

## Department of Homeland Security

## § 235.1

soon as practicable, the commanding officer or person in command, or the owner of the aircraft, shall communicate with the nearest immigration officer and make a full report of the circumstances of the flight and of the emergency or forced landing.

[22 FR 9795, Dec. 6, 1957, as amended at 32 FR 9631, July 4, 1967; 45 FR 29243, May 1, 1980; 49 FR 50019, Dec. 26, 1984; 54 FR 102, Jan. 4, 1989; 54 FR 1050, Jan. 11, 1989; 65 FR 58903, Oct. 3, 2000]

### § 234.3 Aircraft; how considered.

Except as otherwise specifically provided in the Immigration and Nationality Act and this chapter, aircraft arriving in or departing from the continental United States or Alaska directly from or to foreign contiguous territory or the French island of St. Pierre or Miquelon shall be regarded for the purposes of the Immigration and Nationality Act and this chapter as other transportation lines or companies arriving or departing over the land borders of the United States.

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

### § 234.4 International airports for entry of aliens.

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

proper inspection and disposition of aliens, including office space and such temporary detention quarters as may be found necessary. The designation of an airport as an international airport for the entry of aliens may be withdrawn whenever, in the judgment of the Commissioner, there appears just cause for such action.

[22 FR 9795, Dec. 6, 1957]

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

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235.11 Admission of conditional permanent residents.

AUTHORITY: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731-32.

EFFECTIVE DATE NOTE: At 71 FR 68429, Nov. 24, 2006, the authority citation was revised, effective Jan. 23, 2007. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731-32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108-458).

### § 235.1 Scope of examination.

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

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer

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that he or she is a U.S. citizen, he or she shall thereafter be inspected as an alien.

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

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

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

(ii) The Secretary of Homeland Security or his delegate may require non-immigrant aliens seeking admission to the United States pursuant to a non-immigrant visa, a Form DSP-150, B-1/B-2 Visa and Border Crossing Card, or section 217 of the Act, at a port-of-entry designated by notice in the FEDERAL REGISTER to provide fingerprints, photograph(s) or other specified bio-

metric identifiers during the inspection process. The failure of an applicant for admission to comply with any requirement to provide biometric identifiers may result in a determination that the alien is inadmissible under section 212(a)(7) of the Act, or other relevant grounds in section 212 of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) If multiple members of a family, as defined in paragraph (e)(1) of this

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section, are included on a single application, evidence of the familial relationship.

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

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

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

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

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

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

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

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

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

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

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

(v) Participants must abide by all Federal, state, and local laws regarding

the importation of alcohol or agricultural products or the importation or possession of controlled substances as defined in section 101 of the Controlled Substance Act (21 U.S.C. 802).

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

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

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

her decision and the reasons therefore in writing.

(7) *Compliance checking.* Participation in this program does not relieve the holder from responsibility to comply with all other aspects of United States Immigration, Customs, or other Federal inspection service laws or regulations. To prevent abuse, the United States Immigration and Naturalization Service retains the right to conduct inspections or examinations of all persons applying for admission or readmission to or seeking transit through the United States in accordance with the Immigration and Nationality Act.

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

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

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

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

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

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

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

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

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

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

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

[62 FR 10353, Mar. 6, 1997, as amended at 62 FR 47751, Sept. 11, 1997; 64 FR 8494, Feb. 19, 1999; 64 FR 36561, July 7, 1999; 64 FR 68617, Dec. 8, 1999; 67 FR 71449, Dec. 2, 2002; 68 FR 5193, Jan. 31, 2003; 69 FR 480, Jan. 5, 2004; 69 FR 50053, Aug. 13, 2004; 69 FR 53333, Aug. 31, 2004; 69 FR 58037, Sept. 29, 2004]

EFFECTIVE DATE NOTE: At 71 FR 68429, Nov. 24, 2006, §235.1 was amended by redesignating paragraphs (d), (e), and (f) as paragraphs (f), (g), and (h), and by adding paragraphs (d) and (e), effective Jan. 23, 2007. For the convenience of the user, the added text is set forth as follows:

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(d) *U.S. Merchant Mariners.* United States citizens who are holders of a Merchant Mariner Document (MMD or Z-card) issued by the U.S. Coast Guard may present, in lieu of a passport, an unexpired MMD used in conjunction with maritime business when entering the United States.

(e) *NEXUS Air Program Participants.* United States citizens, Canadian citizens, and permanent residents of Canada who are traveling as participants in the NEXUS Air program, may present, in lieu of a passport, a valid NEXUS Air membership card when

using a NEXUS Air kiosk prior to entering the United States.

§ 235.2 Parole for deferred inspection.

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

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

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

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

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

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

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

(e) Whenever an alien on arrival is found or believed to be suffering from a disability that renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his or her family concerning whose admissibility it is necessary to have such alien testify, and