informants who may eventually be granted lawful permanent resident ("LPR") status because of their cooperation. The regulation is necessary to provide uniform standards and responsibilities for the admission, stay, monitoring, adjustment and, if necessary, departure of such alien witnesses and informants and to enable the government to comply with record-keeping and annual reporting requirements imposed by Congress.

**DATES:** This interim rule is effective August 25, 1995.

**ADDRESSES:** Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1683-94 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Katharine Auchincloss-Lorr, Adjudications Officer, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514-5014.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 13, 1994, the President signed the "Violent Crime Control and Law Enforcement Act of 1994." Section 130003 of this legislation, Pub. L. 103-322, creates a new nonimmigrant classification providing for the admission of alien witnesses and

informants who may obtain LPR status upon completion of specified conditions. Section 130003 specifically establishes section 101(a)(15)(S) of the Immigration and Nationality Act ("the Act") and authorizes for each relevant fiscal year: (1) One hundred (100) nonimmigrant visas for aliens determined by the Attorney General to possess critical reliable information on a criminal organization or enterprise, willing to provide that information to federal and/or state authorities, and whose presence, upon the Attorney General's determination, is essential to the success of an authorized criminal investigation or the prosecution of an individual involved in the criminal organization or enterprise, and; (2) twenty-five (25) nonimmigrant visas for aliens whom the Secretary of State and the Attorney General jointly determine possess critical reliable information about a terrorist organization, enterprise, or operation, are willing to provide or have provided that information to federal authorities, will be or have been placed in danger as a result, and are eligible for a reward under 22 U.S.C. 2708(a). Although these new nonimmigrant classifications would be designated to be S-1 and S-2, respectively, to correspond with the statutory designations, the prior utilization of those codes requires that these designations be, respectively, S-5 and S-6. The spouse, married and unmarried sons and daughters, and parents of witnesses and informants in the new nonimmigrant classification may also be granted nonimmigrant status (designated S-7), if the Attorney General (or, where required, the Secretary of State and the Attorney General jointly) considers it appropriate.

Prior to the creation of section 101(a)(15)(S) of the Act, there was no standard procedure for allowing aliens needed to provide testimony or information into the United States. With the creation of the S nonimmigrant classification, Congress has authorized the admission of a limited number of alien witnesses and informants under specified conditions and provides for adjustment to LPR status after the satisfaction of certain conditions.

**Regulatory Structure**

Briefly stated, the enactment of the provisions creating the S nonimmigrant classification enables the Service to utilize the nonimmigrant framework to establish a process so that requesting LEAs can provide immigration benefits to certain key alien witnesses and informants. Included in the statutory scheme are reporting requirements by

the alien to the Attorney General and the Attorney General to Congress.

*a. Nonimmigrant Classification*

By creating a new nonimmigrant category exclusively for alien witnesses and informants, Congress has authorized a temporary admission for a specific purpose, and subjected such aliens to the degree of scrutiny prior to admission that is imposed on all nonimmigrant classifications. The Act distributes responsibility for implementing its nonimmigrant provisions between the Attorney General and the Department of State; generally, nonimmigrants, including those in S classification, are subject to the jurisdiction and authority of both agencies. In formulating this regulation, the Service has worked closely with the Department of State, which is issuing a complementary regulation at this time.

With the creation of the S nonimmigrant category, alien witnesses and informants who intend to reside permanently in the United States may enter only in S classification. Alien witnesses and informants intending a permanent stay will no longer be authorized entry in B nonimmigrant classification. That classification remains available for eligible witnesses and informants seeking temporary admission, who have a residence in a foreign country which they have no intention of abandoning, who will not be employed by a United States entity or seek employment while in the United States, and who will not be seeking any of the benefits that flow from S classification.

Similarly, current procedures affecting alien witnesses and informants seeking to be allowed temporarily into the United States pursuant to parole authorization are unchanged by this regulation, except for a new provision defined in 8 CFR 212.14 specifically providing procedures for an LEA who subsequently will apply for S classification on behalf of a witness or informant.

An essential component of the admission process for nonimmigrants who are excludable is the waiver authority accorded the Attorney General under section 212(d) of the Act. In this legislation, Congress created a new provision, section 212(d)(1), enabling the Attorney General to waive all grounds of excludability (except Nazi involvement) for S nonimmigrants, if it is "in the national interest to do so." Section 212(d)(3) waivers will remain available to witnesses and informants who are eligible for B-1 classification, pursuant to normal procedures.

The statute preserves the Attorney General's right to institute deportation proceedings for conduct committed after the alien's admission in or change to S classification, or for conduct or a condition not disclosed to the Attorney General prior to the alien's admission in or change to S classification.

*b. Controls Imposed by Classification*

As a condition for admission and maintenance of status in the United States, an S nonimmigrant is statutorily required to abide by any conditions, limitations, or restrictions imposed by the Attorney General; to file quarterly reports detailing his or her whereabouts and activities "as the Attorney General may require," and to execute a form waiving the right to contest any action for deportation instituted before the nonimmigrant obtains lawful permanent resident status (other than on the basis of an application for withholding of deportation). The statute renders the alien deportable for conduct committed after admission or for conduct or a condition that was not disclosed to the Attorney General prior to admission. Further, in order to maintain status, the S nonimmigrant may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of S classification; change to another nonimmigrant classification; or be authorized admission for more than 3 years.

The S nonimmigrant may adjust status to that of an LPR exclusively by means of the new statutory provisions creating the nonimmigrant classification. These procedures are found in this regulation at 8 CFR 245.11. Finally, the alien may be deported for conviction of a crime of moral turpitude committed within 10 years after being granted LPR status under those new provisions. New provisions for the deportation of alien witnesses and informants have been provided at 8 CFR 242.26. No alien may be admitted to the United States in S classification more than 5 years after September 13, 1994, the date of enactment of Pub. L. 103-322.

The numeric limit in the S visa provision indicates a Congressional determination that the visa benefit be accorded only in extraordinary circumstances. The legislation is modeled in part after a provision of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h) authorizing LPR status for no more than 100 aliens per year when the Director of Central Intelligence, the Attorney General, and the Commissioner of the Immigration and Naturalization Service ("Commissioner") determine that the

admission of a particular alien is in the national security interest. The S nonimmigrant provision's specific numeric limit authorizing issuance of only 125 visas annually does not include family members. Finally, the Attorney General is required to report annually to Congress on specific aspects of the S classification.

*c. Classification Process*

To facilitate implementation of this legislation and ensure a thorough awareness of LEA needs, the Service has engaged in a process of consultation with the principal federal LEAs interested in and affected by this nonimmigrant classification. With the assistance of the Department of Justice ("DOJ"), the Criminal Division's Terrorism and Violent Crimes Section ("TVCS"), the Service solicited and received written comments on the procedural aspects of how the visa application, classification, and admission process will work in practice, and a range of related concerns, from two State Department components (the Interagency Counterterrorism Rewards Committee and the Visa Office) and the following DOJ components: the Federal Bureau of Investigation ("FBI"), the Drug Enforcement Administration (DEA), the Marshals Service, and the Criminal Division's Organized Crime and Racketeering Section ("OCRS") and Office of Enforcement Operations ("OEO").

After considering the comments of the principal federal LEAs, the Service has devised a process for authorizing S nonimmigrant classification. This process provides federal and state LEAs access to informants and witnesses, and the benefits of S nonimmigrant classification, to the extent permitted by the statute while ensuring S nonimmigrants are appropriately controlled. The Service will develop procedures to protect the identity of the alien while ensuring maintenance of adequate control.

