

Immigration

Smuggling / Deaf Immigrants
Case

THE WHITE HOUSE
WASHINGTON

FROM THE OFFICE OF:
RAHM EMANUEL
SENIOR ADVISOR TO THE PRESIDENT

DATE: 7-22

PAGES: 2

TO: Leanne

FROM: Michelle

FAX NUMBER: 67028

COMMENTS: Julie Anbender^{just} sent this
over - Rahm got the talking points
from you, but what do you think
about this?

If there are any problems with this transmission please call (202) 456-2531

U.S. Department of Justice

IMMIGRATION AND NATURALIZATION SERVICE

FACT SHEET

7/21/97

New York Mexican Smuggling Case

The Immigration and Naturalization Service (INS) is continuing its investigation into the smuggling case in New York City involving more than 50 deaf and non-speaking Mexican nationals. Immigration officers in the district have been assisting the New York City Police Department since early Saturday morning when NYPD officers discovered the Mexican nationals being held against their will in Queens, New York.

Four persons were arraigned today in U.S. District Court for the Eastern District of New York on charges of alien smuggling, harboring and transporting illegal aliens and conspiracy. Additional federal charges may be forthcoming. The individuals charged are: Alfredo Paoletti Rustrain, 37; Jose Paoletti Lemus, 28; Refugio Gonzalez-Santa, 21, and Rosa Beltran-Sanchez, 25.

Three other individuals are being held on state charges by the New York City Police Department.

INS has filed detainers on approximately 50 aliens, notifying city officials of the intent to pursue immigration proceedings and requesting that the individuals be placed in INS custody once New York Police have completed their investigation.

Appropriate arrangements are being made to provide for the health, safety and welfare of the adults and juveniles involved. INS officials will continue to work with city officials on the case and assist in any way possible. Due to the fact that the victims have hearing and speech difficulties, the INS is working with a variety of city and non-governmental agencies to provide interpreters and sign language specialists to assist in communicating with the individuals.

-INS-

Q&A

New York City Mexican Smuggling Case

Q. What's the status of the hearing impaired Mexicans who were held in slavery in New York?

A. INS Commissioner Meissner has spoken to Mayor Giuliani and Mexico's Ambassador Jesus Silva-Herzog and assured them that she will provide whatever resources the U.S. Attorney needs to aggressively investigate this case and prosecute those responsible for this terrible act. In the meantime, Commissioner Meissner is also working to insure that the victims of this tragedy receive safe, compassionate and humane treatment from the federal government.

July 22, 1997
Bergeron
INS Press Office
616-7339

U.S. Department of Justice
IMMIGRATION AND NATURALIZATION SERVICE

STATEMENT

7/21/97

New York City Mexican Smuggling Case

Commissioner Doris Meissner
U.S. Immigration and Naturalization Service

The U.S. Immigration and Naturalization Service (INS) is deeply disturbed by the discovery this weekend of more than 50 deaf and speaking impaired Mexican nationals who had been smuggled into the United States and held in virtual slavery.

I have directed that all necessary INS resources be focused on the ongoing criminal investigation into alien smuggling. Earlier today I called Zachary Carter, U.S. Attorney for the Eastern District of New York, to be certain INS has provided all the support he needs to aggressively prosecute those responsible for these horrendous violations of our laws. I also spoke today to Mayor Giuliani of New York and Mexico's Ambassador to the United States, Jesus Silva-Herzog. I pledged INS' full cooperation and received a similar commitment from them.

In addition to the ongoing criminal investigation, we are focusing on the victims of the smugglers. We are concerned for their well-being, and are considering options for custody in the New York City area when they are released. While INS must enforce the nation's immigration laws, the Service is committed to ensuring that any victim of this smuggling scheme is treated in a safe, secure and humane manner. I have directed that any custody arrangements by INS include the utmost consideration for the special needs of these victims.

