

DEPARTMENT OF JUSTICE**DEPARTMENT OF STATE****28 CFR Part 1100**

[INS No. 2133-01; AG Order No. 2493-2001]

RIN 1115-AG20

Protection and Assistance for Victims of Trafficking**AGENCY:** Department of Justice and Department of State.**ACTION:** Interim rule with request for comments.

SUMMARY: This rule sets forth guidance for all appropriate federal officials, including but not limited to officials of the Department of Justice (DOJ) and the Department of State (DOS) in implementing provisions of section 107(c) of the Trafficking Victims Protection Act of 2000. It establishes overall implementation procedures and assigns responsibilities for DOJ and DOS officials to carry out certain requirements related to the identification and protection of victims of severe forms of trafficking in persons. This rule establishes and/or identifies mechanisms that will allow officials to appropriately address the particular needs of these victims. Specifically it addresses: the identification of victims of a severe form of trafficking in persons; the protection of victims of severe forms of trafficking in persons while in custody; access to information and translation services for victims of severe forms of trafficking in persons; legal mechanisms for allowing victims of severe forms of trafficking in persons, who are potential witnesses, continued presence in the United States; and development of appropriate DOJ and DOS training.

DATES: *Effective Date:* This interim rule is effective August 23, 2001.*Comment Date:* Written comments must be submitted on or before October 22, 2001.

ADDRESSES: Please submit your written comments to the Immigration and Naturalization Service, Policy Directive and Instructions Branch, Attention TVPA Implementation Team, 425 I Street, NW, Room 4034, Washington, DC 20536 by mail or e-mail your comments through the Immigration and Naturalization Service Website Feedback Option at <http://www.ins.usdoj.gov/graphics/feedback.htm>. To ensure proper handling, please reference INS No. 2133-01 on your correspondence. Comments are available for public inspection at the above address by

calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Anne M. Veysey, Director, Program Strategy and Development Branch, Immigration and Naturalization Service, Office of Investigations, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone: (202) 514-3479.

SUPPLEMENTARY INFORMATION:**Background and Legislative Authority**

The Trafficking Victims Protection Act of 2000 (TVPA), Division A of Public Law 106-386, Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), was signed into law on October 28, 2000. When Congress passed this law, it provided a comprehensive set of tools for the federal government to combat trafficking in persons, in the United States and around the world, through prevention, prosecution and enforcement against traffickers, and protection and assistance for victims of trafficking in persons.

This regulation implements section 107(c) of the TVPA and provides guidance concerning: (1) Protections for victims of severe forms of trafficking in persons while in custody (section 107(c)(1)); (2) victims' access to information and translation services (section 107(c)(2)); (3) authority to permit continued presence in the United States of a victim and potential witness (section 107(c)(3)); and (4) training of government personnel (section 107(c)(4)).

This law's purposes "are to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims." Section 102(a), Purposes and Findings, TVPA. Congress found that "[t]rafficking in persons . . . is the largest manifestation of slavery today. At least 700,000 persons annually, primarily women and children, are trafficked within or across international borders. Approximately 50,000 women and children are trafficked into the United States each year." Section 102(b)(1), TVPA. Congress further found that "[t]raffickers often transport victims from their home communities to unfamiliar destinations, including foreign countries away from family and friends, religious institutions, and other sources of protection and support, leaving the victims defenseless and vulnerable." Id. at section 102(b)(5). Moreover, Congress recognized that victims are often "forced through physical violence to engage in sex acts

or perform slavery-like labor" and that "[t]raffickers often make representations to their victims that physical harm may occur to them or others." Id. at sections 102(b)(6) and (7).

Stakeholders' meetings were held with key federal agencies and other groups to consider how best to accomplish the objectives of the TVPA. Input and feedback from these stakeholders were used in the drafting of this regulation. Additionally, a DOJ working group on implementation of the new trafficking law was established. Input from these meetings also was utilized in the development of this rule.

Section 107(c) provides certain protections and assistance to victims of severe forms of trafficking in persons. However, it should be noted that the TVPA contains other forms of protection and assistance to be administered by various federal agencies, including the Departments of Health and Human Services, Labor, Justice, and State, and the Legal Services Corporation. The forms of protection and assistance identified in the TVPA include the establishment and implementation of programs and initiatives in foreign countries to assist in the safe integration, reintegration, or resettlement, as appropriate, of victims of trafficking in persons; and the eligibility for benefits and services under federal or state programs that are funded or administered by federal agencies without regard to the immigration status of such victims. The law also authorizes grants to States, Indian tribes, units of local government, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking in persons. The law also provides for protection from removal for certain trafficking victims through the establishment of two new nonimmigrant classifications. The "T" visa allows victims of severe forms of trafficking in persons to remain in the United States if they have complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking in persons or are under 15 years of age, and would suffer extreme hardship involving unusual and severe harm upon removal. Trafficking victims may also be eligible for the new "U" visa contained in section 1513 of the Battered Immigrant Women Protection Act of 2000, which is Title V of Division B of the Victims of Trafficking and Violence Protection Act 2000, Public Law 106-386. This rulemaking does not

address these issues. Relevant federal agencies or components with primary responsibility regarding this protection and assistance may develop regulations or guidance in the coming months.

