

notify OPM of any subsequent changes in the conditions that served as the basis for the approval of the voluntary early retirement authority. Depending upon the circumstances involved, OPM will modify the authority as necessary to better suit the agency's needs.

(i) The agency may limit voluntary early retirement offers based on:

(1) An established opening and closing date that is announced to employees at the time of the offer; or

(2) The acceptance of a specified number of applications for voluntary early retirement, provided that, at the time of the offer, the agency notified employees that it retained the right to limit the number of voluntary early retirements.

(j) Within the timeframe specified for its approved VERA, the agency may subsequently establish a new or revised closing date, or reduce or increase the number of early retirement applications it will accept, if management's downsizing and/or reshaping needs change. If the agency issues a revised closing date, or a revised number of applications to be accepted, the new date or number of applications must be announced to the same group of employees included in the original announcement. If the agency issues a new window period with a new closing date, or a new instance of a specific number of applications to be accepted, the new window period or number of applications to be accepted may be announced to a different group of employees as long as they are covered by the approved VERA.

(k) An employee who separates from the service voluntarily after completing 25 years of service, or becoming age 50 and completing 20 years of service, is entitled to an annuity if, on the date of separation, the employee:

(1) Is serving in a position covered by a voluntary early retirement offer; and

(2) Meets the conditions covered in 5 U.S.C. 8414(b)(1)(B).

(l) Agencies are responsible for ensuring that employees are not coerced into voluntary early retirement. If an agency finds any instances of coercion, it must take appropriate corrective action.

(m) An agency may not offer or process voluntary early retirements beyond the stated expiration date of a VERA or offer early retirements to employees who are not within the scope of the VERA approved by OPM.

(n) OPM may terminate a voluntary early retirement authority if it determines that the agency is no longer undergoing the condition(s) that formed the basis for its approval.

(o) OPM may amend, limit, or terminate a voluntary early retirement authority to ensure that voluntary early retirement authority regulations are being properly followed.

(p) Agencies must provide OPM with interim and final reports for each voluntary early retirement authority, as covered in OPM's approval letter to the agency. OPM may suspend or cancel a voluntary early retirement authority if the agency is not in compliance with the reporting requirements or reporting schedule specified in OPM's voluntary early retirement authority approval letter.

(q) The terms, conditions, and procedures in this section do not apply to the General Accounting Office.

(r) The authority to VERA to restructure the workforce terminates June 14, 2004.

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 1, 103, 239 and 287

[ICE No. 2274-03]

RIN 1653 AA26

Powers and Authority of Officers and Employees; Revisions to the Internal Review Process for Alleged Violations of the Standards for Enforcement Activities

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296) (HSA), 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, 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. DHS is promulgating this rule to

continue the process of conforming the text of Title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. This rule is not intended to and does not restrict or otherwise limit the authority of any DHS officer.

DATES: This final rule is effective June 13, 2003.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION

Explanation of Changes

First, the final rule expands the definitions of the terms "Service," "Commissioner," and "director" at 8 CFR 1.1. Definitions for the terms "Department," "Secretary," and "Bureau" have been added. Definitions have also been added for "BCIS," "CBP," and "ICE," which are the acronyms for the bureaus within DHS that have been delegated the authorities of the former Service. The definitions provide clarification that the functions of the legacy components of the Service continue under the Department. The definitions refer to the "Service" in recognition that the term "Service" continues to be used throughout Title 8 of the Code of Federal Regulations, and this final rule amends only limited portions of that title.

Second, the term "immigration enforcement agent" has been added to 8 CFR 103.1(b) in recognition of an ongoing modification to the field structure of the Bureau of Immigration and Customs Enforcement (ICE). As part of a position reclassification the immigration agent position (within the investigations program of ICE) and the detention enforcement officer position (within the detention and removal program of ICE) will be combined and reclassified into the immigration enforcement agent position. Immigration enforcement agents will have responsibilities that include the identification and processing of detained criminal aliens within the institutional removal program.

Third, the final rule revises the regulation at 8 CFR 239.1 that delegates authority to issue notices to appear. In his discretion, the Secretary of Homeland Security has published this delegation of authority to issue notices to appear in the Code of Federal Regulations, cross-referencing his general delegation authority under 8 CFR 2.1. The list of officers authorized

to issue notices to appear is amended to reflect the ongoing reorganization of functions of the former Service among the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement. Removed from the list of those authorized to issue a notice to appear is the Director of Juvenile Affairs, based on the transfer of functions with respect to the care of unaccompanied alien children to the Department of Health and Human Services pursuant to section 462 of the Homeland Security Act of 2002, as amended, 6 U.S.C. 279.

Fourth, the final rule revises 8 CFR 287 part 1 with respect to the powers and authority of officers and employees of these three bureaus. Deportation officers have been provided the authority to execute search warrants under 8 CFR 287.5(e)(1).

