

2. Section 1467.4 is amended by revising paragraph (c)(2) to read as follows:

**§ 1467.4 Program requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) Have been the landowner of such land for the 12 months prior to the time the intention to participate is declared unless it is determined by the State Conservationist that the land was acquired by will or success as a result of the death of the previous landowner, the ownership change occurred due to foreclosure on the land and the owner of the land immediately before the foreclosure exercises a right of redemption from the mortgage holder in accordance with State law, or that adequate assurances have been presented to the State Conservationist that the new landowner of such land did not acquire such land for the purpose of placing it in the WRP; and

\* \* \* \* \*

Signed in Washington, DC on May 24, 2002.

**Bruce I. Knight,**

*Vice President, Commodity Credit Corporation, and Chief, Natural Resources Conservation Service.*

[FR Doc. 02-14142 Filed 6-6-02; 8:45 am]

BILLING CODE 3410-16-P

**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 103, 212, 236, 238, 239, 240, 241, and 287**

[INS No. 2206-02]

RIN 1115-AG69

**Delegation of Authorities for Various Detention and Removal Authorities and the Parole, Detention, Care and Custody of Alien Juveniles**

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

**ACTION:** Final rule.

**SUMMARY:** As part of the ongoing restructuring of the Immigration and Naturalization Service (Service or INS), the chain of command for many functions related to the detention and removal of aliens, including the detention, care and custody of juveniles, will be centralized. Currently, these functions are overseen by Service districts and regions which report to the Executive Associate Commissioner for Field Operations. Under the reorganization, the daily oversight of overall detention and removal functions

will transfer to the Deputy Executive Associate Commissioner for Detention and Removal who will still report to the Executive Associate Commissioner for Field Operations. The daily oversight of functions relating to alien juveniles in the custody and care of the Service is transferred to the Director of the Office of Juvenile Affairs who reports to the Commissioner of the INS. This rule ensures that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens consistent with the changes in responsibility.

**DATES:** This rule is effective June 7, 2002.

**FOR FURTHER INFORMATION CONTACT:** For overall detention and removal issues contact: Rachel Carty, Special Assistant, Office of Detention and Removal, Immigration and Naturalization Service, 801 I Street, NW Room 900, Washington, DC 20536, telephone number 202-305-1518. For issues specifically related to the detention, care and custody of juveniles, contact: John J. Pogash, National Juvenile Coordinator, Immigration and Naturalization Service, 801 I Street, NW, Room 800, Washington, DC 20536, telephone number 202-305-1518.

**SUPPLEMENTARY INFORMATION:** The Immigration and Nationality Act (Act) conveys authority to perform various functions on the Attorney General, and that authority, with some limitations, is delegated to the INS Commissioner pursuant to Department of Justice regulations at 8 CFR 0.105 and 8 CFR 2.1. The latter provision further authorizes the INS Commissioner to issue regulations and redelegate authority to any officer or employee of the Service. This final rule delegates authority to grant parole, make decisions on the expedited removal of aggravated felons, issue and cancel notices to appear, issue warrants of removal, continue detention of inadmissible criminals or other aliens beyond the removal period, issue administrative stays of removal, grant extensions of time to depart, issue subpoenas, and issue warrants of arrest to the Deputy Executive Associate Commissioner for Detention and Removal, the Directors of the Detention and Removal Field Offices (who report to the Deputy Executive Associate Commissioner for Detention and Removal), and the Director of the Office of Juvenile Affairs, as appropriate. This rule does not change any substantive rules relating to the implementation of these authorities, and therefore individuals who might be affected by

any of the listed actions will not be disadvantaged by this change.

As part of the ongoing restructuring of the Service, the chain of command for many functions related to the detention and removal of aliens, including the detention, care and custody of juveniles, will be centralized. Currently, these functions are overseen by Service districts and regions which report to the Executive Associate Commissioner for Field Operations. Under the reorganization, the daily oversight of the overall detention and removal functions will transfer to the Deputy Executive Associate Commissioner for Detention and Removal who will report to the Executive Associate Commissioner for Field Operations. In turn, field level oversight of detention and removal functions in a given geographical area will be overseen by Directors of Detention and Removal Field Offices. The daily oversight of certain functions as related to juveniles in the custody and care of the Service is transferred to the Director of the Office of Juvenile Affairs who reports to the Commissioner of the INS. This rule ensures that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens, consistent with the changes in responsibility. This is accomplished by amending the listing of officials authorized to grant parole, make decisions on the expedited removal of aggravated felons, issue and cancel notices to appear, issue warrants of removal, continue detention of inadmissible criminals or other aliens beyond the removal period, issue administrative stays of removal, issue subpoenas, grant extensions of time to depart and issue warrants of arrest.

