

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 214

[INS No. 1732-95]

RIN 1115-AE17

#### Conditions on Nonimmigrant Status: Disclosure of Information

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to amend the Immigration and Naturalization Service ("the Service") regulations by removing the current regulatory language conditioning an alien's nonimmigrant status on his or her providing full and truthful information requested by the Service, regardless of the requested information's materiality. This proposed regulation would clarify that a nonimmigrant's maintenance of status is conditioned on, among other things, the provision of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or that the alien is eligible to receive a benefit under the Immigration and Nationality Act ("the Act"). This rule addresses the concern expressed by the court in *Romero v. I.N.S.*, 39 F.3d 977 (9th Cir. 1994), that, under the current wording of the regulations, the Service may elicit information unrelated to that required to ensure the alien's continued eligibility for nonimmigrant status or benefits under the Act.

**DATES:** Written comment must be submitted on or before August 13, 1996.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536, Attention: Public Comment Clerk. To ensure proper handling, please reference INS

Number 1732-95 on your correspondence.

#### FOR FURTHER INFORMATION CONTACT:

Miriam Jawitz Hetfield, Senior Adjudications Officer, Nonimmigrant Branch, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone: (202) 514-5014.

**SUPPLEMENTARY INFORMATION:** Section 214(a)(1) of the Act provides that the Attorney General may by regulation prescribe the length and the conditions of a nonimmigrant alien's stay, in order to ensure that the nonimmigrant will depart from the United States at the expiration of the period of admission or upon failure of the nonimmigrant to maintain nonimmigrant status. Under section 241(a)(1)(C)(i) of the Act, a nonimmigrant who fails to maintain nonimmigrant status, or to comply with the conditions of such status, is deportable.

Under current 8 CFR 214.1(f), a condition of an alien's nonimmigrant status is that he or she provide full and truthful information requested by the Service, "regardless of whether or not the information requested was material." The Service promulgated this regulation to ensure that it is furnished with the information necessary to perform its statutory function of regulating the admission and control of nonimmigrants, to ensure compliance with the Act, and to locate and deport those nonimmigrant aliens who have violated their status. 44 FR 65726-65727. It was the opinion of the Service, in promulgating this regulation, that, to meet this responsibility, it is necessary to have information which "possibly may not be considered material in the strict legal connotation of the term." *Id.* at 44 FR 65727. Despite such broad language, the current regulation was intended to require the provision of only information bearing a reasonable relationship to the Service's above-described responsibility in prescribing the conditions of a nonimmigrant's stay. *Id.*

On November 3, 1994, the court in *Romero v. I.N.S.*, 39 F.3d 977 (9th Cir. 1994), invalidated the parenthetical phrase in current 8 CFR 214.1(f), "(regardless of whether or not the information requested was material)." In *Romero*, the Service charged the plaintiff with violating section 241(a)(1)(C)(i) of the Act for failing to

maintain nonimmigrant status, contending that she had not disclosed certain information requested by a Service officer. Specifically, in response to a question by a Service officer, the plaintiff stated that she had not informed another alien that someone could help that alien obtain an extension of nonimmigrant status for money. The Service officer sought this information in connection with an investigation of alleged corruption among customs officers. The immigration court found that, in making this statement, the plaintiff had provided a Service officer with false information in violation of 8 CFR 214.1(f), and therefore was deportable under section 241(a)(1)(C)(i) of the Act. In ordering that the case be remanded for withdrawal of the order of deportation, the *Romero* court found that the statement the plaintiff made to the Service officer was not material in any way to the alien's immigration status, but related only to a criminal investigation of other persons. The court held that, as currently worded, the disclosure requirement of 8 CFR 214.1(f) is inconsistent with the purpose of the enabling statute, section 214(a)(1) of the Act, which is to ensure that the alien is eligible for nonimmigrant status or immigration benefits.