The process provides for the use of a new Form I-854, Inter-Agency Alien Witness and Informant Record, to record the basis of the nonimmigrant classification, related and prerequisite commitments and responsibilities, and seat-of-government certification of the need for the requested alien. The procedures for use of this new Form will bring uniformity and consistency to the process for authorizing S nonimmigrant classification for eligible criminal aliens with information needed by LEAs and provide a basis for control and tracking of the alien. A fee for the processing of Form I-854 will be proposed under a separate rulemaking.

There will be no initial fee for processing of Form I-854, although the fee will go into effect as soon as the Service has responded to comments and a final fee rule has been issued.

Pursuant to Form I-854, S nonimmigrant classification is predicated on a relationship between a witness or informant and the LEA that requests classification. For purposes of this regulation, the term "LEAs" refers to the entities authorized to request S nonimmigrant classification for an alien witness or informant in a given case, namely state and federal law enforcement authorities, which include the United States Attorneys' Offices and state and federal courts. Only a federal LEA may request S-6 nonimmigrant classification, although either a state or federal LEA may request S-5 nonimmigrant classification.

Form I-854 request an LEA seeking S nonimmigrant classification for an alien witness or informant to articulate the reasons why the presence of the alien is needed and to assume responsibility for the alien's admission, stay, and departure. In addition to the seat-of-government certification required for LEAs on Form I-854, where nonimmigrant classification is for purposes of providing testimony, the United States Attorney in whose district a case is being prosecuted must also certify the request on Form I-854.

To provide the Service with information to evaluate the needs, accomplishments, failures, and effectiveness of the S visa process, the Service is requiring that all LEA requests related to S nonimmigrant classification be processed on Form I-854, including requests for change of nonimmigrant classification to the S category or adjustment to LPR status. An LEA seeking S nonimmigrant classification for an alien who is out of status or otherwise in the United States illegally may file Form I-854 as a means of initiating procedures with the Service, subsequent to the Criminal Division's certification, in an effort to have the alien admitted to the United States in lawful status.

*d. Criminal Division Certifications*

A central concern of the comments offered by interested LEAs during the Service's drafting process was, given the limited number of available S nonimmigrant visas specified under the statute, how requests for this classification will be evaluated. The regulation provides that the Criminal Division of the Justice Department will establish appropriate procedures for receiving and reviewing Form I-854 and determining which applications will be

forwarded to the Commissioner with a recommendation for approval. The Criminal Division will be responsible to the Attorney General for ensuring that the cases forwarded to the Service fall within the annual numerical limitation.

No Form I-854 request for S nonimmigrant classification for an alien witness or informant may come to the Service without the Criminal Division's certification. Before being forwarded by the Criminal Division to the Service, an application for S-6 nonimmigrant classification certified by the Criminal Division will be forwarded by the Criminal Division to the Department of State for the appropriate certification.

#### *e. Reporting Requirements*

To implement the statutory framework, the regulation imposes two categories of information and reporting requirements on the government. The first involves behavior by the alien that could lead to loss of nonimmigrant status or deportability. The Service must be informed immediately by the responsible LEA of any behavior that renders the alien deportable. This information includes certain criminal conduct, failure to report quarterly, or failure to comply with the authorized terms of the particular S nonimmigrant classification or the adjustment provisions. The requesting LEA is responsible for supervising, monitoring, and otherwise accounting for the admitted alien's compliance with the statutory and regulatory requirements, for quarterly reporting on "whereabouts and activities" and "other conditions, limitations, or restrictions imposed."

Secondly, the statute requires an annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate. The regulation provides that the Justice Department's Criminal Division, in cooperation with the Service, will prepare this report evaluating the program's effectiveness.

#### *f. Period of Authorized Stay*

The statute explicitly provides that the period of admission on an alien in S nonimmigrant classification "may not exceed 3 years" and that such period "may not be extended by the Attorney General." For this reason, the Attorney General has determined that the S nonimmigrant classification must be limited to situations where an alien is reasonably expected to provide the desired assistance within the authorized 3-year period. The Service, therefore, has amended 8 CFR 214.1 accordingly and will require the alien to depart the United States after the 3-year period.

The LEA will be responsible for ensuring departure. Parole may not be used to extend a period of stay or to authorize a reentry. However, an S nonimmigrant who departs prior to adjustment may subsequently be readmitted in the same classification consistent with the process set forth herein.

#### *g. Change of Status*

The regulation at 8 CFR 214.2(t)(12) implements the prohibition in section 101(a)(15)(S) concerning change of status. Aliens cannot be admitted in S-5 nonimmigrant classification and change status to S-6 nonimmigrant classification, nor can they change to any other nonimmigrant classification. Pursuant to new procedures set forth at 8 CFR 248.3(h), aliens in nonimmigrant categories other than S may apply to and, if eligible, change their status to S nonimmigrant classification, unless specifically prohibited from so doing by section 248 of the Act.

#### *h. Deportation and Exclusion*

Aliens in S nonimmigrant classification will be required as a condition for admission and stay in lawful nonimmigrant status to certify Form I-854, waiving their entitlement to a deportation hearing pursuant to the statute. This rule amends the deportation regulations at 8 CFR part 242 to include aliens in S nonimmigrant classification. The exclusion regulations have similarly been amended at 8 CFR 236.10. Due to the limited nature of this nonimmigrant classification and its significance to the law enforcement community, deportation and other procedures that would effectively terminate an alien's S nonimmigrant classification will not be initiated without the concurrence of the Assistant Attorney General, Criminal Division.

#### *i. Employment Authorization*

An employment authorization document ("EAD") for S nonimmigrants will be issued through normal procedures. The regulation specifies that, pursuant to the terms of 8 CFR part 274a, S nonimmigrants are authorized to work in the United States and that the LEA may assist the alien in applying for employment authorization.

#### *j. Criminal Conduct*

Section 212(d)(1) of the Act provides that the Service can institute deportation proceedings against an S nonimmigrant for conduct committed after the alien's admission into the United States or for conduct or a condition that was not disclosed to the Attorney General prior to the alien's

classification as a nonimmigrant under section 101(a)(15)(S) of the Act. Accordingly, the Service will take appropriate steps to remove such an alien.

In addition, section 214(j)(4)(B) of the Act requires, as a condition for the admission, and continued lawful status, the S nonimmigrant "may not be convicted of any criminal offense punishable by a term of imprisonment of 1 year or more after the date of such admission."

The revised parole provisions at 8 CFR 212.14 enable an alien to be paroled into the United States so that an LEA can secure a guilty plea and conviction. In such a case, upon the recommendation of an LEA and the approval of a certified request on Form I-854, the Service may terminate the parole authorized to such an alien, waive the nonimmigrant visa requirement as provided under section 212(d)(4) of the Act, exercise the discretionary waiver authority provided under section 212(d)(1) of the Act, and authorize the alien's admission into the United States in S nonimmigrant classification.

The precise meaning of parole in an immigration context is quite different from the parole with which LEAs are normally familiar. Under the parole authority provided in section 212(d)(5) of the Act, the Attorney General has the discretion to permit an otherwise inadmissible alien to proceed into the United States temporarily and under specific safeguards. Parole is granted on a case-by-case basis and, if granted, does not constitute admission into the United States. The paroled alien does not make an entry as defined by section 101(a)(13) of the Act and, as a result, is subject to exclusion proceedings (not deportation proceedings) if the terms and conditions of the parole are violated. The due process rights of aliens subject to exclusion proceedings are more limited than those of aliens subject to deportation proceedings.