-INS-

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-INS-

NATIONAL SECURITY COUNCIL

FAX COVER SHEET

Office of Democracy, Human Rights and Humanitarian Affairs

**NATIONAL
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COUNCIL**

17th & Penn, N.W.
Washington, D.C.
20504

Did you get a complete,
clear transmission? If
not, please call:

(202) 456-9141

From: Rob Malley

To: Steve Warnath

Agency: DPC

Fax Number: 67028

Date/Time: February 28, 1997

No. of pages to follow: 3

**Message: Attached is a paper for the March 3rd meeting
about Alien Smuggling and Expedited Exclusion. It is
scheduled for 4:00 in Room 208 OEOP.**

**This paper is being sent to one person in each office - please
ensure everyone you invited to the meeting gets a copy.**

**If you plan to attend or send someone please make sure
Kelly Letts gets your full name, DOB, and SSN. Kelly can be
reached on 456-9141.**

Discussion Memorandum Alien-Smuggling Boat Cases

BACKGROUND

Recent experience involving the interdiction of migrant vessels has underscored the need for inter-agency agreement on the disposition and funding of future such cases. Critical questions involve where intercepted migrants will be held pending their repatriation, who will pay for their transportation, care and maintenance, as well as the impact of the expedited exclusion provisions of the immigration bill. This draft paper incorporates previous agency comments. Participants should come to the March 3 inter-agency meeting prepared to present agency views on the issues discussed.

IMPACT OF EXPEDITED EXCLUSION

Background: The recently enacted immigration bill includes provisions pursuant to which certain illegal aliens can be expeditiously removed from the United States. These provisions, which will take effect on April 1, 1997, apply to aliens who arrive in the United States as well as to aliens who are interdicted at sea and then brought to the United States, and will permit processing within a matter of weeks. Issues for discussion include whether and under what circumstances aliens intercepted at sea after April 1, 1997, would be brought into the United States for processing and how such decisions will be made. Because bringing migrants into the U.S. would represent a departure from PDD 9, this will need to be considered at the deputies' level.

Factors to be considered:

- Deterrence: Bringing in aliens intercepted at sea could unintentionally send a signal that we are changing our policy, thereby encouraging further migration.
- Litigation Risks: Initial use of the expedited exclusion provisions is likely to be challenged in court. While we ultimately would expect to prevail, the expedited removal of aliens could be enjoined in the interim.
- Protection principles: We currently provide for some form of refugee screening for all intercepted aliens. However, by bringing aliens into the U.S., we will be in a better position to satisfy refugee protection principles and to conduct processing in a more humanitarian setting.

- Costs: Any detention costs associated with bringing migrants into the U.S. need to be weighed against the costs to the Coast Guard and to JCS of the current on-board processing/safehaven approach.
- Cubans: Cubans intercepted at sea will continue to be processed according to current policy.

DISPOSITION OF MIGRANTS NOT BROUGHT TO THE UNITED STATES

For various reasons, and despite the availability of expedited exclusion, some migrants intercepted at sea are likely not to be brought into the United States. Their disposition requires improved inter-agency coordination.

Assumptions

1. The USG will seek flag state agreement to hold the migrants pending repatriation to country of origin. While State should press flag states, agencies recognize that such agreement is often unlikely, particularly in cases involving large vessels.
2. To the extent reasonable, the Coast Guard will seek to maintain the migrants on board their vessel pending repatriation. However, this will not be feasible in most circumstances. The ultimate decision should be made by the on-scene commander, taking into account humanitarian considerations, including the state of the vessel and the ability to conduct INS and other interviews at sea.
3. The remaining \$7.4 million from the Immigration Emergency Fund (IEF) has been drawn down. As specified in the President's memorandum to the Attorney General, the funds should be available to cover costs associated with the repatriation of foreign nationals intercepted en route to the United States.