In recognition of the position reclassification of detention enforcement officers to immigration enforcement agents, the term "immigration enforcement agent" is added to the existing term of "detention enforcement officer" in 8 CFR 103.1(b), 287.5(c)(6), 287.5(e)(3), 287.5(f), 287.8(a)(1)(iv) and 287.8(a)(2)(iii). Pursuant to their duties and responsibilities within the institutional removal program, immigration enforcement agents are delegated the authority to make arrests under 8 CFR 287.5(c)(1), and 8 CFR 287.5(c)(2), to conduct searches under 8 CFR 287.5(d), to execute search warrants under 287.5(e)(1), to serve warrants of arrest for non-immigration violations under 287.5(e)(4), and to issue detainers under 8 CFR 287.7(b).

Fifth, the final rule revises the regulation at 8 CFR 287.10 regarding the internal review process for alleged violations of the standards for enforcement activities to replace the references to offices within the Department of Justice that had been responsible for reviewing such allegations with the appropriate offices within DHS.

Sixth, the final rule revises or removes several paragraphs in 8 CFR 239.2 (cancellation of notices to appear), 8 CFR 287.3 (aliens arrested without warrant), and 8 CFR 287.4 (subpoenas), to reflect the recodification of regulations governing immigration proceedings. Under the HSA, the Executive Office for Immigration Review (EOIR), including the immigration judges and the Board of Immigration Appeals, remain in the Department of Justice, and the regulations pertaining to proceedings

before EOIR have been codified in Chapter V of 8 CFR. Accordingly, this final rule makes conforming changes to 8 CFR 239.2, 287.3, and 287.4 in recognition that the regulations governing immigration proceedings before the immigration judges and the Board are now codified at 8 CFR 1003 *et seq.* (including with reference to this rule, 8 CFR 1003.14, 1239.2, 1287.4, and 1292.2).

Finally, the rule revises the regulation at 8 CFR 287.8 by adding a new subsection (g) which states that the criminal law enforcement activities authorized under this rule will be exercised in a manner consistent with all applicable DHS and Department of Justice guidelines and policies.

Good Cause Exception

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(a) and (b)(2) 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 Homeland Security has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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 requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 1

Administrative practice and procedure, 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.

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:

Chapter I—Department of Homeland Security (Immigration and Naturalization)

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

PART 1—DEFINITIONS

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

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

■ 3–4. Section 1.1 is amended by revising paragraphs (c), (d), (o) and (p) and adding paragraphs (u) through (z) to read as follows:

§ 1.1 Definitions.

* * * * *

(c) The term *Service* means the Immigration and Naturalization Service, as it existed prior to March 1, 2003. Unless otherwise specified, references to the Service after that date mean the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement.

(d) The term *Commissioner* means the Commissioner of the Immigration and Naturalization Service prior to March 1, 2003. Unless otherwise specified, references after that date mean the Director of the Bureau of Citizenship and Immigration Services, the Commissioner of the Bureau of Customs and Border Protection, and the Assistant Secretary for the Bureau of Immigration and Customs Enforcement.

* * * * *

(o) The terms *director* or *district director* prior to March 1, 2003, mean the district director or regional service center director, unless otherwise specified. On or after March 1, 2003, pursuant to delegation from the Secretary of Homeland Security or any successive re-delegation, the terms mean, to the extent that authority has been delegated to such official: service center director; special agent in charge; field office director; district director for services; district director for interior enforcement; or director, field operations. The terms also mean such other official, including an official in an acting capacity, within the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, or other component of the Department of Homeland Security who is delegated the

function or authority above referenced for a particular geographic district, region, or area.

(p) The term *lawfully admitted for permanent residence* means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed. Such status terminates upon entry of a final administrative order of exclusion, deportation, or removal.

* * * * *

(u) The term *Department*, unless otherwise noted, means the Department of Homeland Security.

(v) The term *Secretary*, unless otherwise noted, means the Secretary of Homeland Security.

(w) The term *Bureau* means generally, unless otherwise noted, the Bureau of Citizenship and Immigration Services, the Bureau of Customs and Border Protection, and the Bureau of Immigration and Customs Enforcement, as created by the Homeland Security Act of 2002, as amended, Pub. L. 107–296, November 25, 2002, 116 Stat. 2135, and the President's Reorganization Plan, as modified.

(x) The term *BCIS* means the Bureau of Citizenship and Immigration Services.

(y) The term *CBP* means the Bureau of Customs and Border Protection.

(z) The term *ICE* means the Bureau of Immigration and Customs Enforcement.

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

■ 5. The authority citation for part 103 continues 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; Pub. L. 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.

■ 6. Section 103.1(b) is revised to read as follows:

§ 103.1 Delegations of authority; designation of immigration officers.

* * * * *

(b) *Immigration Officer.* The following employees of the Department of Homeland Security, including senior or supervisory officers of such employees, are designated as immigration officers authorized to exercise the powers and duties of such officer as specified by the Act and this chapter I: 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, immigration enforcement agent, intelligence officer, intelligence agent, general attorney (except with respect to CBP, only to the extent that the attorney is performing any immigration function), applications adjudicator, contact representative, legalization adjudicator, legalization officer, 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.