Parole may be authorized only for emergent reasons or reasons deemed strictly in the public interest and is available only if the Service has custody of the alien. It should not be used as a means of circumventing a waiver of inadmissibility. In an immigration context, parole is considered, in itself, a form of constructive custody, and is available only to an alien "applying for admission to the United States." A request for parole of an alien in exclusion proceedings and in Service custody must be made pursuant to the terms of 8 CFR 212.5 or, in the case of an alien for which S classification is being sought, 8 CFR 212.14. Due to the

requirement that the alien be "applying for admission," parole is not available to aliens who have effected an entry. Aliens who have been "paroled" (in the criminal sense) from prison or who are in prison, and who are deemed to be arriving aliens may not be granted parole unless the Service has custody.

#### *k. Monitoring and Control*

The regulation and the certifications on Form I-854 require that, as a prerequisite to S nonimmigrant classification, the requesting LEA assume responsibility, during the period of the S nonimmigrant's presence in the United States, for the safety of the public and for keeping the Service appropriately informed of matters that might impact on the alien's immigration status. Once an alien achieves immigrant status through adjustment from S nonimmigrant classification to LPR status, the LEAs responsibility for monitoring and reporting will cease. In addition, if the Marshals Service assumes responsibility for the alien, LEA monitoring will be minimal. Further, an alien will become deportable upon the commission of conduct that violates either the regulatory requirements or the specified terms and limitations of the authorized status. In such a case, the LEA should immediately advise the Service, request that the Service proceed to remove the alien, and assist with, and verify, the alien's departure. Consistent with this monitoring responsibility, an LEA is responsible for ensuring departure, if necessary, and verifying departure in a manner acceptable to the Service, so that monitoring is formally concluded.

#### *l. Adjustment*

Section 245(i) of the Act provides for the "Exclusive Means of Adjustment" of aliens admitted as S nonimmigrants. The Service has interpreted this to mean that S nonimmigrants may not adjust to permanent resident status pursuant to section 506(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies 1995 Appropriations Act, Public Law 103-317, which allows most otherwise ineligible persons to adjust status upon payment of an additional sum. The provisions for "Exclusive Means of Adjustment" for S nonimmigrants provide clearly that these statutory terms and conditions are to be the exclusive means of adjustment for S nonimmigrants described in section 101(a)(15)(S) of the Act. Adjustment of status pursuant to terms other than those specified therein are not available to aliens in S classification.

In the statute, Congress appears inadvertently to have created a new, second subsection 245(i) of the Act, which the Service interprets as an error. There is no indication that Congress intended to repeal or superseded the provisions of section 506(b) of Public Law 103-317, enacted one month earlier. The Service regards the establishment of the second subsection 245(i) of the Act as a numbering error and will recommend that Congress enact a technical amendment to redesignate the Crime Bill's provision as subsection 245(j) of the Act.

The regulations, at 8 CFR 212.14(a)(1)(vi) and 214.2(t)(4)(i), place certain restrictions on the promises LEAs can make to alien witnesses and informants for whom they seek parole or S nonimmigrant classification.

#### **Changes to Current Regulations**

This interim rule implements section 130003 of Public Law 103-322, which establishes section 101(a)(15)(S) of the Act. It amends 8 CFR at parts 208, 212, 214, 236, 242, 245, 248, 274a, and 299 to provide uniform and consistent application, admission, reporting, control, deportation, and adjustment criteria for the entry, parole, and stay of alien witnesses and informants who intend to remain in the United States.

Other than the changes to 8 CFR 214.2(t) previously discussed, the following specific changes to Title 8 of the Code of Federal Regulations are necessary to fully implement this regulation:

8 CFR 208.2 and 208.16 are amended to enable asylum officers to determine whether an alien classified pursuant to section 101(a)(15)(S) of the Act is entitled to withholding of deportation.

8 CFR 212.1(m) is added to require that aliens seeking admission in S nonimmigrant classification must be in possession of appropriate documents issued by an American consular officer.

8 CFR 212.4(i) is added to enable the Attorney General to determine pursuant to section 101(a)(15)(S) of the Act whether to exercise the discretion to waive a ground of excludability, other than under section 212(a)(3)(E) of the Act, if it is in the national interest to do so. The Service may remove an alien classified as a nonimmigrant under section 101(a)(15)(S) of the Act for conduct committed after the alien's admission to the United States or for conduct or a condition undisclosed to the Attorney General prior to the alien's admission in, or change to, S nonimmigrant classification.

8 CFR 212.14 is added to specify the process by which LEAs may obtain parole status for alien witnesses and

informants who intend to apply for S nonimmigrant classification.

8 CFR 214.1(a)(2) is amended to add nonimmigrant classifications for S-5, S-6, and S-7.

8 CFR 214.1(c)(3) is amended to add a reference to nonimmigrants defined in section 101(a)(15)(S) of the Act, so that such aliens are ineligible for an extension of stay beyond a total of 3 years.

8 CFR 236.10 is added to provide exclusion procedures for aliens requesting admission in S nonimmigrant classification.

8 CFR 242.26 is added to provide deportation procedures for aliens in S nonimmigrant classification who, as a condition of their admission and stay in lawful status in the United States, must waive their right to a deportation hearing and to contest, other than on the basis of an application for withholding of deportation, any action for deportation instituted before lawful permanent resident status is obtained.

8 CFR 245.11 is added to set forth the exclusive terms of adjustment of status to that of lawful permanent resident for an S nonimmigrant.

8 CFR 248.2(b) is amended by removing the reference to "or (K)" to read "(K), or (S)" in order to prohibit change of status from S classification.

8 CFR 248.3(h) is added to set forth procedures for change of nonimmigrant classification to S classification pursuant to the request of a law enforcement agency.

8 CFR 274a.12(c) is amended to authorize aliens in S classification to apply for employment authorization. Pursuant to 8 CFR 274a.12(c)(21), an alien granted S nonimmigrant classification may apply for employment authorization by filing Form I-765, Application for Employment Authorization, with the applicable fee.

8 CFR 299.1 is amended to add Form I-854 to the list of prescribed Service forms.

8 CFR 299.5 is amended to add Form I-854 to the listing of Service forms approved by the Office of Management and Budget.

#### **Good Cause Exception**

The Attorney General has determined that there is good cause for publishing this as an interim rule. Law enforcement authorities need access to the benefits provided in this legislation, which cannot be conferred without these regulatory provisions and the guidance, controls, and structure they afford. Since prior notice and public comment with respect to this interim rule are impracticable and contrary to the public

interest under these circumstances, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments received within 60 days of publication of this interim rule in the **Federal Register**.

**Regulatory Flexibility Act**

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

**Executive Order 12866**

This rule is not considered by the Attorney General to be a "significant regulatory action" under Executive Order 12866, section 3(f) Regulatory Planning and Review, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

**Executive Order 12612**

The regulation herein will not have substantial direct effects on the states, on the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

**Paperwork Reduction Act**

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

**List of Subjects**

8 CFR Part 208

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

8 CFR Part 212

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

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting

and recordkeeping requirements, Students.

