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RIN 1115–AG12

''K'' Nonimmigrant Classification for Spouses of U.S. Citizens and Their Children Under the Legal Immigration Family Equity Act of 2000

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to implement section 1103 of the Legal Immigration Family Equity (LIFE) Act, Public Law 106–553. Section 1103 of the LIFE Act creates a new nonimmigrant classification for the spouses of U.S. citizens and their children. Previously, spouses of U.S. citizens and their children who were the beneficiaries of pending or approved petitions could enter the United States only with immigrant visas. Following the enactment of LIFE, spouses of U.S. citizens and their children who are the beneficiaries of pending or approved visa petitions can be admitted initially as nonimmigrants and adjust to immigrant status later while in the United States. This regulation implements the new K nonimmigrant classification for the spouses of U.S. citizens and their children, and establishes filing and adjudication procedures for it. Following publication of this interim rule, aliens will be able to apply for this new K nonimmigrant status.

DATES: *Effective date:* This interim rule is effective August 14, 2001.

Comment date: Written comments must be submitted on or before October 15, 2001.

ADDRESSES: Please submit written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2127–01 on your correspondence. You may also submit comments electronically to the Service at *INSREGS@USDOJ.GOV.* When submitting comments electronically, please include INS number 2127–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Office of Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. Introduction and Background

The LIFE Act, enacted on December 21, 2000, as Public Law 106–553, made several significant changes to the Immigration and Nationality Act (Act). A brief overview and a more thorough analysis of the LIFE Act are included as follows.

A. Overview of LIFE Section 1103

LIFE created a new nonimmigrant classification for spouses and children of U.S. citizens at section 101(a)(15)(I)(ii) of the Act. Previously, the ''K'' nonimmigrant classification was limited to a fiancée or fiancée of a U.S. citizen seeking to enter the U.S. to complete a marriage within 90 days of entry, and the fiancé/fiancée's child.

Prior to the passage of LIFE, aliens who were married to a U.S. citizen and living abroad had to obtain an immigrant visa outside of the United States prior to admission. Although spouses of U.S. citizens are not subject to numerical limitations and, therefore, do not need to wait for a current visa number under section 201(b)(2)(A) of the Act, the process for immigrants is more burdensome and lengthy than for nonimmigrants. Presently, aliens who wish to immigrate to the United States to be with their U.S. citizen spouse frequently have to wait for as long as 1 year for the Service to approve the initial petition and the Department of State to issue the immigrant visa. This results in the family members being separated while waiting for their applications to be processed. The LIFE Act addresses this lengthy family separation by creating a nonimmigrant classification for spouses to citizens and their children to expedite their entry to the United States.

B. Analysis of LIFE Section 1103

Subsection 1103(a) of LIFE amends section 101(a)(15)(K) of the Act. Prior to LIFE, the K nonimmigrant classification was limited to the fiancé/fiancée of a U.S. citizen and the fiancé/fiancée's children. This classification still exists, and LIFE section 1103(a) redesignates it as section 101(a)(15)(K)(i) of the Act, with the fiancé/fiancée's children now classified at section 101(a)(15)(K)(iii) of the Act.

LIFE section 1103(a) adds a classification for the spouse of a U.S. citizen at section 101(a)(15)(K)(ii) of the Act. The new section 101(a)(15)(K)(ii) of the Act has three requirements for an alien to obtain this nonimmigrant classification. First, the alien must already be married to a U.S. citizen who has filed a relative visa petition on his or her behalf with the Service for purposes of an immigrant visa. Second, that same U.S. citizen spouse must be petitioning on that alien's behalf to

obtain a nonimmigrant visa. Third, the alien must be seeking to enter the United States to wait the ''availability of an immigrant visa.'' Section 1103(a) also classifies the children of (K)(ii) aliens under section 101(a)(15)(K)(iii) of the Act.

Subsection 1103(b) adds a new subsection (p) to section 214 of the Act, which generally covers admission of nonimmigrants. Subsection 214(p) of the Act is divided into three paragraphs:

- The new section 214(p)(1) of the Act requires the petitioner to file a petition in the United States for the purpose of obtaining nonimmigrant K status for his or her spouse. The petition must be approved by the Service prior to the issuance of the nonimmigrant visa by the consular officer abroad.
- The new section 214(p)(2) of the Act requires the alien described in section 101(a)(15)(K)(ii) of the Act to be in possession of the nonimmigrant K visa as a spouse at the time of admission, and that the visa must be issued from the same foreign state in which the marriage occurred, if the marriage occurred outside of the United States. This rule provides an exception when the United States does not have a visa issuing post in that state.
- The new section 214(p)(3) of the Act provides that the new nonimmigrant K status will terminate 30 days following the denial of the relative visa petition or application for immigrant status based on such a petition. Therefore, if the Form I–130, Petition for Alien Relative, the immigrant visa application, or the adjustment of status application of an alien admitted under section 101(a)(15)(K)(ii) of the Act, or the child of such an alien who accompanied or followed to join such an alien, is subsequently denied, the spouse and child's K nonimmigrant status will terminate automatically 30 days later and the alien(s) must leave the United States. For purposes of termination of the new K statuses, these petitions or applications are denied when the applicable administrative appeal has been exhausted, or the period to appeal has expired.

Section 1103(c) of LIFE makes conforming amendments to sections 214, 216, and 245 of the Act. Section 214(d), which covers the issuance of a K nonimmigrant visa to a fiancé or fiancée of a U.S. citizen, is amended to cover only section 101(a)(15)(K)(i) of the Act, which now corresponds only to the fiancé/fiancée of a U.S. citizen.