PART 239—INITIATION OF REMOVAL PROCEEDINGS

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

Authority: 8 U.S.C. 1103, 1221, 1229; Homeland Security Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 8. Section 239.1 is revised to read as follows:

§ 239.1 Notice to appear.

(a) *Issuance of notice to appear.* Any immigration officer, or supervisor thereof, performing an inspection of an arriving alien at a port-of-entry may issue a notice to appear to such 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) Assistant chief patrol agents;
- (6) Patrol agents in charge;
- (7) Assistant patrol agents in charge;
- (8) Field operations supervisors;
- (9) Special operations supervisors;
- (10) Supervisory border patrol agents;
- (11) Service center directors;
- (12) Deputy service center directors;
- (13) Assistant service center directors for examinations;
- (14) Supervisory district adjudications officers;
- (15) Supervisory asylum officers;
- (16) Officers in charge (except foreign);
- (17) Assistant officers in charge (except foreign);
- (18) Special agents in charge;
- (19) Deputy special agents in charge;
- (20) Associate special agents in charge;
- (21) Assistant special agents in charge;
- (22) Resident agents in charge;
- (23) Supervisory special agents;

(24) Directors of investigations;
 (25) District directors for interior enforcement;
 (26) Deputy or assistant district directors for interior enforcement;
 (27) Director of detention and removal;
 (28) Field office directors;
 (29) Deputy field office directors;
 (30) Supervisory deportation officers;
 (31) Supervisory detention and deportation officers;
 (32) Directors or officers in charge of detention facilities;
 (33) Directors of field operations;
 (34) Deputy or assistant directors of field operations;
 (35) District field officers;
 (36) Port directors;
 (37) Deputy port directors; or
 (38) Other officers of employees of the Department or of the United States who are delegated the authority as provided by § 2.1 of this chapter to issue notices to appear.

(b) *Service of notice to appear.* Service of the notice to appear shall be in accordance with section 239 of the Act.

■ 9. Section 239.2 is amended by:
 ■ a. Revising paragraphs (c) and (d); and by

■ b. Removing paragraph (f).

The revisions read as follows:

§ 239.2 Cancellation of notice to appear.

(c) *Motion to dismiss.* After commencement of proceedings pursuant to 8 CFR 1003.14, ICE counsel, or any officer enumerated in paragraph (a) of this section, may move for dismissal of the matter on the grounds set out under paragraph (a) of this section.

(d) *Motion for remand.* After commencement of the hearing, ICE counsel, or any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration.

PART 287—FIELD OFFICERS; POWERS AND DUTIES

■ 10. The authority citation for part 287 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; Homeland Security Act of 2002, Pub. L. 107–296 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 11. Section 287.1 is amended by:

■ a. Revising the words “district director” to read “chief patrol agent for CBP, or the special agent in charge for ICE” in paragraph (a)(2);

■ b. Revising paragraphs (b) and (g);
 ■ c. Removing the words “and § 242.2(a) of this part” in paragraph (e); and by
 ■ d. Adding paragraphs (h) and (i).

The revisions and additions read as follows:

§ 287.1 Definitions.

(b) *Reasonable distance; fixing by chief patrol agents and special agents in charge.* In fixing distances not exceeding 100 air miles pursuant to paragraph (a) of this section, chief patrol agents and special agents in charge shall take into consideration topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States: *Provided*, That whenever in the opinion of a chief patrol agent or special agent in charge a distance in his or her sector or district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such chief patrol agent or special agent in charge shall forward a complete report with respect to the matter to the Commissioner of CBP, or the Assistant Secretary for ICE, as appropriate, who may, if he determines that such action is justified, declare such distance to be reasonable.

(g) *Basic immigration law enforcement training.* The phrase basic immigration law enforcement training, as used in §§ 287.5 and 287.8, means the successful completion of one of the following courses of training provided at the Immigration Officer Academy or Border Patrol Academy: Immigration Officer Basic Training Course after 1971; Border Patrol Basic Training Course after 1950; Immigration Detention Enforcement Officer Basic Training Course after 1977; and Immigration Customs Enforcement Special Agent Training, after 2002; or training substantially equivalent thereto as determined by the Commissioner of CBP or the Assistant Secretary for ICE with respect to personnel in their respective bureaus. The phrase basic immigration law enforcement training also means the successful completion of the Other than Permanent Full-Time (OTP) Immigration Inspector Basic Training Course after 1991 in the case of individuals who are OTP immigration inspectors. Conversion by OTP immigration to any other status requires training applicable to that position.

(h) References to specific titles of officers mean all individuals holding such positions and any individual acting in such position.

(i) Nothing in this part limits the authority of any DHS officers to act pursuant to any authorities that they may otherwise possess.

§ 287.2 [Amended]

■ 12. Section 287.2 is amended by:

■ a. Revising the words “district director” to read “special agent in charge, port director,”;
 ■ b. Adding the phrase “immigration and nationality” immediately before the phrase “laws administered or enforced”; and by
 ■ c. Revising the word “Service” to read “Department”.