Discussion of the Interim Rule

Victims of Severe Forms of Trafficking in Persons

Who Are Victims of Severe Forms of Trafficking in Persons?

A victim of a severe form of trafficking in persons is anyone who has been subjected either (1) to sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the commercial sex act is under 18 years of age, or (2) to the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Victims of a severe form of trafficking in persons may include United States citizens or nationals, lawful permanent residents, and other aliens lawfully or unlawfully present in the United States.

How Will Federal Officials Identify Victims of Severe Forms of Trafficking in Persons?

Federal officials will follow the definition of severe forms of trafficking in persons articulated in section 103 of the TVPA. Indeed, certain federal officials already have obligations to identify victims of federal crime. Under 42 U.S.C. 10607, the head of each department and agency of the United States engaged in the detection, investigation, or prosecution of crime must designate "responsible officials" to identify victims of crime. Section 107(c) will be implemented consistent with these pre-existing obligations to identify victims of crime.

What Is the Difference Between Alien Smuggling and Severe Forms of Trafficking in Persons?

Federal law makes a distinction between alien smuggling—in which the smuggler arranges for an alien to enter the country illegally for any reason, including where the alien has voluntarily contracted to be smuggled—and severe forms of trafficking in persons. Unlike alien smuggling, as the following definition indicates, severe forms of trafficking in persons must involve both a particular means such as the use of force, fraud, or coercion, and a particular end such as involuntary servitude or a commercial sex act (with regards to a commercial sex act,

however, the use of force, fraud, or coercion is not necessary if the person induced to perform a commercial sex act is under the age of 18). Pursuant to the TVPA, victims of severe forms of trafficking are persons who are recruited, harbored, transported, provided, or obtained for: (1) Labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery; or (2) the purpose of a commercial sex act in which such act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. Aliens who are voluntarily smuggled into the United States, in most cases, will not be considered victims of severe forms of trafficking in persons. However, individuals who are smuggled into the United States in order to be used for labor or services may become victims of a severe form of trafficking in persons if, for example, after arrival the smuggler uses threats of serious harm or physical restraint to force the individual into involuntary servitude, peonage, debt bondage, or slavery. Federal law prohibits forced labor regardless of the victim's initial consent to work. This distinction between alien smuggling and severe forms of trafficking in persons is consistent with the separate treatment of the trafficking and smuggling issues internationally.

Who Receives Protections Under the TVPA?

Once identified as a victim of a severe form of trafficking in persons, section 107(c)(1) of the TVPA requires that all victims of severe forms of trafficking in persons be protected while in federal custody. Under section 107(c)(3), victims of severe forms of trafficking in persons who are potential witnesses to trafficking in persons and whom federal law enforcement officials seek to keep in this country in order to prosecute traffickers also receive necessary protections, even when the victims are not in custody. Pursuant to the TVPA and 42 U.S.C. 10607(c)(2), federal law enforcement officials should arrange for victims of severe forms of trafficking in persons to receive reasonable protections from suspected traffickers and persons acting in concert with or at the behest of the suspected traffickers.

Which Family Members Are Covered in the Protection and Continued Presence Provisions of the TVPA?

In the TVPA, Congress recognized that traffickers may use threats of intimidation or reprisals against the family members of victims of severe

forms of trafficking in persons as a tool to force trafficking victims to comply with their wishes. For victims of severe forms of trafficking in persons who are in custody or whose continued presence the Attorney General has authorized, the TVPA requires law enforcement personnel, immigration officials, and DOS officials to take measures to protect them and their family members from intimidation, threats of reprisals, and reprisals from traffickers. For the purpose of determining immigration benefits under the T visa, the definition of family members is narrowly drawn. For the protections afforded by this rule, federal law enforcement personnel, immigration officials, and DOS officials are not limited to that specific definition. Instead, in this context, family members may include those members of a victim's family whom traffickers have chosen to target or whom traffickers are likely to target.

Federal law enforcement personnel, immigration officials, and DOS officials should work with victims of severe forms of trafficking in persons to determine whether a member of the victim's family is likely to be threatened, intimidated, or harmed. Federal law enforcement personnel, immigration officials, and DOS officials have discretion to determine whom they can reasonably protect from such reprisals, given such parameters, for instance, as the inability of the United States to provide protection in foreign countries.

Who Provides the Protection?

Federal law enforcement personnel, immigration officials, and DOS officials are responsible for protecting victims of severe forms of trafficking in persons. Under 42 U.S.C. 10607, federal officials involved in the detection, investigation, or prosecution of crime are required to arrange for a victim to receive reasonable protection from suspected offenders and persons acting in concert with or at the behest of the suspected offenders. (See "Attorney General Guidelines for Victim and Witness Assistance 2000," at 21, currently available at <http://www.ojp.usdoj.gov/ovc/infores/agg2000>.) This rule will help to identify victims as early as possible in the investigation and prosecution processes, so that they are provided the protection and services available to them under the laws of the United States. Victims of severe forms of trafficking, by virtue of being victims of a federal crime, already are eligible to receive reasonable protections and services in accordance with 42 U.S.C. 10606 and 10607.