Proposed Approach

- Coast Guard will maintain its traditional operational and financial responsibility for interdicting vessels and escorting them to port.
- The IEF will be used to cover the costs of repatriating the interdicted aliens, including transportation to an intermediate facility if necessary. In the event IEF funds are insufficient, State ERMA funds will be made available.

- DOJ will be responsible for daily operations, care, maintenance and processing of aliens on repatriation site pending their repatriation. This will include emergency transportation to, and medical care in, the United States, as well as transportation to U.S. of U.S. processing personnel, aliens eligible for asylum, aliens subject to prosecution, and potential witnesses.
- A: [DoD will have operational and financial responsibility for standing up a suitable repatriation location at Wake Island [GTMO], assuming refusal by the flag-state and impracticability of holding the migrants on the vessel. Equipment will be pre-positioned so that the facility could be stood up within 72-96 hours. This option requires further discussion between NSC, DOT, and DOD lawyers. Both this option and option B require discussion of Wake versus GTMO. Concerns regarding Cuban migration need to be taken into account in this context.]

B: [DOJ/INS will sign a memorandum of understanding with appropriate service at DoD to run a repatriation location at Wake Island [GTMO] which would be used in the event of refusal by the flag-state and impracticability of holding the migrants on the vessel. Location would be made available for pre-positioning of supplies and equipment to make stand-up by INS possible within 72-96 hours. INS would either assume responsibility for care and maintenance at facility or would contract out to private organization. This option requires further discussion of course of action if IEF funds are insufficient.]

C: [The USG would reach agreement with a third country to lease a facility on its territory to hold migrants pending their repatriation. DOJ/INS would contract out with private organizations for care and maintenance of facility.]

Long-term Consideration

Administration will request appropriated funding on an annual basis for purpose of alien interdiction and repatriation. FY 98 INS Appropriations language includes request for authority to make available amounts "not to exceed \$5,000,000 . . . to fund, or reimburse other Federal Agencies, for the costs associated with the care, maintenance and repatriation of smuggled illegal aliens." Inter-agency should discuss sufficiency of amount.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

ROUTE SLIP

TO JULIE FERNANDES	Take necessary action ☐
	Approval or signature ☐
	Comment ☒
	Prepare reply ☐
	Discuss with me ☐
	For your information ☐
	See remarks below ☒
FROM DAN CHENOK	DATE 7/8/98

REMARKS

INSRUE SUSPENDING AIRLINE ALIEN
TRANSPORT PRIVILEGES IF AIRLINE HAS
A HISTORY OF FRAUDULENT ALIEN
TRANSPORT.

COMMENT BY 7/22

EXECUTIVE ORDER 12866 SUBMISSION

Important

Please read the instructions on the reverse side before completing this form.

For additional forms or assistance in completing this form, contact the OIRA Docket Library, (202) 395-6880, or your OIRA Desk Officer.

Send three copies of both this form and supporting material (four copies if Economically Significant or an Unfunded Mandate) to:

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Office of Management and Budget
Attention: Docket Library, Room 10102
725 17th Street, N.W.
Washington, D. C. 20503

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1. Agency/Subagency originating request <i>Dept. of Justice/INS</i>	2. Regulation Identifier Number (RIN) <i>1115-AE59</i>
3. Title <i>Suspension of Privilege to Transport Aliens (1251809-96) to the United States.</i>	
4. Stage of Development ☐ Prerule ☒ Proposed Rule ☐ Interim Final Rule ☐ Final Rule ☐ Final Rule - No material change ☐ Notice ☐ Other Description of Other _____	5. Legal Deadline for this submission a) ☒ Yes ☐ No b) Date <i>30</i> / <i>12</i> / <i>1996</i> DD MM YYYY c) ☒ Statutory ☐ Judicial
7. Agency Contact (person who can best answer questions regarding the content of this submission) <i>Lina Brien</i> Phone <i>(202) 305-7060</i>	6. Designations a) Economically Significant (E.O. 12866) ☒ Yes ☐ No b) Unfunded Mandate (2 U.S.C. 1532) ☐ Yes ☒ No If either of the above is "Yes," submit four (4) complete packages to OIRA

Certification for Executive Order 12866 Submissions

The authorized regulatory contact and the program official certify that the agency has complied with the requirements of E. O. 12866 and any applicable policy directives.