§ 287.3 [Amended]

■ 13. Section 287.3 is amended by:

■ a. Revising the words “8 CFR part 3” to read “8 CFR part 1003” in paragraph (c); and by
 ■ b. Adding the phrase “or 8 CFR 1292.2” immediately after the phrase “§ 292.2 of this chapter” in paragraph (c).

■ 14. Section 287.4 is amended by:

■ a. Revising paragraph (a);
 ■ b. Adding the word “immigration” immediately before the word “officer” and by revising the word “Service” to read “Department” in paragraph (b)(1);
 ■ c. Revising the word “making” to read “taking”, adding the word “immigration” immediately before the word “officer” and by revising the word “Service” to read “Department” in paragraph (b)(2); and by
 ■ d. Revising paragraph (c).

The revisions read as follows:

§ 287.4 Subpoena.

(a) *Who may issue*—(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 Patrol Agents in Charge; Field Operations Supervisors; Special Operations Supervisors; Supervisory Border Patrol Agents; Assistant District Directors, Investigations; Supervisory Criminal Investigators, Anti-Smuggling; Regional Directors; Service Center Directors; Assistant District Directors, Examinations; Director, Detention and Removal; Special Agents in Charge; all Special Agents in supervisory positions; Field Office Directors; Deputy Field Office Directors; and any other immigration officer who has been expressly delegated such authority as provided by 8 CFR 2.1 may issue a subpoena requiring the production of

records and evidence for use in criminal or civil investigations.

(2) *Proceedings other than naturalization proceedings*—(i) *Prior to commencement of proceedings.* All District Directors; Deputy District Directors; Chief Patrol Agents; Deputy Chief Patrol Agents; Officers in Charge; Director, Detention and Removal; Special Agents in Charge; Deputy Special Agents in Charge; Resident Agents in Charge; District Field Officers; Field Office Directors; Deputy Field Office Directors; and Port Directors 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 I, other than under 8 CFR part 335, or any application made ancillary to the proceeding.

(ii) *Subsequent to commencement of any immigration court proceeding.* Procedures for the issuance of a subpoena after the commencement of proceedings, in cases other than those arising under part 335 of this chapter, are set forth at 8 CFR 1003.35(b) and 1287.4.

* * * * *

(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; Special Agent in Charge; Deputy Special Agent in Charge; Resident Agent in Charge; District Field Officer; Field Office Director; Deputy Field Office Director; Supervisory Deportation Officer; Supervisory Detention and Deportation Officer; and Port Director having administrative jurisdiction over the office in which the subpoena is issued. The Director, Detention and Removal, 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 Department, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

* * * * *

■ 15. Section 287.5 is revised to read as follows:

§ 287.5 Exercise of power by immigration officers.

(a) *Power and authority to interrogate and administer oaths.* Any immigration officer as defined in 8 CFR 103.1(b) is hereby authorized and designated to exercise anywhere in or outside the United States the power conferred by:

(1) Section 287(a)(1) of the Act to interrogate, without warrant, any alien or person believed to be an alien concerning his or her right to be, or to remain, in the United States, and

(2) Section 287(b) of the Act to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States; or concerning any matter which is material or relevant to the enforcement of the Act and the administration of the immigration and naturalization functions of the Department.

(b) *Power and authority to patrol the border.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to patrol the border conferred by section 287(a)(3) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Immigration inspectors (seaport operations only);

(4) Adjudications officers and deportation officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections (seaport operations only);

(5) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(6) Immigration officers who need the authority to patrol the border under section 287(a)(3) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary for ICE.

(c) *Power and authority to arrest*—(1) Arrests of aliens under section 287(a)(2) of the Act for immigration violations. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(2) of the Act and in accordance with 8 CFR 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Immigration enforcement agents;

(vii) Supervisory and managerial

personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to arrest aliens under section 287(a)(2) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(2) Arrests of persons under section 287(a)(4) of the Act for felonies regulating the admission or removal of aliens. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(4) of the Act and in accordance with 8 CFR 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors;

(v) Adjudications officers;

(vi) Immigration enforcement agents;

(vii) Supervisory and managerial

personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(viii) Immigration officers who need the authority to arrest persons under section 287(a)(4) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(3) Arrests of persons under section 287(a)(5)(A) of the Act for any offense against the United States. The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(A) of the Act and in accordance with 8 CFR 287.8(c):

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration inspectors

(permanent full-time immigration inspectors only);

(v) Adjudications officers when in the uniform of an immigration inspector

and performing inspections or supervising other immigration inspectors performing inspections;

(vi) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(vii) Immigration officers who need the authority to arrest persons under section 287(a)(5)(A) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, or the Assistant Secretary for ICE.