Victims of severe forms of trafficking in persons, however, are often particularly vulnerable, because they have experienced physical and psychological trauma, are far from home without nearby friends or family, have limited or no English proficiency, and come from cultural traditions different from those in the United States. In accordance with the intent of the TVPA, the particular needs of these victims should be taken into account by federal law enforcement personnel, immigration officials, and DOS officials. As such, where practicable and appropriate, this protection and these services should be specifically tailored to meet the particular needs of victims of severe forms of trafficking in persons.

For this rule, federal officials as defined by 42 U.S.C. 10606(a) also include federal law enforcement personnel who work cooperatively with the federal law enforcement agencies with the primary responsibility for enforcing trafficking laws.

Will Alien Victims of a Severe Form of Trafficking in Persons, who are not Legally in the United States, Be Placed in U.S. Immigration Removal Proceedings?

The Immigration and Naturalization Service (INS or Service) has prosecutorial discretion whether to place alien victims of severe forms of trafficking in persons into removal proceedings. INS officials, when deciding whether to place alien victims into removal proceedings, will take into account the facts and circumstances of each individual situation, including specific recommendations from federal law enforcement officials relating to individual victims for whom they are requesting continued presence. If these alien victims are potential witnesses to trafficking in persons, their continued presence in the United States may be authorized. The INS reserves the right to initiate removal proceedings, where necessary and appropriate, against aliens whose continued presence in the United States has been authorized. In cases where proceedings have been initiated, the INS may use various tools to exercise its prosecutorial discretion to accomplish the goal of allowing the alien victim to remain in the United States. Victims of severe forms of trafficking in persons also may be eligible for other forms of immigration relief, including the new nonimmigrant T and U visas, that would prevent their removal.

Will the INS Keep Alien Victims of Severe Forms of Trafficking in Persons in Custody?

The INS will not detain victims unless individual circumstances or the law requires detention and the INS has the authority under the Immigration and Nationality Act (Act or INA) to detain them for removal proceedings. If INS does take victims of a severe form of trafficking in persons into custody, to the extent practicable, these individuals should not be detained in facilities inappropriate to their crime victim status. Additionally, unless the law prohibits release, the INS, an Immigration Judge or the Board of Immigration Appeals (BIA)—whoever has proper jurisdiction—may decide whether to release the alien. The need to continue custody in order to protect the victim and the victim's desire to remain in custody for protection purposes should be taken into consideration when making this decision. In general, an alien victim of severe forms of trafficking in persons will not be required to remain in INS custody for the sole purpose of protection.

Will Other Federal Officials Detain Victims of Severe Forms of Trafficking in Persons?

Such victims will only be held in federal detention if authority to detain exists under statutory authority separate from the TVPA. If victims are detained by federal officials, to the extent practicable, they shall not be detained in facilities inappropriate to their status as crime victims.

Access to Information and Translation Services

What Information Will Be Provided to Victims of Severe Forms of Trafficking In Persons?

Section 107(c)(2) of the TVPA mandates that “[v]ictims of severe forms of trafficking in persons shall have access to information about their rights and translation services.” Under § 1100.33 of the interim rule, victims of severe forms of trafficking in persons will be provided with notice about their rights and services, including information about legal services, federal and state benefits and services, victim service organizations, protections available, rights of privacy and confidentiality issues, victim compensation and assistance programs, immigration benefits and programs that might be relevant including those available under the TVPA, the right to restitution, the right to notification of case status, and the availability of

medical services. We are planning to prepare updated versions of standardized victim-assistance brochures targeted for victims of severe forms of trafficking in persons. The Departments of Justice, State, Health and Human Services, and Labor are working collaboratively to develop these brochures, which will provide basic information or points of contact about victims' rights and potential services and benefits that may be available to victims, depending on their eligibility. Where information more specific to a geographic area is required by this regulation—for instance, in providing information about low-cost or pro bono legal services—local agency representatives may need to supplement the general information provided in the brochures. These brochures will be distributed and copied for use by federal agencies that may encounter victims of severe forms of trafficking in persons and will contain general information about relevant immigration benefits and programs. Specific advice, relevant to individual circumstances, about a victim's eligibility for such immigration benefits is more appropriately given by an independent legal advisor than by federal law enforcement personnel, immigration officials, or DOS officials. We welcome public comment on the notification arrangements set out in § 1100.33. Any such comments should include suggestions about how information can be provided to trafficking victims most effectively and without undue burden to law enforcement officers operating in a range of contexts and with varying areas of expertise.

Who Will Provide Victims Of Severe Forms of Trafficking in Persons Information About Their Rights and Available Services Under the Law?