LIFE section 1103(c) also adds references to the new section of the Act covering nonimmigrant K spouses (section 214(p)) to two sections of the Act dealing with combating marriage fraud. A reference to section 214(p) is added to section 216(b)(1)(B) of the Act, so that any finding by the Service that a fee or other consideration was given for the purpose of filing the relative visa petition or the petition to obtain K nonimmigrant status for a spouse results in termination of the K status and the alien being placed in removal proceedings. (This does not apply to a fee or other consideration paid to an attorney for assistance in preparation of a lawful petition.) A reference to section 214(p) is also added to section 216(d)(1)(A)(ii) of the Act, so that at the time the alien spouse attempts to remove conditions on the permanent resident status, he or she will be required to affirm that no fee (with the same exception) was given to file the original petition in which the alien obtained nonimmigrant K status.

Section 1103(c) of LIFE amends section 245 of the Act. Section 245(d) of the Act is amended by striking language pertaining specifically to fiancé/fiancées, so that all who adjust status to permanent resident from the K nonimmigrant classification, as a spouse, fiancé/fiancée, or a minor child of either, are subject to the conditional residency requirements of section 216 of the Act. Further, a K nonimmigrant classification, whether a spouse, a fiancé/fiancée, or the child of either, may only apply for adjustment of status based on the alien spouse's (or, in the case of a minor child, the alien parent's) marriage to the citizen who filed the original petition to obtain that alien's status under section 101(a)(15)(K) of the Act.

Also, LIFE section 1103(c) amends section 245(e)(3) of the Act. Section 245(e)(3) provides for a ''bona fide'' marriage exeption to the general rule that an alien may not adjust to permanent resident status while in exclusion, deportation, or removal proceedings. In order for the marriage to be ''bona fide'' and for the applicant to qualify for this exception, the applicant must show, among other things, that no fee was given for the filing of a petition for the alien spouse and/or child. LIFE adds any petition filed as part of the new section 214(p) to the list of petitions to which this applies.

Finally, section 1103(d) of LIFE states that the law became effective on the date the legislation was enacted, which was December 21, 2000.

C. Terminology of New Classifications

To date, ''K'' nonimmigrants have been designated as ''K–1,'' for the fiancée of a U.S. citizen, or ''K–2,'' for their children accompanying them or following to join. LIFE amended the Act to redefine section 101(a)(15)(K)(ii) aliens as U.S. citizen spouses, and section 101(a)(15)(K)(iii) as the children of either a fiancé(e) entering under (K)(i) or a spouse entering under (K)(ii). For the sake of consistency, the Service will not change the original classification designations of the fiancé(e)s and their accompanying children, which will remain ''K–1'' and ''K–2,'' respectively. United States citizen spouses and children will be designated as ''K–3'' and ''K–4'' respectively. While all of this does not precisely match the statutory sections of the Act, the Service feels that changing well-established nonimmigrant classification designations would cause more confusion than this slight deviation from the statutory numbering. We invite comment on this decision. This regulation adds ''K–3'' and ''K–4'' to the Service's list of classification designations at 8 CFR 214.1(a)(2).

II. Obtaining K–3/K–4 Status

This regulation adds paragraphs concerning the new K nonimmigrant classification (K–3/K–4) to 8 CFR 214.2(k). The original sections of 8 CFR 214.2(k) dealing with fiancé/fiancées and their children will remain the same with one exception. This regulation removes § 214.2(k)(6)(i), which applied only to immigrant visas issued prior to November 10, 1986, since it is now clearly out of date. This section is removed and reserved. The K nonimmigrant spouse provisions added at § 214.2(k) are discussed in this section.

A. Eligibility

Only spouses of U.S. citizens and their children are eligible for the new K–3 or K–4 nonimmigrant classification. Other relatives of U.S. citizens, as well as any relatives of lawful permanent residents, are not eligible. Further, the citizen petitioner must have filed Form I–130, Petition for Alien Relative, with the Service on behalf of the spousal beneficiary seeking a K–3 nonimmigrant classification. A Form I–129F, Petition for Alien Fiancé, must also be filed with and approved by the Service for the purposes of obtaining K–3/K–4 nonimmigrant status for a spouse and any children of the spouse as defined in section 101(b)(1)(A) through (E) of the Act. If there is more than one beneficiary, only one Form I–129F need be filed.

Note that the U.S. citizen petitioner is not required to file a Form I–130 immigrant visa petition on behalf of the alien's children seeking K–4 nonimmigrant status, since K–4 is

merely a derivative nonimmigrant classification. Nonimmigrant K–4's are dependent on the K–3 for their status, similar to the relationship between the K–1 and the K–2. Therefore, K–4 eligibility is restricted to those whose parents are eligible for a K–3 nonimmigrant classification. K–4 aliens must be under 21 years of age and unmarried, in order to continue to meet the definition of ''child'' under section 101(b)(1) of the Act.

However, nothing in the law prevents the U.S. citizen stepparent from filing Form I–130 for the child, and such action would be prudent and beneficial to the child. The child will not be able to adjust status to that of a lawful permanent resident (LPR) or even file an application for that status until the U.S. citizen stepparent files Form I–130 on the child's behalf. If the U.S. citizen never files the Form I–130 on behalf of the child, the biological parent may do so after immigrating, but the child may have to wait for a visa number to become available. In addition, since the parent would no longer be in K–3 status but would be an LPR, the child would no longer be in lawful K–4 status, since it is merely a derivative classification.