(4) Arrests of persons under section 287(a)(5)(B) of the Act for any felony. (i) Section 287(a)(5)(B) of the Act authorizes designated immigration officers, as listed in paragraph (c)(4)(iii) of this section, to arrest persons, without warrant, for any felony cognizable under the laws of the United States if:

(A) The immigration officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(B) The immigration officer is performing duties relating to the enforcement of the immigration laws at the time of the arrest;

(C) There is a likelihood of the person escaping before a warrant can be obtained for his or her arrest; and

(D) The immigration officer has been certified as successfully completing a training program that covers such arrests and the standards with respect to the immigration enforcement activities of the Department as defined in 8 CFR 287.8.

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the arrest power conferred by section 287(a)(5)(B) of the Act and in accordance with 8 CFR 287.8(c):

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors (permanent full-time immigration inspectors only);

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 287(a)(5)(B) of the Act in order to effectively accomplish their individual

missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(iii) Notwithstanding the authorization and designation set forth in paragraph (c)(4)(ii) of this section, no immigration officer is authorized to make an arrest for any felony under the authority of section 287(a)(5)(B) of the Act until such time as he or she has been certified by the Director of Training as successfully completing a training course encompassing such arrests and the standards for enforcement activities as defined in 8 CFR 287.8. Such certification shall be valid for the duration of the immigration officer's continuous employment, unless it is suspended or revoked by the Commissioner of CBP or the Assistant Secretary for ICE, or their respective designees, for just cause.

(5) Arrests of persons under section 274(a) of the Act who bring in, transport, or harbor certain aliens, or induce them to enter.

(i) Section 274(a) of the Act authorizes designated immigration officers, as listed in paragraph (c)(5)(ii) of this section, to arrest persons who bring in, transport, or harbor aliens, or induce them to enter the United States in violation of law. When making an arrest, the designated immigration officer shall adhere to the provisions of the enforcement standard governing the conduct of arrests in 8 CFR 287.8(c).

(ii) The following immigration officers who have successfully completed basic immigration law enforcement training are authorized and designated to exercise the arrest power conferred by section 274(a) of the Act:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Immigration inspectors;

(E) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(F) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(G) Immigration officers who need the authority to arrest persons under section 274(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(6) Custody and transportation of previously arrested persons. In addition to the authority to arrest pursuant to a warrant of arrest in paragraph (e)(3)(iv)

of this section, detention enforcement officers and immigration enforcement agents who have successfully completed basic immigration law enforcement training are hereby authorized and designated to take and maintain custody of and transport any person who has been arrested by an immigration officer pursuant to paragraphs (c)(1) through (c)(5) of this section.

(d) *Power and authority to conduct searches.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to conduct searches conferred by section 287(c) of the Act:

(1) Border patrol agents, including aircraft pilots;

(2) Special agents;

(3) Deportation officers;

(4) Immigration inspectors;

(5) Adjudications officers;

(6) Immigration enforcement agents;

(7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to conduct searches under section 287(c) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(e) *Power and authority to execute warrants*—(1) *Search warrants.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to execute a search warrant:

(i) Border patrol agents, including aircraft pilots;

(ii) Special agents;

(iii) Deportation officers;

(iv) Immigration enforcement agents;

(v) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph, and

(vi) Immigration officers who need the authority to execute search warrants under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(2) *Issuance of arrest warrants for immigration violations.* A warrant of arrest may be issued by an immigration officer who has 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) Supervisory deportation officers;
 (xxv) Supervisory detention and deportation officers;
 (xxvi) Director, Office of Detention and Removal;
 (xxvii) Special Agents in Charge;
 (xxviii) Deputy Special Agents in Charge;
 (xxix) Associate Special Agents in Charge;
 (xxx) Assistant Special Agents in Charge;
 (xxxi) Resident Agents in Charge;
 (xxxii) Field Office Directors;
 (xxxiii) Deputy Field Office Directors;
 or
 (xxxiv) District Field Officers.

(3) *Service of warrant of arrests for immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power pursuant to section 287(a) of the Act to execute warrants of arrest for administrative immigration violations issued under section 236 of the Act or to execute warrants of criminal arrest issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;
 (ii) Special agents;
 (iii) Deportation officers;

(iv) Detention enforcement officers or immigration enforcement agents (warrants of arrest for administrative immigration violations only);
 (v) Immigration inspectors;
 (vi) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;
 (vii) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
 (viii) Immigration officers who need the authority to execute arrest warrants for immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(4) *Service of warrant of arrests for non-immigration violations.* The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power to execute warrants of criminal arrest for non-immigration violations issued under the authority of the United States:

(i) Border patrol agents, including aircraft pilots;
 (ii) Special agents;
 (iii) Deportation officers;
 (iv) Immigration enforcement agents;
 (v) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
 (vi) Immigration officers who need the authority to execute warrants of arrest for non-immigration violations under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(f) *Power and authority to carry firearms.* The following immigration officers who have successfully completed basic immigration enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to carry firearms provided that they are individually qualified by training and experience to handle and safely operate the firearms they are permitted to carry, maintain proficiency in the use of such firearms, and adhere to the provisions of the enforcement standard governing the use of force in 8 CFR 287.8(a):

(1) Border patrol agents, including aircraft pilots;
 (2) Special agents;

(3) Deportation officers;
 (4) Detention enforcement officers or immigration enforcement agents;
 (5) Immigration inspectors;
 (6) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;
 (7) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and
 (8) Immigration officers who need the authority to carry firearms under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

■ 16. Section 287.7 is revised to read as follows:

§ 287.7 Detainer provisions under section 287(d)(3) of the Act.