Signature of Program Official <i>Lina Brien</i>	Date <i>6/15/98</i>
Signature of Authorized Regulatory Contact <i>Richard A. Sloan</i>	Date <i>6/18/98</i>

BILLING CODE: 4410-10

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 212

[INS No. 1809-96]

RIN 1115- AE59

Suspension of Privilege to Transport Aliens to the United States

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Immigration and Naturalization Service ("the Service" or "INS") regulations by allowing the Service to suspend a commercial airline's privilege to transport aliens to the United States if the airline brings in passengers with fraudulent documents contrary to regulation and at a significantly higher rate than the industry standard. This rule is necessary to ensure that airlines prevent the boarding and transport of aliens who use fraudulent documents in an attempt to gain entry to the United States.

DATES: Written comments must be submitted on or before [Insert date 60 days from date of publication in the FEDERAL REGISTER].

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, attention:

Public Comment Clerk, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1809-96 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: Una Brien, Director, National Fines Office, Inspections Division, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Arlington, VA 22209, telephone (202)305-7018.

SUPPLEMENTARY INFORMATION: Section 124(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, amended section 212(f) of the Immigration and Nationality Act (the Act) by authorizing the Attorney General to suspend a commercial airline's privilege to transport aliens to the United States if the airline brings in passengers with fraudulent documents. The Attorney General has delegated to the Commissioner of the INS her authority to issue regulations. This rule proposes to add a new § 212.15 to define the steps the Service will take to suspend a commercial airline's privilege, if necessary. This is supported by Articles 4 and 5 of the U.S. Government Model Open Skies Agreement. It also amends section 103.1(f)(3)(iii) by adding an appeal to the Administrative Appeals Office (AAO) of a decision by the Executive Associate Commissioner for Field Operations to suspend an airline's privilege of transporting some or all aliens to the United States.

Section 212(f) of the Act allows the President to suspend the admission of any class of aliens if their entry would be detrimental to the interests of the United States. In IIRIRA,

Congress provided that: "Whenever the Attorney General finds that a commercial airline has failed to comply with regulations of the Attorney General relating to requirements of airlines for the detection of fraudulent documents used by passengers traveling to the United States (including the training of personnel in such detection), the Attorney General may suspend the entry of some or all aliens transported to the United States by such airline."

It should be noted that the Service has other means available to encourage airlines to comply with the Act by preventing the transport of improperly documented aliens to the United States. Specifically, carriers are subject to monetary penalties under section 273 of the Act for transporting to the United States an alien who is not in possession of a valid passport or visa, as required. It has long been the Service's policy not to impose fines against carriers that transport aliens with fraudulent documents unless the quality of the fraud is exceedingly poor and could have reasonably been detected by carrier personnel at the port-of-embarkation.

In recent years, the Service has been working closely with the air transport industry to provide training to carriers in screening passengers for proper documentation. Administrative fines for bringing in aliens who have destroyed their documents en route and arrive in the United States without passports or visas dropped from approximately 3,000 cases in fiscal year 1992 to approximately 1,200 cases in fiscal year 1995. The primary reason for the decrease in the number of aliens without documents being brought to the United States was the passage in 1990 of legislation which increased the fines imposed on carriers for the transportation of improperly documented aliens from \$1,000 to \$3,000

for each violation of section 273(a) of the Act. As a result, carriers, seeking to avoid fines, began document-training programs for their agents at overseas ports-of-embarkation. It is anticipated that imposition of fines for bringing in aliens with reasonably detectable fraudulent documents will similarly reduce the frequency of such occurrences.