Federal law enforcement personnel, immigration officials, and DOS officials, as appropriate, are required by the TVPA to make available to victims of severe forms of trafficking in persons information about their rights under United States law, as well as reasonable access to translation services. In addition, victims of federal crime, including victims of severe forms of trafficking in persons, have certain rights, as outlined in 42 U.S.C. 10606. These rights include the right to be treated with fairness and respect, the right to be notified of court proceedings, and the right to be present at all public court proceedings. Moreover, under 42 U.S.C. 10607, responsible federal officials must provide certain services to federal crime victims, including victims of severe forms of trafficking in persons.

Section 1100.31 of this rule specifies that victims of severe forms of trafficking in persons also will receive information about services.

Continued Presence

Who May Be Allowed To Remain in the United States Under the Continued Presence Provision of Section 107(c) of The TVPA?

Victims of severe forms of trafficking in persons who are aliens and potential witnesses to such trafficking may be allowed to remain temporarily in the United States to effectuate prosecution of those responsible for the trafficking.

Can Any Law Enforcement Officer or Agency Permit an Alien Victim of a Severe Form of Trafficking in Persons to Remain in the United States Without Proper Immigration Status?

No. Only the Attorney General or someone delegated the authority under the immigration laws can authorize an alien to enter or to remain in the United States.

What if a Law Enforcement Agency Has a Genuine Need To Have a Victim/ Witness Remain in the United States for the Purpose of Investigation and Prosecution of a Case?

Any federal law enforcement agency may request an alien's continued presence in the United States in order to investigate and prosecute traffickers if the alien is a victim of a severe form of trafficking in persons and a potential witness to such trafficking. The agency may contact the INS, Headquarters Office of Field Operations, and request that an alien be allowed to remain temporarily in the country. When appropriate, the INS will grant continued presence in the United States through one of several mechanisms available under the law. These mechanisms may include parole, voluntary departure, stay of final order, deferred action under section 107(c)(3), or any other authorized form of relief, including applicable nonimmigrant visas. Aliens granted deferred action based upon section 107(c)(3) are considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA sections 212(a)(9)(B)(I) and (c) and therefore do not accrue time toward unlawful presence.

The requirements of this rule do not apply to state or local law enforcement. However, if state or local law enforcement officials want assistance in having victims of severe forms of trafficking in persons remain in this country to effectuate prosecution of

traffickers, those law enforcement officials should contact the Criminal Section of the Civil Rights Division of the U.S. Department of Justice or other appropriate federal law enforcement officials who may investigate or prosecute trafficking in persons. The federal law enforcement officials may then contact the INS, Headquarters Office of Field Operations, and request that an alien be allowed to remain temporarily in the country.

In most cases, victims whose continued presence has been authorized may be eligible for temporary employment authorization, as employment is often one of the particular needs of victims of severe forms of trafficking in persons.

If the Victim is an Alien and Does Not Wish to Remain in the United States, Will the Alien Be Prevented From Departing?

Generally, the INS will not require victims of severe forms of trafficking in persons, regardless of their immigration status, to remain in the United States. However, under unusual circumstances, a victim may be required to stay. An alien can be prevented from departing the United States if that departure is deemed prejudicial to the interests of the United States. One example of this could be if the alien is needed in the United States as a witness in, or a party to, any criminal case under investigation or action pending in a court in the United States. An alien also can be prevented from departing the United States for national security reasons, if the alien is a fugitive from justice, or if it is believed that the alien is being forced to depart involuntarily under conditions other than removal, exclusion, or extradition. The procedures governing these actions are established in 8 CFR part 215.

Who Is Responsible for Implementing This Rule?

All federal law enforcement personnel, immigration officials, and Department of State officials who are involved in investigating or prosecuting traffickers in persons, or in identifying, encountering, or detaining victims of severe forms of trafficking in persons, are responsible for implementing this rule. Those officials responsible for implementation include federal officers who work cooperatively with the federal law enforcement agencies with the primary jurisdiction for enforcing trafficking laws, such as screening for and referring suspected victims of severe forms of trafficking in persons.

Does a Victim as a Private Individual Have any Legal Recourse Against the United States Government if Benefits Under Section 107(c) Are Somehow Not Provided?

No. Nothing in section 107(c) shall be construed as creating any private cause of action against the United States, or its officers or employees. See section 107(d) of the TVPA. Furthermore, this regulation does not abrogate existing laws with respect to immigration admission and status or the United States Government's obligation to provide consular notice and access under the Vienna Convention on Consular Relations, April 24, 1963, 21 U.S.T. 77, T.I.A.S. No. 6820, 596 U.N.T.S. 261, and applicable bilateral agreements, which are described at the DOS website in "Consular Notification and Access" at <http://www.state.gov>.

Who Will Receive Training Under This Rule and What Type of Training Will Be Provided?

Section 1100.37 requires that appropriate DOJ and DOS personnel receive training in identifying victims of severe forms of trafficking in persons and providing for protections for such victims. The training will also include the rights of victims of crimes, as well as the benefits and services available to them and the victims of trafficking in persons in particular.