The provisions of 8 CFR 212.5(a), (c), (d) and (e), 236.3(b)(4), (e) and (f), 238.1(a), 239.1(a), 240.25(a), 240.26(f), 241.2(a), 241.4, 241.6(a) and (b), 241.7, 287.4(a) and (c), and 287.5(e)(2), are being amended to add the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Detention and Removal Field Office, and the Director of the Office of Juvenile Affairs, as appropriate to the list of officials authorized to engage in such functions. This amendment does not otherwise alter who is authorized to exercise these authorities except that district directors and chief patrol agents have been removed from 8 CFR 212.5(b)(3) and 8 CFR 236.3 relating to parole and release of juveniles. This authority is being transferred to the Director of the Office of Juvenile Affairs. In particular, under this rule, the Deputy Executive Associate Commissioner for Detention and

Removal, and the Director of the Office of Juvenile Affairs may grant parole (8 CFR 212.5), make decisions on the expedited removal of aggravated felons (8 CFR 238.1(a)), issue and cancel notices to appear (8 CFR 239.1(a)), grant voluntary departure (8 CFR 240.25), grant extensions of time to depart (8 CFR 240.26(f)), issue warrants of removal (8 CFR 241.2), issue administrative stays of removal (8 CFR 241.6), grant self removal (8 CFR 241.7), issue subpoenas (8 CFR 287.4), and issue warrants of arrest (8 CFR 287.5). The Director of the Office of Juvenile Affairs is also specifically given the sole authority to determine parole for juveniles (8 CFR 212.5(a)(3)) and issues concerning the detention and release of juveniles (8 CFR 236.3). District directors and chief patrol agents will no longer have this authority. Directors of the Detention and Removal Field Offices are delegated the authority to continue detention of inadmissible criminals or other aliens beyond the removal period (8 CFR 241.4).

This rule also adds a new paragraph in 8 CFR 103.1(g) to delegate authority to the Deputy Executive Associate Commissioner for Detention and Removal within the Office of Field Operations for the Service. This position, created in calendar year 2000, working under the direction and supervision of the Executive Associate Commissioner for Field Operations, has responsibility for planning, directing, managing and coordinating all Service operational functions relating to the detention and removal of aliens from the United States. See Meissner, Commissioner, *Establishment of Headquarters Office of Detention and Removal*, INS Mem. HQOPS 50/10 (Oct. 25, 2000).

Additionally, this rule adds a new paragraph in 8 CFR 103.1(k) to delegate authority to the Director for the Office of Juvenile Affairs. This position, created in April 2002, working under the direction and supervision of the Commissioner, has responsibility for planning, directing, managing and coordinating all Service operational, adjudicative, and policy functions relating to alien juveniles in the custody and care of the Service. See Ziglar, Commissioner, *Initial Restructuring Measures*, INS Mem. HQOU 90/20 (April 17, 2002).

#### **Congressional Review Act**

This action pertains to agency organization, practice, and procedure and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the

Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### **Good Cause Exception**

The Service's implementation of this rule as a final rule is based on the "good cause" exception found at 5 U.S.C. 553(a)(2). The amendments contained herein relate to agency management and are necessary to ensure that the appropriate immigration officials will have the necessary authority to carry out the daily oversight of the detention and removal of aliens. Accordingly, it would be contrary to the public interest to issue this rule as a proposed rule because doing so would delay its implementation.

#### **Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that since this rule pertains to internal agency management, it will not have a significant economic impact on a substantial number of small entities as that term is defined in 5 U.S.C. 601(6).

#### **Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

#### **Executive Order 13132**

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this

rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **Small Business Regulatory Enforcement Fairness Act of 1996**

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. 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 12988 Civil Justice Reform**

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

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163, all departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting and recordkeeping requirements under the Paperwork Reduction Act.

#### **List of Subjects**

##### **8 CFR Part 103**

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and record keeping requirements.

