

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 242

[INS No. 1672-94; AG Order No. 1957-95]

RIN 1115-AD76

Administrative Deportation Procedures for Aliens Convicted of Aggravated Felonies Who Are Not Lawful Permanent Residents

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to establish alternative administrative deportation procedures for aliens not admitted for permanent residence and not eligible for any relief from deportation who have been convicted of aggravated felonies. This regulation is necessary to implement a recently enacted statutory measure eliminating the requirement for a hearing before an immigration judge and limiting judicial review. While incorporation procedural safeguards, it will expedite the deportation process in certain cases involving serious criminal offenses.

DATES: Written comments must be submitted on or before May 30, 1995.

ADDRESSES: Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, Room 5307, 425 I Street NW., Washington, DC 20536. Attention: Public Comment Clerk. To ensure proper handling, please reference INS No. 1672-94 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Leonard C. Loveless, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536, Telephone (202) 514-2865.

SUPPLEMENTARY INFORMATION: This proposed rule establishes an expedited administrative deportation process. Section 130004 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, amended section 242A of the Immigration and Nationality Act (Act), effective September 14, 1994, to authorize such a process. Amended section 242A(b) of the Act authorizes the Attorney General to implement a deportation procedure that eliminates hearings before immigration judges for certain aliens convicted of serious criminal offenses. Limited judicial review is authorized upon the filing of a petition for review within 30 days after the administrative deportation order is issued. Also, the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416, enacted October 25, 1994, made minor technical changes to the statutory administrative deportation procedures.

Before enactment of Public Law 103-322, except in the case of certain Visa Waiver Pilot Program and crewman violators, deportation proceedings were required to be conducted before an immigration judge pursuant to section 242(b) of the Act. By enactment of Public Law 103-322, Congress provided for a more streamlined deportation process for an alien who is convicted of an aggravated felony and who is not a lawful permanent resident. The procedure is available only if the alien is not eligible for any form of relief from deportation under the Act. Section 242A(b)(4) requires the Attorney General to prescribe regulations to conduct proceedings under the section. This proposed rule authorizes a district director or chief patrol agent to issue a final administrative order of deportation in accordance with section 242A(b) of the Act.

The proposed rule would require the Service to perform certain functions to afford the alien procedural protection during the administrative process:

a. The alien would be given reasonable notice of the charge of deportability. The notice would set forth allegations of fact and conclusions of law establishing that the alien is not a lawful permanent resident, is deportable under section 241(a)(2)(A)(iii) of the Act (relating to conviction for an aggravated felony), and is ineligible for relief from deportation.

b. The charge of deportability would be supported by clear, convincing, and unequivocal evidence, and a record would be maintained for judicial review.

c. The alien would have an opportunity to be represented by counsel in the deportation proceedings at no expense to the government.

d. The alien would have a reasonable opportunity to inspect the evidence and rebut the allegations and/or charge within ten days, with an extension granted by the district director or chief patrol agent for good cause shown.

e. The person who renders the final decision would not be the same person who issues the notice of the Service's intention to issue a final order (i.e. the charge).

f. The alien would be able to seek review of the final order by filing a petition for judicial review within 30 days.

During the administrative deportation process, the district director or chief patrol agent would determine the alien's custody status in accordance with applicable provisions of section 242 of the Act. The alien would be able to seek review of the custody determination in habeas corpus proceedings.

Section 242(b) of the Act does not apply when the alien is eligible for relief from deportation under the Act. If the Service finds that the alien's response presents a prima facie claim of statutory eligibility for relief, the rule proposes that the district director or chief patrol agent (or their designee) shall terminate proceedings under section 242A(b) of the Act, and shall, where appropriate, issue an order to show cause for the purpose of initiating an immigration judge proceeding under section 242(b) of the Act.

Limited judicial review of the final administrative deportation order may be obtained by filing a petition for review in accordance with section 106 of the Act. The review, however, is statutorily limited to: (1) Whether the person is in fact the alien described in the order; (2) whether the person was not lawfully admitted for permanent residence at the time at which deportation proceedings commenced; (3) whether the person is not eligible for any relief from deportation; (4) whether the alien has been convicted of an aggravated felony and such conviction has become final; and (5) whether the alien was afforded

the procedures required by section 242A(b)(4) of the Act.

Sections 242(a) (2)(A) and (2)(B) of the Act require the Service to detain, until the order is executed, any aggravated felon who has not been "lawfully admitted." An alien who has been lawfully admitted may be released from custody if the alien demonstrates to the satisfaction of the Attorney General that the alien is not a threat to the community and is likely to appear for any scheduled proceedings. An immigration judge is not authorized to consider (or redetermine) custody issues under the rule. The alien may seek review of the bond determination by filing a writ of habeas corpus with the district court.

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities because the affected parties are individual aliens who have been ordered deported from the United States.