Regulatory Procedures

Good Cause Exception

Pursuant to 5 U.S.C. 553(b)(B), the Attorney General has determined that there is "good cause" to issue this rule as an interim rule with a provision for post-promulgation public comment; any delay in issuing these regulations would be contrary to the public interest. In the TVPA, Congress clearly recognized the need to promulgate these regulations expeditiously in order to provide for protection and assistance to victims of severe forms of trafficking in persons. Indeed, Congress provided the Department of Justice and the Department of State only 180 days within which to issue these required regulations. Without the protections and procedures provided in this interim rule, victims of severe forms of trafficking in persons currently in the United States may be held inappropriately in federal custody and not accorded the assistance due such victims. This regulation also outlines a mechanism that enables federal law enforcement officials to provide a legal means for individuals who have been victimized through a severe form of trafficking in persons to remain in the

United States. Without the prompt promulgation of this rule, victims of severe forms of trafficking in persons might inadvertently be sent back to their home countries, thus hindering the ability of federal law enforcement to investigate and prosecute cases. Moreover, the safety of victims of severe forms of trafficking in persons might be placed at risk, if the protections and assistance set forth in the TVPA were not available as soon as possible. The issuance of these regulations as an interim rule effective thirty days after publication will allow victims of severe forms of trafficking in persons to be accorded these needed protections as soon as possible. Finally, these regulations also implement training requirements for certain federal law enforcement personnel in order to facilitate the identification and protection of victims of severe forms of trafficking in persons and to provide methods to inform such victims of possible benefits and services. Since prior notice and comment with respect to this interim rule are impractical and contrary to the public interest, there is "good cause" under 5 U.S.C. 553 to make this rule effective August 23, 2001.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under section 3 of the Small Business Act. The rule deals with issues related to victims of severe forms of the trafficking in persons into the United States and the protection of those victims. Therefore, this rule does not affect 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, or tribal governments in the aggregate, or by the private sector, of \$100 million or more in any 1-year period, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This

rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866, Regulatory Planning and Review

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting or recordkeeping requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in this regulation clearly stated? (2) Do the regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of these regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (5) Is the description of these regulations in the **SUPPLEMENTARY INFORMATION** section helpful in understanding the regulations? How could this description be more helpful in making these regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Executive Order 13132, Federalism

This rule does not have a substantial direct effect 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, the Attorney General, by approving this rule, has determined that it does not have sufficient federalism implications to warrant 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.

List of Subjects in 28 CFR Part 1100

Administrative practice and procedure, Aliens, Civil rights, Crime, Immigration, Investigations, Intergovernmental relations, Labor, Law enforcement, Law enforcement officers, Victims.

Accordingly, for the reasons set forth and pursuant to section 107(c) of the TVPA, title 28 of the Code of Federal Regulations is amended by establishing a new chapter XI consisting of part 1100 to read as follows:

CHAPTER XI—DEPARTMENT OF JUSTICE AND DEPARTMENT OF STATE

PART 1100—TRAFFICKING IN PERSONS

Subpart A—[Reserved]

Subpart B—Victims of Severe Forms of Trafficking in Persons

Sec.

- 1100.25 Definitions.
- 1100.27 Purpose and scope.
- 1100.29 The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA).
- 1100.31 Procedures for protecting and providing services to victims of severe forms of trafficking in persons in federal custody.
- 1100.33 Access to information and translation services for victims of severe forms of trafficking in persons.
- 1100.35 Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons.
- 1100.37 Requirements to train appropriate personnel in identifying and protecting victims of severe forms of trafficking in persons.

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1104, 1252; 22 U.S.C. 7101, 7105; 42 U.S.C. 10606 and 10607; and section 107(c) of Public Law 106-386 (114 Stat. 1464, 1477).

Subpart A—[Reserved]**Subpart B—Victims of Severe Forms of Trafficking in Persons****§ 1100.25 Definitions.**

In this subpart, the following definitions apply:

Admission and Admitted mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer (8 U.S.C. 1101).

Alien means any person not a citizen or national of the United States (8 U.S.C. 1101).

Attorney General Guidelines means the *Attorney General Guidelines for Victim and Witness Assistance 2000*, which contain a policy guidance on how to treat crime victims and witnesses; these guidelines are available through the Internet on the Department of Justice's website.

Coercion means threats of serious harm to or physical restraint against any person; or any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of law or the legal process (22 U.S.C. 7102).

Commercial sex act means any sex act on account of which anything of value is given to or received by any person (22 U.S.C. 7102).

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined (22 U.S.C. 7102).

Family members of victims of severe forms of trafficking in persons means spouses, children, parents, or siblings whom traffickers have targeted or are likely to target and for whom protections from harm may reasonably be provided. At the discretion of the responsible official, this classification may be extended to include other family members. This definition is only applicable to the protections from harm referred to in this subpart.

Federal custody means that statutory detention and custodial authority exercised by personnel of federal agencies, bureaus, boards, divisions, programs, and offices.

Federal victims' rights legislation means the following statutes, as amended: the Victim and Witness Protection Act of 1982 (VWPA), Public

Law 97-291, 96 Stat. 1248; the Victims of Crime Act of 1984, Public Law 98-473, 98 Stat. 2170; the Victims Rights and Restitution Act of 1990, Public Law 101-647, 104 Stat. 4820; the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796; the Antiterrorism and Effective Death Penalty Act of 1996, Public Law 104-132, 110 Stat. 1214; the Victim Rights Clarification Act of 1997, Public Law 105-6, 111 Stat. 12; and the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386, 114 Stat. 1464.