##### **8 CFR Part 212**

Administrative practice and procedure, Aliens, Immigration, Reporting and record keeping requirements.

##### **8 CFR Part 236**

Administrative practice and procedure, Aliens, Immigration.

##### **8 CFR Part 238**

Air Carriers, Aliens, Government contracts, Maritime carriers.

##### **8 CFR Part 239**

Air carriers, Aircraft, Airports, Aliens.

##### **8 CFR Part 240**

Administrative practice and procedure, Immigration.

##### **8 CFR Part 241**

Aliens.

**8 CFR Part 287**

Immigration, Law enforcement officers.

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

**PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS**

1. The authority citation for part 103 continues to read as follows:

**Authority:** 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.1 is amended by adding paragraphs (g)(4) and (k) to read as follows:

**§ 103.1 Delegation of authority.**

\* \* \* \* \*

(g) \* \* \*

(4) *Deputy Executive Associate Commissioner for Detention and Removal.* Under the direction and supervision of the Executive Associate Commissioner for Field Operations, the Deputy Executive Associate Commissioner for Detention and Removal is delegated authority to plan, direct, manage and coordinate all Service operational functions relating to the detention and removal of aliens from the United States and for liaison with Departmental and interagency partners on these issues.

\* \* \* \* \*

(k) *Director of the Office of Juvenile Affairs.* Under the direction and supervision of the Commissioner, the Director of the Office of Juvenile Affairs is delegated authority to plan, direct, manage and coordinate all Service operational, adjudicative and policy functions relating to alien juveniles in the custody and care of the Service and to conduct liaison with the Departmental and interagency partners on these issues.

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

3. The authority citation for part 212 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227; 8 CFR part 2.

4. Section 212.5 is amended by:

- Revising paragraph (a);
- Revising paragraph (b)(3) introductory text and paragraph (b)(5);
- Revising paragraph (c);
- Revising paragraph (d) introductory text;

e. Revising paragraph (d)(1); and by f. Revising paragraph (e)(2)(i). The revision reads as follows:

**§ 212.5 Parole of aliens into the United States.**

(a) The authority of the Commissioner to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Office of Juvenile Affairs, the district director, or the chief patrol agent, subject to the parole and detention authority of the Commissioner or his designees. The Commissioner or his designees, which include the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and the regional director, may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

\* \* \* \* \*

(b) \* \* \*

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The Director of the Office of Juvenile Affairs shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (b)(3)(i) through (b)(3)(iii) of this section, in determining under what conditions a juvenile shall be paroled from detention:

\* \* \* \* \*

(5) Aliens whose continued detention is not in the public interest as determined by the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs.

(c) In the case of all other arriving aliens, except those detained under § 235.3(b) or (c) of this chapter and paragraph (b) of this section, the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (d) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (f) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3(b) or (c) of this chapter. An alien seeking to enter the United States for sole purpose of

applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(d) *Conditions.* In any case where an alien is paroled under paragraph (b) or (c) of this section, the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I-352 in such amount as the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may deem appropriate;

\* \* \* \* \*

(e) \* \* \*

(2)(i) *On notice.* In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director or chief patrol agent in charge of the area in which the alien is located, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be

released on parole unless in the opinion of the district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs the public interest requires that the alien be continued in custody.

\* \* \* \* \*

## PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

5. The authority citation for part 236 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1362; sec. 303(b) of Div. C of Pub. L. No. 104-208; 8 CFR part 2.

6. Section 236.3 is amended by revising paragraphs (b)(4), (e) and (f) to read as follows:

### § 236.3 Detention and release of juveniles.

\* \* \* \* \*

(b) \* \* \*

(4) In unusual and compelling circumstances and in the discretion of the Director of the Office of Juvenile Affairs, a juvenile may be released to an adult, other than those identified in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, who executes an agreement to care for the juvenile's well-being and to ensure the juvenile's presence at all future proceedings before the Service or an immigration judge.

\* \* \* \* \*

(e) *Refusal of release.* If a parent of a juvenile detained by the Service can be located, and is otherwise suitable to receive custody of the juvenile, and the juvenile indicates a refusal to be released to his or her parent, the parent(s) shall be notified of the juvenile's refusal to be released to the parent(s), and they shall be afforded the opportunity to present their views to the district director, chief patrol agent, Director of the Office of Juvenile Affairs or immigration judge before a custody determination is made.