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

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

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION**

1. The authority citation for part 208 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

**§ 208.2 [Amended]**

2. In § 208.2, paragraph (a) is amended in the third sentence by adding the phrase "and aliens classified pursuant to section 101(a)(15)(S) of the Act," immediately after the phrase "§ 253.1(f) of this chapter,".

**§ 208.16 [Amended]**

3. In § 208.16, paragraph (a) is amended in the first sentence by adding the phrase "and aliens classified pursuant to section 101(a)(15)(S) of the Act," immediately after the phrase "§ 253.1(f) of this chapter,".

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

4. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

5. In § 212.1, paragraph (m) is added to read as follows:

**§ 212.1 Documentary requirements for nonimmigrants.**

\* \* \* \* \*

(m) *Aliens in S classification.* Notwithstanding any of the provisions of this part, an alien seeking admission pursuant to section 101(a)(15)(S) of the Act must be in possession of appropriate documents issued by a United States consular officer classifying the alien under that section.

6. In § 212.4, the section heading is revised, and paragraph (i) is added to read as follows:

**§ 212.4 Applications for the exercise of discretion under section 212(d)(1) and 212(d)(3).**

\* \* \* \* \*

(i) *Alien witnesses and informants.—*

(1) *Waivers under section 212(d)(1) of the Act.* Upon the application of a federal or state law enforcement authority ("LEA"), which shall include a state or federal court or United States Attorney's Office, pursuant to the filing of Form I-854, Inter-Agency Alien Witness and Informant Record, for nonimmigrant classification described in section 101(a)(15)(S) of the Act, the Commissioner shall determine whether a ground of exclusion exists with respect to the alien for whom classification is sought and, if so, whether it is in the national interest to exercise the discretion to waive the ground of excludability, other than section 212(a)(3)(E) of the Act. The Commissioner may at any time revoke a waiver previously authorized under section 212(d)(1) of the Act. In the event the Commissioner decides to revoke a previously authorized waiver for an S nonimmigrant, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to the decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to revoke.

(2) *Grounds of removal.* Nothing shall prohibit the Service from removing from the United States and alien classified pursuant to section 101(a)(15)(S) of the Act for conduct committed after the alien has been admitted to the United States as an S nonimmigrant, or after the alien's change to S classification, or for conduct or a condition undisclosed to

the Attorney General prior to the alien's admission in, or change to, S classification, unless such conduct or condition is waived prior to admission and classification. In the event the Commissioner decides to remove an S nonimmigrant from the United States, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to remove.

7. Section 212.14 is added to read as follows:

**§ 212.14 Parole determinations for alien witnesses and informants for whom a law enforcement authority ("LEA") will request S classification.**

(a) *Parole authority.* Parole authorization under section 212(d)(5) of the Act for aliens whom LEAs seek to bring to the United States as witnesses or informants in criminal/counter terrorism matters and to apply for S classification shall be exercised as follows:

(1) *Grounds of eligibility.* The Commissioner may, in the exercise of discretion, grant parole to an alien (and the alien's family members) needed for law enforcement purposes provided that a state or federal LEA:

(i) Establishes its intention to file, within 30 days after the alien's arrival in the United States, a completed Form I-854, Inter-Agency Alien Witness and Informant Record, with the Assistant Attorney General, Criminal Division, Department of Justice, in accordance with the instructions on or attached to the form, which will include the names of qualified family members for whom parole is sought;

(ii) Specifies the particular operational reasons and basis for the request, and agrees to assume responsibility for the alien during the period of the alien's temporary stay in the United States, including maintaining control and supervision of the alien and the alien's whereabouts and activities, and further specifies any other terms and conditions specified by the Service during the period for which the parole is authorized;

(iii) Agrees to advise the Service of the alien's failure to report quarterly any criminal conduct by the alien, or any other activity or behavior on the alien's part that may constitute a ground of excludability or deportability;

(iv) Assumes responsibility for ensuring the alien's departure on the date of termination of the authorized parole (unless the alien has been admitted in S nonimmigrant classification pursuant to the terms of paragraph (a)(2) of this section), provides any and all assistance needed by the Service, if necessary, to ensure departure, and verifies departure in a manner acceptable to the Service;

(v) Provide LEA seat-of-government certification that parole of the alien is essential to an investigation or prosecution, is in the national interest, and is requested pursuant to the terms and authority of section 212(d)(5) of the Act;

(vi) Agrees that no promises may be, have been, or will be made by the LEA to the alien that the alien will or may:

(A) Remain in the United States in parole status or any other nonimmigrant classification;

(B) Adjust status to that of lawful permanent resident; or

(C) Otherwise attempt to remain beyond the authorized parole. The alien (and any family member of the alien who is 18 years of age or older) shall sign a statement acknowledging an awareness that parole only authorizes a temporary stay in the United States and does not convey the benefits of S nonimmigrant classification, any other nonimmigrant classification, or any entitlement to further benefits under the Act; and

(vii) Provides, in the case of a request for the release of an alien from Service custody, certification that the alien is eligible for parole pursuant to § 235.3 of this chapter.

(2) *Authorization.* (i) Upon approval of the request for parole, the Commissioner shall notify the Assistant Attorney General, Criminal Division, of the approval.

(ii) Upon notification of approval of a request for parole, the LEA will advise the Commissioner of the date, time, and place of the arrival of the alien. The Commissioner will coordinate the arrival of the alien in parole status with the port director prior to the time of arrival.

(iii) Parole will be authorized for a period of thirty (30) days to commence upon the alien's arrival in the United States in order for the LEA to submit a completed Form I-854 to the Assistant Attorney General, Criminal Division. Upon the submission to the Assistant

Attorney General of the Form I-854 requesting S classification, the period of parole will be automatically extended while the request is being reviewed. The Assistant Attorney General, Criminal Division, will notify the Commissioner of the submission of a Form I-854.

(b) *Termination of parole—(1) General.* The Commissioner may terminate parole for any alien (including a member of the alien's family) in parole status under this section where termination is in the public interest. A district director may also terminate parole when, in the district director's opinion, termination is in the public interest and circumstances do not reasonably permit referral of the case to the Commissioner. In such a case, the Commissioner shall be notified immediately. In the event the Commissioner, or in the appropriate case, a district director, decides to terminate the parole of a alien witness or informant authorized under the terms of this paragraph, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to terminate parole.

(2) *Termination of parole and admission in S classification.* When an LEA has filed a request for an alien in authorized parole status to be admitted in S nonimmigrant classification and that request has been approved by the Commissioner pursuant to the procedures outlines in 8 CFR 214.2(t), the Commissioner may, in the exercise of discretion:

(i) Terminate the alien's parole status;

(ii) Determine eligibility for waivers; and

(iii) Admit the alien in S nonimmigrant classification pursuant to the terms and conditions of section 101(a)(15)(S) of the Act and 8 CFR 214.2(t).

(c) *Departure.* If the alien's parole has been terminated and the alien has been ordered excluded from the United States, the LEA shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall

oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure. The Commissioner shall be notified in writing of the failure of any alien authorized parole under this paragraph to depart in accordance with an order of exclusion and deportation entered after parole authorized under this paragraph has been terminated.

(d) *Failure to comply with procedures.* Any failure to adhere to the parole procedures contained in this section shall immediately be brought to the attention of the Commissioner, who will notify the Attorney General.