INA means the Immigration and Nationality Act, 8 U.S.C. 1101 et seq.

Involuntary servitude includes a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process (22 U.S.C. 7102).

Responsible official refers to the agency official designated to provide the services described in 42 U.S.C. 10607(a).

Section 107(c) means section 107(c) of TVPA, Division A of Public Law 106-386.

Services to victims refer to those services to be provided pursuant to 42 U.S.C. 10607(c), unless otherwise specified in the TVPA or this subpart.

Severe forms of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery (22 U.S.C. 7102).

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102).

TVPA means the Trafficking Victims Protection Act of 2000, Public Law 106-386, Division A, October 28, 2000, 114 Stat. 1464, as amended, 22 U.S.C. 7105, et seq.

United States means the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the territories and possessions of the United States (22 U.S.C. 7102).

Victims' rights refer to crime victims' rights under 42 U.S.C. 10606(b), as well

as in other federal victims' rights legislation.

§ 1100.27 Purpose and scope.

(a) Under section 107(c) of the TVPA, both the Department of Justice (DOJ) and the Department of State (DOS) have been directed to promulgate regulations to implement the following:

(1) Procedures for appropriate federal employees to ensure, to the extent practicable, that victims of severe forms of trafficking in persons are housed in a manner appropriate to their status as crime victims, afforded proper medical care and other assistance, and protected while in federal custody, in accordance with their status as victims of severe forms of trafficking in persons;

(2) Procedures to provide victims of severe forms of trafficking in persons with access to information about their rights and with translation services;

(3) Procedures for federal law enforcement officials to request that certain victims of severe forms of trafficking in persons, who are aliens and are also potential witnesses, be permitted to remain in the United States to effectuate the prosecution of those responsible, and procedures to protect their safety, including taking measures to protect victims of severe forms of trafficking in persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates (these procedures should be appropriate to their status as victims of severe forms of trafficking in persons); and

(4) Training of appropriate DOJ and DOS personnel in identifying victims of severe forms of trafficking in persons, in understanding the particular needs common to victims of severe forms of trafficking in persons, and in providing for the protection of such victims.

(b) The regulations in this subpart apply to all federal law enforcement personnel, immigration officials and DOS officials, insofar as their duties involve investigating or prosecuting traffickers in persons, or may involve identifying, encountering or detaining victims of severe forms of trafficking in persons.

(c) The rights and protections made available to victims of severe forms of trafficking in persons under section 107(c) supplement those rights and protections provided to victims and witnesses in federal victims' rights legislation as defined in this subpart. The intent of this subpart is to ensure that the protections available under the provisions of federal victims' rights legislation as well as the TVPA are fully provided to victims of severe forms of trafficking in persons, in keeping with

their status as victims of severe forms of trafficking in persons. This subpart will ensure that these victims are identified as early as possible in the investigation and prosecution process, so that services and protections available to them under the laws of the United States are provided.

(d) The regulations under this subpart set forth the general procedures to ensure these rights are protected in cases involving victims of severe forms of trafficking in persons. All agencies, bureaus, boards, divisions, programs, and offices in the DOJ and the DOS with specific responsibilities under this subpart shall adopt such regulations and/or operating procedures as may be necessary to ensure compliance with section 107(c) and the requirements of this subpart.

§ 1100.29 The roles and responsibilities of federal law enforcement, immigration, and Department of State officials under the Trafficking Victims Protection Act (TVPA).

(a) *Department of Justice officials.* The various agencies, bureaus, boards, divisions, programs, and offices of the DOJ have most of the responsibilities assigned by section 107(c). The goals of section 107(c) are to identify victims of severe forms of trafficking in persons as early as possible in the investigation and prosecution process, to ensure efforts are made to see that such victims are accorded the rights described in 42 U.S.C. 10606, and to provide the protections and services required under 42 U.S.C. 10607 and under the TVPA.

(b) *Department of State officials.* Department of State missions throughout the world are often the initial contact for aliens in foreign countries who wish to come to the United States. Appropriate DOS personnel should be trained in identifying victims of severe forms of trafficking in persons. Furthermore, considering the international nature of trafficking in persons, appropriate DOS personnel, upon encountering victims of severe forms of trafficking in persons in foreign countries, should consider referrals to local law enforcement or service providers in the host country, but only if the local host country conditions support such actions.

(c) *Federal law enforcement officials.* Federal law enforcement officials who, during the performance of their duties, encounter a person whom they believe may be a victim of a severe form of trafficking in persons as defined by this subpart, are responsible for bringing such an individual to the attention of those federal law enforcement officials primarily responsible for enforcing trafficking laws, specifically INS or FBI.