This proposed regulatory change would clarify that a nonimmigrant's maintenance of status and/or continued receipt of immigration benefits is conditioned on the alien fully and truthfully disclosing all information he or she possesses, or reasonably should have knowledge of, which the Service deems material in order to ensure that the alien is eligible for nonimmigrant status and/or immigration benefits under the Act. This regulation does not give the Service the authority to require disclosure of information in the hope that it might uncover information to be used for another purpose, such as an investigation of another person or persons. For information to be deemed "material" for purposes of this regulation, there must exist a reasonable connection between the information sought and the determination of whether an alien is eligible under the Act for nonimmigrant status or immigration benefits. In this regard, "material" information includes that information which, if known to the Service, would be predictably capable of

affecting a decision regarding whether an alien has violated a condition of his or her nonimmigrant stay or eligibility for benefits. See *Kungys v. United States*, 485 U.S. 759, 771 (1988).

#### Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule merely clarifies that a nonimmigrant's status in this country is conditioned on, among other things, his or her providing full and truthful disclosure of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or to ensure that the alien is eligible to receive any other benefit under the Act. Any impact this proposed regulation will have on small business entities, therefore, will be negligible.

#### Executive Order 12866

This proposed rule is not 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, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

#### Executive Order 12612

This regulation 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 Federal Assessment.

#### Paperwork Reduction Act

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

#### List of Subjects in 8 CFR Part 214

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

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 214—NONIMMIGRANT CLASSES

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

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

2. In § 214.1, paragraph (f) is revised to read as follows:

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

\* \* \* \* \*

(f) *Disclosure of information.* (1) A condition of a nonimmigrant's admission and maintenance of status in the United States is that he or she fully and truthfully disclose all information deemed by the Service to be material in determining whether the nonimmigrant:

(i) Is eligible for, and/or is maintaining the nonimmigrant status in which the alien was admitted or to which the alien has changed under section 248 of the Act, or

(ii) Is eligible to receive any benefit under the Act.

(2) Willful failure by a nonimmigrant to provide full and truthful disclosure of such material information when requested by a Service officer constitutes a failure to maintain nonimmigrant status under section 241(a)(1)(C)(i) of the Act.

\* \* \* \* \*

Dated: March 4, 1996.

Doris Meissner,

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 96-15169 Filed 6-13-96; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

##### 9 CFR Part 95

[Docket No. 89-174-3]

##### Importation of Fetal Bovine Serum

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We are withdrawing a proposed rule that would have allowed, under certain conditions, the importation of fetal bovine serum into the United States from countries in which foot-and-mouth disease or rinderpest exists. We are taking this action after considering the comments

we received following the publication of the proposed rule.

**DATES:** This withdrawal is effective June 14, 1996.

**FOR FURTHER INFORMATION CONTACT:** Dr. John H. Gray, Senior Staff Veterinarian, Import/Export Products, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737, (301) 734-7837.

##### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR part 95 govern importation into the United States of certain animal byproducts, including blood serum and other blood products. Blood serum is that part of blood that is left after the blood cells are removed.

Fetal bovine serum (FBS) is that part of the blood from bovine fetuses that is left after the blood cells are removed. It is used in tissue culture media to produce various pharmaceuticals and biological products, such as vaccines, and cannot be derived synthetically.

On February 25, 1994, we published in the Federal Register (59 FR 9142-9146, Docket No. 89-174-1) a proposed rule that would have allowed, under certain conditions, the importation of FBS into the United States from countries in which foot-and-mouth disease (FMD) or rinderpest exists. The proposed conditions included certification of the origin of the donor fetuses and treatment of the FBS with gamma radiation.

We solicited comments on the proposed rule for 60 days ending April 26, 1994. However, on April 15, 1994, we published in the Federal Register (59 FR 18003-18004, Docket No. 89-174-2) a notice extending the comment period on the proposed rule until June 27, 1994.

By the close of the comment period, we received a total of 22 comments. One commenter supported the proposed rule as written. Several commenters supported it with changes. The remainder of the commenters either opposed the proposed rule or expressed reservations concerning it.

The commenters in opposition to the proposal raised a number of issues, including that of the efficacy of the proposed required dosage of gamma radiation in destroying FMD virus. Several of the commenters stated that the size and configuration of the containers in which the FBS is irradiated could influence the effectiveness of the treatment. A number of commenters stated that the potential difficulties in adequately monitoring the source of donor fetuses could create an