**PART 214—NONIMMIGRANT CLASSES**

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

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

9. In § 214.1, paragraph (a)(2) is amended by adding the following nonimmigrant classification entries to the listing of designations, in proper sequence, to read as follows:

**§ 214.1 Requirements for admission, extension, and maintenance of status.**

- (a) \* \* \*
- (2) \* \* \*

Section	Designation
* * * * *	
101(a)(15)(S)(i) .....	S-5
101(a)(15)(S)(ii) .....	S-6
101(a)(15)(S) qualified family members.	S-7

\* \* \* \* \*

- 10. Section 214.1 is amended by:
  - a. Removing the "or" at the end of paragraph (c)(3)(iv);
  - b. Removing the "." at the end of paragraph (c)(3)(v), and replacing it with a "; or"; and by
  - c. Adding a new paragraph (c)(3)(iv), to read as follows:

**§ 214.1 Requirements for admission, extension, and maintenance of status.**

- \* \* \* \* \*
- (c) \* \* \*
- (3) \* \* \*

(vi) Any nonimmigrant who is classified pursuant to section 101(a)(15)(S) of the Act beyond a total of 3 years.

\* \* \* \* \*

11. Section 214.2 is amended by adding a new paragraph (t) to read as follows:

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

\* \* \* \* \*

(t) *Alien witnesses and informants—*  
 (1) *Alien witness or informant in criminal matter.* An alien may be classified as an S-5 alien witness or informant under the provisions of section 101(a)(15)(S)(i) of the Act if, in the exercise of discretion pursuant to an application on Form I-854 by an interested federal or state law enforcement authority ("LEA"), it is determined by the Commissioner that the alien:

- (i) Possesses critical reliable information concerning a criminal organization or enterprise;
- (ii) Is willing to supply, or has supplied, such information to federal or state LEA; and
- (iii) Is essential to the success of an authorized criminal investigation or the successful prosecution of an individual involved in the criminal organization or enterprise.

(2) *Alien witness or informant in counterterrorism matter.* An alien may be classified as an S-6 alien counterterrorism witness or informant under the provisions of section 101(a)(15)(S)(ii) of the Act if it is determined by the Secretary of State and the Commissioner acting jointly, in the exercise of their discretion, pursuant to an application on Form I-854 by an interested federal LEA, that the alien:

- (i) Possesses critical reliable information concerning a terrorist organization, enterprise, or operation;
- (ii) Is willing to supply or has supplied such information to a federal LEA;
- (iii) Is in danger or has been placed in danger as a result of providing such information; and
- (iv) Is eligible to receive a reward under section 36(a) of the State Department Basic Authorities Act of 1956, 22 U.S.C. 2708(a).

(3) *Spouse, married and unmarried sons and daughters, and parents of alien witness or informant in criminal or counterterrorism matter.* An alien spouse, married or unmarried son or daughter, or parent of an alien witness or informant may be granted derivative S classification (S-7) when accompanying, or following to join, the alien witness or informant if, in the exercise of discretion by, with respect to paragraph (t)(1) of this section, the Commissioner, or, with respect to paragraph (t)(2) of this section, the Secretary of State and the Commissioner acting jointly, consider it to be appropriate. A nonimmigrant in such derivative S-7 classification shall be subject to the same period of admission, limitations, and restrictions as the alien witness or informant and must be identified by the requesting LEA on the

application Form I-854 in order to qualify for S nonimmigrant classification. Family members not identified on the Form I-854 application will not be eligible for S nonimmigrant classification.

(4) *Request for S nonimmigrant classification.* An application on Form I-854, requesting S nonimmigrant classification for a witness or informant, may only be filed by a federal or state LEA (which shall include a federal or state court or a United States Attorney's Office) directly in need of the information to be provided by the alien witness or informant. The completed application is filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward only properly certified applications that fall within the numerical limitation to the Commissioner, Immigration and Naturalization Service, for approval, pursuant to the following process.

(i) *Filing request.* For an alien to qualify for status as an S nonimmigrant, S nonimmigrant classification must be requested by an LEA. The LEA shall recommend an alien for S nonimmigrant classification by: Completing Form I-854, with all necessary endorsements and attachments, in accordance with the instructions on, or attached to, that form, and agreeing, as a condition of status, that no promises may be, have been, or will be made by the LEA that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to that of lawful permanent resident, or otherwise attempt to remain beyond a 3-year period other than by the means authorized by section 101(a)(15)(S) of the Act. The alien, including any derivative beneficiary who is 18 years or older, shall sign a statement, that is part of or affixed to Form I-854, acknowledging awareness that he or she is restricted by the terms of S nonimmigrant classification to the specific terms of section 101(a)(15)(S) of the Act as the exclusive means by which he or she may remain permanently in the United States.

(A) *District director referral.* Any district director or Service officer who receives a request by an alien, an eligible LEA, or other entity seeking S nonimmigrant classification shall advise the requestor of the process and the requirements for applying for S nonimmigrant classification. Eligible LEAs seeking S nonimmigrant classification shall be referred to the Commissioner.

(B) *United States Attorney certification.* The United States Attorney with jurisdiction over a prosecution or investigation that forms the basis for a

request for S nonimmigrant classification must certify and endorse the application on Form I-854 and agree that no promises may be, have been, or will be made that the alien will or may remain in the United States in S or any other nonimmigrant classification or parole, adjust status to lawful permanent resident, or attempt to remain beyond the authorized period of admission.

(C) *LEA certification.* LEA certifications on Form I-854 must be made at the seat-of-government level, if federal, or the highest level of the state LEA involved in the matter. With respect to the alien for whom S nonimmigrant classification is sought, the LEA shall provide evidence in the form of attachments establishing the nature of the alien's cooperation with the government, the need for the alien's presence in the United States, all conduct or conditions which may constitute a ground or grounds or excludability, and all factors and considerations warranting a favorable exercise of discretionary waiver authority by the Attorney General on the alien's behalf. The attachments submitted with a request for S nonimmigrant classification may be in the form of affidavits, statements, memoranda, or similar documentation. The LEA shall review Form I-854 for accuracy and ensure the alien understands the certifications made on Form I-854.

(D) *Filing procedure.* Upon completion of Form I-854, the LEA shall forward the form and all required attachments to the Assistant Attorney General, Criminal Division, United States Department of Justice, at the address listed on the form.

(ii) *Assistant Attorney General, Criminal Division review.*—(A) *Review of information.* Upon receipt of a complete application for S nonimmigrant classification on Form I-854, with all required attachments, the Assistant Attorney General, Criminal Division, shall ensure that all information relating to the basis of the application, the need for the witness or informant, and grounds of excludability under section 212 of the Act has been provided to the Service on Form I-854, and shall consider the negative and favorable factors warranting an exercise of discretion on the alien's behalf. No application may be acted on by the Assistant Attorney General unless the eligible LEA making the request has proceeded in accordance with the instructions on, or attached to, Form I-854 and agreed to all provisions therein.

(B) *Advisory panel.* Where necessary according to procedures established by

the Assistant Attorney General, Criminal Division, an advisory panel, composed of representatives of the Service, Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Criminal Division, and the Department of State, and those representatives of other LEAs, including state and federal courts designated by the Attorney General, will review the completed application and submit a recommendation to the Assistant Attorney General, Criminal Division, regarding requests for S nonimmigrant classification. The function of this advisory panel is to prioritize cases in light of the numerical limitation in order to determine which cases will be forwarded to the Commissioner.