In addition, DOS's Diplomatic Security Service has investigative authority in visa and passport fraud cases that may involve trafficking in persons. Federal law enforcement officials also include federal law enforcement personnel working cooperatively with law enforcement officials who have primary investigative jurisdiction in such trafficking cases. Each federal agency having law enforcement responsibilities should ensure that its officers are trained in identifying victims of severe forms of trafficking in persons, and are familiar with the rights, services, and protections such victims are to be accorded under the TVPA and 42 U.S.C. 10606 and 10607.

§ 1100.31 Procedures for protecting and providing services to victims of severe forms of trafficking in persons in federal custody.

(a) While in federal custody, all victims of severe forms of trafficking in persons must be provided, to the extent practicable, the protections and services outlined in this section in accordance with their status as victims of severe forms of trafficking in persons. Under 42 U.S.C. 10607(a), each agency must designate officials who are responsible for identifying victims of crime and providing services to them. The designations appear in the *Attorney General Guidelines*. This responsibility also extends to those who are responsible for victims of severe forms of trafficking in persons while they are in federal custody.

(b) To the extent practicable and allowed by law, alternatives to formal detention of victims of severe forms of trafficking in persons should be considered in every case. However, if detention is required, victims of severe forms of trafficking in persons in federal custody, to the extent practicable, shall not be detained in facilities inappropriate to their status as crime victims. The responsible official shall make all efforts, where appropriate and practicable, to house those victims separately from those areas in which criminals are detained. The responsible official must also provide protections and security to those victims as required by federal standards, policies, and procedures. Information on the federal prohibitions against intimidation and harassment, and the remedies available for such actions should routinely be made available to victims.

(c) Victims of severe forms of trafficking in persons in federal custody shall receive necessary medical care and other assistance. This care should include free optional testing for HIV and other sexually transmitted diseases in

cases involving sexual assault or trafficking into the sex industry, as well as a counseling session by a medically-trained professional on the accuracy of such tests and the risk of transmission of sexually transmitted diseases to the victim. Other forms of mental health counseling or social services also may be appropriate to address the trauma associated with trafficking in persons.

(d) As mandated by 42 U.S.C. 10607, federal officials are responsible for arranging for victims to receive reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender. Federal law enforcement agencies also should protect victims of a severe form of trafficking in persons from harm and intimidation pursuant to section 6 of the Victim and Witness Protection Act of 1982 and 18 U.S.C. 1512 note. It may also be appropriate to discuss with the victims the available remedies described in 18 U.S.C. 1512 and 1513. Federal officials also should employ civil procedures for protecting victims and witnesses, including application for temporary restraining orders and protective orders, as set out in 18 U.S.C. 1514, if practicable. If the victim's safety is at risk or if there is danger of the victim's recapture by the trafficker, the responsible official should take the following steps under the TVPA:

(1) Use available practical and legal measures to protect the trafficked victim and family members from intimidation, harm, and threats of harm; and

(2) Ensure that the names and identifying information pertaining to trafficked victims and family members are not disclosed to the public.

§ 1100.33 Access to information and translation services for victims of severe forms of trafficking in persons.

(a) All federal investigative, prosecutorial, and correctional agencies engaged in the detection, investigation, or prosecution of crime shall use their best efforts to see that victims of severe forms of trafficking in persons are accorded all rights under federal victims' rights legislation. In cases involving severe forms of trafficking in persons, federal officials should provide victims within the United States, as defined by this subpart, information about their rights and applicable services, including:

(1) Pro bono and low-cost legal services, including immigration services;

(2) Federal and state benefits and services (victims who are minors and adult victims who are certified by the United States Department of Health and

Human Services (HHS) are eligible for assistance that is administered or funded by federal agencies to the same extent as refugees; others may be eligible for certain, more limited, benefits);

(3) Victim service organizations, including domestic violence and rape crisis centers;

(4) Protections available, especially against threats and intimidation, and the remedies available as appropriate for the particular individual's circumstances;

(5) Rights of individual privacy and confidentiality issues;

(6) Victim compensation and assistance programs;

(7) Immigration benefits or programs that may be relevant to victims of severe forms of trafficking in persons, including those available under the TVTPA;

(8) The right to restitution;

(9) The right to notification of case status; and

(10) The availability of medical services.

(b) The federal agencies as defined in paragraph (a) of this section must ensure reasonable access to translation services and/or oral interpreter services in the event the victim is not able to communicate in English.

§ 1100.35 Authority to permit continued presence in the United States for victims of severe forms of trafficking in persons.

(a) Federal law enforcement officials who encounter alien victims of severe forms of trafficking in persons who are potential witnesses to that trafficking may request that the Immigration and Naturalization Service (INS) grant the continued presence of such aliens in the United States. All law enforcement requests for continued presence must be submitted to the INS, Headquarters Office of Field Operations, in accordance with INS procedures. Each federal law enforcement agency will designate a headquarters office to administer submissions and coordinate with the INS on all requests for continued presence. The designated headquarters office will be responsible for meeting all reporting requirements contained in INS procedures for the processing and administering of the requests for continued presence in the United States of eligible aliens.