In addition, the Service interprets the word ''availability'' in the phrase ''awaiting the approval of such petition and the availability to the applicant of an immigrant visa'' in the new section 101(a)(15)(K)(ii) of the Act to mean the approval of the adjustment of status application. This appears to comport with the Congressional intent even though the concept of visa ''availability'' in other contexts (sections 202, 203, and 245 of the Act) relates to per country and preference limitations. Read literally, the language in (K)(ii) could mean that those aliens with approved Form I–130 petitions on their behalf would not be eligible for K–3/K–4 status. This is because those aliens would not need to await the approval of the petition and because no visa number is needed by an immediate relative of a U.S. citizen. A visa is available as soon as the Form I–130 is approved. However, since the new section 214(p)(3) of the Act provides that the (K)(ii) or (K)(iii) nonimmigrant status shall terminate 30 days after the denial of the Form I–130, the application for an immigrant visa, or the adjustment of status application, the term ''availability of an immigrant visa,'' appears to have a different meaning than the same term in sections 202, 203, and 245 of the Act. The Service believes that Congress did not intend to create a nonimmigrant classification for spouses and children of U.S. citizens that is based on the filing of a Form I–130 petition, only to see that classification cut off to them part of the way through the immigration process. However, the Service also believes that Congress did not intend for this K–3/K–4 status to be of indefinite duration and that status holders must be taking steps to ultimately immigrate.

To ease applicant burden and to avoid any confusion, the Service recommends that petitioners whose alien spouses wish to first obtain a K–3/K–4 visa abroad and later adjust while in the United States so state in Question 21 of Form I–130. Petitioners may state in this question that their beneficiary will apply for adjustment of status in the United States. Petitioners who have previously stated on an approved Form I–130 that the beneficiary would visa process abroad should notify the Service that they now intend to apply for a K–3/K–4 nonimmigrant visa and will be applying for adjustment of status to that of lawful permanent resident in the United States. The Service will then request that the Department of State's National Visa Center (NVC) return the approved Form I–130 to the Service Center with jurisdiction.

B. Application Procedures

As stated in the previous paragraph, an alien seeking admission as a K–3 or K–4 must have the citizen petitioner file with the Service, Form I–130, with fee, on the alien spouse's behalf. The citizen petitioner must also file Form I–129F, with fee, for the purposes of obtaining nonimmigrant K–3/K–4 status for the spouse/children. Once the current Form I–129F is approved, the Service will notify the American consulate abroad specified on the petition. If the marriage took place abroad, the Service will notify a consulate in the country where the marriage took place. However, in the event that country does not have a visa-issuing post, the Department of State has determined that the visa must be issued at the consular post having jurisdiction to issue immigrant visas for nationals of that country. (*See* State Department regulations at 22 CFR 41.61.) The alien beneficiary may then appear at the consulate to apply for the nonimmigrant visa from the Department of State.

The Form I–129F is a temporary solution to the need for a new Service form to deal with the requirements of section 214(p)(1) of the Act, added by LIFE section 1103(b). As previously stated, section 1103(b) creates the new section 214(p)(1) of the Act, stating that all beneficiaries under section 101(a)(15)(K)(ii) of the Act and their children must have had a petition approved by the Service on their behalf to obtain K–3/K–4 status. The Service plans to design a new form for this purpose, but because LIFE is already effective and a process is needed to implement it immediately, the Service will use the Form I–129F until further notice. Applicants using Form I–129F to apply for K–3/K–4 status should omit sections (B)(18) and (B)(19) as instructed on the new version of the form.

Although the new K–3/K–4 is a nonimmigrant classification, the alien spouse will still be required to meet certain State Department requirements and regulations as though they were applying for an immigrant visa. This is consistent with treatment of U.S. citizens' fiancées and their children entering as K–1/K–2's, and recognizes the nature of this nonimmigrant classification. Although entering as nonimmigrants, these aliens plan to ultimately stay in the United States permanently. Regulations pertinent to State Department ''K'' nonimmigrant processing can be found at 22 CFR 41.81.

In addition, applicants for the new K–3/K–4 classification are subject to section 212(a)(9)(B) of the Act. LIFE did not exempt aliens applying for the new K nonimmigrant classification from the 3- and 10-year bars of section 212(a)(9)(B) of the Act, as it did for the other new visa category, the V classification, that LIFE created at LIFE section 1102(b). The Service does not anticipate that many potential K nonimmigrants will be affected by this provision, as many of them will be entering the United States for the first time. However, in order to ensure that the K–3/K–4 nonimmigrants have the opportunity to apply for the same waiver provisions as do the K–1/K–2's, 8 CFR 212.7(a) is amended to include them.

Applications for K–3/K–4 status should be sent to the following address: Immigration and Naturalization Service, P.O. Box 7218, Chicago, IL 60680–7218

C. Admission

Aliens appearing at U.S. Ports-of-Entry (POE) with a valid nonimmigrant K–3 visa will be inspected, and, if admissible, will be admitted into the United States for a period of 2 years. Similarly, an alien appearing at a POE with a valid nonimmigrant K–4 visa will be admitted for a period of 2 years or until the day before the alien's 21st birthday, whichever is shorter. 8 CFR 212.1(h) will be amended to include spouses of U.S. citizens under the K provision requiring visa documentation as a condition of admission. Also, 8 CFR 214.2(k)(8) is added, which includes the admission periods.

III. Maintaining K–3/K–4 Nonimmigrant Status

K–3/K–4 nonimmigrant aliens are authorized to remain in the United States for the period of time specified on their Form I–94. Specific issues arising during this admission period are discussed in the following paragraphs.

A. Changing to or From K–3/K–4 Nonimmigrant Status

The LIFE Act does not directly address whether nonimmigrants may change from another nonimmigrant status to a K–3/K–4 while in the United States. However, the Joint memorandum on LIFE issued by Congress states that the K visa is intended ''* * * to be a speedy mechanism for the spouses and minor children of U.S. citizens to obtain their immigrant visas in the U.S., rather than wait for long periods of time outside the U.S.'' The implication in this statement is that aliens seeking the benefits of the K–3/K–4 classification would not already be in the United States.

In addition, section 1102 of LIFE provides a specific change of status provision for the new V visa but section 1103 omits such a provision for a nonimmigrant K–3/K–4 visa. Further, section 214(p)(1) suggests that action by the consular officer abroad is required after the Attorney General approves the K petition.