Executive Order No. 12866

This rule is not considered to be a "significant regulatory action" within the meaning of section 3(f) of E.O. 12866, Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order No. 12612

This rule is not considered to have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612.

Executive Order 12606

The Attorney General certifies that she has assessed this rule in light of the criteria in E.O. 12606 and has determined that this rule will not have an impact on family formation, maintenance, or general well-being.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Aliens, Deportation.

Accordingly, part 242 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for part 242 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252a, 1252b, 1254, 1362; 8 CFR part 2.

2. In part 242, a new § 242.25 is added to read as follows:

§ 242.25 Proceedings under section 242A(b) of the Act.

(a) *Definitions.* As used in this section—

Deciding Service officer means a district director, chief patrol agent, or his or her designated representative who is not the same person as the issuing Service officer.

Issuing Service officer means any Service officer listed in § 242.1(a) as authorized to issue orders to show cause.

Prima facie claim means a claim that, on its face and consistent with the evidence in the record of proceeding, demonstrates present statutory eligibility for a specific form of relief from deportation under the Immigration and Nationality Act (Act).

(b) *Preliminary consideration and notice of intent to issue a final administrative deportation order; commencement of proceedings.* (1) *Basis of Service charge.* An issuing Service officer shall cause to be served upon the alien a notice of intent to issue a final administrative deportation order (Notice of Intent, Form I-851) if he or she is satisfied that there is evidence sufficient to support a finding that the individual:

- (i) Is an alien;
- (ii) Has not been lawfully admitted for permanent residence;
- (iii) Has been convicted (as demonstrated by one or more of the sources listed in § 3.41 of this chapter) of an aggravated felony and such conviction has become final;
- (iv) Is deportable under section 241(a)(2)(A)(iii) of the Act; and
- (v) Does not appear statutorily eligible for any relief from deportation under the Act.

(2) *Notice.* Deportation proceedings under section 242A(b) of the Act shall commence upon personal service of the Notice of Intent upon the alien, as prescribed by § 103.5a(a)(2), 103.5a(b), and 103.5a(c)(2) of this chapter. The Notice of Intent shall set forth the preliminary determinations and inform the alien of the Service's intention to issue a final administrative order of deportation (Final Administrative Deportation Order, Form I-851A) without a hearing before an immigration judge. This notice shall constitute the charging document. The Notice of Intent shall include allegations of fact and conclusions of law. It shall advise that the alien:

(i) Has the privilege of being represented by counsel of the alien's choosing, at no expense to the government, as long as counsel is authorized to practice in deportation proceedings;

(ii) May inspect the evidence supporting the Notice of Intent; and

(iii) May rebut the charges within ten calendar days after service of such notice (or thirteen (13) days if service of the Notice was by mail). The Notice of Intent shall also advise the alien that he or she may designate in writing, within ten calendar days of service of the Notice of Intent (or thirteen calendar days if service is by mail), the country to which he or she chooses to be deported in accordance with section 243 of the Act, in the event that a Final Administrative Deportation Order is issued, and that the Service will honor such designation only to the extent permitted under the terms, limitations, and conditions of section 243 of the Act.

(c) *Alien's response.* (1) *Time for response.* The alien will have ten calendar days from service of the Notice of Intent, or 13 calendar days if service is by mail,

(i) To designate his or her choice of country for deportation and

(ii) To submit a written response rebutting the allegations and/or charge and/or requesting the opportunity to review the government's evidence. The alien should send his or her designation of country for deportation, and his or her written response to the charge, to the deciding Service officer at the address provided in the Notice of Intent. If the final date for filing falls on a Saturday, Sunday, or legal holiday, the time shall be extended to the next business day. The time for response may be extended by the deciding Service officer for good cause shown in a written request for extension received within the time to submit a written response. The request must explain specifically why an extension is necessary. A request for extension of time for response will not automatically toll the prescribed period (e.g., ten days) for that response. The alien will be permitted to file a response outside the prescribed period only if the deciding Service officer permits it. The alien may, in writing, choose to accept immediate issuance of a Final Administrative Deportation Order.

(2) *Nature of response; request to review evidence.* The alien's written response must indicate which finding(s) are being challenged and must be accompanied by affidavit(s), documentary information, or other specific evidence supporting the challenge. If the written response

requests the opportunity to review the government's evidence, the alien will be served with a copy of the evidence in the record of proceeding relied on by the government to support the allegations and/or charge. The alien may, within ten days following service of the government's evidence (thirteen days if service is by mail), furnish a final response in accordance with paragraph (c)(1) of this section. Either the alien's initial written response or the alien's final response must be accompanied by an affidavit and a completed and signed application designed for any relief sought.