(b) Upon receiving a request, the INS will determine the victim's immigration status. When applicable and appropriate, the INS may then use a variety of statutory and administrative mechanisms to ensure the alien's continued presence in the United States. The specific mechanism used will depend on the alien's current status

under the immigration laws and other relevant facts. These mechanisms may include parole, voluntary departure, stay of final order, section 107(c)(3)-based deferred action, or any other authorized form of continued presence, including applicable nonimmigrant visas.

(1) The alien's continued presence in the United States under this subpart does not convey any immigration status or benefit apart from that already encompassed by the particular form of authorized continued presence granted. In most circumstances, victims granted continued presence will be eligible for temporary employment authorization.

(2) The continued presence granted through any of the mechanisms described in this paragraph (b) will contain the terms normally associated with the particular type of authorized continued presence granted, including, but not limited to, duration of benefit, terms and procedures for receiving an extension, travel limitations, and employment authorization unless expressly waived in an individual approval. Aliens granted deferred action based upon section 107(c)(3) are considered to be present in the United States pursuant to a period of stay authorized by the Attorney General for purposes of INA sections 212(a)(9)(B)(I) and (C).

(c) (1) In cases where it is determined that the granting to an alien of continued presence in the United States poses a threat to national security or to the safety and welfare of the public, the INS may require the requesting agency to meet special conditions or requirements prior to approval. The INS will promptly convey any such condition or requirement to the requesting agency in writing. Upon agreement by the requesting agency to comply with the conditions and accept the costs associated with the implementation of those conditions, the INS will grant the continued presence of the alien in the United States.

(2) Although the INS and the requesting law enforcement agency will make every effort to reach a satisfactory agreement for the granting of continued presence, the INS may deny a request for continued presence in the following instances:

(i) Failure, on the part of the requesting agency, to provide necessary documentation or to adhere to established INS procedures;

(ii) Refusal to agree or comply with conditions or requirements instituted in accordance with paragraph (c)(1) of this section;

(iii) Failure, on the part of the requesting agency, to comply with past

supervision or reporting requirements established as a condition of continued presence; or

(iv) When the INS determines that granting continued presence for the particular alien would create a significant risk to national security or public safety and that the risk cannot be eliminated or acceptably minimized by the establishment of agreeable conditions.

(3) In the case of a denial, the INS shall promptly notify the designated office within the requesting agency. The INS and the requesting agency will take all available steps to reach an acceptable resolution. In the event such resolution is not possible, the INS shall promptly forward the matter to the Deputy Attorney General, or his designee, for resolution.

(d) In addition to meeting any conditions placed upon the granting of continued presence in accordance with paragraph (c) of this section, the responsible official at the law enforcement agency requesting the victim's continued presence in the United States as described in paragraph (a) of this section shall arrange for reasonable protection to any alien allowed to remain in the United States by the INS. This protection shall be in accordance with 42 U.S.C. 10606 and shall include taking measures to protect trafficked persons and their family members from intimidation, threats of reprisals, and reprisals from traffickers and their associates in accordance with section 107(c)(3). Such protection shall take into account their status as victims of severe forms of trafficking in persons.

§ 1100.37 Requirements to train appropriate personnel in identifying and protecting victims of severe forms of trafficking in persons.

(a) The TVPA requires that appropriate DOJ and DOS personnel be trained in identifying victims of severe forms of trafficking in persons and providing for the protection of such victims. These federal personnel will be trained to recognize victims and provide services and protections, as appropriate, in accordance with the TVPA, 42 U.S.C. 10606 and 10607, and other applicable victim-assistance laws. Specifically, the training will include, as applicable:

(1) Procedures and techniques for identifying victims of severe forms of trafficking in persons;

(2) Rights of crime victims, including confidentiality requirements;

(3) Description of the services available to victims of severe forms of trafficking in persons at the investigation, prosecution, and, where

applicable, correction stages of the law enforcement process;

(4) Referral services to be provided to victims of severe forms of trafficking in persons;

(5) Benefits and services available to alien victims of severe forms of trafficking in persons regardless of their immigration status;

(6) Particular needs of victims of severe forms of trafficking in persons;

(7) Procedures and techniques for dealing with specialized needs of victims who may face cultural, language, and/or other obstacles that impede their ability to request and

obtain available services for themselves; and

(8) Protection obligations of responsible officials under federal law and policies, as these apply to victims of severe forms of trafficking in persons.

(b) Each component of the DOJ and the DOS with program responsibility for victim witness services must provide initial training in the particular needs of victims of severe forms of trafficking in persons, and appropriate federal agencies' responses to such victims; initial training of appropriate agency personnel should be conducted as soon as possible. Thereafter, training must be held on a recurring basis to ensure that

victims of severe forms of trafficking in persons receive the rights, protections, and services accorded them under the TVPA and federal victims' rights laws, and the federal policies, procedures, and guidelines implementing the TVPA and other federal victims' rights laws.

Dated: July 18, 2001.

John Ashcroft,
Attorney General.

Dated: July 16, 2001.

Richard L. Armitage,
Deputy Secretary of State.

[FR Doc. 01-18388 Filed 7-23-01; 8:45 am]

BILLING CODE 4410-10-P