Therefore, the Service has determined that nonimmigrant aliens will not be able to change from another nonimmigrant status to K status while in the United States. Overall, the purpose of the ''K'' nonimmigrant classification, in both the original K–1/K–2 form and the additions from LIFE, is family reunification. United States citizens whose spouses and children are in the United States are already unified and therefore do not fall within the K–3/K–4 classification's purposes. Accordingly, 8 CFR 248.1 is amended to prohibit change of status to all nonimmigrant classifications in section 101(a)(15)(K) of the Act, including those added by LIFE section 1103.

Congress, when passing LIFE, did not amend section 248 of the Act, which specifically prohibits K nonimmigrants from changing to any other nonimmigrant classification. Therefore, K–3 and K–4 nonimmigrants may not change to any other nonimmigrant classification. This is comparable to the prohibition against adjustment of a K to LPR on any basis other than the marriage on which the K petition was based, as stated in section 245(d) of the Act.

The Service notes, however, that neither of these prohibitions will affect the ability of alien spouses and children of U.S. citizens in the United States to remain. A United States citizen's spouse and children remain eligible to file for permanent residency at any time if the petitioner files Form I–130, and the beneficiary files Form I–485, Application for Adjustment to Permanent Residence. While these are pending, the spouse of the U.S. citizen and his or her child may remain in the United States without accruing unlawful presence, and may obtain work authorization and permission to travel outside the United States and return.

B. Employment Authorization

Aliens admitted to the United States as a K–3 or K–4 nonimmigrant will be authorized to work incident to status as are K–1 and K–2 nonimmigrants. However, similar to what is required of K–1 and K–2 aliens, K–3 and K–4 nonimmigrants will still need to file Form I–765, Application for Employment Authorization, and the fee, with the Service to obtain evidence of eligibility to work legally in the U.S. This regulation adds the K–3/K–4 nonimmigrant classification to 8 CFR 274a.12(a)(9).

However, aliens classified as K–3/K–4 seeking to renew employment authorization documents will be required to show that they are pursuing the immigration process and still meet the necessary nonimmigrant classification by having an application or petition awaiting approval. In order to renew employment authorization as a K–3/K–4, the applicants will have to show that the Form I–130 has been filed on their behalf, and, if the Form I–130 has been approved, that their application for an immigrant visa or their application for adjustment of status has been filed with the Service or Department of State, as applicable, in order to receive a second employment authorization document. This renewal may be requested concurrently with the application for extension of stay, and is discussed in paragraph (C) below.

Applications for employment authorization for those in K–3/K–4 status should be sent to the following address: Immigration and Naturalization Service, P.O. Box 7218, Chicago, IL 60680–7218.

C. Extension of Status

Following the 2-year admission period, a K–3 and K–4 nonimmigrant may apply with the Service for an extension of stay using Form I–539, Application for Extension of Stay, in 2-year increments. Since the Service believes that the purpose of the K–3 and K–4 nonimmigrant classifications is to provide family reunification while the immigration process is ongoing, the Service will require an alien seeking an extension of stay to have filed a Form I–485 or an application for an immigrant visa. If Form I–485 or application for an immigrant visa has not been filed, the alien must be still awaiting approval of the pending Form I–130, in order to be eligible for an extension of stay, or be able to provide the Service with ''good cause'' as required by the new 8 CFR 214.2(k)(10)(ii) added by this regulation. In addition, the alien must continue to be married to the U.S. citizen spouse who petitioned for the alien's K status. Finally, the U.S. citizen parents (including stepparents) of K–4 aliens should file Form I–130 on the child's behalf at the earliest possible time, if they have not already done so. These requirements will ensure that all aliens who enter as K–3 and K–4 nonimmigrants ultimately continue the immigration process to become permanent residents and continue to meet the statutory definition of the K–3/K–4 nonimmigrant classification.

If the Service intends to deny an application filed for an extension of K–3/K–4 status, the Service will send the applicant a notice of intent to deny and the basis for the proposed denial. The applicant will then have 30 days from the date of the notice to submit additional information in rebuttal. No appeal shall be available for Form I–539 denials which are filed for an extension of K–3/K–4 status, pursuant to 8 CFR 214.1(c)(5).

The Service expects that this requirement will have no impact on the majority of aliens entering as K–3 or K–4 nonimmigrants. Once in the United States, those in K–3 or K–4 status may file for adjustment of status at any time following the approval of their Form I–130 petition as immediate relatives of U.S. citizens, and most will do so very quickly after such approval. However, the Service believes that Congress did not intend the K–3 and K–4 classification to be one which would be of indefinite duration or one which could be extended in perpetuity without the alien spouse or child taking steps to become a permanent resident. For this purpose, and to deter marriage fraud, the Service will require the Form I–485 to be filed prior to allowing an extension of stay as a K–3 or K–4. This regulation adds this requirement for K–3/K–4 aliens seeking an extension of stay to 8 CFR 214.1(c)(2), which generally covers extensions, by requiring these aliens to comply with 8 CFR 214.2(k)(10), discussed in paragraph D below.

D. Termination of Status

Pursuant to LIFE section 1103(c), K–3/K–4 nonimmigrant status will terminate 30 days following the denial of one of the following: The Form I–130, filed on the alien's behalf by the citizen petitioner; an application for an immigrant visa by the alien; or the alien's Form I–485 adjustment of status application. If any of these is denied, the alien will have 30 days to leave the United States or will become deportable under section 237(a)(1) of the Act and will begin accruing unlawful presence for purposes of sections 212(a)(9)(B) and (C) of the Act. In addition, the alien will no longer be authorized to work in the United States, and if the alien continues to work without authorization, this will be an additional basis for removal. These restrictions are added to the regulations at 8 CFR 214.2(k)(10). If the K–3's status is terminated, the derivative K–4's status will also be simultaneously terminated.

