

numbers for cotton modules or other storage units that will correspond to the gin-assigned bale numbers for which the loan deficiency payments are requested; and

* * * * *

(c) Subject to the availability of funds and limitations on payments set out elsewhere, the loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is otherwise eligible to pledge as collateral for a loan in accordance with § 1427.8(b).

* * * * *

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as determined in accordance with § 1427.5(c), on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate:

(1) Based on the date the cotton was ginned if payment application is made using CCC-709;

(2) Based on the date a complete payment request including production evidence is submitted, if the request is made after ginning using CCC-Cotton AA;

(3) Based on the date of request for lock-in of the adjusted world price if the request is made before ginning of the cotton that is identified by gin-supplied module or other storage unit number using CCC-Cotton AA. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

10. Amend § 1427.25 by revising paragraph (e) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c) of this section, and the amount of the additional adjustment as determined in accordance with paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. The adjusted world price and the amount of the additional adjustment will be effective at 12:01 a.m. eastern time each Friday and will remain in effect for a period as

announced by CCC. In the event that Thursday is a non-workday, the determination will be announced and will be effective, to the extent practicable, at 8 a.m. eastern time the next workday.

§§ 1427.50–1427.58 [Removed and reserved]

11. Remove and reserve subpart B consisting of § 1427.50 through § 1427.58.

12. Amend § 1427.165 by adding new paragraph (a)(8) to read as follows:

§ 1427.165 Eligible seed cotton.

(a) * * *

(8) Not be cotton for which a loan deficiency payment or a lock-in of the adjusted world price has been requested.

* * * * *

Signed at Washington, DC, on April 30, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02-11352 Filed 5-8-02; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 236, 240, and 241

[INS No. 1847-97; AG Order No. 2579-2002]

RIN 1115-AE82

Requiring Aliens Ordered Removed from the United States To Surrender To the Immigration and Naturalization Service for Removal

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This supplementary proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) by requiring aliens subject to a final order of removal to surrender themselves to the Service. This rule also establishes procedures for surrender and provides that aliens violating those procedures will be denied certain discretionary immigration benefits.

DATES: Written comments must be submitted on or before June 10, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street, NW, Room 4034,

Washington, DC 20536. To ensure proper handling please reference INS No. 1847-97 on your correspondence. You may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically please include INS No. 1847-97 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa Batey, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW, Room 6100, Washington, DC 20536, telephone (503) 231-4049, or Cristina Hamilton, Office of the General Counsel, at (202) 514-2895. For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305-0470.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1998, the Department of Justice (Department) published a proposed rule in the **Federal Register** at 63 FR 47205, providing procedures that must be followed by an alien subject to a final order of removal. After a careful review, the Department is publishing a supplementary proposed rule on these issues. This rule is substantially the same as that proposed by former Attorney General Janet Reno, with some changes discussed herein. One principal change is that the requirements of this rule will not be limited only to aliens who are served with a Notice to Appear after the effective date of this rule; such a limitation, as stated in the 1998 proposed rule, would unnecessarily impair the effectiveness of this rule. Instead, this rule provides that the requirements of this rule shall also be applied to aliens who are currently in immigration proceedings, as long as they receive the requisite notice. Moreover, this supplementary proposed rule reflects a renumbering of the new regulatory provisions in light of other new sections that the Service has added to 8 CFR part 241 after the proposed rule was published.

What Is the Purpose of This Supplementary Proposed Rule?

The purpose of this supplementary proposed rule is to establish procedures requiring aliens who have received a final order of removal to surrender to the Service for removal from the United

States. The rule establishes procedures for surrender and provides that persons violating these procedures will be denied certain discretionary immigration benefits. Section 241(a) of the Immigration and Nationality Act (Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), generally requires the detention and removal of aliens subject to a final order of removal within 90 days. Many aliens, however, are not in Service custody at the time the order of removal becomes administratively final. In the past, fully "89 percent of non-detained aliens with final orders of [removal] failed to surrender for deportation when ordered to do so." 62 FR 48183 (Sept. 15, 1997) (background information relating to detention under the Transition Period Custody Rules, citing to Report #I-96-03 issued in March 1996 by the Department's Office of the Inspector General).

This rule would provide that an alien not detained at the time an order of removal becomes final has an affirmative legal obligation to surrender thereafter for removal, and would provide an incentive for compliance by denying future discretionary relief for absconding aliens who fail to comply.

Who Will Be Affected by This Rule When It Is Finalized?

