

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF JUSTICE

### 8 CFR Part 2

### 28 CFR Part 65

[INS No. 1924-98; AG Order No. 2215-99]

RIN 1115-AF20

#### **Powers of the Attorney General to Authorize State or Local Law Enforcement Officers To Enforce Immigration Law During a Mass Influx of Aliens**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to implement section 103(a)(8) of the Immigration and Nationality Act (the Act), which permits the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform certain functions related to the enforcement of the immigration laws during a period of mass influx of aliens. This rule provides for a cooperative process by which State or local governments can agree to place authorized State or local law enforcement officer(s) under the direction of the Immigration and Naturalization Service (INS) in enforcing immigration laws, whenever the Attorney General determines that such assistance is necessary during a mass influx of aliens.

This rule also allows the Commissioner of the INS to enter into advance written "contingency" agreements with State and local law enforcement officials. The written agreements will explain the terms and conditions (including the reimbursement of expenses) under which State or local law enforcement officers enforce immigration laws during a mass influx of aliens. The rule also ensures that appropriate notifications are made to Congress and

the Administration. This rule is necessary to ensure that the INS can respond in an expeditious manner during a mass influx of aliens.

Finally, the rule ensures that the performance of duties under the special authorization is consistent with civil rights protections.

**DATES:** Written comments must be submitted on or before June 7, 1999.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1924-98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:** George M. Waldroup, Special Assistant, Field Operations, Immigration and Naturalization Service, 425 I Street, NW, Room 7228, Washington, DC 20536, telephone (202) 305-7873.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) (Pub. L. 104-208, 110 Stat. 3009), added section 103(a)(8) of the Act (8 U.S.C. 1103(a)(8)) to permit the Attorney General to authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act or implementing regulations upon officers or employees of the INS during a period of a mass influx of aliens. Under section 103(a)(8) of the Act, such Attorney General authorization to State or local law enforcement officers can occur only in the event that the Attorney General determines that "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response." Any authority to enforce immigration laws that is given to State or local law enforcement officers under section 103(a)(8) of the Act can be exercised only during such a mass influx of aliens, as determined by the

Attorney General. The implementation of this proposed rule will facilitate an expeditious and coordinated response during a mass influx of aliens, by enabling the Attorney General to draw upon the voluntary assistance of State and local resources.

#### **Explanation of Changes**

This rule implements the intent of section 103(a)(8) of the Act by providing a mechanism by which a trained cadre of State and/or local law enforcement officers will be available to enhance the Federal Government's ability to field an immediate and effective response to a mass influx of aliens.

State/local law enforcement officers cannot perform any functions of an INS officer or employee pursuant to 8 U.S.C. 1103(a)(8) and under the provisions of this rule until they successfully complete training prescribed by the INS in basic immigration law, enforcement fundamentals, civil rights law, and sensitivity and cultural awareness issues. INS will provide all necessary training materials and will conduct training sessions to designated officers at sites within their jurisdictional or commuting areas when possible. The employing State/local law enforcement agency, department, or establishment will be required to fund its officers' transportation, lodging, and subsistence costs as may be required.

This rule is an amendment to the existing regulations of the Department of Justice relating to the Immigration Emergency Fund. By tying reimbursement for actual expenses incurred to the Immigration Emergency Fund, this rule also seeks to assure State and local law enforcement agencies that they will not bear undue increased operational expenditures. However, this rule provides no guarantee of reimbursement for actual expenses incurred in excess of the balance of uncommitted funds in the Immigration Emergency Fund. Without additional appropriations to the Immigration Emergency Fund, any reimbursement would be contingent on supplemental appropriations and/or other funding that may be available. Execution of advance "contingency" agreements will expedite subsequent action by the Attorney General to give authority to State and/or local law enforcement officers to enforce immigration laws and will facilitate reimbursement of actual

expenditures in support of a Federal response to a mass influx of aliens, pursuant to existing financial requirements such as Congressional notification and recordkeeping.

#### Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following factors: (1) INS anticipates that participation in written agreements executed with State and/or local law enforcement agencies under section 103(a)(8) of the Act and this rule will be limited to those State or local law enforcement agencies whose jurisdiction is along the southern land border or the coastline of South Florida and who agree to provide assistance in a Federal response to a mass influx of aliens into the United States; (2) participation by State and/or local law enforcement agencies is voluntary and no State or local law enforcement agency outside the area of a mass influx of aliens would be affected by implementation of this rule; (3) this rule believes undue financial burdens on participating law enforcement agencies by providing for reimbursement of actual expenses incurred in direct support of a Federal response to a mass influx of aliens; and, (4) it is anticipated that delegation of authority to State/local law enforcement officers to enforce immigration law under the provisions of this rule will be infrequent and will occur only during times of an actual or imminent mass influx of aliens into the United States.

#### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 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.

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

This rule is not a major rule as defined in the Small Business Regulatory Enforcement Fairness 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 cost 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 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

#### Executive Order 12612

The regulation adopted herein 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 various levels of government. This rule provides for reimbursement through the Immigration Emergency Fund (contingent upon availability of such funds) and/or supplemental appropriation, of actual expenditures incurred by State/local law enforcement agencies whose law enforcement officers are supporting a Federal response to an actual or imminent mass influx of aliens. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Executive Order 12988: Civil Justice Reform

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

#### Paperwork Reduction Act

As contained in this rule under 28 CFR 65.85(e), the Attorney General will consider all applications from State or local governments for reimbursement of actual expenses incurred in direct support of a Federal response to a mass influx of aliens, until the maximum amount of money in the Immigration Emergency Fund has been expended. The information that must be included in the application for reimbursement is described in 28 CFR 65.85(c). The information required in 28 CFR 65.85(c) is considered an information collection which is covered under the Paperwork Reduction Act (PRA). This information collection has previously been approved by the Office of Management and Budget (OMB) under the PRA. The OMB control number for this approved information collection is 1115-0184.

#### List of Subjects

##### 8 CFR Part 2

Authority delegations (government agencies).

##### 28 CFR Part 65

Grant programs—law, Law enforcement, Reporting and recordkeeping requirements.

Accordingly, part 2 of chapter I of title 8 of the Code of Federal Regulations, and part 65 of chapter I of title 28 of the Code of Federal Regulations are proposed to be amended as follows:

#### TITLE 8—ALIENS AND NATIONALITY

#### PART 2—AUTHORITY OF THE COMMISSIONER

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

**Authority:** 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

2. Section 2.1 is amended by:

- (a) Designating the existing text as paragraph (a); and by
- (b) Adding a new paragraph (b), to read as follows:

##### § 2.1 Authority of the Commissioner.

\* \* \* \* \*

(b) The Commissioner, pursuant to 28 CFR 65.84(a), may execute written contingency agreements with State and local law enforcement agencies regarding assistance under section 103(a)(8) of the Act, which may be activated in the event that the Attorney General determines that such assistance is required during a period of a mass influx of aliens, as provided in 28 CFR 65.83(d). Such contingency agreements shall not authorize State or local law enforcement officers to perform any functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until the Attorney General determines that a mass influx of aliens exists, and specifically authorizes such performance.

#### TITLE 28—JUDICIAL ADMINISTRATION

#### PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

3. The authority citation for part 65 continues to read as follows:

**Authority:** The Comprehensive Crime Control Act of 1984, Title II, Chap. VI, Div. I, Subdiv. B, Emergency Federal Law Enforcement Assistance, Pub. L. 98-473, 98 Stat. 1837, Oct. 12, 1984 (42 U.S.C. 10501 *et seq.*); 8 U.S.C. 1101 note; Sec. 610, Pub. L. 102-140, 105 Stat. 832.

4. In § 65.83, a new paragraph (d) is added to read as follows:

##### § 65.83 Assistance required by the Attorney General.

\* \* \* \* \*

(d) If, in making a determination pursuant to paragraph (b) or (c) of this section, the Attorney General also determines that the situation involves an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, which presents urgent circumstances requiring an immediate Federal response, the Attorney General, pursuant to 8 U.S.C. 1103(a)(8), may authorize any State or local law enforcement officer to perform or exercise any of the powers, privileges, or duties conferred or imposed by the INA, or regulations issued thereunder, upon officers or employees of the INS. Such authorization must be with the consent of the head of the department, agency, or establishment under whose jurisdiction the officer is serving.