In addition, the Service notes that for purposes of the new section 214(p)(3)(A) of the Act and 8 CFR 214.2(k)(2)(viii), that ''revocation'' will have equal meaning with ''denial.'' If either the petitioner's Form I–130, or either of the alien's applications listed in LIFE section 1103(c) is denied or is approved but later revoked, the alien's K–3/K–4 nonimmigrant status will terminate 30 days later. This is consistent with the established notion that the alien ultimately bears the burden of proof of eligibility for the benefit sought until the visa is issued or adjustment is granted. Events that can cause the revocation of petitions are listed in 8 CFR part 205, and include the divorce of the citizen petitioner from the alien beneficiary. Congress clearly did not intend to allow K–3/K–4 aliens to remain in the United States following the dissolution of the marriage that allowed them to enter in the first place, and this interpretation assists in avoiding that result.

K–3/K–4 status will also be terminated after 2 years if the alien does not file a request for extension of stay with the Service. In order for an application for an extension to be approved, the alien must show that one of the following has been filed and is awaiting approval: (1) The Form I–130 petition, (2) an application for an immigrant visa, or (3) a Form I–485 adjustment of status application. The Service believes that if none of these factors is present, the alien is not ''awaiting approval'' of anything and therefore does not meet the definition of section 101(a)(15)(K)(ii) of the Act.

Finally, K–4 status will be terminated when the alien turns 21 years of age or is married. Section 101(a)(15)(K)(iii) of the Act limits the K–4 classification to the ''minor children'' of K–3 aliens. If the K–4 alien turns 21, he or she is no longer a child as defined in section 101(b)(1) of the Act. Therefore, in the event either of these occurs, the K–4 alien's status will terminate. This is another incentive for the citizen petitioner to file Form I–130 on behalf of the K–4 alien child as soon as possible, so that the child may adjust status as soon as possible. Once the K–3 spouse obtains LPR status, there will be no basis for the K–4 dependent's status.

IV. Adjusting Status From K–3/K–4 to Permanent Resident

As previously stated, the Service expects most K–3/K–4 aliens to quickly file for adjustment of status following admission to the United States. Those admitted as K–3/K–4 aliens do not have to wait for a visa number to become current and may apply for adjustment at any time following the filing of the Form I–130 petition (or both may be filed concurrently for the K–4). This section therefore explains some of the issues relating to adjustment from K–3/K–4 status to permanent resident status.

A. Section 216 and Conditional Residence Status

As previously noted in the preamble, LIFE amends section 245(d) of the Act by removing the language relating specifically to fiancé(e)s and broadens the section to now cover anyone admitted under section 101(a)(15)(K) of the Act. Accordingly, those adjusting from K–3/K–4 status to permanent resident status may only do so as a result of a marriage to the original U.S. citizen petitioner who filed a petition on behalf of the K–3/K–4 nonimmigrants. In addition, they are subject to the requirement of conditional residency of section 216 of the Act. Section 216 of the Act requires aliens who are adjusting status based on a marriage of less than 24 months in duration to become ''conditional permanent residents'' following adjustment. Conditional permanent residents have the same status, rights, and privileges as permanent residents, except that they must file a petition to remove the conditions with the Service within 90 days of the 2-year anniversary of receiving conditional permanent resident status. This process is outlined in section 216 of the Act and 8 CFR part 216.

The Service notes, however, that aliens who are married longer than 24 months at the time of adjustment are not subject to the conditional residency requirements. Section 245(d) of the Act requires aliens adjusting from K status to be subject to the conditions of section 216 of the Act, but section 216(a) of the Act states that section 216 of the Act as a whole only applies to those who meet the definition of ''alien spouse'' of section 216(g)(1) of the Act. Section 216(g)(1) of the Act provides that adjustment on the basis of marriage that took place more than 24 months before the alien obtains lawful permanent resident status is not granted on a conditional basis. Therefore, aliens who end up adjusting status 2 years or more following the original marriage will not be subject to the conditional residency requirements, although they will still have to meet all of the other criteria for adjusting status.

B. Travel Outside of the U.S. While in K–3/K–4 Status

Aliens present in the United States in a K–3/K–4 nonimmigrant classification may travel outside of the United States and return using their nonimmigrant K–3/K–4 visa, even if they have filed for adjustment of status in the United States prior to departure. The Service recognizes that although the K–3/K–4 status is a nonimmigrant classification, aliens entering with this status have an intent to stay in the United States permanently. The definition of a K–3/K–4 nonimmigrant alien does not require that such an alien have a foreign residence that he or she has no intent of abandoning. Such aliens are married to a U.S. citizen and are coming to the U.S. to live with their spouse. Accordingly, the Service will not presume that departure constitutes abandonment of an adjustment application that has been filed.

This rule is different for a K–3/K–4 nonimmigrant than for fiancés and their children (K–1/K–2). The Service notes that applicants for adjustment of status who entered as a K–1 or K–2 nonimmigrant, and who later filed to adjust status, will continue to be required to obtain advance parole to avoid abandonment of their adjustment application upon departure, as provided in 8 CFR 245.2(a)(4). This is the case because K–1/K–2 aliens have only a 90-day period of admission prior to being required to marry the citizen petitioner and file for an adjustment application. Unlike those in K–3/K–4 status, K–1/K–2 aliens will have no status or visa to fall back on following the filing of their adjustment application.

C. Medical Examinations

According to 8 CFR 245.5, aliens seeking to adjust status are required to undergo a medical examination performed by a designated civil surgeon to determine whether they are inadmissible under section 212(a)(1)(A) of the Act. To date, applicants for K nonimmigrant visas have been required to obtain a medical examination abroad pursuant to Department of State regulations at 22 CFR 41.81 prior to entry, and the medical examination is not repeated if they apply for adjustment of status within 1 year of the date the examination was performed. They are, however, required to submit with the adjustment of status application a vaccination assessment completed by a designated civil surgeon in order to establish their compliance with the vaccination requirements under section 212(a)(1)(A)(ii) of the Act.