(a) *Detainers in general.* Detainers are issued pursuant to sections 236 and 287 of the Act and this chapter 1. Any authorized immigration officer may at any time issue a Form I-247, Immigration Detainer-Notice of Action, to any other Federal, State, or local law enforcement agency. A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.

(b) *Authority to issue detainers.* The following officers are authorized to issue detainers:

(1) Border patrol agents, including aircraft pilots;
 (2) Special agents;
 (3) Deportation officers;
 (4) Immigration inspectors;
 (5) Adjudications officers;
 (6) Immigration enforcement agents;
 (7) Supervisory and managerial

personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(8) Immigration officers who need the authority to issue detainers under section 287(d)(3) of the Act in order to effectively accomplish their individual missions and who are designated individually or as a class, by the Commissioner of CBP, the Assistant Secretary for ICE, or the Director of the BCIS.

(c) *Availability of records.* In order for the Department to accurately determine

the propriety of issuing a detainer, serving a notice to appear, or taking custody of an alien in accordance with this section, the criminal justice agency requesting such action or informing the Department of a conviction or act that renders an alien inadmissible or removable under any provision of law shall provide the Department with all documentary records and information available from the agency that reasonably relates to the alien's status in the United States, or that may have an impact on conditions of release.

(d) *Temporary detention at Department request.* Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.

(e) *Financial responsibility for detention.* No detainer issued as a result of a determination made under this chapter I shall incur any fiscal obligation on the part of the Department, until actual assumption of custody by the Department, except as provided in paragraph (d) of this section.

17. Section 287.8 is revised to read as follows:

§ 287.8 Standards for enforcement activities.

The following standards for enforcement activities contained in this section must be adhered to by every immigration officer involved in enforcement activities. Any violation of this section shall be reported to the Office of the Inspector General or such other entity as may be provided for in 8 CFR 287.10.

(a) *Use of force*—(1) *Non-deadly force.* (i) Non-deadly force is any use of force other than that which is considered deadly force as defined in paragraph (a)(2) of this section.

(ii) Non-deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(1)(iv) of this section, has reasonable grounds to believe that such force is necessary.

(iii) A designated immigration officer shall always use the minimum non-deadly force necessary to accomplish the officer's mission and shall escalate to a higher level of non-deadly force only when such higher level of force is warranted by the actions, apparent intentions, and apparent capabilities of the suspect, prisoner, or assailant.

(iv) The following immigration officers who have successfully

completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to use non-deadly force should circumstances warrant it:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Detention enforcement officers or immigration enforcement agents;

(E) Immigration inspectors;

(F) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(H) Immigration officers who need the authority to use non-deadly force under section 287(a) of the Act in order to effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(2) *Deadly force.* (i) Deadly force is any use of force that is likely to cause death or serious physical injury.

(ii) Deadly force may be used only when a designated immigration officer, as listed in paragraph (a)(2)(iii) of this section, has reasonable grounds to believe that such force is necessary to protect the designated immigration officer or other persons from the imminent danger of death or serious physical injury.

(iii) The following immigration officers who have successfully completed basic immigration law enforcement training are hereby authorized and designated to exercise the power conferred by section 287(a) of the Act to use deadly force should circumstances warrant it:

(A) Border patrol agents, including aircraft pilots;

(B) Special agents;

(C) Deportation officers;

(D) Detention enforcement officers or immigration enforcement agents;

(E) Immigration inspectors;

(F) Adjudications officers when in the uniform of an immigration inspector and performing inspections or supervising other immigration inspectors performing inspections;

(G) Supervisory and managerial personnel who are responsible for supervising the activities of those officers listed above; and

(H) Immigration officers who need the authority to use deadly force under section 287(a) of the Act in order to

effectively accomplish their individual missions and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(b) *Interrogation and detention not amounting to arrest.* (1) Interrogation is questioning designed to elicit specific information. An immigration officer, like any other person, has the right to ask questions of anyone as long as the immigration officer does not restrain the freedom of an individual, not under arrest, to walk away.

(2) If the immigration officer has a reasonable suspicion, based on specific articulable facts, that the person being questioned is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States, the immigration officer may briefly detain the person for questioning.

(3) Information obtained from this questioning may provide the basis for a subsequent arrest, which must be effected only by a designated immigration officer, as listed in 8 CFR 287.5(c). The conduct of arrests is specified in paragraph (c) of this section.

(c) *Conduct of arrests*—(1) *Authority.* Only designated immigration officers are authorized to make an arrest. The list of designated immigration officers varies depending on the type of arrest as listed in 8 CFR 287.5(c)(1) through (c)(5).

(2) *General procedures.* (i) An arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is an alien illegally in the United States.

