

or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(9) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mediterranean fruit fly. From the literature available, the fruits authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579-0215.)

Done in Washington, DC, this 20th day of February 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

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DEPARTMENT OF JUSTICE

28 CFR Part 65

[INS No. 2241-02; AG Order No. 2659-2003]

RIN 1115-AG84

Abbreviation or Waiver of Training for State or Local Law Enforcement Officers Authorized To Enforce Immigration Law During a Mass Influx of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends Department of Justice regulations to authorize the Attorney General to waive normally required training requirements in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens

is insufficient to protect public safety, public health, or national security. This action is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens.

DATES: *Effective date:* This interim rule is effective February 26, 2003.

Comment date. Written comments must be submitted on or before April 28, 2003.

ADDRESSES: Please submit written comments to the Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2241-02 on your correspondence. You may also submit comments electronically at insregs@usdoj.gov. When submitting comments electronically you must include "INS No. 2241-02" in the subject box to ensure that the comments are properly routed to the appropriate office for review. Comments are available for public inspection at the above address by calling (202) 514-3291 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Ronald W. Dodson, Supervisory Special Agent, Director, Evaluation and Support Branch, Headquarters Office of Investigations, Immigration and Naturalization Service, 425 I Street, NW., Room 1000, Washington, DC 20536, telephone (202) 514-2998.

SUPPLEMENTARY INFORMATION: Section 372 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Div. C., 110 Stat. 3009-646, amended section 103(a) of the Immigration and Nationality Act ("Act"), 8 U.S.C. 1103(a), 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 Immigration and Naturalization Service ("Service") during a period of a mass influx of aliens. Under section 103(a)(8) of the Act, the Attorney General may authorize State or local law enforcement officers to perform such powers, privileges, or duties only if 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." 8 U.S.C. 1103(a)(8).

The Department of Justice has published a final rule implementing this authority. See 67 FR 48354 (July 24, 2002). The rule detailed the procedures the Attorney General must follow when seeking assistance from a State or local government during a declared mass influx of aliens. In accordance with the rule, the Attorney General is required to execute written agreements with appropriate State or local officials that set forth the terms and conditions of the assistance before the State or local law enforcement officer may exercise immigration law enforcement authorities pursuant to section 103(a)(8) of the Act. The regulations also permit the Attorney General to enter into written contingency agreements prior to the declaration of a mass influx of aliens. All of the written agreements must include a requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under 8 U.S.C. 1103(a)(8) until they have successfully completed and been certified in a Service-prescribed course of instruction in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. See 28 CFR 65.84(a)(3)(iv). Because of the need to respond quickly in the event of a mass influx of aliens, most of these State and local law enforcement officers likely will be trained pursuant to contingency agreements in place prior to any declared mass influx of aliens.

The Department recognizes the desirability for all State or local law enforcement officers to receive training prior to being authorized to exercise immigration law enforcement authority pursuant to section 103(a)(8) of the Act during a mass influx of aliens. Indeed, the Department fully anticipates that all State or local law enforcement officers authorized to exercise immigration law enforcement authority under the Act will have been certified in basic immigration law, immigration law enforcement fundamentals and procedures, civil rights law, and sensitivity and cultural awareness issues. While drafting the final rule, however, the Department realized that unanticipated situations might arise during a declared mass influx of aliens in which the number of State or local law enforcement officers trained pursuant to a written agreement would be insufficient to respond in an expeditious manner in order to protect public safety, public health, or national security. As a result of this concern, the Attorney General has determined that,

in exceptional circumstances, it would be prudent to allow the Attorney General to abbreviate or waive the normally required training for State and local law enforcement officers.

The Department believes that it will rarely be necessary for the Attorney General to declare a mass influx of aliens. As discussed below in the Regulatory Procedures Section, however, the Department believes that the country currently is facing an increased risk of a mass influx of aliens. In the event that a mass influx of aliens does occur, the need to abbreviate or waive the normally required training may be necessary if the Service does not receive enough advance knowledge of the mass influx of aliens or the influx occurs at an unanticipated location. The Department believes that it is necessary to provide the Attorney General with the tools and flexibility to address any unanticipated situations that might occur during a mass influx of aliens. Therefore, the Department is amending the applicable regulations to allow the Attorney General to abbreviate or waive the otherwise normally required training requirement when such an action is necessary to protect public safety, public health, or national security. Such officers, however, still would be required to adhere to applicable Service policies and standards.

This interim rule is intended to solicit comments from the public on the very limited issue of whether the regulations should allow for the abbreviation or waiver of the normal training requirement. The Department welcomes comments on steps that can be taken to minimize the need for the Attorney General to exercise his authority to abbreviate or waive training requirements in the event of a declared mass influx of aliens. In particular, the Department welcomes comments on how the written contingency agreements with the appropriate State or local officials could be formulated to help ensure that this authority would be exercised only under extraordinary circumstances. The Department does not intend to reconsider any of the other issues addressed by the final rulemaking.

It is important to note that even if State and local law enforcement officers have not completed the training devised by the Service, these individuals still are trained law enforcement officers and can be expected to respond in an appropriate manner. In addition, most, if not all, of the functions such State and local law enforcement officers would be asked to perform during a declared mass influx of aliens would not require

detailed training in immigration matters. Rather, these individuals are likely to be asked only to apprehend, transport, or temporarily guard aliens who are part of the mass influx. As a result, the abbreviation or waiver of the normally required training requirement is not likely to affect the public in an adverse manner.