This rule would apply to those aliens who receive notice at any point in immigration proceedings of their duty to surrender following any final order of exclusion, deportation, or removal, and of the consequences of failing to surrender. Aliens placed in removal proceedings after the effective date of any final rule based on this regulation will be served written notice of the duty to surrender in the Notice to Appear. Aliens who are already in proceedings on the effective date of this rule when it is published as a final rule will receive notice of the duty to surrender, and the consequences of failure to surrender, by one of several methods, such as (1) from the immigration judge, (2) from the Board of Immigration Appeals at the time the Board issues a written order of removal, (3) from the district director prior to any release from custody, or (4) in any other manner whereby such written notice may be effectuated. In order to ensure that aliens receive proper notice, this rule provides that such notice will be provided at several points in the immigration enforcement process. However, once notice is provided by any means, no other notice shall be legally required.

How Would This Rule Affect Aliens With Final Removal Orders?

This supplementary proposed rule would apply to all aliens who received the requisite notice under this rule, at any stage of the immigration enforcement process, regarding the obligation to surrender to the Service, and the consequences of failing to surrender when required. Such aliens, if they are not within the custody of the Service at the time, must surrender to the Service within 30 days of the issuance of an administratively final order of removal by either an immigration judge or the Board of Immigration Appeals. An alien who has been granted voluntary departure is given an order of removal that automatically becomes administratively final if the alien does not depart under the grant of voluntary departure. If an alien does not voluntarily depart he or she is also required to surrender to the Service. Aliens granted voluntary departure must surrender for removal on the first business day following the date the alternate order of removal becomes effective. It is important to note that nothing in this rule restricts the Service's authority to arrest and remove an alien with a final order of removal at any time, unless a federal court has stayed that final order.

The Service also notes that aliens subject to a final order of removal are already obligated under section 241(a)(1)(C) of the Act and 8 CFR 241.4(g) to make application in good faith for travel documents, and that any failure to undertake this and other affirmative obligations tolls the removal period during which detention is mandated. See 66 FR 56967 (Nov. 14, 2001).

Where Must the Alien Go To Surrender?

This supplementary proposed rule would require the alien to surrender to the Detention and Removal Program of the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. The Service may designate an alternate location for surrender upon providing notice to the alien.

What Are the Consequences for an Alien Who Fails To Surrender as Required?

This supplementary proposed rule provides that an alien who fails to surrender, as required, will be denied discretionary relief from removal by the Attorney General under sections 208(b) (asylum), 212(h) (waiver of inadmissibility for criminal convictions), 212(i) (waiver of

inadmissibility for fraud), 240A (cancellation of removal), 240B (voluntary departure), 245 (adjustment to status of a lawful permanent resident), 248 (change of nonimmigrant status) and 249 (registry) of the Act at any time while he or she remains in the United States, and for a period of ten years after the alien's departure from the United States. These consequences will apply to all aliens who fail to surrender, when required, after having received the requisite notice under this rule at any stage of the immigration enforcement process.

Entirely apart from the provisions of this rule, the Service notes that any alien who fails to surrender when required may also be subject to other sanctions under the existing laws, including criminal prosecution under section 243 of the Act or civil penalties under section 274D of the Act.

Can the Denial of Discretionary Relief Be Waived?

This supplementary proposed rule would provide the district director with discretion to waive the denial of discretionary relief, as provided under § 241.17(c), if the alien demonstrates that the failure to surrender was due to exceptional circumstances and that he or she appeared as soon as possible thereafter as circumstances allowed. This rule incorporates the statutory definition of exceptional circumstances at section 240(e)(1) of the Act, which is narrow and does not include ignorance of the law or reliance on advice of counsel or of any other individual.

What Effect Would an Alien's Failure To Surrender Have on Motions To Reopen or Reconsider Removal Proceedings?

Pursuant to the changes proposed by the Department, removal proceedings would not be reopened in the case of an alien who failed to surrender for removal unless the alien can demonstrate by clear and convincing evidence both that the failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act, and that he or she actually surrendered for removal as soon as possible after the circumstances that prevented timely surrender had passed. Any alien seeking to file a motion to reopen or reconsider must also satisfy the legal and time requirements of § 3.2, for cases before the Board of Immigration Appeals, or § 3.23, for cases before the Immigration Court, as applicable.

Are There Any Other Requirements Under This Rule?