The Service will continue this same policy for the K–3/K–4 nonimmigrants. K–3/K–4 nonimmigrants who file their adjustment of status application within 1 year from the date of the medical examination overseas will not have to submit an additional medical examination. However, the Service notes that applicants whose medical examinations overseas revealed a ''Class A'' or ''Class B'' condition (as defined by 42 CFR 34.2(b)) must establish upon application for adjustment of status that they complied with those conditions imposed on the initial admission. Failure to comply with those conditions means that a new medical examination will be required.

D. Affidavit of Support

The Service also notes that aliens entering as K–3/K–4 nonimmigrant aliens will not be subject to the Affidavit of Support requirements of section 213A of the Act and 8 CFR part 213a. Instead, they will be treated the same as K–1/K–2 nonimmigrants and be required to file a Form I–864, Affidavit of Support Contract Between Sponsor and Household Member, at the time of adjustment. No Service regulatory changes are necessary for this point, but the Service felt this was still a relevant point for this supplemental section, as the Form I–864 is a significant part of the adjustment process as well as for the immigrant visa process abroad.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provisions for post-promulgation public comments, is based on the ''good cause'' exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The immediate implementation of this rule without prior notice and comment is necessary as Public Law 106–553 became effective December 21, 2000. This interim rule establishes the proper rules and filing procedures for the part of the LIFE Act creating a new ''K'' nonimmigrant classification for spouses and children of U.S. citizens. Publishing a proposed rule would not take effect immediately and because of the necessary comment period would result in a lengthy delay in processing for those already eligible for this benefit.

In fact, eligible aliens have already filed applications with the Service's local offices while the Service has been in the process of drafting regulations. Many of these applicants are filing on the wrong forms, which do not provide sufficient information for adjudication decisions. The Service has no other recourse but to return the incorrect forms. Therefore, it is of significant importance that the Service publish regulations to establish appropriate procedures as soon as possible. Since prior notice and public comments with respect to this interim rule are impractical and contrary to public interest, there is good cause under 5 U.S.C. 553 to make this rule effective upon the date of publication in the **Federal Register**.

Regulatory Flexibility Act

The Acting Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on the substantial number of small entities because this regulation affects family members of U.S. citizens. It does not have an effect on small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the 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 Act of 1995.

Small Business Regulatory Fairness Act of 1996

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or an ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Assessment of Regulatory Impact on the Family

This immigration law facilitates reunification of families by according preferences to aliens who are the immediate relatives of citizens. This regulation creates an additional nonimmigrant classification through which these aliens may be reunified with their U.S. citizen family member. For this reason, the Acting Commissioner has determined, as provided by section 654 of the Treasury and General Government Appropriations Act, Public Law 105–277, Division A, section 101(h), 122 Stat. 2681, 2681–528, that this interim rule will not have an adverse impact on the strength or stability of the family.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Execution 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 13132

This rule 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 section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

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

Paperwork Reduction Act

The information collection requirement (Form I–129F) contained in this rule has been approved for use by the Office of Management and Budget under emergency review procedures contained in the Paperwork Reduction Act. The emergency clearance is good for 180 days from the date of OMB approval. Prior to its renewal by OMB, INS will publish a notice in the **Federal Register** soliciting comment on the

form. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

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, Employment, Reporting and recordkeeping requirements.

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.

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

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

1. 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.

2. In § 212.1, paragraph (h) is revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(h) *Nonimmigrant spouses, fiancées, fiancés, and children of U.S. citizens.* Notwithstanding any of the provisions of this part, an alien seeking admission as a spouse, fiancée, fiancé, or child of a U.S. citizen, or as a child of the spouse, fiané, or finacée of a U.S. citizen, pursuant to section 101(a)(15)(K) of the Act shall be in possession of an unexpired nonimmigrant visa issued by an American consular officer classifying the alien under that section, or be inadmissible under section 212(a)(7)(B) of the Act.

* * * * *

3. Section 212.7 is amended by:

a. Revising the section heading;

b. Revising the heading for paragraph (a);

c. Revising paragraph (a)(1)(i).

The revisions read as follows:

§ 212.7 Waiver of certain grounds of inadmissibility.

(a) *General.*

(1) * * *

(i) *Immigrant visa or K nonimmigrant visa applicant.* An applicant for an immigrant visa or ''K'' nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I–601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I–601 to the Service for decision.

* * * * *

PART 214—NONIMMIGRANT CLASSES

5. 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; sec. 643, Pub. L. 104–428, 110 Stat. 3009–708; Section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note and 1931 note, respectively; 8 CFR part 2.

6. Section 214.1 is amended by:

a. Revising paragraph (a)(1)(v);

b. Revising the entry for ''101(a)(15)(K)(ii)'' and adding the entry for ''101(a)(15)(K)(iii)'' in proper sequence, in the table in paragraph (a)(2);

c. Adding a note at the end of the table in paragraph (a)(2); and by

d. Adding a sentence at the end of paragraph (c)(2).

The revisions and additions read as follows:

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

(a) * * *

(1) * * *

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiancé(e), (K)(ii) for the spouse, and (K)(iii) for the children of either;

* * * * *

(2) * * *

Section	Designation
* * * *	
101(a)(15)(K)(ii)	K–3
101(a)(15)(K)(iii)	K–2; K–4
* * * *	

Note: The classification designation K–2 is for the child of a K–1. The classification designation K–4 is for the child of a K–3.

* * * * *

(c) * * *

(2) * * * In order to be eligible for an extension of stay, nonimmigrant aliens in K–3/K–4 status must do so in accordance with § 214.2(k)(10).