(f) *Notice to parent of application for relief.* If a juvenile seeks release from detention, voluntary departure, parole, or any form of relief from removal, where it appears that the grant of such relief may effectively terminate some interest inherent in the parent-child relationship and/or the juvenile's rights and interests are adverse with those of the parent, and the parent is presently residing in the United States, the parent shall be given notice of the juvenile's application for relief, and shall be afforded an opportunity to present his or her views and assert his or her interest to the district director, Director

of the Office of Juvenile Affairs or immigration judge before a determination is made as to the merits of the request for relief.

\* \* \* \* \*

## PART 238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

7. The authority citation for part 238 continues to read as follows:

**Authority:** 8 U.S.C. 1228; 8 CFR part 2.

8. Section 238.1(a) is revised to read as follows:

### § 238.1 Proceedings under section 238(b) of the Act.

(a) *Definitions.* As used in this part the term:

*Deciding Service officer* means a district director, chief patrol agent, or another immigration officer designated by a district director, chief patrol agent, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, so long as that person is not the same person as the Issuing Service Officer.

*Issuing Service officer* means any Service officer listed in § 239.1 of this chapter as authorized to issue notices to appear.

\* \* \* \* \*

## PART 239—INITIATION OF REMOVAL PROCEEDINGS

9. The authority citation for part 239 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

10. Section 239.1 is amended by:

- a. Removing the word "or" from the end of paragraph (a)(21);
- b. Removing the period from the end of paragraph (a)(22) and adding a ";" in its place; and by
- c. Adding paragraphs (a)(23) and (a)(24).

The additions read as follows:

### § 239.1 Notice to appear.

(a) \* \* \*

(23) The Director of the Office of Juvenile Affairs; or

(24) The Deputy Executive Associate Commissioner for Detention and Removal.

\* \* \* \* \*

## PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

11. The authority citation for part 240 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note,

1252a, 1252b, 1362; sec. 202, Pub. L. 105-100 (111 Stat. 2160, 2193); 8 CFR part 2.

12. Section 240.25(a) is revised to read as follows:

### § 240.25 Voluntary departure—authority of the Service.

(a) *Authorized officers.* The authority contained in section 240B(a) of the Act to permit aliens to depart voluntarily from the United States may be exercised in lieu of being subject to proceedings under section 240 of the Act by district directors, assistant district directors for investigations, assistant district directors for examinations, officers in charge, chief patrol agents, the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Office of Juvenile Affairs, service center directors, and assistant service center directors for examinations.

\* \* \* \* \*

13. Section 240.26(f) is revised to read as follows:

### § 240.26 Voluntary departure— authority of the Executive Office for Immigration Review.

\* \* \* \* \*

(f) *Extension of time to depart.*

Authority to extend the time within which to depart voluntarily specified initially by an immigration judge or the Board is only within the jurisdiction of the district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. An immigration judge or the Board may reinstate voluntary departure in a removal proceeding that has been reopened for a purpose other than solely making an application for voluntarily departure if reopening was granted prior to the expiration of the original period of voluntary departure. In no event can the total period of time, including any extension, exceed 120 days or 60 days as set forth in section 240B of the Act.

\* \* \* \* \*

## PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

14. The authority citation for part 241 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1223, 1227, 1231, 1253, 1255, and 1330; 8 CFR part 2.

15. Section 241.2(a) is revised to read as follows:

### § 241.2 Warrant of removal.

(a) *Issuance of a warrant of removal.* A Form I-205, Warrant of Removal, based upon the final administrative removal order in the alien's case shall

be issued by a district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs. The district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs, shall exercise the authority contained in section 241 of the Act to determine at whose expense the alien shall be removed and whether his or her mental or physical condition requires personal care and attention en route to his or her destination.

\* \* \* \* \*

16. Section 241.4 is amended by:

- Revising paragraph (a) introductory text;
- Revising paragraph (c)(1);
- Revising paragraph (c)(4);
- Revising paragraph (h)(5); and by
- Revising paragraph (j)(3).