(C) *Assistant Attorney General certification.* The certification of the Assistant Attorney General, Criminal Division, to the Commissioner recommending approval of the application for S nonimmigrant classification shall contain the following:

(1) All information and attachments that may constitute, or relate to, a ground or grounds of excludability under section 212(a) of the Act;

(2) Each section of law under which the alien appears to be inadmissible;

(3) The reasons that waiver(s) of inadmissibility are considered to be justifiable and in the national interest;

(4) A detailed statement that the alien is eligible for S nonimmigrant classification, explaining the nature of the alien's cooperation with the government and the government's need for the alien's presence in the United States;

(5) The intended date of arrival;

(6) The length of the proposed stay in the United States;

(7) The purpose of the proposed stay; and

(8) A statement that the application falls within the statutorily specified numerical limitation.

(D) *Submission of certified requests for S nonimmigrant classification to Service.* (1) The Assistant Attorney General, Criminal Division, shall forward to the Commissioner only qualified applications for S-5 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph and that fall within the annual numerical limitation.

(2) The Assistant Attorney General, Criminal Division, shall forward to the Commissioner applications for S-6 nonimmigrant classification that have been certified in accordance with the provisions of this paragraph, certified by

the Secretary of State or eligibility for S-6 classification, and that fall within the annual numerical limitation.

(5) *Decision on application.* (i) The Attorney General's authority to waive grounds of excludability pursuant to section 212 of the Act is delegated to the Commissioner and shall be exercised with regard to S nonimmigrant classification only upon the certification of the Assistant Attorney General, Criminal Division. Such certification is nonreviewable as to the matter's significance, importance, and/or worthwhileness to law enforcement. The Commissioner shall make the final decision to approve or deny a request for S nonimmigrant classification certified by the Assistant Attorney General, Criminal Division.

(ii) *Decision to approve application.* Upon approval of the application on Form I-854, the Commissioner shall notify the Assistant Attorney General, Criminal Division, the Secretary of State, and Service officers as appropriate. Admission shall be authorized for a period not to exceed 3 years.

(iii) *Decision to deny application.* In the event the Commissioner decides to deny an application for S nonimmigrant classification on Form I-854, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

(6) *Submission of requests for S nonimmigrant visa classification to Secretary of State.* No request for S nonimmigrant visa classification may be presented to the Secretary of State unless it is approved and forwarded by the Commissioner.

(7) *Conditions of status.* An alien witness or informant is responsible for certifying and fulfilling the terms and conditions specified on Form I-854 as a condition of status. The LEA that assumes responsibility for the S nonimmigrant must:

(i) Ensure that the alien:

(A) Reports quarterly to the LEA on his or her whereabouts and activities, and as otherwise specified on Form I-

854 or pursuant to the terms of his or her S nonimmigrant classification;

(B) Notifies the LEA of any change of home or work address and phone numbers or any travel plans;

(C) Abides by the law and all specified terms, limitations, or restrictions on the visa, Form I-854, or any waivers pursuant to classification; and

(D) Cooperates with the responsible LEA in accordance with the terms of his or her classification and any restrictions on Form I-854;

(ii) Provide the Assistant Attorney General, Criminal Division, with the name of the control agent on an ongoing basis and provide a quarterly report indicating the whereabouts, activities, and any other control information required on Form I-854 or by the Assistant Attorney General;

(iii) Report immediately to the Service any failure on the alien's part to:

(A) Report quarterly;

(B) Cooperate with the LEA;

(C) Comply with the terms and conditions of the specific S nonimmigrant classification; or

(D) Refrain from criminal activity that may render the alien deportable, which information shall also be forwarded to the Assistant Attorney General, Criminal Division; and

(iv) Report annually to the Assistant Attorney General, Criminal Division, on whether the alien's S nonimmigrant classification and cooperation resulted in either:

(A) A successful criminal prosecution or investigation or the failure to produce a successful resolution of the matter; or

(B) The prevention or frustration of terrorist acts or the failure to prevent such acts.

(v) Assist the alien in his or her application to the Service for employment authorization.

(8) *Annual report.* The Assistant Attorney General, Criminal Division, in consultation with the Commissioner, shall compile the statutorily mandated annual report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

(9) *Admission.* The responsible LEA will coordinate the admission of an alien in S nonimmigrant classification with the Commissioner as to the date, time, place, and manner of the alien's arrival.

(10) *Employment.* An alien classified under section 101(a)(15)(S) of the Act may apply for employment authorization by filing Form I-765, Application for Employment Authorization, with fee, in accordance with the instructions on, or attached to,

that form pursuant to § 274a.12(c)(21) of this chapter.

(11) *Failure to maintain status.* An alien classified under section 101(a)(15)(S) of the Act shall abide by all the terms and conditions of his or her S nonimmigrant classification imposed by the Attorney General. If the terms and conditions of S nonimmigrant classification will not be or have not been met, or have been violated, the alien is convicted of any criminal offense punishable by a term of imprisonment of 1 year or more, is otherwise rendered deportable, or it is otherwise appropriate or in the public interest to do so, the Commissioner shall proceed to deport an alien pursuant to the terms of 8 CFR 242.26. In the event the Commissioner decides to deport an alien witness or informant in S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deport.

(12) *Change of classification.* (i) An alien in S nonimmigrant classification is prohibited from changing to any other nonimmigrant classification.

(ii) An LEA may request that any alien lawfully admitted to the United States and maintaining status in accordance with the provisions of § 248.1 of this chapter, except for those aliens enumerated in 8 CFR 248.2, have his or her nonimmigrant classification changed to that of an alien classified pursuant to section 101(a)(15)(S) of the Act as set forth in 8 CFR 248.3(h).

#### PART 236—EXCLUSION OF ALIENS

12. The authority citation for part 236 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362.

13. A new § 236.10 is added to read as follows:

##### § 236.10 Exclusion of alien seeking admission under section 101(a)(15)(S) of the Act.

An alien who applies for admission under the provisions of section 101(a)(15)(S) of the Act who is

determined by an immigration officer not to be eligible for admission under that section or to be excludable from the United States under one or more of the grounds of excludability listed in section 212 of the Act, which have not been previously waived by the Commissioner, will be taken into custody and will be subject to the exclusion procedures contained in 8 CFR part 236.

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

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

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

15. A new § 242.26 is added to read as follows:

##### § 242.26 Deportation of S-5, S-6, and S-7 nonimmigrant.

(a) *Condition of classification.* As a condition of classification and continued stay in classification pursuant to section 101(a)(15)(S) of the Act, nonimmigrants in S classification must have executed Form I-854, Part B, certifying that they have knowingly waived their right to a deportation hearing and right to contest, other than on the basis of an application for withholding of deportation, any deportation action, including detention pending deportation, instituted before lawful permanent resident status is obtained.

(b) *Determination of deportability.* A determination to deport an alien classified pursuant to section 101(a)(15)(S) of the Act shall be made by the district director having jurisdiction over the place where the alien is located.

(1) A determination to deport such an alien shall be based on one or more of the deportation grounds listed in section 241 of the Act based on conduct committed after, or conduct or a condition not disclosed to the Service prior to, the alien's classification as an S nonimmigrant under section 101(a)(15)(S) of the Act, or for a violation of, or failure to adhere to, the particular terms and conditions of status in S nonimmigrant classification.

(c) *Deportation procedures.* (1) A district director who determines to deport an alien witness or informant in S nonimmigrant classification shall notify the Commissioner, the Assistant Attorney General, Criminal Division, and the relevant LEA in writing to that

effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deport.