5. In § 65.84, paragraph (a) is revised to read as follows:

**§ 65.84 Procedures for the Attorney General seeking State or local assistance.**

(a)(1) When the Attorney General determines to seek assistance from a State or local government under § 65.83, or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the State or local government. The Attorney General shall then execute a written agreement with appropriate State or local officials, which sets forth the terms and conditions of the assistance, including funding. Such written agreements can be reimbursement agreements, grants, or cooperative agreements.

(2) The Commissioner of INS may execute written contingency agreements regarding assistance under § 65.83(d) in advance of the Attorney General's determination pursuant to that section. However, such advance agreements shall not authorize State or local law enforcement officers to perform any functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until the Attorney General has made the necessary determinations and authorizes such performance. Any such advance agreements shall contain precise activation procedures.

(3) Written agreements regarding assistance under § 65.83(d), including contingency agreements, shall include the following minimum requirements:

(i) The powers, privileges, or duties that State or local law enforcement officers will be authorized to perform or exercise and the conditions under which they may be performed or exercised;

(ii) The types of assistance by State and local law enforcement officers for

which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth in paragraph (b) of this section;

(iii) A statement that the relevant State or local law enforcement officers are not authorized to perform any functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(iv) A requirement that State or local law enforcement officers cannot perform any authorized functions of INS officers or employees under 8 U.S.C. 1103(a)(8) until they have successfully completed an INS prescribed course of instruction in basic immigration law, enforcement fundamentals, civil rights law, and sensitivity and cultural awareness issues;

(v) A description of the duration of both the written agreement, and the authority the Attorney General will confer upon State or local law enforcement officers pursuant to 8 U.S.C. 1103(a)(8), along with a mechanism for amending, terminating, or extending the duration of authority and/or the written agreement;

(vi) A requirement that the performance of any INS officer functions by State or local law enforcement officers pursuant to 8 U.S.C. 1103(a)(8) be at the direction of the INS;

(vii) A requirement that any State or local law enforcement officer performing INS officer or employee functions pursuant to 8 U.S.C. 1103(a)(8) must adhere to the policies and standards set forth during the training, including applicable enforcement standards, civil rights law, and sensitivity and cultural awareness issues;

(viii) A listing by position (title and name when available) of the INS officers authorized to provide operational direction to State or local law enforcement officers assisting in a Federal response pursuant to 8 U.S.C. 1103(a)(8);

(ix) Provisions concerning State or local law enforcement officer use of Federal property or facilities, if any;

(x) A requirement that any department, agency, or establishment whose State or local law enforcement officer is performing INS officer or employee functions shall cooperate fully in any Federal investigation related to the written agreement; and

(xi) A procedure by which the appropriate law enforcement department, agency, or establishment will be notified that the Attorney

General has made a determination under 8 U.S.C. 1103(a)(8) to delegate authority for State/local law enforcement officers to enforce immigration law under the provisions of the respective agreements.

\* \* \* \* \*

6. In § 65.85, paragraph (e) is revised to read as follows:

**§ 65.85 Procedures for State or local government applying for funding.**

\* \* \* \* \*

(e) The Attorney General will consider all applications from State or local governments until the Attorney General has expended the maximum amount available in the Immigration Emergency Fund. The Attorney General will make a decision with respect to any application submitted under this section, subject to the necessary notifications within the Administration or Congress, and containing the information described in paragraph (c) of this section, within 15 calendar days of such application.

\* \* \* \* \*

Dated: April 1, 1999.

**Janet Reno,**

*Attorney General.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 98-NM-275-AD]

RIN 2120-AA64

**Airworthiness Directives; Boeing Model 777 Series Airplanes**

**AGENCY:** Federal Aviation Administration, DOT.

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

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**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes, that would have required repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. That proposed AD also would have provided for optional terminating action for the repetitive inspections. That proposal was prompted by reports indicating that excessive wear was found on the safety spring wear plate doublers on the APU