Prior to December 1994, the Service, by statute, was permitted to remit or refund fines imposed under section 273 of the Act only if the carrier could demonstrate that it did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required. Section 209(a)(6) of the Immigration and Nationality Technical Corrections Act of 1994 (P.L. 103-416, 108 Stat. 5312, Oct. 25, 1994), added subsection (e) to section 273 of the Immigration and Nationality Act. This new subsection gave the Service the ability to reduce fines if a carrier can demonstrate that it screened passengers in accordance with standards prescribed by the Attorney General, or that circumstances exist that the Attorney General determines would justify reduction. In a final rule published in the **Federal Register** on April 30, 1998, at 63 FR 23643, the Service provided procedures carriers must undertake for the proper screening of passengers at the port-of-embarkation to become eligible for fines reductions, refunds, or waivers. These procedures are considered voluntary.

The provision, enacted in IIRIRA, allowing the Service to suspend an airline's privilege to transport aliens to the United States would be a last resort, and it is anticipated that it would rarely be used. Generally, once the Service imposes significant monetary penalties against a carrier, the carrier will take corrective action by improving document-

screening standards, training check-in agents, and upgrading security measures. If fining the carrier proved to be ineffective, the Service could, with reasonable notice, cancel the carrier's Visa Waiver Pilot Program (VWPP), Transit-without-Visa (TWOV), and/or preinspection contracts. If a carrier continued to transport aliens with fraudulent documents to the United States at a significantly higher rate than the industry standard, despite the imposition of fines and the cancellation of contracts, the Service could invoke its authority to suspend a carrier's privilege to transport aliens to the United States. To the extent required under applicable bilateral air services agreements, the United States would pursue consultations with the governments of implicated airlines relative to any potential suspension of a carrier's privilege to transport aliens to the United States.

When it is noted that a commercial airline transports to the United States, at a rate that significantly exceeds the industry standard, aliens with altered or counterfeit documents that a reasonable person could have identified as deficient, and the airline has made insufficient effort to stop the transport of such aliens despite the imposition of fines pursuant to section 273 of the Act, the Service will issue to the airline a warning letter. The letter will notify the airline that the number or percentage of passengers with fraudulent documents brought to the United States by the airline is significantly above the industry standard. The letter will also describe the circumstances that have prompted the Service to issue the letter and what the carrier must do to comply with Service regulations regarding document screening. The Service will also offer to provide training in the detection of fraudulent documents. The letter will further state that if, within 120 days from the date of

the letter, the carrier has not brought its fraudulent document violation rate to an acceptable level compared to the industry standard, the Service may cancel the carrier's VWPP, TWOV, and/or preinspection contracts. Within the 120 days the carrier must bring its fraudulent document violation rate to an acceptable level compared to the industry standard. The carrier may use this 120-day period to train its employees and improve document-screening standards in order to reduce the rate at which it transports aliens with fraudulent documents. If the carrier does not reduce its fraudulent document rate to an acceptable level, the Service may take action to cancel its contracts with the airline in addition to imposing fines under section 273 of the Act.

The fraudulent document violation rate for the industry will be calculated by finding the total number of aliens with fraudulent documents transported to the United States by all airlines, and dividing it by the total number of documented nonimmigrant aliens transported to the United States by all airlines, and then multiplying by 1,000. A carrier's individual fraudulent document violation rate will be calculated by finding the number of aliens with fraudulent documents transported to the United States by the carrier for a specific period of time, dividing it by the total number of documented nonimmigrant aliens transported to the United States by that carrier for the same period of time, and multiplying by 1,000.

If the Service cancels the airline's contracts, the Service will also inform the airline that it must reduce its fraudulent document violation rate to within 20 percent of the industry standard within 60 days of the cancellation of its contracts, and warn the airline

that if it does not achieve this reduction, the Service may take action to suspend the airline's privilege to transport aliens to the United States.