(2) A district director, who has provided notice as set forth in paragraph (c)(1) of this section and who has been advised by the Commissioner that the Assistant Attorney General, Criminal Division, has not objected, shall issue a warrant of deportation. The alien shall immediately be arrested and taken into custody by the district director initiating the deportation. An alien classified under the provisions of section 101(a)(15)(S) of the Act who is determined, pursuant to a warrant issued by a district director, to be deportable from the United States shall be deported from the United States to his or her country of nationality or last residence. The LEA who requested the alien's presence in the United States shall ensure departure from the United States and so inform the district director in whose jurisdiction the alien has last resided. The district director, if necessary, shall oversee the alien's departure from the United States and, in any event, shall notify the Commissioner of the alien's departure.

(d) *Withholding of deportation.* An alien classified pursuant to section 101(a)(15)(S) of the Act who applies for withholding of deportation shall have 10 days from the date the warrant of deportation is served upon the alien to file an application for such relief with the district director initiating the deportation order. The procedures contained in 8 CFR 208.2 and 208.16 shall apply to such an alien who applies for withholding of deportation.

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

16. The authority citation for part 245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255, and 8 CFR part 2.

17. In § 245.1, paragraph (c)(7) is redesignated as paragraph (c)(8), and a new paragraph (c)(7) is added to read as follows:

##### **§ 245.1 Eligibility.**

\* \* \* \* \*

(c) \* \* \*

(7) A nonimmigrant classified pursuant to section 101(a)(15)(S) of the Act, unless the nonimmigrant is applying for adjustment of status pursuant to the request of a law enforcement authority, the provisions of section 101(a)(15)(S) of the Act, and 8 CFR 245.11.

\* \* \* \* \*

18. A new § 245.11 is added to read as follows:

##### **§ 245.11 Adjustment of aliens in S nonimmigrant classification.**

(a) *Eligibility.* An application on Form I-854, requesting that an alien witness or informant in S nonimmigrant classification be allowed to adjust status to that of lawful permanent resident, may only be filed by the federal or state law enforcement authority ("LEA") (which shall include a federal or state court or a United States Attorney's Office) that originally requested S classification for the alien. The completed application shall be filed with the Assistant Attorney General, Criminal Division, Department of Justice, who will forward only properly certified applications to the Commissioner, Immigration and Naturalization Service, for approval. Upon receipt of an approved Form I-854 allowing the S nonimmigrant to adjust status to that of lawful permanent resident, the alien may proceed to file with that Form, Form I-485, Application to Register Permanent Residence or Adjust Status, pursuant to the following process.

(1) *Request to allow S nonimmigrant to apply for adjustment of status to that of lawful permanent resident.* The LEA that requested S nonimmigrant classification for an S nonimmigrant witness or informant pursuant to section 101(a)(15)(S) of the Act may request that the principal S nonimmigrant be allowed to apply for adjustment of status by filing Form I-854 with the Assistant Attorney General, Criminal Division, in accordance with the instructions on, or attached to, that form and certifying that the alien has fulfilled the terms of his or her admission and classification. The same Form I-854 may be used by the LEA to request that the principals nonimmigrant's spouse, married and unmarried sons and daughters, regardless of age, and parents who are in derivative S nonimmigrant classification and who are qualified family members as described in paragraph (b) of this section similarly be allowed to apply for adjustment of status pursuant to section 101(a)(15)(S) of the Act.

(2) *Certification.* Upon receipt of an alien in S nonimmigrant classification on Form I-854, the Assistant Attorney General, Criminal Division, shall review the information and determine whether to certify the request to the Commissioner in accordance with the instructions on the form.

(3) *Submission of requests for adjustment of status to the Commissioner.* No application by an LEA on Form I-854 requesting the adjustment to lawful permanent resident status of an S nonimmigrant shall be forwarded to the Commissioner unless first certified by the Assistant Attorney General, Criminal Division.

(4) *Decision on request to allow adjustment of S nonimmigrant.* The Commissioner shall make the final decision on a request to allow an S nonimmigrant to apply for adjustment of status to lawful permanent resident.

(i) In the event the Commissioner decides to deny an application on Form I-854 to allow an S nonimmigrant to apply for adjustment of status, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall be alien or the relevant LEA have a right of appeal from any decision to deny.

(ii) Upon approval of the request on Form I-854, the Commissioner shall forward a copy of the approved form to the Assistant Attorney General and the S nonimmigrant, notifying them that the S nonimmigrant may proceed to file Form I-485 and request adjustment of status to that of lawful permanent resident, and that, to be eligible for adjustment of status, the nonimmigrant must otherwise:

(A) Meet the requirements of paragraph (b) of this section, if requesting adjustment as a qualified family member of the certified principal S nonimmigrant witness or informant;

(B) Be admissible to the United States as an immigrant, unless the ground of excludability has been waived;

(C) Establish eligibility for adjustment of status under all provisions of section 245 of the Act, unless the basis for ineligibility has been waived; and

(D) Properly file with his or her Form I-485, Application to Register Permanent Residence or Adjust Status, the approved Form I-854.

(b) *Family members*—(1) *Qualified family members*. A qualified family member of an S nonimmigrant includes the spouse, married or unmarried son or daughter, or parent of a principal S nonimmigrant who meets the requirements of paragraph (a) of this section, provided that:

(i) The family member qualified as the spouse, married or unmarried son or daughter, or parent (as defined in section 101(b) of the Act) of the principal S nonimmigrant when the family member was admitted as or granted a change of status to that of a nonimmigrant under section 101(a)(15)(S) of the Act;

(ii) The family member was admitted in S nonimmigrant classification to accompany, or follow to join, the principal S-5 or S-6 alien pursuant to the LEA's request;

(iii) The family member is not excludable from the United States as a participant in Nazi persecution or genocide as described in section 212(a)(3)(E) of the Act;

(iv) The qualifying relationship continues to exist; and

(v) The principal alien has adjusted status, has a pending application for adjustment of status or is concurrently filing an application for adjustment of status under section 101(a)(15)(S) of the Act.

(vi) Paragraphs (b)(1)(iv) and (v) of this section do not apply if the alien witness or informant has died and, in the opinion of the Attorney General, was in compliance with the terms of his or her S classification under section 245(i) (1) and (2) of the Act.

(2) *Other family member*. The adjustment provisions in this section do not apply to a family member who has not been classified as an S nonimmigrant pursuant to a request on Form I-854 or who does not otherwise meet the requirements of paragraph (b) of this section. However, a spouse or an unmarried child who is less than 21 years old, and whose relationship to the principal S nonimmigrant or qualified family member was established prior to the approval of the principal S nonimmigrant's adjustment of status application, may be accorded the priority date and preference category of the principal S nonimmigrant or qualified family member, in accordance with the provisions of section 203(d) of the Act. Such a spouse or child:

(i) May use the principal S nonimmigrant or qualified member's priority date and category when it

becomes current, in accordance with the limitations set forth in sections 201 and 202 of the Act;

(ii) May seek immigrant visa issuance abroad or adjustment of status to that of a lawful permanent resident of the United States when the priority date becomes current for the spouse's or child's country of chargeability under the fourth employment-based preference classification;

(iii) Must meet all the requirements for immigrant visa issuance or adjustment of status, unless those requirements have been waived;

(iv) Is not applying for adjustment of status under 101(a)(15)(S) of the Act, is not required to file Form I-854, and is not required to obtain LEA certification; and

(v) Will lose eligibility for benefits if the child marries or has his or her twenty-first birthday before being admitted with an immigrant visa or granted adjustment of status.