Regulatory Procedures

Good Cause

This interim rule is effective immediately upon the date of publication. The Department finds that good cause exists for adopting this rule without the prior notice ordinarily required by 5 U.S.C. 553(b) because a delay in the implementation of the rule would pose a substantial risk to public safety and national security.

The Department believes that the country currently is at risk for a mass influx of aliens. Present conditions in Haiti are prime for creating a mass migration to the United States. Not only have rising prices and the collapse of the informal banking sector worsened an already reeling economy, but a prolonged drought has afflicted the northwest portion of the country and severe floods have hit southern Haiti. Internal security in Haiti also has deteriorated.

Indeed, on October 29, 2002, a Haitian vessel beached off Biscayne Bay, Florida, with 214 predominantly Haitian aliens jumping off and wading ashore. Another 21 migrants were detained offshore by an United States Coast Guard ("USCG") cutter. On November 8, 2002, the USCG interdicted 25 Haitians who were using a small wooden vessel to attempt a voyage to the United States. The interdiction took place off the coast of Haiti. Finally, on November 11, 2002, the USCG interdicted two wooden vessels carrying a total of 237 Haitians and one Bahamian, 30 miles south of Great Inagua, in the Bahamas.

At the present time, an insufficient number of State and local law enforcement officers who have completed the otherwise required immigration training are available to exercise immigration law enforcement authority pursuant to section 103(a)(8) of the Act in an expeditious manner in the event the Attorney General declares a mass influx of aliens. This lack of State and local officers who have completed training presents an immediate risk to public safety and national security. Therefore, the publication of this interim rule is necessary to provide the Attorney General with the tools and flexibility to

address any unanticipated situations that might occur during a mass influx of aliens.

For the same reasons, the Department also finds that it has good cause to issue this interim rule with an immediate effective date, in accordance with 5 U.S.C. 553(d). Because additional delay is contrary to the public interest, there is good cause under 5 U.S.C. 553(d) to make this rule effective as of February 26, 2003.

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. This rule allows the Attorney General to waive normally required training requirements in the event that the State or local law enforcement officers available to respond to a mass influx of aliens is insufficient to protect public safety, public health, or national security. Because this rule involves only the waiver of training requirements, it should impose little or no economic impact on small entities. Indeed, the exercise of this waiver may confer a small economic benefit on affected entities because they will not have to devote personnel and time for any training that is waived. Moreover, this rule does not affect a substantial number of small entities as that term is defined in 5 U.S.C. 601(6). Because of the remote chance of a mass influx of aliens occurring in most States, only a very few local law enforcement agencies are ever expected to enter into agreements with the Attorney General to exercise immigration law enforcement authorities pursuant to section 103(a)(8) of the Act. In addition, the decision of a small entity to participate in the event of a mass influx of aliens is purely voluntary on the part of the entity.

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 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 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 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 13132

This regulation 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. Participation by state or local law enforcement agencies is voluntary. Therefore, in accordance with section six 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.

List of Subjects in 28 CFR Part 65

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

Accordingly, part 65 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 65—EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

1. 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.

2. Section 65.84 is amended by adding paragraph (a)(4), to read as follows:

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

(a) * * *

(4) The Attorney General may abbreviate or waive any of the training required pursuant to a written agreement regarding assistance under § 65.83(d) of this chapter, including contingency agreements, in the event that the number of State or local law enforcement officers available to respond in an expeditious manner to urgent and quickly developing events during a declared mass influx of aliens is insufficient to protect public safety, public health, or national security. Such officers still would be required to adhere to applicable policies and standards of the Immigration and Naturalization Service. The decision to abbreviate or waive these training requirements is at the sole discretion of the Attorney General.

* * * * *

Dated: February 20, 2003.

John Ashcroft,

Attorney General.

[FR Doc. 03–4441 Filed 2–25–03; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 171

RIN 0790–AG95

Implementation of Wildfire Suppression Aircraft Transfer Act of 1996

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule adds regulations on the Implementation of Wildfire Suppression Aircraft Transfer Act of 1996 back into the Code of Federal Regulations. This rule was published as an Interim Final Rule on June 1, 1999 (64 FR 29227) and was inadvertently removed on October 25, 2001 (66 FR 53957). The Wildfire Suppression Aircraft Transfer Act of 1996 authorized the Department of Defense (DOD), during the period 1 October 1996 through 30 September 2000, to sell aircraft and aircraft parts to entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. Public Law 106–398 (114 STAT. 1654A–89) extended the expiration date from 30 September 2000 to 30 September 2005.

EFFECTIVE DATE: This rule is effective August 1, 2002.

FOR FURTHER INFORMATION CONTACT:

Debra Bennett, 703–604–0098.

SUPPLEMENTARY INFORMATION: Public comment was taken on the Interim Final Rule. No comments were received.

I. Background

Subsection 2(a) of the Wildfire Suppression Aircraft Transfer Act of 1996, as amended, states that, notwithstanding subchapter II of chapter 5 of title 40, United States Code and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning on October 1, 1996, and ending on September 30, 2005, sell certain aircraft and aircraft parts to persons or entities that contract with the Federal Government for the delivery of fire retardant by air in order to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This rule prescribes such regulations.

II. Administrative Requirements

A. Executive Order 12866

It has been determined that 32 CFR part 171 is not a significant regulatory action. The rule does not (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

B. Unfunded Mandates Reform Act

It has been certified that 32 CFR part 171 does not contain a Federal Mandate that may 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.

C. Regulatory Flexibility Act

It has been determined that this rule is not subject to the Regulatory