(d) *Determination by deciding Service officer.* (1) *No response; acceptance of Final Administrative Deportation Order.* If

(i) A timely response is not received by the deciding Service officer, or

(ii) The alien accepts immediate issuance of the Final Administrative Deportation Order, then the deciding Service officer shall issue and cause to be served upon the alien a Final Administrative Deportation Order. The determination of deportability must be supported by clear, convincing, and unequivocal evidence contained in the record of proceeding.

(2) *Response submitted.* (i) *Insufficient rebuttal; no prima facie claim or genuine issue of material fact.* If the deciding Service officer finds that the response fails to rebut the allegations and charge in the Notice of Intent, fails to present a prima facie claim of relief from deportation under the Act, and fails to raise a genuine issue of material fact, he or she shall issue and cause to be served upon the alien a Final Administrative Deportation Order. The determination of deportability must be supported by clear, convincing, and unequivocal evidence contained in the record of proceeding.

(ii) *Additional evidence required.* If the deciding Service officer finds that the alien's response raises a genuine issue of material fact regarding the preliminary findings, he or she

(A) May request additional information from any source, including the alien, as he or she may deem appropriate, or

(B) Issue an order to show cause to initiate deportation proceedings under section 242(b) of the Act. If the deciding Service officer considers additional information from a source other than the alien, that evidence shall be provided to the alien, and the alien may, within ten days of service thereof (thirteen days if service is by mail) furnish a response to the deciding Service officer. If, after considering all additional information,

the deciding Service officer finds that deportation is supported by the requisite proof, he or she shall issue and cause to be served upon the alien a Final Administrative Deportation Order.

(iii) *Secretary eligibility for relief; conversion to proceedings under section 242(b) of the Act.* If the deciding Service officer finds that the alien has presented a prima facie claim of present statutory eligibility for a specific form of relief from deportation, the deciding Service officer shall terminate the expedited proceedings under section 242A(b) of the Act, and shall, where appropriate, issue an order to show cause for the purpose of initiating an immigration judge proceeding under section 242(b) of the Act.

(3) *Termination of proceedings by deciding Service officer.* Only the deciding Service officer may terminate proceedings under section 242A(b) of the Act, in the exercise of his or her discretion.

(e) *Proceedings commenced under section 242(b) of the Act.* In any proceeding commenced under section 242(b) of the Act, if it appears that the respondent's case falls under the provisions of section 242A(b) of the Act, the immigration judge may, upon the Service's request, terminate the case and, upon such termination, the Service may commence administrative proceedings under section 242A(b) of the Act. However, in the absence of any such request, the immigration judge shall complete the pending proceeding commenced under section 242(b) of the Act.

(f) *Executing final order of deciding Service officer—*

(1) *Thirty (30) calendar days.* Upon the issuance of a Final Administrative Deportation Order, the Service shall issue a warrant of deportation issued in accordance with 8 CFR part 243.2; such warrant shall be executed no sooner than 30 calendar days after the date the Final Administrative Deportation Order is issued, unless the 30-day period is waived in writing by the alien. The 72-hour provisions of § 243.3(b) of this chapter shall not apply.

(2) *Place to which deported.* The deciding Service officer shall designate the country of deportation, in the manner prescribed by section 243(a) of the Act.

(g) *Arrest and detention.* At the time of issuance of a Notice of Intent or at any time thereafter and up to the time the alien becomes the subject of a warrant of deportation, the alien may be arrested and taken into custody under the authority of a warrant of arrest issued by an officer listed in § 242.2(c)(1) of this chapter. Pursuant to

section 242(a)(2)(A) of the Act, pending proceedings under section 242A(b) of the Act, the deciding Service officer shall not release an alien who has not been lawfully admitted. Pursuant to section 242(a)(2)(B) of the Act, the deciding Service officer may release an alien who has been lawfully admitted based upon factors considered under § 242.2(h) of this chapter. The decision of the deciding Service officer concerning custody or bond is not administratively appealable during proceedings initiated under section 242A(b) of the Act and this section.

(h) *Record of proceeding.* A record of proceeding shall be maintained by the Service for judicial review of the Final Administrative Deportation Order sought by any petition for review. The record of proceeding shall include, but not necessarily be limited to, the charging document (Notice of Intent); the Final Administrative Deportation Order; the alien's response, if any; all evidence in support of the charges; and any admissible evidence, briefs, or documents submitted by either party respecting deportability or relief from deportation.

Dated: March 16, 1995.

Janet Reno,

Attorney General.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-177-AD]

Airworthiness Directives; Boeing Model 727 and Model 737 Series Airplanes Equipped With J.C. Carter Company Fuel Valve Actuators

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 727 and Model 737 series airplanes, that would have required replacement of the actuator of the engine fuel shutoff valve and the fuel system crossfeed valve with an improved actuator. That proposal was prompted by reports indicating that, during ground acceptance tests on Model 737 series airplanes, the actuator clutch on the engine shutoff and