* * * * *

7. Section 214.2 is amended by:

a. Revising the paragraph heading for paragraph (k);

b. Revising the reference cite to ''section 101(a)(15)(K)'' to ''section 101(a)(15)(K)(i)'' in the first sentence in paragraph (k)(1);

c. Adding the term ''*K–1*'' immediately before the word ''*beneficiary*'' in the heading to paragraph (k)(2);

d. Adding the term ''K–1'' immediately before the word ''beneficiary'' or ''beneficiary's'' wherever those terms appear in paragraph (k)(2);

e. Adding the term ''K–1'' immediately before the word ''beneficiary'' in the second sentence in paragraph (k)(5);

f. Removing and reserving paragraph (k)(6)(i);

g. Revising the term ''K'' with ''K–1'' in paragraph (k)(6)(ii);

h. Adding the term ''K–1'' before the term ''beneficiary'' in the first sentence in paragraph (k)(6)(ii);

i. Adding paragraphs (k)(7) through (k)(11).

The revisions and additions read as follows:

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

* * * * *

(k) *Spouses, Fiancées, and Fiancés of United States Citizens.* * * *

(7) *Eligibility, petition and supporting documents for K–3/K–4 classification.* To be classified as a K–3 spouse as defined in section 101(a)(15)(k)(ii) of the Act, or the K–4 child of such alien defined in section 101(a)(15)(K)(iii) of the Act, the alien spouse must be the beneficiary of an immigrant visa petition filed by a U.S. citizen on Form I–130, Petition for Alien Relative, and the beneficiary of an approved petition for a K–3 nonimmigrant visa filed on Form I–129F. The petitions with supporting documents shall be filed by the petitioner with the director having administrative jurisdiction over the place where the petitioner is residing in the United States, or such other place as the Commissioner may designate.

(8) *Period of admission for K3/K–4 status.* Aliens entering the United States

as a K–3 shall be admitted for a period of 2 years. Aliens entering the United States as a K–4 shall be admitted for a period of 2 years or until that alien's 21st birthday, whichever is shorter.

(9) *Employment authorization.* An alien admitted to the United States as a nonimmigrant under section 101(a)(15)(K) of the Act shall be authorized to work incident to status for the period of authorized stay. K–1/K–2 aliens seeking work authorization must apply, with fee, to the Service for work authorization pursuant to § 274a.12(a)(6) of this chapter. K–3/K–4 aliens must apply to the Service for a document evidencing employment authorization pursuant to § 274a.12(a)(9) of this chapter. Employment authorization documents issued to K–3/K–4 aliens may be renewed only upon a showing that the applicant has an application or petition awaiting approval, equivalent to the showing required for an extension of stay pursuant to § 214.2(k)(10).

(10) *Extension of stay for K–3/K–4 status.* (i) *General.* A K–3/K–4 alien may apply for extension of stay, on Form I–539, Application to Extend/Change Nonimmigrant Status, 120 days prior to the expiration of his or her authorized stay. Extensions for K–4 status must be filed concurrently with the alien's parent's K–3 status extension application. In addition, the citizen parent of a K–4 alien filing for extension of K status should file Form I–130 on their behalf. Extension will be granted in 2-year intervals upon a showing of eligibility pursuant to section 101(a)(15)(K)(ii) or (iii) of the Act. Aliens wishing to extend their period of stay as a K–3 or K–4 alien pursuant to § 214.1(c)(2) must show that one of the following has been filed with the Service or the Department of State, as applicable, and is awaiting approval:

(A) The Form I–130, Petition for Alien Relative, filed by the K–3's U.S. citizen spouse who filed the Form I–129F;

(B) An application for an immigrant visa based on a Form I–130 described in § 214.2(K)(10)(i);

(C) A Form I–485, Application for Adjustment to that of Permanent Residence, based on a Form I–130 described in § 214.2(k)(10)(i);

(ii) *''Good Cause'' showing.* Aliens may file for an extension of stay as a K–3/K–4 nonimmigrant after a Form I–130 filed on their behalf has been approved, without filing either an application for adjustment of status or an immigrant visa upon a showing of ''good cause.'' A showing of ''good cause'' may include an illness, a job loss, or some other catastrophic event that has prevented the filing of an adjustment of status application by the K–3/K–4 alien. The event or events must have taken place since the alien entered the United States as a K–3/K–4 nonimmigrant. The burden of establishing ''good cause'' rests solely with the applicant. Whether the applicant has shown ''good cause'' is a purely discretionary decision by the Service from which there is no appeal.

(iii) *Notice of intent to deny.* When an adverse decision is proposed on the basis of evidence not submitted by the applicant, the Service shall notify the applicant of its intent to deny the application for extension of stay and the basis for the proposed denial. The applicant may inspect and rebut the evidence and will be granted a period of 30 days from the date of the notice in which to do so. All relevant material will be considered in making a final decision.

(11) *Termination of K–3/K–4 status.* The status of an alien admitted to the United States as a K–3/K–4 under section 101(a)(15)(K)(ii) or (iii) of the Act, shall be automatically terminated 30 days following the occurrence of any of the following:

(i) The denial or revocation of the Form I–130 filed on behalf of that alien;

(ii) The denial or revocation of the immigrant visa application filed by that alien;

(iii) The denial or revocation of the alien's application for adjustment of status to that of lawful permanent residence;

(iv) The K–3 spouse's divorce from the U.S. citizen becomes final;

(v) The marriage of an alien in K–4 status.

(vi) The denial of any of these petitions or applications to a K–3 also results in termination of a dependent K–4's status. For purposes of this section, there is no denial or revocation of a petition or application until the administrative appeal applicable to that application or petition has been exhausted.

* * * * *

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

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

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

12. Section 245.1 is amended by revising paragraph (c)(6), and by adding a new paragraph (i), to read as follows:

§ 245.1 Eligibility.

