

## DEPARTMENT OF HOMELAND SECURITY

### Immigration and Naturalization Service

#### 8 CFR Parts 1, 2, 103, 239

RIN 1601-AA06

#### Authority of the Secretary of Homeland Security; Delegations of Authority; Immigration Laws

**AGENCY:** INS, Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends certain regulations relating to the administration and enforcement of the immigration laws to reflect the authority of the Secretary of Homeland Security and to address delegation of that authority, as a result of the March 1, 2003, transfer of the Immigration and Naturalization Service of the Department of Justice to the Department of Homeland Security.

**DATES:** This final rule is effective March 6, 2003. Written comments may be submitted to the Department of Homeland Security on or before April 7, 2003.

**ADDRESSES:** Submit written comments (preferably an original and three copies) to the Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528.

**FOR FURTHER INFORMATION CONTACT:** Philip B. Busch, (202) 514-2895, not a toll free call.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296) (the Act), which created the new Department of Homeland Security (DHS). Pursuant to the provisions of the Act, DHS came into existence on January 24, 2003. As provided by the Act and by the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified (Reorganization Plan), the functions of the Immigration and Naturalization Service (INS) of the Department of Justice, and all authorities with respect to those functions, transfer to DHS on March 1, 2003, and the INS is abolished on that date. The transition and savings provisions of the Act, including sections 1512(d) and 1517, provide that references relating to the INS in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS. Despite this continued validity of Title 8 of the Code of Federal

Regulations with respect to DHS, and its application as a matter of law in full to DHS as the successor to the INS unless and until specifically modified, it is appropriate at this time to begin the process of conforming the text of Title 8 to the new governmental structures provided by the Act and the Reorganization Plan.

This rule is also a step in the process of separating DHS enforcement and services functions from Department of Justice adjudication functions as envisioned by the Act. DHS and the Department of Justice are working together to ensure that this complex task proceeds as smoothly as possible without unnecessary disruption to enforcement, adjudication, and other immigration functions.

##### II. The Final Rule

First, this final rule replaces 8 CFR 2.1—stating the authority of the Commissioner of the INS and providing for his redelegation of authority—with an equivalent provision that vests all authorities and functions of DHS to administer and enforce the immigration laws in the Secretary of Homeland Security. The immigration laws are defined in section 101(a)(17) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(17), as the INA and all laws, conventions, and treaties of the United States relating to the immigration, deportation, expulsion, or removal of aliens (this INA definition is incorporated in Title 8 of the Code of Federal Regulations by 8 CFR 1.1(a)). The Secretary may redelegate any of his functions and authorities with respect to the immigration laws in his discretion to any official, officer or employee of DHS (including by means of successive redelegations), or to other employees of the United States to the extent authorized by law. He may delegate his authority in any manner he chooses, including by regulation or by memorandum, directive, or other method. The Secretary's delegations of authority may in his discretion be published as rules or notices in the **Federal Register**, but the Secretary is not required to publish his delegations of authority in the **Federal Register**. The new section 2.1 reflects the statutory authority that the Secretary of Homeland Security possesses under section 102 and other provisions of the Act and other applicable law, and does not limit or constrain that authority in any way.

Second, the final rule deletes delegations of authority at 8 CFR 103.1 that reflect the structure of the former INS and therefore no longer provide accurate information from the

regulations. These delegations are replaced with a cross-reference to the Secretary of Homeland Security's delegation authority under 8 CFR 2.1. Delegations to replace the former § 103.1 will be in place on March 1, 2003, but are not required to be, and will not be promulgated as rules or codified in the Code of Federal Regulations. The final rule retains the designations of "immigration officer" in former 8 CFR 103.1(j) (new § 103.1(b)), and amends it to include additional officers in DHS as the Secretary may designate as provided by § 2.1.

Third, the final rule revises the regulation at 8 CFR 239.1 that delegates authority to issue notices to appear. The Secretary of Homeland Security has determined in his discretion that he will continue publication of this delegation to certain officers in the Code of Federal Regulations, but has added a cross-reference to his delegation authority under 8 CFR 2.1 to clarify that he may in his discretion supplement or revise the list by memorandum or other method other than rulemaking or publication in the **Federal Register**. The list has also been revised to reflect new titles. This rule omits the former first sentence of § 239.1 as superfluous explanatory material that is unnecessary in light of the jurisdictional regulations of the Executive Office for Immigration Review of the Department of Justice at 8 CFR 3.14.

Fourth, the final rule supplements the regulatory definition of "director" at 8 CFR 1.1(o) to clarify that on or after March 1, 2003, any reference to a district director or other director in Title 8 of the Code of Federal Regulations with respect to any function or authority will be a reference to that official within the Bureau of Immigration and Customs Enforcement, the Bureau of Customs and Border Protection, the Bureau of Citizenship and Immigration Services, or other component of DHS who has been delegated that function or authority for a district or other geographic area.

##### III. Procedural Requirements

###### *Administrative Procedure Act*

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking or delayed effective date is unnecessary as this rule relates to agency organization and management. Accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

*Executive Order 12866*

This rule making is limited to agency organization, management or personnel matters, and therefore is not a regulation or rule as defined by Executive Order 12866. It has also been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

*Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

*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 section 3 of Executive Order 12988.

**Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by state, local and tribal government, 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 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, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**List of Subjects***8 CFR Part 1*

Administrative practice and procedure, Immigration.

*8 CFR Part 2*

Administrative practice and procedure, Authority delegation (Government agencies), Immigration.

*8 CFR Part 103*

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

*8 CFR Part 239*

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

**Authority and Issuance**

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

**Chapter I—Immigration and Naturalization Service, Department of Homeland Security**

1. The chapter heading is revised to read as set forth above.

**PART 1—DEFINITIONS**

1a. The authority citation for Part 1 is revised to read as follows:

**Authority:** 8 U.S.C. 1101; 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

2. In § 1.1, paragraph (o) is revised to read as follows:

**§ 1.1 Definitions.**

\* \* \* \* \*

(o) The term *director*, when used with respect to any function, geographic area, office or authority, means the district director, service center director, district director for interior enforcement or for other specified function, or other official within the Bureau of Citizenship and Immigration Services, the Bureau of Immigration and Customs Enforcement, the Bureau of Customs and Border Protection, or other component of the Department of Homeland Security who has been delegated the function or authority by the Secretary of Homeland Security for an office, region, district or geographic area.

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**PART 2—AUTHORITY OF THE SECRETARY OF HOMELAND SECURITY**

3. The heading for Part 2 is revised to read as set forth above.:

4. The authority citation for Part 2 is revised to read as follows:

**Authority:** 8 U.S.C. 1103; 5 U.S.C. 301; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

5. Section 2.1 is revised to read as follows:

**§ 2.1 Authority of the Secretary of Homeland Security.**

All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. The Secretary of Homeland Security may, in the Secretary's discretion, delegate any such authority or function to any official, officer, or employee of the Department of Homeland Security, including delegation through successive redelegation, or to any employee of the United States to the extent authorized by law. Such delegation may be made by regulation, directive, memorandum, or other means as deemed appropriate by the Secretary in the exercise of the Secretary's discretion. A delegation of authority or function may in the Secretary's discretion be published in the **Federal Register**, but such publication is not required.

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

6. The heading for Part 103 is revised to read as set forth above.

7. The authority citation for Part 103 is revised to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

8. Section 103.1 is revised to read as follows:

**§ 103.1 Delegations of authority; designation of immigration officers.**

(a) *Delegations of authority.* Delegations of authority to perform functions and exercise authorities under the immigration laws may be made by the Secretary of Homeland Security as provided by § 2.1 of this chapter.

(b) *Immigration Officer.* Any immigration officer, immigration inspector, immigration examiner, adjudications officer, Border Patrol agent, aircraft pilot, airplane pilot,

helicopter pilot, deportation officer, detention enforcement officer, detention officer, investigator, special agent, investigative assistant, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, chief legalization officer, supervisory legalization officer, legalization adjudicator, legalization officer and legalization assistant, forensic document analyst, fingerprint specialist, immigration information officer, immigration agent (investigations), asylum officer, other officer or employee of the Department of Homeland Security or of the United States as designated by the Secretary of Homeland Security as provided in § 2.1 of this chapter, or senior or supervisory officer of such employee, is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

#### **PART 239—INITIATION OF REMOVAL PROCEEDINGS**

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

**Authority:** 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Public Law 107-296; 8 CFR part 2.

10. Section 239.1 is amended by revising paragraph (a) to read as follows:

##### **§ 239.1 Notice to appear.**

(a) *Issuance of notice to appear.* Any immigration officer performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such an alien. In addition, the following officers, or officers acting in such capacity, may issue a notice to appear:

- (1) District directors (except foreign);
- (2) Deputy district directors (except foreign);
- (3) Chief patrol agents;
- (4) Deputy chief patrol agents;
- (5) Service center directors;
- (6) Deputy service center directors;
- (7) Assistant service center directors for examinations;
- (8) Officers in charge (except foreign);
- (9) Assistant officers in charge (except foreign);
- (10) Supervisory special agents;
- (11) Supervisory deportation officers;
- (12) Supervisory detention and deportation officers;
- (13) Supervisory district adjudications officers;

- (14) Supervisory asylum officers;
- (15) Supervisory border patrol agents;
- (16) Directors of investigations;
- (17) District directors for interior enforcement;
- (18) Deputy or assistant district directors for interior enforcement;
- (19) Director of detention and removal;
- (20) Supervisory asylum officers;
- (21) Port directors;
- (22) Deputy port directors;
- (23) Directors of juvenile affairs;
- (24) Directors or officers in charge of detention facilities;
- (25) Directors of field operations;
- (26) Deputy or assistant directors of field operations; or
- (27) Other officers or employees of the Department of Homeland Security or of the United States who are delegated the authority to issue notices to appear as provided by § 2.1 of this chapter.

\* \* \* \* \*

Dated: February 28, 2003.

**Tom Ridge,**

*Secretary of Homeland Security.*

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