(ii) A warrant of arrest shall be obtained except when the designated immigration officer has reason to believe that the person is likely to escape before a warrant can be obtained.

(iii) At the time of the arrest, the designated immigration officer shall, as soon as it is practical and safe to do so:

(A) Identify himself or herself as an immigration officer who is authorized to execute an arrest; and

(B) State that the person is under arrest and the reason for the arrest.

(iv) With respect to an alien arrested and administratively charged with being in the United States in violation of law, the arresting officer shall adhere to the procedures set forth in 8 CFR 287.3 if the arrest is made without a warrant.

(v) With respect to a person arrested and charged with a criminal violation of the laws of the United States, the arresting officer shall advise the person of the appropriate rights as required by

law at the time of the arrest, or as soon thereafter as practicable. It is the duty of the immigration officer to assure that the warnings are given in a language the subject understands, and that the subject acknowledges that the warnings are understood. The fact that a person has been advised of his or her rights shall be documented on appropriate Department forms and made a part of the arrest record.

(vi) Every person arrested and charged with a criminal violation of the laws of the United States shall be brought without unnecessary delay before a United States magistrate judge, a United States district judge or, if necessary, a judicial officer empowered in accordance with 18 U.S.C. 3041 to commit persons charged with such crimes. Accordingly, the immigration officer shall contact an Assistant United States Attorney to arrange for an initial appearance.

(vii) The use of threats, coercion, or physical abuse by the designated immigration officer to induce a suspect to waive his or her rights or to make a statement is prohibited.

(d) *Transportation*—(1) *Vehicle transportation*. All persons will be transported in a manner that ensures the safety of the persons being transported. When persons arrested or detained are being transported by vehicle, each person will be searched as thoroughly as circumstances permit before being placed in the vehicle. The person being transported shall not be handcuffed to the frame or any part of the moving vehicle or an object in the moving vehicle. The person being transported shall not be left unattended during transport unless the immigration officer needs to perform a law enforcement function.

(2) *Airline transportation*. Escorting officers must abide by all Federal Aviation Administration, Transportation Security Administration, and airline carrier rules and regulations pertaining to weapons and the transportation of prisoners.

(e) *Vehicular pursuit*. (1) A vehicular pursuit is an active attempt by a designated immigration officer, as listed in paragraph (e)(2) of this section, in a designated pursuit vehicle to apprehend fleeing suspects who are attempting to avoid apprehension. A designated pursuit vehicle is defined as a vehicle equipped with emergency lights and siren, placed in or on the vehicle, that emit audible and visual signals in order to warn others that emergency law enforcement activities are in progress.

(2) The following immigration officers who have successfully completed basic immigration law enforcement training

are hereby authorized and designated to initiate a vehicular pursuit:

(i) Border patrol agents, including aircraft pilots;

(ii) Supervisory personnel who are responsible for supervising the activities of those officers listed in this paragraph; and

(iii) Immigration officers who need the authority to initiate a vehicular pursuit in order to effectively accomplish their individual mission and who are designated, individually or as a class, by the Commissioner of CBP or the Assistant Secretary for ICE.

(f) *Site inspections*. (1) Site inspections are Border and Transportation Security Directorate enforcement activities undertaken to locate and identify aliens illegally in the United States, or aliens engaged in unauthorized employment, at locations where there is a reasonable suspicion, based on articulable facts, that such aliens are present.

(2) An immigration officer may not enter into the non-public areas of a business, a residence including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.

(3) Adequate records must be maintained noting the results of every site inspection, including those where no illegal aliens are located.

(4) Nothing in this section prohibits an immigration officer from entering into any area of a business or other activity to which the general public has access or onto open fields that are not farms or other outdoor agricultural operations without a warrant, consent, or any particularized suspicion in order to question any person whom the officer believes to be an alien concerning his or her right to be or remain in the United States.

(g) *Guidelines*. The criminal law enforcement authorities authorized under this part will be exercised in a manner consistent with all applicable guidelines and policies of the Department of Justice and the Department of Homeland Security.

■ 18. Section 287.9 is amended by:

■ a. Revising the word "Commissioner" to read "Commissioner of CBP and the Assistant Secretary for ICE" in paragraph (a); and by

■ b. Revising paragraph (b).

The revisions read as follows:

§ 287.9 Criminal search warrant and firearms policies.

* * * * *

(b) In using a firearm, an immigration officer shall adhere to the standard of conduct set forth in 8 CFR 287.8(a)(2). An immigration officer may carry only firearms (whether Department issued or personally owned) that have been approved pursuant to guidelines promulgated by the Commissioner of CBP or the Assistant Secretary for ICE. These officials shall promulgate guidelines with respect to:

(1) Investigative procedures to be followed after a shooting incident involving an officer;

(2) Loss or theft of an approved firearm;

(3) Maintenance of records with respect to the issuance of firearms and ammunition; and

(4) Procedures for the proper care, storage, and maintenance of firearms, ammunition, and related equipment.

■ 19. Section 287.10 is revised to read as follows:

§ 287.10 Expedited internal review process.