(c) *Waivers of excludability*. An alien seeking to adjust status pursuant to the provisions of section 101(a)(15)(S) of the Act may not be denied adjustment of status for conduct or a condition which:

(1) Was disclosed to the Attorney General prior to admission; and

(2) Was specifically waived pursuant to the waiver provisions set forth at section 212(d)(1) and 212(d)(3) of the Act.

(d) *Application*. Each S nonimmigrant requesting adjustment of status under section 101(a)(15)(S) of the Act must:

(1) File Form I-485, with the prescribed fee, accompanied by the approved Form I-854, and the supporting documents specified in the instructions to Form I-485 and described in 8 CFR 245.2. Secondary evidence may be submitted if the nonimmigrant is unable to obtain the required primary evidence as provided in 8 CFR 103.2(b)(2). The S nonimmigrant applying to adjust must complete Part 2 of Form I-485 by checking box "h-other" and writing "S" or "S-Qualified Family Member." Qualified family members must submit documentary evidence of the relationship to the principal S nonimmigrant witness or informant.

(2) Submit detailed and inclusive evidence of eligibility for the adjustment of status benefits of S classification, which shall include:

(i) A photocopy of all pages of the alien's most recent passport or an explanation of why the alien does not have a passport; or

(ii) An attachment on a plain piece of paper showing the dates of all arrivals and departures from the United States

in S nonimmigrant classification and the reason for each departure; and

(iii) Primary evidence of a qualifying relationship to the principal S nonimmigrant, such as birth or marriage certificate. If any required primary evidence is unavailable, church or school records, or other secondary evidence may be submitted. If such documents are unavailable, affidavits may be submitted as provided in 8 CFR 103.2(b)(2).

(e) *Priority date*. The S nonimmigrant's priority date shall be the date his or her application for adjustment of status as an S nonimmigrant is properly filed with the Service.

(f) *Visa number limitation*. An adjustment of status application under section 101(a)(15)(S) of the Act may be filed regardless of the availability of immigrant visa numbers. The adjustment of status application may not, however, be approved and the alien's adjustment of status to that of lawful permanent resident of the United States may not be granted until a visa number becomes available for the alien under the worldwide allocation for employment-based immigrants under section 201(d) and section 203(b)(4) of the Act. The alien may request initial or continued employment authorization while the adjustment application is pending by filing Form I-765, Application for Employment Authorization. If the alien needs to travel outside the United States during this period, he or she may file a request for advance parole on Form I-131, Application for Travel Document.

(g) *Filing and decision*. An application for adjustment of status filed by an S nonimmigrant under section 101(a)(15)(S) of the Act shall be filed with the district director having jurisdiction over the alien's place of residence. Upon approval of adjustment of status under this section, the district director shall record the alien's lawful admission for permanent residence as of the date of such approval. The district director shall notify the Commissioner and the Assistant Attorney General, Criminal Division, of the adjustment.

(h) *Deportation under section 241 of the Act*. Nothing in this section shall prevent an alien adjusted pursuant to the terms of these provisions from being deported for conviction of a crime of moral turpitude committed within 10 years after being provided lawful permanent residence under this section or for any other ground under section 241 of the Act.

(i) *Denial of application*. In the event the district director decides to deny an application on Form I-485 and an

approved Form I-854 to allow an S nonimmigrant to adjust status, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny. A denial of an adjustment application under this paragraph may not be renewed in subsequent deportation proceedings.

**PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION**

19. The authority citation for part 248 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

**§ 248.2 [Amended]**

20. In § 248.2, paragraph (b) is amended by removing the term “or (K)” and adding in lieu thereof the term “(K), or (S)”.

21. Section 248.3 is amended by adding a new paragraph (h) to read as follows:

**§ 248.3 Application.**

\* \* \* \* \*

(h) *Change to S nonimmigrant classification.* An eligible state or federal law enforcement agency (“LEA”), which shall include a state or federal court or a United States Attorney’s Office, may seek to change the nonimmigrant classification of a nonimmigrant lawfully admitted to the United States, except those enumerated in § 248.2 of this chapter, to that of an alien witness or informant pursuant to section 101(a)(15)(S) of the Act by filing with the Assistant Attorney General, Criminal Division, Form I-539, Application to Extend/Change Nonimmigrant Status, with the appropriate fee, and Form I-854, Inter-Agency Alien Witness and Informant Record, with attachments establishing eligibility for the change of nonimmigrant classification.

(1) If the Assistant Attorney General, Criminal Division, certifies the request for S nonimmigrant classification in accordance with the procedures set forth in 8 CFR 214.2(t), the Assistant Attorney General shall forward the

LEA’s request on Form I-854 with Form I-539 to the Commissioner. No request for change of nonimmigrant classification to S classification may proceed to the Commissioner unless it has first been certified by the Assistant Attorney General, Criminal Division.

(2) In the event the Commissioner decides to deny an application to change nonimmigrant classification to S nonimmigrant classification, the Assistant Attorney General, Criminal Division, and the relevant LEA shall be notified in writing to that effect. The Assistant Attorney General, Criminal Division, shall concur in or object to that decision. Unless the Assistant Attorney General, Criminal Division, objects within 7 days, he or she shall be deemed to have concurred in the decision. In the event of an objection by the Assistant Attorney General, Criminal Division, the matter will be expeditiously referred to the Deputy Attorney General for a final resolution. In no circumstances shall the alien or the relevant LEA have a right of appeal from any decision to deny.

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

22. The authority citation for part 274a continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

23. Section 274a.12 is amended by adding a new paragraph (c)(21) to read as follows:

**§ 274a.12 Classes of aliens authorized to accept employment.**

\* \* \* \* \*

(c) \* \* \*

(21) A principal nonimmigrant witness or informant in S classification, and qualified dependent family members.

\* \* \* \* \*

**PART 299—IMMIGRATION FORMS**

24. The authority citation for part 299 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103; 8 CFR part 2.

25. Section 299.1 is amended by adding the entry for “Form I-854” to the listing of forms, in proper numerical sequence, to read as follows:

**§ 299.1 Prescribed forms.**

\* \* \* \* \*

Form No.	Edition date	Title
I-854	June 20, 1995.	Inter-Agency Alien Witness and Informant Record.

26. Section 299.5 is amended by adding the entry for “Form I-854”, to the listing of forms, in proper numerical sequence, to read as follows:

**§ 299.5 Display of control numbers.**

INS form No.	INS form title	Currently assigned OMB control No.
I-854	Inter-Agency Alien Witness and Informant Record.	1115-0196

Dated: August 18, 1995.  
**Janet Reno,**  
*Attorney General.*  
 [FR Doc. 95-21113 Filed 8-24-95; 8:45 am]  
 BILLING CODE 4410-10-M

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 635**

[FHWA Docket 95-21]

RIN 2125-AD61

**General Material Requirements; Warranty Clauses**

**AGENCY:** Federal Highway Administration (FHWA), DOT.  
**ACTION:** Interim final rule; request for comments.

**SUMMARY:** The FHWA is revising its regulation that generally prohibits the use of guaranty and warranty clauses on Federal-aid highway construction contracts. This action will permit greater use of warranties in Federal-aid highway construction contracts within prescribed limits.

**DATES:** This interim final rule is effective August 25, 1995. Written comments must be received on or before October 24, 1995.

**ADDRESSES:** Submit signed, written comments to FHWA Docket No. 95-21, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments