DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 236, 239, 241 and 287

Powers and Authority of Officers and Employees

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule continues the process of conforming the text of the Code of Federal Regulations to the governmental structures established in the Homeland Security Act and Reorganization Plan. This rule is not intended to and does not restrict or otherwise limit the authority of any Department of Homeland Security officer.

DATES: This final rule is effective November 4, 2005.

FOR FURTHER INFORMATION CONTACT: Jack Penca, Chief Counsel, Law Enforcement Support Center; 188 Harvest Lane, Williston, Vermont 05495; telephone number: (802) 872-6056.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296, 116 Stat. 2135) (HSA), 6 U.S.C. 101 et seq., which created the new Department of Homeland Security (Department or DHS). Pursuant to the provisions of the HSA, DHS came into existence on January 24, 2003. The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). The transition and savings provisions of the HSA, including sections 1512(d) and 1517 of the HSA, 6 U.S.C. 552(d), 557, provide that references relating to the Service in statutes, regulations, directives or delegations of authority shall be deemed to refer to the appropriate official or component of DHS.

This rule amends various lists of DHS officials authorized to perform certain immigration enforcement functions, including making administrative arrests for immigration violations, making custody determinations, issuing Notices to Appear (which set forth the charges against an alien and order the alien to appear before an immigration
judge), and issuing Warrants of Removal (which authorize the removal of an alien from the United States after the issuance of a final administrative order). While this rule constitutes a delegation of authority, and constitutes a public statement thereof, it is not the only means by which such authority may be delegated by the Secretary pursuant to 8 CFR 2.1. The Secretary retains the authority to further delegate immigration authorities and functions through internal directives, memoranda, or other means. See Id. This rule does not alter any other delegation of authority by the Secretary that is not addressed in the rule. The rule does not affect any rights of aliens or the general public. See 8 CFR 287.12.

Explanation of Changes

This final rule:
(1) Amends 8 CFR 236.1 to set forth a list of officers authorized to issue and serve Form I-286, Notice of Custody Determination.
(2) Amends 8 CFR 239.1 to revise the list of officers authorized to issue a Notice to Appear, which sets forth the immigration charges against the alien.
(3) Amends 8 CFR 241.2 to revise the list of officers authorized to issue Warrants of Removal, which authorizes the removal of an alien from the United States after a final administrative order is entered.
(4) Amends 8 CFR 287.5(e)(2) to revise the list of officers authorized to issue an administrative Warrant of Arrest for immigration violations.

Administrative Procedure Act

This rule relates to agency organization and management and is exempt from the notice of proposed rulemaking and delayed effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553(a).

Executive Order 12866

This rule is limited to agency organization and management and therefore is not a rule as defined by 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. 605(b), do not apply.

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 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.

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 Homeland Security 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 236

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

8 CFR Part 239

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

8 CFR Part 241

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

8 CFR Part 287

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

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

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

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


2. Section 236.1 is amended by adding a new paragraph (g) to read as follows:

Sec. 236.1 Apprehension, custody, and detention.

* * * * *

(g) Notice of custody determination. (1) In general. At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, an immigration official may issue a Form I-286, Notice of Custody Determination. A notice of custody determination may be issued by those immigration officials listed in 8 CFR 287.5(e)(2) and may be served by those immigration officials listed in 8 CFR 287.5(e)(3), or other officers or employees
of the Department or the United States who are delegated the authority
to do so pursuant to 8 CFR 2.1.

(2) Cancellation. If after the issuance of a notice of custody
determination, a determination is made not to serve it, any official
authorized to issue such notice may authorize its cancellation.

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PART 239--INITIATION OF REMOVAL PROCEEDINGS

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


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4. Section 239.1 is amended by:
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a. Revising paragraphs (a)(37) and (a)(38); and by
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b. Adding paragraphs (a)(39) through (a)(41).

The revisions and additions read as follows:

Sec.  239.1  Notice to appear.

(a) * * *
* * * * *
(37) Deputy port directors;
(38) Supervisory service center adjudications officers;
(39) Unit Chief, Law Enforcement Support Center;
(40) Section Chief, Law Enforcement Support Center; or
(41) Other officers or employees of the Department or of the United
States who are delegated the authority as provided by 8 CFR 2.1 to
issue notices to appear.
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PART 241--APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

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5. The authority citation for part 241 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223,
1224, 1225, 1226, 1227, 1228, 1231, 1251, 1253, 1255, 1330, 1362; 18
101, et seq.); 8 CFR part 2.

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6. Section 241.2 is revised to read as follows:

Sec.  241.2  Warrant of removal.

(a) Issuance of a warrant of removal. (1) In general. A Form I-205,
Warrant of Removal, based upon the final administrative removal order
in the alien's case shall be issued by any of the following immigration
officials:
(i) Director, Detention and Removal Operations;
(ii) Deputy Assistant Director, Field Operations;
(iii) Field Office Directors;
(iv) Deputy Field Office Directors;
(v) Assistant Field Office Directors;
(vi) Officers in Charge;
(vii) Special Agents in Charge;
(viii) Deputy Special Agents in Charge;
(ix) Associate Special Agents in Charge;
(x) Assistant Special Agents in Charge;
(xi) Group Supervisors;
(xii) Resident Agents in Charge;
(xiii) District Field Officers;
(xiv) Chief Patrol Agents;
(xv) Deputy Chief Patrol Agents;
(xvi) Assistant Chief Patrol Agents;
(xvii) Patrol Agents in Charge;
(xviii) Unit Chief, Law Enforcement Support Center;
(xix) Section Chief, Law Enforcement Support Center;
(xx) Port Directors;
(xxi) Deputy Port Directors;
(xxii) Assistant Port Directors;
(xxiii) Director, Field Operations;
(xxiv) Deputy Director, Field Operations;
(xxv) Assistant Director, Field Operations; and
(xxvi) Other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1 to issue Warrants of Removal.

(2) Costs and care during removal. The immigration officials listed in paragraphs (a)(1)(i) through (xxv) of this section, and other officers or employees of the Department or the United States who are delegated the authority as provided in 8 CFR 2.1, 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.

(b) Execution of the warrant of removal. Any officer authorized by 8 CFR 287.5(e)(3) to execute administrative warrants of arrest may execute a warrant of removal.

PART 287--FIELD OFFICERS; POWERS AND DUTIES

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


8. Section 287.5(e)(2) is revised to read as follows:

Sec. 287.5 Exercise of power by immigration officers.

* * * * *
(e) * * *
(2) Issuance of arrest warrants for immigration violations. A warrant of arrest may be issued by any of the following immigration officials who have been authorized or delegated such authority:
(i) District directors (except foreign);
(ii) Deputy district directors (except foreign);
(iii) Assistant district directors for investigations;
(iv) Deputy assistant district directors for investigations;
(v) Assistant district directors for deportation;
(vi) Deputy assistant district directors for deportation;
(vii) Assistant district directors for examinations;
(viii) Deputy assistant district directors for examinations;
(ix) Officers in charge (except foreign);
(x) Assistant officers in charge (except foreign);
(xi) Chief patrol agents;
(xii) Deputy chief patrol agents;
(xiii) Assistant chief patrol agents;
(xiv) Patrol agents in charge;
(xv) Assistant patrol agents in charge;
(xvi) Field operations supervisors;
(xvii) Special operations supervisors;
(xviii) Supervisory border patrol agents;
(xix) The Assistant Commissioner, Investigations;
(xx) Institutional Hearing Program directors;
(xxi) Area port directors;
(xxii) Port directors;
(xxiii) Deputy port directors;
(xxiv) Assistant Area port directors;
(xxv) Supervisory deportation officers;
(xxvi) Supervisory detention and deportation officers;
(xxvii) Group Supervisors;
(xxviii) Director, Office of Detention and Removal Operations;
(xxix) Special Agents in Charge;
(xxx) Deputy Special Agents in Charge;
(xxxi) Associate Special Agents in Charge;
(xxxii) Assistant Special Agents in Charge;
(xxxiii) Resident Agents in Charge;
(xxxiv) Field Office Directors;
(xxxv) Deputy Field Office Directors;
(xxxvi) District Field Officers;
(xxxvii) Supervisory district adjudications officers;
(xxxviii) Supervisory asylum officers;
(xxxix) Supervisory special agents;
(xl) Director of investigations;
(xli) Directors or officers in charge of detention facilities;
(xlii) Directors of field operations;
(xliii) Deputy or assistant directors of field operations;
(xliv) Unit Chief, Law Enforcement Support Center;
(xlv) Section Chief, Law Enforcement Support Center;
(xlvi) Director, Field Operations;
(xlvii) Deputy Director, Field Operations;
(xlviii) Assistant Director, Field Operations;
(xlix) Immigration Enforcement Agents; or

(1) Other officers or employees of the Department or the United
States who are delegated the authority as provided in 8 CFR 2.1 to
issue warrants of arrest.

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Dated: October 17, 2005.
Michael Chertoff,
Secretary of Homeland Security.
[FR Doc. 05-21980 Filed 11-3-05; 8:45 am]
BILLING CODE 4410-10-P