The revision reads as follows:

**§ 241.4 Continued detention of inadmissible, criminal, and other aliens beyond the removal period.**

(a) *Scope.* The authority to continue an alien in custody or grant release or parole under sections 241(a)(6) and 212(d)(5)(A) of the Act shall be exercised by the Commissioner or Deputy Commissioner, as follows: Except as otherwise directed by the Commissioner or his or her designee, the Executive Associate Commissioner for Field Operations (Executive Associate Commissioner), the Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Detention and Removal Field Office or the district director may continue an alien in custody beyond the removal period described in section 241(a)(1) of the Act pursuant to the procedures described in this section. Except as provided for in paragraph (b)(2) of this section, the provisions of this section apply to the custody determinations for the following group of aliens:

\* \* \* \* \*

(c) \* \* \*

(1) *District Directors and Directors of Detention and Removal Field Offices.* The initial custody determination described in paragraph (h) of this section and any further custody determination concluded in the 3 month period immediately following the expiration of the 90-day removal period, subject to the provisions of paragraph (c)(2) of this section, will be made by the district director or the Director of the Detention and Removal Field Office having jurisdiction over the alien. The district director or the Director of the Detention and Removal Field Office

shall maintain appropriate files respecting each detained alien reviewed for possible release, and shall have authority to determine the order in which the cases shall be reviewed, and to coordinate activities associated with these reviews in his or her respective jurisdictional area.

\* \* \* \* \*

(4) *Additional delegation of authority.* All references to the Executive Associate Commissioner, the Director of the Detention and Removal Field Office, and the district director in this section shall be deemed to include any person or persons (including a committee) designated in writing by the Executive Associate Commissioner, the Director of the Detention and Removal Field Office, or the district director to exercise powers under this section.

\* \* \* \* \*

(h) \* \* \*

(5) *District office or Detention and Removal Field office staff.* The district director or the Director of the Detention and Removal Field Office may delegate the authority to conduct the custody review, develop recommendations, or render the custody or release decisions to those persons directly responsible for detention within his or her geographical areas of responsibility. This includes the deputy district director, the assistant director for detention and deportation, the officer-in-charge of a detention center, the assistant director of the detention and removal field office, the director of the detention and removal resident office, the assistant director of the detention and removal resident office, officers in charge of service processing centers, or such other persons as the district director or the Director of the Detention and Removal Field Office may designate from the professional staff of the Service.

\* \* \* \* \*

(j) \* \* \*

(3) *Employment authorization.* The district director, Director of the Detention and Removal Field Office, and the Executive Associate Commissioner, may, in the exercise of discretion, grant employment authorization under the same conditions set forth in § 241.5(c) for aliens released under an order of supervision.

\* \* \* \* \*

**§ 241.4 [Amended]**

17. Section 241.4 is further amended by revising the term "district director or Executive Associate Commissioner" to read "district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner"

whenever that term appears in the following places:

- Paragraph (d) introductory text;
- Paragraph (d)(2);
- Paragraph (j)(1);
- Paragraph (j)(2);
- Paragraph (j)(4); and

18. Section 241.4 is further amended by revising the term "district director or the Executive Associate Commissioner" to read "district director, Director of the Detention and Removal Field Office, or Executive Associate Commissioner" whenever that term appears in the following places:

- Paragraph (d)(1); and
- Paragraph (l)(3).

19. Section 241.4 is further amended by revising the term "district director's" to read "district director's or Director of the Detention and Removal Field Office's" whenever that term appears in the following places:

- Paragraph (h) paragraph heading;*
- Paragraph (h) introductory text;
- Paragraph (h)(3);
- Paragraph (h)(4) paragraph heading.*

20. Section 241.4 is further amended by revising the term "district director" to read "district director or Director of the Detention and Removal Field Office" whenever that term appears in the following places:

- Paragraph (h)(1);
- Paragraph (h)(2);
- Paragraph (h)(4);
- Paragraph (j)(2);
- Paragraph (k)(1) heading;*
- Paragraph (k)(1)(i);
- Paragraph (k)(1)(ii);
- Paragraph (k)(2)(i) heading;*
- Paragraph (k)(2)(i);
- Paragraph (k)(2)(ii) heading;* and
- Paragraph (k)(2)(ii).