Other criteria for suspending an airline's privilege to transport aliens to the United States were considered but not adopted. For example, consideration was given to suspending the privilege if a carrier brought in a number of aliens with fraudulent documents on one flight that was significantly above the industry standard, or if over 10 percent of the alien passengers on any one flight arrived with fraudulent documents, or if a carrier regularly or systematically transported aliens with fraudulent documents. For example, a carrier might operate a 300-400 seat aircraft and bring 30, 40, or 50 fraudulently documented aliens to the United States. However, smaller carriers might operate a 10-seat aircraft and transport 9 aliens with fraudulent documents. Or a carrier might bring in aliens with fraudulent documents on a daily or almost daily basis. However, it was decided instead to calculate the violation rate as described in the previous paragraph.

After the contracts are canceled, if the carrier still does not lower its fraudulent document violation rate to an acceptable level within a 60-day period, the Service may issue a notice of intent to suspend the carrier's privilege to transport some or all aliens to the United States. The Service will forward a copy of this notice to the Office of Aviation Programs and Policy of the Department of State ("DOS"), requesting that DOS contact the appropriate foreign government to the extent required under applicable bilateral air services agreements.

The carrier may submit written representations to the Service stating why the Service should not suspend the carrier's privilege to transport aliens to the United States and may request an interview with the Service. If, within 30 days of the issuance of the notice of intent to suspend, the carrier still does not bring its fraudulent document violation rate to an acceptable level, the Service may suspend the carrier's privilege to transport some or all aliens to the United States or to a particular port-of-entry within the United States or from a particular foreign port-of-embarkation. Any Service decision to suspend the carrier's privilege to transport some or all aliens to the United States will take into consideration any consultations between governments under applicable bilateral air services agreements. The carrier will be fined under section 271 of the Act if it continues to transport aliens to the United States in violation of the suspension order.

The carrier may appeal the Service's decision to the Administrative Appeals Office (AAO). The AAO will adjudicate the appeal as expeditiously as possible.

In order to have its privilege to transport aliens to the United States reinstated, the airline must demonstrate improved document-screening and personnel-training standards as defined in 8 CFR 273.3. The carrier must submit evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. This evidence shall be submitted to the Executive Associate Commissioner for Field Operations for consideration. Evidence may include, but is not limited to, the following: (1) information regarding the carrier's document-screening training program, including attendance of the carrier's personnel in any Service, Department of State, or other

training programs, the number of employees trained, and a description of the training program; (2) information regarding the date and number of improperly documented passengers bound for countries other than the United States and intercepted by the carrier at the port(s)-of-embarkation, including, but not limited to, the passenger's name, date of birth, passport nationality, passport number, other travel document information, reason boarding was refused, the country of destination and port of embarkation; and, (3) any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States. The evidence submitted should indicate that the carrier has achieved substantial compliance with INS screening standards in order to improve screening of its passengers. If the Executive Associate Commissioner for Field Operations is satisfied that the carrier has achieved substantial compliance with INS screening standards, he will issue a notice to the carrier reinstating its privilege to transport aliens and enter into contracts pursuant to section 233 of the Act.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factor: aliens with fraudulent documents make up approximately four percent of the total number of aliens found to be inadmissible at airports of entry. The Service anticipates rarely having to use this provision. In the past four years the Service has warned only two carriers that it might take action to

fine them if the carrier did not cease bringing aliens to the United States with fraudulent documents. Although the economic impact on a carrier whose privilege to transport aliens is suspended will be significant, it is not expected that a substantial number of small entities will be affected.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

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

Executive Order 12988 Civil Justice Reform

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act of 1995

This proposed rule does not impose any new reporting or recordkeeping requirements. The evidence requirements for reinstatement contained in § 212.15(j), are not considered an information collection as defined in 5 CFR 1320.3. As previously discussed, the Service anticipates rarely having to use this provision. During the past four years the Service has warned only two carriers that it might take action if the carrier did not cease bringing aliens to the United States with fraudulent documents.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegation (Government agencies), Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

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

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

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

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

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

2. Section 103.1 is amended by:

a. Removing the period at the end of paragraph (f)(3)(iii)(MM) and adding "; and" in its place, and by

b. Adding a new paragraph (f)(3)(iii)(NN), to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(f)* * *

(3)* * *

(iii)* * *

(NN) Suspension of a carrier's privilege to transport some or all aliens to the United States under § 212.15 of this chapter.