The amendments contained in this supplementary proposed rule would prohibit an alien's release from Service custody unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with the rule. All aliens seeking voluntary departure are also required to agree to surrender for removal as a condition to being granted that form of relief if they fail to voluntarily depart.

Did the Department Receive Comments on the Proposed Rule?

The Department set a 60-day public comment period that ended on November 3, 1998. The Department received four public comments on the proposed rule. The following is a discussion of those comments and the Department's response.

Discussion of Comments and Changes From the Proposed Rule

Length of Surrender Period

Two commenters raised concerns with the length of the proposed 10-day surrender period. One commenter suggested that 10 days is an insufficient period of time for an alien who has moved away to report to the Service district office with jurisdiction over the location where the removal proceedings were completed. The other commenter pointed out that decisions from the Board of Immigration Appeals do not always arrive within 10 days of the date of the order, thus making it impossible for an alien to report within the proposed 10-day surrender period as required by the regulation. The commenter suggested that a 30-day period to ensure sufficient mailing time would be more appropriate.

The Department has carefully considered these concerns, and has amended this supplementary proposed rule to provide for a 30-day surrender period.

Location for Surrender

One commenter indicated a concern with the requirement under § 241.13 of the proposed rule (now renumbered as § 241.16) that the alien must surrender to the Service district office with jurisdiction over the location where removal proceedings were completed. The commenter proposed that aliens be allowed to surrender to any Service district office. In contrast, another comment, signed by seven surety companies, objected to the suggestion that the Service could change the location for surrender, as this could

impose additional compliance costs on the surety provider.

The recommendation to allow aliens to surrender to any Service district office has some merit, but is not easily reconciled with logistical considerations, the obligation to make most efficient use of Service resources, and the expectations of surety providers. The designated district office will have the alien's file and the necessary documentation for his or her removal. The designated office will also be prepared to house the alien pending removal, or make arrangements as needed. For these reasons, the Department has retained in these rules the requirement to surrender at the designated district office, but has made allowance in the rule under appropriate circumstances for the district director, in his or her discretion, to agree to an alternate site.

Tolling of the Surrender Period for Federal Court Review

One commenter questioned why the surrender period is tolled pending an appeal to the Board of Immigration Appeals, but not pending a petition for review in federal court. The answer has to do with the administrative finality of the order. An order of removal on appeal to the Board of Immigration Appeals is not a final administrative order. Execution of the order is automatically stayed pending disposition of the appeal.

The filing of a petition for review in federal court, on the other hand, does not result in an automatic stay of the removal order. The alien must specifically request a stay of removal. *See* Fed. R. App. P. 18. The alien must also notify the Service that such a stay is being sought. Should a stay be granted, the order cannot be executed and the duty to surrender is suspended. Likewise, if a stay is ordered pending a motion to reopen, the order cannot be executed and the duty to surrender is suspended. The alien's duty to surrender to the Service within 30 days begins anew on the day the stay is lifted.

Denial of Discretionary Relief

One commenter opposed the inclusion of sections 208, 212(h), and 212(i) of the Act as forms of relief from removal that the Attorney General will deny, as a matter of discretion, to aliens who fail to surrender as required. Sections 240(b)(7) and 240B(d) of the Act bar an alien who fails to appear for proceedings or who fails to depart pursuant to a voluntary departure order from any further relief under sections 240A, 240B, 245, 248, and 249 of the Act for a period of 10 years. The

commenter argues that including discretionary denials of relief under the three additional provisions is not permitted by the statute, nor is the discretionary denial of asylum consistent with treaty obligations and Congressional intent.

The Department reiterates its position that denying discretionary forms of relief to those aliens who disobey the law by failing to surrender is a rational exercise of the Attorney General's discretion, and a regulatory provision reflecting that result is a proper means for the Attorney General to exercise that discretion. The Supreme Court has recognized that an agency head "has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority." *Lopez v. Davis*, 531 U.S. 230, 244 (2001), quoting *American Hospital Assn. v. NLRB*, 499 U.S. 606, 612 (1991); *see also, Yang v. INS*, 79 F.3d 932, 936 (9th Cir. 1996). Moreover, sections 212(h) and 212(i) of the Act are waiver provisions, not independent forms of relief, and as such would be unavailable to any alien who was denied the other forms of relief.