(a) *Violations of standards for enforcement activities*. Alleged violations of the standards for enforcement activities established in accordance with the provisions of § 287.8 shall be investigated expeditiously consistent with the policies and procedures of the Department of Homeland Security and pursuant to any guidelines issued by the Secretary.

(b) *Complaints*. Any persons wishing to lodge a complaint pertaining to violations of enforcement standards contained in § 287.8 may contact the Department of Homeland Security, Office of the Inspector General, 245 Murray Drive—Building 410, Washington, DC, 20548, or telephone 1–800–323–8603. With respect to employees of the former INS, persons may contact the Office of Internal Audit, Bureau of Immigration and Customs Enforcement, 425 I Street NW., Washington, DC, 20536.

(c) *Expedited processing of complaints*. When an allegation or complaint of violation of § 287.8 is lodged against an employee or officer of the Department, the allegation or complaint shall be referred promptly for investigation in accordance with the

policies and procedures of the Department. At the conclusion of an investigation of an allegation or complaint of violation of § 287.8, the investigative report shall be referred promptly for appropriate action in accordance with the policies and procedures of the Department.

(d) *Unsubstantiated complaints.*

When an investigative report does not support the allegation, the employee or officer against whom the allegation was made shall be informed in writing that the matter has been closed as soon as practicable. No reference to the allegation shall be filed in the official's or employee's official personnel file.

(e) *Jurisdiction of Department of Justice organizations.* Nothing in this section alters or limits, is intended to alter or limit, or shall be construed to alter or limit, the jurisdiction or authority conferred upon the Federal Bureau of Investigation, the United States Attorneys, the Criminal Division or the Civil Rights Division, or any other component of the Department of Justice that may have jurisdiction regarding criminal violations of law.

■ 20. Section 287.12 is revised to read as follows:

§ 287.12 Scope.

With regard to this part, these regulations provide internal guidance on specific areas of law enforcement authority. These regulations do not, are not intended to, and shall not be construed to exclude, supplant, or limit otherwise lawful activities of the Department or the Secretary. These regulations do not, are not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. The Secretary shall have exclusive authority to enforce these regulations through such administrative and other means as he may deem appropriate.

Dated: June 6, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03-14931 Filed 6-10-03; 3:25 pm]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 113

[Docket No. 01-091-2]

Viruses, Serums, Toxins, and Analogous Products; Standard Requirements for Determination of Residual Free Formaldehyde Content of Biological Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Virus-Serum-Toxin Act regulations for the determination of residual free formaldehyde in veterinary biologics to specify that such determinations be made using the ferric chloride method, and that the residual free formaldehyde content be measured in grams per liter. The ferric chloride method has been adopted as an international standard by scientific experts and regulatory authorities in the United States, Canada, Japan, and the European Union. The effect of this rule will be to reduce the differences in technical requirements for veterinary biologics among regulatory agencies in different countries and further ensure the safety and shelf life of veterinary biologics by adopting a method that has been standardized and accepted internationally.

EFFECTIVE DATE: July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief Staff Officer, Operational Support Section, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, 4700 River Road Unit 148, Riverdale, MD, 20737-1231; (301) 734-8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe standard requirements for the preparation and testing of veterinary biological products. Standard requirements consist of test methods, procedures, and criteria that define the standards for purity, safety, potency, and efficacy for a given type of veterinary biological product. When a standard procedure for testing veterinary biological products is validated and approved by the Animal and Plant Health Inspection Service (APHIS) for general use, it is proposed for codification in the regulations. Sections 113.100 and 113.200 of the

regulations prescribe the requirement for determination of residual free formaldehyde content in inactivated bacterial products and killed virus vaccines, respectively.

On April 5, 2002, we published in the **Federal Register** (67 FR 16327-16329, Docket No. 01-091-1) a proposal to amend to amend the regulations for determination of residual free formaldehyde content in inactivated bacterial products and killed virus vaccines to specify that such determinations be made using the ferric chloride method, and that the residual free formaldehyde content be measured in grams per liter. The proposed rule was intended to reduce the differences in technical requirements for veterinary biologics among regulatory agencies in different countries and further ensure the safety and shelf life of veterinary biologics by adopting a method which has been standardized and accepted internationally.

We solicited comments concerning our proposal for 60 days ending on June 4, 2002. We received one comment by that date, from a national trade association representing veterinary biologics manufacturers. The commenter expressed support for the efforts of APHIS and the International Cooperation on Harmonization of Technical Requirements for the Registration of Veterinary Medicinal Products (VICH) to harmonize the technical requirements for product registration among the participating regions and recommended that APHIS adopt the provisions of the proposed rule.

Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Virus-Serum-Toxin Act regulations for determination of residual free formaldehyde content in biological products to require that such free formaldehyde determinations be made using the ferric chloride method, which determines residual free formaldehyde content by measuring the quantity of coloring matter in solution by the quantity of light absorbed in passing through the solution. In addition, this rule provides that the maximum allowable residual free formaldehyde content of veterinary