**PART 212 - DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS;
WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE;
SUSPENSION OF AN AIRLINE'S PRIVILEGE TO TRANSPORT ALIENS TO
THE UNITED STATES**

3. The heading for part 212 is revised as set forth above.

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

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

5. Section 212.15 is added to read as follows:

**§ 212.15 Warning of intention to suspend a commercial airline's privilege to
transport aliens to the United States.**

(a) Transporting aliens with fraudulent documents. When a commercial airline transports to the United States, at a rate that significantly exceeds the industry standard, aliens who, upon arrival at a U.S. Port-of-Entry, are found to be in possession of fraudulent documents that, in the opinion of the Service, the airline should have detected, and the imposition of fines under 8 CFR 280.1 has not resulted in a satisfactory reduction in

airline's violation rate, the Executive Associate Commissioner for Field Operations may issue a warning letter notifying the carrier that:

(1) The number or percentage of passengers brought to the United States with fraudulent documents is significantly above the industry standard as set forth in paragraph (b) of this section, demonstrating that the violation rate for the subject carrier over a stated period of time has exceeded the industry standard, and stating the difference between the industry standard and the carrier's violation rate;

(2) The Service is available to provide training to carrier personnel in the detection of fraudulent documents pursuant to section 235A(b) of the Act;

(3) The Service requires the rate of fraudulent document violations for the subject carrier to decrease to a rate within 20 percent of the industry standard within 120 days of the date of service of the warning letter; and

(4) If 120 days after the date of the warning letter the carrier's fraudulent document violation rate is not within 20 percent of the industry standard, the Executive Associate Commissioner for Field Operations may cancel the carrier's contracts (Forms I-775, I-425, and I-426) pursuant to section 233 of the Act.

(b) Calculation of industry standard. The industry standard will be calculated by finding the total number of aliens with fraudulent documents transported to the United States by all airlines, dividing it by the total number of documented nonimmigrant aliens transported by all airlines to the United States, and multiplying by 1,000.

(c) Calculating the carrier violation rate. A carrier's individual fraudulent document violation rate will be calculated by finding the number of aliens with fraudulent documents transported to the United States by the carrier for a specific period of time, dividing it by the total number of documented nonimmigrant aliens transported to the United States by that carrier for the same period of time, and multiplying by 1,000.

(d) Canceling contracts. (1) If the carrier's fraudulent document violation rate is not within 20 percent of the industry standard within 120 days of service of the warning letter, the Service may cancel all contracts entered into with the carrier pursuant to section 233 of the Act.

(2) The Service will inform the carrier that if, within 60 days of the date of cancellation of the contracts, the carrier can demonstrate that it has reduced its fraudulent document rate to within 20 percent of the industry standard, the carrier may request to become signatory to contracts with the Service in accordance with section 233 of the Act. The Service will also warn the carrier that if the carrier cannot demonstrate that it has reduced its fraudulent document rate to within 20 percent of the industry standard within 60 days of the cancellation of the contracts, the Service may take action pursuant to paragraph (e) of this section.