* * * * *

(c) * * *

(6) Any alien admitted to the United States as a nonimmigrant defined in section 101(a)(15)(K) of the Act, unless:

(i) In the case of a K–1 fiancé(e) under section 101(a)(15)(K)(i) of the Act or the K–2 child of a fiancé(e) under section 101(a)(15)(K)(iii) of the Act, the alien is applying for adjustment of status based upon the marriage of the K–1 fiancé(e) which was contracted within 90 days of entry with the United States citizen who filed a petition on behalf of the K–1 fiancé(e) pursuant to § 214.2(k) of this chapter;

(ii) In the case of a K–3 spouse under section 101(a)(15)(K)(ii) of the Act or the K–4 child of a spouse under section 101(a)(15)(K)(iii) of the Act, the alien is applying for adjustment of status based upon the marriage of the K–3 spouse to the United States citizen who filed a petition on behalf of the K–3 spouse pursuant to § 214.2(k) of this chapter;

* * * * *

(i) *Adjustment of status from K–3/K–4 status.* An alien admitted to the United States as a K–3 under section 101(a)(15)(K)(ii) of the Act may apply for adjustment of status to that of a permanent resident pursuant to section 245 of the Act at any time following the approval of the Form I–130 petition filed on the alien's behalf, by the same citizen who petitioned for the alien's K–3 status. An alien admitted to the United States as a K–4 under section 101(a)(15)(K)(iii) of the Act may apply for adjustment of status to that of permanent residence pursuant to section 245 of the Act at any time following the approval of the Form I–130 petition filed on the alien's behalf, by the same citizen who petitioned for the alien's parent's K–3 status. Upon approval of the application, the director shall record his or her lawful admission for permanent residence in accordance with that section and subject to the conditions prescribed in section 216 of the Act. An alien admitted to the U.S. as a K–3/K–4 alien may not adjust to that of permanent resident status in any way other than as a spouse or child of the U.S. citizen who originally filed the petition for that alien's K–3/K–4 status.

13. Section 245.2 is amended by adding a sentence at the end of paragraph (a)(4)(ii)(C), to read as follows:

§ 245.2 Application.

(a) * * *

(4) * * *

(ii) * * *

(C) * * * The travel outside of the United States by an applicant for adjustment of status, who is not under exclusion, deportation, or removal

proceeding and who is in lawful K–3 or K–4 status shall not be deemed an abandonment of the application if, upon returning to this country, the alien is in possession of a valid K–3 or K–4 visa and remains eligible for K–3 or K–4 status.

* * * * *

14. Section 245.5 is amended by revising the second sentence to read as follows:

§ 245.5 Medical examination.

* * * A medical examination shall not be required of an applicant for adjustment of status who entered the United States as a nonimmigrant spouse, fiancé, or fianceé of a United States citizen or the child of such an alien as defined in section 101(a)(15)(K) of the Act and § 214.2(k) of this chapter if the applicant was medically examined prior to, and as a condition of, the issuance of the nonimmigrant visa; provided that the medical examination must have occurred not more than 1 year prior the date of application for adjustment of status. * * *

PART 248—CHANGE OF NONIMMIGRANT STATUS

15. 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.

§ 248.1 [Amended]

16. Section 248.1(a) is amended by:

a. Revising the phrase ''his nonimmigrant'' to read ''his or her nonimmigrant'' wherever that term appears in the paragraph; and by

b. Revising the phrase ''that of a fianceé'' or fiancé to read ''that of a spouse or fiancé(e), or the child of such alien,''

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

17. The authority citation for part 274a is revised to read as follows:

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

18. Section 274a.12(a) is amended by:

a. Revising paragraph (a) heading, and paragraph (a) introductory text;

b. Revising paragraph (a)(6);

c. Adding a new paragraph (a)(9).

The revisions and additions read as follows:

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

(a) *Aliens authorized incident to status.* Pursuant to the statutory or regulatory reference cited, the following classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. Any alien who is within a class of aliens described in paragraphs (a)(3) through (a)(13) of this section, and who seeks to be employed in the United States, must apply with the Service for a document evidencing such employment authorization.

* * * * *

(6) An alien admitted to the United States as a nonimmigrant fiancé or fiancée pursuant to section 101(a)(15)(K)(i) of the Act, or an alien admitted as a child of such alien, for the period of admission in that status, as evidenced by an employment authorization document issued by the Service;

* * * * *

(9) Any alien admitted as a nonimmigrant spouse pursuant to section 101(a)(15)(K)(ii) of the Act, or an alien admitted as a child of such alien, for the period of admission in that status, as evidenced by an employment authorization document, with an expiration date issued by the Service;

* * * * *

Dated: August 2, 2001.

Kevin D. Rooney,

Acting Commissioner, Immigration and Naturalization Service.

[FR Doc. 01–20302 Filed 8–13–01; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 94 and 95

[Docket No. 00–121–1]

RIN 0579–AB26

Importation Prohibitions Because of Bovine Spongiform Encephalopathy

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to prohibit, with limited exceptions, the importation of certain animal materials and their derivatives, and any products they are used in, from regions considered to present an unacceptable risk of introducing bovine spongiform encephalopathy into the United States. Additionally, we are requiring that those materials, when imported from regions not considered at risk for bovine spongiform encephalopathy, be accompanied by government certification regarding the species, region of origin, processing, and handling of the materials and the animals from which they were derived. These actions are necessary to ensure that materials containing the bovine spongiform encephalopathy agent are not imported into the United States.

DATES: This rule is effective retroactively to December 7, 2000, except for § 95.29, which is effective August 14, 2001. We invite you to comment on this docket. We will consider all comments that we receive by October 15, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 00–121–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 00–121–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and possibly other ruminants and is not known to exist in the United States.