Even prior to this supplementary proposed rule, case law has established that an alien who fails to report to the Service following notification that his or her deportation has been scheduled does not merit the favorable exercise of discretion required for reopening deportation proceedings. *See, e.g., Matter of Barocio*, 19 I.&N. Dec. 255, 258 (BIA 1985); *see also Sequeira-Solano v. INS*, 104 F.3d 278, 279 (9th Cir. 1997) ("The BIA correctly found that Sequeira-Solano [by failing to surrender] had put himself in defiance of our immigration laws and therefore concluded that his [motion] for reopening [to apply for suspension of deportation] did not merit favorable consideration."); *Zapon v. Dep't of Justice*, 53 F.3d 283, 285 (9th Cir. 1995) (United States was "substantially justified" in opposing fugitives' efforts to obtain a stay of deportation, supporting the denial of their application for award of attorneys fees under Equal Access to Justice Act); *Bar-Levy v. Dep't of Justice*, 990 F.2d 33, 35 (2d Cir. 1993) ("An alien who is a fugitive from a deportation order should thus not be permitted to pursue an appeal of the deportation order or a denial of his application for a waiver of deportation."), *following Arana v. INS*, 673 F.2d 75, 77 (3d Cir. 1982) (*per curiam*).

The obligation to surrender for removal is not a new one, and failure to comply with this obligation is a

significant flaunting of U.S. law for which the denial of all discretionary relief—including asylum—is an appropriate response. Nothing in this rule affects an alien's eligibility for withholding of deportation, when required by law.

District Director's Discretion

Two commenters raised questions regarding § 241.15(c) (now renumbered as § 241.18(c)) of the proposed rule. One commenter suggested that it was unclear exactly as to the scope of the consequences of failing to surrender in this section. The section has been amended to clarify that the consequences of failing to surrender, after having received notice of the duty to surrender, can be found in § 241.18(c). The other commenter appeared to be concerned with the fact that this section provides that the decision to waive the denial of relief is left to the sole discretion of the district director. The commenter argued that “a regulation cannot dictate what is the adjudicator's sole and unreviewable discretion.”

The Supreme Court has upheld an agency's ability to utilize regulations as an exercise of discretionary authority. *See, e.g., Lopez v. Davis*, 531 U.S. 230, 244 (2001). In this case, however, proposed § 241.18(c) does not dictate precisely how the district director must exercise his or her discretion. It simply provides that the discretionary decision to waive the consequences under § 241.18(c) of the alien's failure to surrender is to be made by the district director, if the alien demonstrates that his or her failure to surrender was a result of exceptional circumstances as defined in section 240(e)(1) of the Act and that the alien surrendered himself or herself to the Service as soon as those exceptional circumstances ceased to exist.

Retroactive Effect

One commenter remarked that the prospective nature of the rule was not stated in the proposed rule. Rulemaking is presumed to be prospective in nature, and a clear statement is required only if the rule is intended to have retroactive application. Nonetheless, in the interest of clarity, the notice provisions of § 241.17 specify that the denial of discretionary relief for failure to surrender, as provided in § 241.18(c), will be invoked only where the alien had received written notice of the surrender obligation and the consequences under § 241.18(c) of failure to surrender.

Bonds

Three of the four comments were submitted by surety companies who post immigration bonds, or their representatives. These commenters strongly criticized the proposed rule, contending that the proposals violate the spirit, intent, and express wording of the June 22, 1995 settlement agreement in the case of *Amwest Surety Insurance Co. v. Reno*, Civil No. 93–2356 JSL (Shx) (C.D. Cal.). In that agreement, the Service agreed to send notice of the date and time to report for deportation to the bond obligor at least 3 days prior to sending such notice to the alien. While the settlement agreement applied only to bonds underwritten by the plaintiffs, the Service as a matter of policy decided to apply the terms of the settlement agreement to all other companies underwriting immigration bonds.

The Department has carefully considered the effects of that policy and has determined that the policy should be modified for all bonds posted after the effective date of this rule.

The commenters assert that, by equating the final order of removal to the notice to surrender and mailing it directly to the alien, the proposed rule would deprive the obligor of its contractual right to advance notice. The commenters further argue that the proposed rule would deprive the obligor of its ability to surrender the alien for removal as the obligor would only be notified to surrender the alien for removal only after he or she has failed to surrender as required. By that time, the administrative penalties, civil fines, and criminal consequences have all attached. No alien, according to the commenters, will be willing to surrender at that point.

The commenters assert that the proposed rule is an improper attempt by the Department to extend the 90-day removal period by labeling an alien who fails to surrender as a “fugitive from justice,” thus subject to continued detention. The commenters also argue that § 241.13(h) of the proposed rule (now renumbered as § 241.16(j)), which allows the Service to unilaterally alter the surrender terms, e.g., designate an alternate surrender location, could unlawfully increase the risks or duties of the obligor under the contract it executes with the alien.