(e) Notice of intent to suspend. (1) If, 60 days after the Service cancels a carrier's contracts pursuant to paragraph (d)(1) of this section, the carrier has not reduced its violation rate to within 20 percent of the industry standard, the Service may issue a notice of intent to suspend the carrier's privilege to transport some or all aliens to the United States or

to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation. The Service will forward a copy of this notice to the Office of Aviation Programs and Policy, Department of State, EB/TRA/AVP, Washington, DC 20520, with a cover letter requesting that the Department of State ("DOS") contact the appropriate foreign government to the extent required under applicable bilateral air services agreements. The United States shall pursue consultations with the government of an implicated airline relative to any potential suspension of a carrier's privilege to transport aliens to the United States. The Service shall not take further action against the airline until DOS has indicated, in writing, that it has no objection to the Service proceeding with the suspension.

(2) The carrier may, within 30 days of the date of service of the notice of intent to suspend, submit written representations under oath supported by documentary evidence setting forth reasons why the carrier's privilege to transport aliens to the United States should not be suspended. The carrier may also, at the time of filing these representations, request, in writing, an interview before the Executive Associate Commissioner for Field Operations, or his designee, in support of the written representations.

(f) Allegations denied. If the carrier denies the allegations in the notice of intent to suspend, then the carrier shall, in its answer, provide all information or evidence on which the answer is based.

(g) Interview requested. (1) If, in its answer to the warning letter, the carrier requests an interview, the carrier shall be given notice of the date set for the interview.

(2) A summary of the information provided by the carrier at the interview shall be prepared and included in the record, along with all other evidence relied on in the adjudication. In the discretion of the Executive Associate Commissioner for Field Operations, the interview may be recorded.

(h) Decision. The decision will take into consideration any consultations between governments under applicable bilateral air service agreements.

(1) Privilege not suspended. If the carrier demonstrates the required improvement in its fraudulent document violation rate within 30 days of the issuance of the notice of intent to suspend, the Executive Associate Commissioner for Field Operations will notify the carrier that the Service will not, at this time, suspend the privilege of the airline to transport aliens to the United States.

(2) Privilege suspended. If the carrier admits the allegations in the notice of intent to suspend, or if it does not demonstrate, within the 30-day period, the required improvement in its fraudulent document violation rate, the Executive Associate Commissioner for Field Operations may issue a notice to the carrier, suspending the privilege of the carrier to transport some or all aliens to the United States or to a particular Port-of-Entry within the United States or from a particular foreign port-of-embarkation until such time as the Service has certified that the carrier has substantially complied with the screening standards set forth in 8 CFR 273.3. This notice will summarize evidence relied on, including evidence submitted by the carrier and other evidence that the Service has, and give reasons for the suspension. The notice will also inform the carrier that it will be fined

under section 271 of the Act if it continues to transport aliens to the United States in violation of a final administrative suspension order.

(i) Appeal of decision to suspend. The decision to suspend a carrier's privilege to transport aliens may be appealed to the Service's Administrative Appeals Office (AAO) pursuant to 8 CFR 103.1(f)(3)(iii)(NN). If the decision is appealed, the suspension will not take place until after the appeal is adjudicated by the AAO.

(j) Reinstatement. If a carrier's privilege to transport aliens is suspended in accordance with paragraph (h)(2) of this section, the carrier may have its privilege reinstated by providing evidence that satisfies the Executive Associate Commissioner for Field Operations that it has implemented improved document-screening standards as described in 8 CFR 273.3. The carrier must submit evidence that it has taken extensive measures to prevent the transport of improperly documented passengers to the United States. Such evidence may include but is not limited to:

(1) Information regarding the carrier's document-screening training program, including attendance of the carrier's personnel in any Service, Department of State, or other training programs; the number of employees trained; and a description of the training program;

(2) Information regarding the date and number of improperly documented passengers bound for countries other than the United States intercepted by the carrier at the port(s) of embarkation, including, but not limited to, the passenger's name, date of birth,

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passport nationality, passport number, other travel document information, reason boarding was refused, the country of destination, and port of embarkation; and

(3) Any other evidence to demonstrate the carrier's efforts to properly screen passengers destined for the United States.

Dated:

Doris Meissner,

Commissioner, Immigration

and Naturalization Service.