21. Section 241.6 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 241.6 Administrative stay of removal.**

(a) Any request of an alien under a final order of deportation or removal for a stay of deportation or removal shall be filed on Form I-246, Stay of Removal, with the district director having jurisdiction over the place where the alien is at the time of filing. The Commissioner, Deputy Commissioner, Executive Associate Commissioner for Field Operations, Deputy Executive Associate Commissioner for Detention and Removal, the Director of the Office of Juvenile Affairs, regional directors, or district director, in his or her discretion and in consideration of factors listed in 8 CFR 212.5 and section 241(c) of the Act, may grant a stay of removal or deportation for such time and under

such conditions as he or she may deem appropriate. Neither the request nor failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

(b) Denial by the Commissioner, Deputy Commissioner, Executive Associate Commissioner for Field Operations, Deputy Executive Associate Commissioner for Detention and Removal, Director of the Office of Juvenile Affairs, regional director, or district director of a request for a stay is not appealable, but such denial shall not preclude an immigration judge or the Board from granting a stay in connection with a previously filed motion to reopen or a motion to reconsider as provided in 8 CFR part 3.

\* \* \* \* \*

22. Section 241.7 is revised to read as follows:

**§ 241.7 Self-removal.**

A district director, the Deputy Executive Associate Commissioner for Detention and Removal, or the Director of the Office of Juvenile Affairs may permit an alien ordered removed (including an alien ordered excluded or deported in proceedings prior to April 1, 1997) to depart at his or her own expense to a destination of his or her own choice. Any alien who has departed from the United States while an order of deportation or removal is outstanding shall be considered to have been deported, excluded and deported, or removed, except that an alien who departed before the expiration of the voluntary departure period granted in connection with an alternate order of deportation or removal shall not be considered to be so deported or removed.

**PART 287—FIELD OFFICERS; POWERS AND DUTIES**

23. The authority citation for part 287 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

24. Section 287.4 is amended by revising paragraphs (a)(1), (a)(2)(i) and (c) to read as follows:

**§ 287.4 Subpoena.**

(a) \* \* \*

(1) *Criminal or civil investigations.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Assistant Chief Patrol Agents, Officers in Charge, Patrol Agents in Charge, Assistant District Directors, Investigations, Supervisory

Criminal Investigators (Anti-Smuggling), Regional Directors, Office of Professional Responsibility, Service Center Directors, Assistant District Directors for Examinations, the Deputy Executive Associate Commissioner for Detention and Removal, and the Director of the Office of Juvenile Affairs, may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

(2) \* \* \*

(i) *Prior to commencement of proceedings.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Officers-in-Charge, the Deputy Executive Associate Commissioner for Detention and Removal, and the Director of the Office of Juvenile Affairs, may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this chapter, other than under 8 CFR part 355, or any application made ancillary to the proceeding.

\* \* \* \* \*

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Assistant Chief Patrol Agent, Patrol Agent in Charge, Officer-in-Charge, Assistant District Director, Investigations, Supervisory Criminal Investigator (Anti-Smuggling), Regional Director and the Office of Professional Responsibility, having administrative jurisdiction over the office in which the subpoena is issued. The Deputy Executive Associate Commissioner for Detention and Removal and the Director of the Office of Juvenile Affairs shall also have the authority to make such designation. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not to be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

\* \* \* \* \*

25. Section 287.5 is amended by:

- Removing the word "or" from the end of paragraph (e)(2)(ix);
- Removing the period from the end of paragraph (e)(2)(xx) and adding a ";" in its place; and by

c. Adding paragraphs (e)(2)(xxi) and (e)(2)(xxii).

The additions read as follows:

**§ 287.5 Exercise of power by immigration officers.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(xxi) the Director of the Office of Juvenile Affairs; or

(xxii) the Deputy Executive Associate Commissioner for Detention and Removal.

\* \* \* \* \*

Dated: June 3, 2002.

**James W. Ziglar,**  
Commissioner, Immigration and Naturalization Service.

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**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 72**

**RIN 3150-AG97**

**List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision; Withdrawal of Direct Final Rule**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule; withdrawal.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is withdrawing a direct final rule that would have revised the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment No. 1 to the Certificate of Compliance. The NRC is taking this action because it has received a significant adverse comment in response to an identical proposed rule which was concurrently published with the direct final rule.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** On March 27, 2002 (67 FR 14627), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR 72.214 to revise the Holtec International HI-STORM 100 cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 1 to the Certificate of Compliance. Amendment No. 1 would have modified the present cask system design to: Add four new