The Department is cognizant of its contractual duties and has carefully considered the points raised in these comments. The Department will abide by the settlement agreement with regard to all bond contracts entered into prior to the effective date of the final rule.

The Service will continue to send form I–340, Notice to Obligor to Produce Alien, as agreed in the settlement agreement, to sureties of any bond posted prior to the effective date of this rule when it is published as a final rule.

However, the settlement agreement was based upon the Act as it existed prior to the passage of the IIRIRA, which mandated detention of certain aliens during the post-order removal period. The settlement agreement has been affected by IIRIRA, and more recently by judicial decisions such as *Zadvydas v. Davis*, 533 U.S. 678 (2001), and the resulting changes in regulations published at 66 FR 56967 (Nov. 14, 2001) (codified at §§ 241.4, 241.13 and 241.14). These changes in the legal landscape necessitate revision to the way the Service handles bonds.

Revisiting the bond contract and procedures is also necessary to ensure the efficient use of Service resources, particularly with the growing removal caseload and competing government priorities after the events of September 11, 2001. Moreover, technological advances, such as the availability of information on the status of cases from EOIR's automated information line, 1–800–898–7180, make it reasonable to expect that surety companies monitor the surrender obligations of their clients in new cases.

In response to the concerns of the surety companies, this supplementary proposed rule would extend the surrender period to 30 days. The Department is in the process of revising form I–352, Immigration Bond, to more accurately reflect the current legal and procedural requirements and this supplementary proposed rule.

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 economic impact on a substantial number of small entities because it affects the legal obligations of individual aliens ordered removed from the United States, not small entities. Although this rule will have an impact on surety companies by altering the terms of future bond contracts, the impact and number of surety companies affected will not be substantial.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small

governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804(2)). 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 12866

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

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

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

Paperwork Reduction Act

This rule requires a revision to an existing information collection (Form I-352). This revision will be submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Organization and functions (Government agencies).

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1231, 1252 note, 1252b, 1253, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 3.1 is amended by adding one sentence at the end of paragraph (f) to read as follows:

§ 3.1 General authorities.

* * * * *

(f) * * * The decision shall include notice of the duty to surrender and the consequences of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

3. Section 3.2 is amended by adding paragraph (c)(5) to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(c) * * *

(5) (i) Notwithstanding the limitations of paragraph (c)(1) of this section, a motion to reopen removal proceedings will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.16 of this chapter, unless:

(A) The district director waived the consequences under § 241.18(c) for failing to surrender for removal in accordance with § 241.18(c)(2) of this chapter; or

(B) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that:

(1) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(2) The alien surrendered for removal as soon as possible after the

circumstances that prevented a timely surrender had passed.

(ii) Nothing in paragraph (c)(5)(i)(B) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

* * * * *

4. Section 3.23 is amended by adding paragraph (b)(5) to read as follows:

§ 3.23 Reopening or reconsideration before the Immigration Court.

* * * * *

(b) * * *

(5) *Failure to surrender for removal.*

(i) Notwithstanding the requirements of paragraph (b)(1) of this section, a motion to reopen or reconsider will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.16 of this chapter, unless:

(A) The district director waived the consequences under § 241.18(c) for failing to surrender for removal, in accordance with § 241.18(c)(2) of this chapter; or

(B) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that:

(1) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(2) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(ii) Nothing in paragraph (b)(5)(i)(B) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

5. Section 3.37 is amended by adding a new paragraph (c) to read as follows:

§ 3.37 Decisions.

* * * * *

(c) All oral and written decisions of the Immigration Judge will include notice of the duty to surrender and the consequences of failure to surrender, when required, in accordance with §§ 241.16 through 241.19 of this chapter.

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

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

7. Section 236.1 is amended by adding one sentence at the end of paragraph (c)(1)(i) to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) * * *

(i) * * * No alien may be released from custody unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with § 241.16 of this chapter should the alien become subject to a final order of removal, and the alien has been advised of the consequences under § 241.18(c) of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

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

8. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1231, 1251, 1252 note, 1252a, 1252b, 1253, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

9. Section 240.26 is amended by adding one sentence at the end of paragraph (a), to read as follows:

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

(a) * * * In addition, no alien may be granted voluntary departure unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with § 241.16 of this chapter if the alien fails to depart voluntarily within the time allowed, and the alien has been advised of the consequences under § 241.18(c) of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

10. 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, 1231, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); sec. 303(b) of Div. C of Pub. L. 102–208; 8 CFR part 2.

11. In part 241, subpart A, add § 241.16 to read as follows:

§ 241.16 Duty to surrender.

(a) *In general.* An alien subject to a final order of removal shall be taken into custody by the Service and removed. If not in the custody of the Service, however, an alien subject to a final order of removal issued in proceedings and who has received notice of the duty to surrender as set forth in § 241.17 must surrender for removal as provided in this section. Such surrender must be made during regular business hours to the Detention and Removal Program of the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. Nothing in this part shall be construed as limiting the Service's authority to enforce a final order of removal at any time.

(b) *Final order by an immigration judge—(1) Aliens waiving appeal and aliens ordered removed in absentia.* Any alien who, upon issuance of the order of removal by an immigration judge, waives appeal of the order, and any alien who is ordered removed *in absentia*, must surrender for removal within 30 calendar days of the date of the order.

(2) *Aliens reserving appeal.* Any alien who, upon issuance of the order of removal by an immigration judge, reserves appeal, must surrender for removal within 30 calendar days of the date when the appeal period expires, unless he or she files a timely appeal, or within 30 calendar days of the date of any subsequent waiver or withdrawal of the appeal.

(c) *Final order by the Board of Immigration Appeals.* Any alien who becomes subject to an order of removal, or an order dismissing an appeal from an order of removal, issued by the Board of Immigration Appeals must surrender for removal within 30 calendar days of the date of the Board's order.

(d) *Voluntary departure.* Notwithstanding paragraphs (b) and (c) of this section, any alien granted voluntary departure who becomes subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure, must surrender for removal on the next business day following such a failure.

(e) *Aliens in custody.* (1) Any alien who becomes subject to a final order of removal while in Service custody is

thereby relieved of the duty to surrender for removal under this section.

(2) Any alien who becomes subject to a final order of removal while incarcerated in a local, State, or Federal facility must surrender for removal within 30 calendar days of the alien's release from that facility, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense, unless the alien is detained by the Service at the time he or she is released. If the Service detains the alien at the time of release from a local, State, or Federal facility, the alien is thereby relieved of the duty to surrender for removal pursuant to this section.

(f) *Other orders of removal.* Any alien who is ordered removed, other than by an immigration judge or the Board of Immigration Appeals, must surrender for removal to the Service district office with jurisdiction over the place where the alien was ordered removed within 30 calendar days of the date that the order becomes final.

(g) *Requests for relief subsequent to final order of removal.* An application for discretionary or other relief, including a motion to reopen, submitted to the Service, an immigration judge, or the Board of Immigration Appeals, by an alien who is the subject of a final order of removal, will have no effect on an alien's duty to surrender, unless the alien presents, prior to the expiration of the period to surrender, a written decision granting the requested relief. A request for modification of the surrender terms submitted by an alien to the Service will have no effect on an alien's duty to surrender, unless the alien presents, prior to the expiration of the period to surrender, a written response granting the requested relief.

(h) *Stay pending federal court review.* Filing of a petition for federal court review or a writ of habeas corpus with respect to an administratively final removal order will have no effect on an alien's duty to surrender for removal. If the federal court issues a stay of the removal order pending review, the alien's duty to surrender will also be suspended for the duration of the stay. The 30-day period for surrender will begin again on the day that the federal court stay is lifted.

(i) *Weekends and holidays.* If the last permissible day to surrender for removal falls on a Saturday, Sunday, Federal holiday, or other day when the Service office designated for surrender is closed, the alien must surrender for removal on the first business day thereafter.

(j) *Alternative surrender terms.* Nothing in this part may be construed as limiting the Service's authority, in its sole and unreviewable discretion, to impose surrender requirements in addition to or varying from those generally applicable under this section. Changes to the surrender requirements may be made by mutual consent of the parties or, if without the alien's consent, the Service shall notify the alien in person or by regular mail at the last address given to the Service by the alien. This notice requirement shall not affect the Service's ability to arrest and remove an alien described in section 241(a) of the Act at any time.

12. In part 241, subpart A, add § 241.17 to read as follows:

§ 241.17 Notice of duty to surrender.

(a) *Notice to Appear.* As of the effective date when this rule is published as a final rule, the Notice to Appear, Form I-862, will contain written notice of the duty to surrender after the issuance of a final order of removal and the consequences of failure to surrender when required.

(a) *Immigration judge.* (1) The immigration judge will inform the alien orally or in writing that, if the alien fails to appear for a hearing, and thereby becomes subject to a final order of removal, the alien will be required to surrender for removal and the consequences of failure to surrender when required.

(2) In any case in which an immigration judge renders a decision, whether or not adverse to the alien, the immigration judge will inform the alien orally or in writing of the duty to surrender for removal and the location to which the alien must surrender in the event that the alien becomes subject to a final order of removal, and the consequences of failure to surrender when required.

(c) *Board of Immigration Appeals.* Orders of removal and orders dismissing an appeal from an order of removal issued by the Board of Immigration Appeals will be accompanied by written notice of the duty to surrender for removal, and the consequences of failure to surrender when required.

(d) *Upon release from custody.* As a condition of release from custody, whether under terms directed by the Service or subsequent to redetermination by an immigration judge or the Board of Immigration Appeals, the alien released must agree in writing or otherwise on the record to surrender for removal if the alien becomes subject to a final order of removal. No alien will be released from

custody without agreeing to surrender for removal as required by this part.

(e) *Upon grant of voluntary departure.* No alien may be granted voluntary departure, whether by an immigration judge or the Board of Immigration Appeals, unless the alien agrees in writing or otherwise on the record to surrender for removal as provided under § 241.16(c), should the alien become subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure.

(f) *Effectuating notice of duty to surrender.* An alien will be on notice of the provisions of this section, including penalties for failure to surrender, upon service of any written notice that the alien has a duty to surrender. Aliens placed in proceedings after the effective date when this rule is published as a final rule will be served written notice of the duty to surrender in the Notice to Appear pursuant to section 239(a)(1) of the Act. Aliens who have been served with a Notice to Appear prior to the effective date when this rule is published as a final rule will be served with written notice in one of the ways described in paragraphs (b) through (e) of this section or in any other manner whereby such written notice may be effectuated. Service of the written notice will be accomplished either by hand-delivery or by mailing to the alien's last-known address as reported by the alien to the Service or EOIR. Once notice is served as described in this section, no other notice is required, even though the alien may receive more than one notice from the Service and EOIR. If the address of the Service district office to which the alien is required to surrender changes subsequent to issuance of notice under this section, it is the alien's duty to determine the new address and surrender to that location.

13. In part 241, subpart A, add § 241.18 to read as follows:

§ 241.18 Consequences of failure to surrender for removal; exception; waiver.

(a) *Liability.* An alien who fails to surrender for removal as required by this part, and remains in the United States in violation of law:

(1) Is subject to criminal prosecution under section 243 of the Act; and

(2) Is subject to civil penalties under section 274D of the Act.

(b) *Consent to reapply.* The fact that the alien failed to surrender for removal as required by this part shall be a serious adverse factor when considering a subsequent application for consent to

reapply for admission to the United States.

(c) *Denial of discretionary relief.* An alien who fails to surrender for removal as required by this part, and remains in the United States in violation of law, after having received notice of the duty to surrender as provided in § 241.17, will be denied discretionary relief under sections 208(b), 212(h), 212(i), 240A, 240B, 245, 248, and 249 of the Act while the alien remains in the United States, and for a period of 10 years after the alien's departure or removal.

(1) *Exception.* An alien who fails to surrender for removal as required by this part may be granted the relief specified in this paragraph (c) for which the alien is otherwise eligible, if the underlying proceeding was reopened by the Board of Immigration Appeals in accordance with § 3.2(c)(5) of this chapter or an immigration judge in accordance with § 3.23(b)(5) of this chapter, provided that the alien does not again fail to surrender for removal subsequent to reopening of the underlying proceeding.

(2) *Waiver.* The consequences of failing to surrender specified in this paragraph (c) may be waived in the sole and unreviewable discretion of the district director, if the alien surrenders for removal as soon as possible thereafter, and at that time presents documentary evidence that demonstrates, by clear and convincing evidence, that the failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act. Exceptional circumstances do not include reliance on advice of counsel or any other individual, and no waiver is available based on such reliance.

14. In part 241, subpart A, add § 241.19 to read as follows:

§ 241.19 Construction.

(a) *Order of removal.* For purposes of § 241.16, § 241.17, and § 241.18, the term "order of removal" shall apply to orders issued pursuant to the Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104-208, including, but not limited to, section 309 therein.

(b) *Detainers.* Nothing in this part may be construed to relieve local, State, or Federal authorities from complying with the terms of a lawfully issued Service detainer.

(c) *Service.* For purposes of § 241.16, § 241.17, and § 241.18, in the case of an alien who is not personally served with an order of removal, service by first class mail to the last address provided by the alien in accordance with section

239(a)(1)(F) of the Act, or part 3 or part 265 of this chapter shall be sufficient.

(d) *Effect on existing bonds.* For all immigration bonds posted prior to the effective date of this rule when it is published as a final rule, the Service will make demand on the obligor on Form I-340 by mail to the address furnished on Form I-352 (unless the obligor is present and the demand can be served on the obligor in person), requiring the obligor to produce the alien at a time, date and place certain not later than the final date of the surrender period. The I-340 shall be mailed (or delivered in person) as soon as practicable after receipt of the final order from the immigration judge or the Board of Immigration Appeals.

(e) *Change in handling of new bonds.* For all immigration bonds posted after the effective date of this rule when it is published as a final rule, the bond will be deemed to have been breached when the alien fails to surrender within the 30-day surrender period. It is the duty of the obligor(s) to monitor the status of proceedings against the alien and ensure that the alien surrenders within the 30-day surrender period.

(f) *Construction in relation to post-order custody rules.* An alien's duty to surrender, as set forth in § 241.16, § 241.17, and § 241.18, is an affirmative obligation. The failure to comply with this obligation shall be considered a failure to comply for purposes of custody determinations pursuant to § 241.4.

Dated: April 30, 2002.

John Ashcroft,
Attorney General.

[FR Doc. 02-11141 Filed 5-8-02; 8:45 am]

BILLING CODE 4410-10-P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002-6]

Candidate Debates

AGENCY: Federal Election Commission.

ACTION: Petition for Rulemaking; Notice of Availability.

SUMMARY: On April 10, 2002, the Commission received a Petition for Rulemaking from several major news organizations that are listed below. The petitioners urge the Commission to amend its rules to explicitly state that the sponsorship by a news organization (or a related trade association) of a debate between political candidates does not constitute an illegal corporate campaign contribution or expenditure

in violation of the Federal Election Campaign Act of 1971, as amended ("the Act") and that the Commission would have no jurisdiction over such sponsorship. This petition is available for inspection in the Commission's Public Records Office through its Faxline service, and on the Commission's Web site at www.fec.gov.

DATES: Statements in support of or in opposition to the petition must be filed on or before June 10, 2002.

ADDRESSES: All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Electronic mail comments should be sent to debate02noa@fec.gov. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to insure legibility. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Mr. Michael Marinelli, Staff Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On April 10, 2002, the Commission received a Petition for Rulemaking from CBS Broadcasting Inc.; American Broadcasting Companies Inc.; Belo Corp.; Cox Enterprises, Inc.; Gannett Co., Inc.; the National Association of Broadcasters; National Broadcasting Co., Inc.; News America Incorporated; The New York Times Company; Post-Newsweek Stations, Inc.; the Radio and Television News Directors Association; the Society of Professional Journalists; and Tribune Company regarding the Commission's candidate debate regulations at 11 CFR 110.13. Paragraph (c) of section 110.13 states, *inter alia*, that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate." *Id.* The petition asserts that this regulation should be repealed. It argues that any regulation of the sponsorship by news organization (or a related trade association) is contrary to the clear

intent of the U.S. Congress, irreconcilable with other FEC decisions, in conflict with the regulatory decisions of the Federal Communications Commission and unconstitutional. The petition urges the Commission to draft new regulations that explicitly declare such sponsorship is legal under the Act and to refrain from any further regulatory jurisdiction over the sponsorship of a candidate debate by a news organization or trade association of members of the press.

Copies of the petitions are available for public inspection in the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m. Copies of the petitions can also be obtained at any time of the day and week from the Commission's home page at www.fec.gov, or from the Commission's Faxline. To obtain copies of the petitions from Faxline, dial (202) 501-3413 and follow the Faxline service instructions. Request document # to receive the petition.

All statements in support of or in opposition to the petition should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219-3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to debates02noa@fec.gov. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by June 10, 2002. Commenters are strongly encouraged to send comments electronically to ensure timely receipt and consideration.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: May 6, 2002.

David M. Mason,
Chairman, Federal Election Commission.
[FR Doc. 02-11628 Filed 5-8-02; 8:45 am]

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