

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 122

[ICE No. 2278-03]

RIN 1653 AA25

### Authority of the Secretary of Homeland Security; Parole Authority

**AGENCY:** Department of Homeland Security.

**ACTION:** Final rule.

**SUMMARY:** On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (Pub. L. 107-296) (HSA), which created the new Department of Homeland Security (Department or DHS). The functions of the Immigration and Naturalization Service (Service) and all authorities with respect to those functions, transferred to DHS on March 1, 2003, and the Service was abolished on that date, pursuant to the HSA and the Department of Homeland Security Reorganization Plan, as modified (Reorganization Plan). DHS is promulgating this rule to continue the process of conforming the text of Title 8 of the Code of Federal Regulations to the governmental structures established in the HSA and Reorganization Plan. The rule addresses parole authority under section 212(d)(5) of the Immigration and Nationality Act. With regard to parole authority the rule implements changes in the field structures of the Bureau of Citizenship and Immigration Services (BCIS), the Bureau of Customs and Border Protection (CBP), and the Bureau of Immigration and Customs Enforcement (ICE) by amending the titles of officers given parole authority.

**DATES:** This final rule is effective June 12, 2003.

**FOR FURTHER INFORMATION CONTACT:** Catherine Muhletaler, Bureau of

Immigration and Customs Enforcement, Office of General Counsel, 425 I Street, NW., Room 6100, Washington, DC 20536, telephone (202) 514-2895.

#### SUPPLEMENTARY INFORMATION:

#### Explanation of Changes

This rule amends parole authority under 8 CFR 212.5 to reflect the new titles under the organizational structures of the BCIS, CBP, and ICE. The term "Commissioner" has been replaced with "Secretary" to reflect the transfer of authority over parole issues from the Service to DHS and the component organizations of the BCIS, CBP, and ICE. Component heads of the three bureaus are the Director of the BCIS, Commissioner of CBP and Assistant Secretary for ICE. The rule does not make any substantive changes to the standards for making determinations regarding requests for parole.

#### Procedural Requirements

##### Good Cause Exception

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking or delayed effective date is unnecessary as this rule relates to agency organization and management. Accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

##### Executive Order 12866

This rule is limited to agency organization, management or personnel matters, and therefore is not a regulation or rule as defined by Executive Order 12866. It has also been determined that this rulemaking is not a significant regulatory action for the purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

##### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

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

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of

1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

##### Executive Order 12988: Civil Justice Reform

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

##### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local and tribal government, in the aggregate, or by the private sector of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### Executive Order 13132

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

##### Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104-13, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

##### List of Subjects in 8 CFR Part 212

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

■ Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE**

■ 1. The authority citation for part 212 is revised to read as follows:

**Authority:** 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; Public Law 107–296, 116 Stat 2135 (6 U.S.C. 1, *et seq.*); 8 CFR part 2.

■ 2. Section 212.5 is amended by:

- a. Revising paragraph (a);
  - b. Revising paragraph (b)(3) introductory text;
  - c. Revising paragraph (b)(5);
  - d. Revising paragraph (c);
  - e. Revising paragraph (d) introductory text;
  - f. Revising paragraph (d) (1); and by
  - g. Revising paragraph (e)(2)(i).
- The revisions read as follows:

**§ 212.5 Parole of aliens into the United States.**

(a) The authority of the Secretary to continue an alien in custody or grant parole under section 212(d)(5)(A) of the Act shall be exercised by the Assistant Commissioner, Office of Field Operations; Director, Detention and Removal; directors of field operations; port directors; special agents in charge; deputy special agents in charge; associate special agents in charge; assistant special agents in charge; resident agents in charge; field office directors; deputy field office directors; chief patrol agents; district directors for services; and those other officials as may be designated in writing, subject to the parole and detention authority of the Secretary or his designees. The Secretary or his designees may invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.

(b) \* \* \*

(3) Aliens who are defined as juveniles in § 236.3(a) of this chapter. The Director, Detention and Removal; directors of field operations; field office directors; deputy field office directors; or chief patrol agents shall follow the guidelines set forth in § 236.3(a) of this chapter and paragraphs (b)(3)(i) through (iii) of this section in determining under what conditions a juvenile should be paroled from detention:

\* \* \* \* \*

(5) Aliens whose continued detention is not in the public interest as determined by those officials identified in paragraph (a) of this section.

(c) In the case of all other arriving aliens, except those detained under

§ 235.3(b) or (c) of this chapter and paragraph (b) of this section, those officials listed in paragraph (a) of this section may, after review of the individual case, parole into the United States temporarily in accordance with section 212(d)(5)(A) of the Act, any alien applicant for admission, under such terms and conditions, including those set forth in paragraph (d) of this section, as he or she may deem appropriate. An alien who arrives at a port-of-entry and applies for parole into the United States for the sole purpose of seeking adjustment of status under section 245A of the Act, without benefit of advance authorization as described in paragraph (f) of this section shall be denied parole and detained for removal in accordance with the provisions of § 235.3(b) or (c) of this chapter. An alien seeking to enter the United States for the sole purpose of applying for adjustment of status under section 210 of the Act shall be denied parole and detained for removal under § 235.3(b) or (c) of this chapter, unless the alien has been recommended for approval of such application for adjustment by a consular officer at an Overseas Processing Office.

(d) *Conditions.* In any case where an alien is paroled under paragraph (b) or (c) of this section, those officials listed in paragraph (a) of this section may require reasonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. Those officials should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances or departure, and a bond may be required on Form I–352 in such amount as may be deemed appropriate;

\* \* \* \* \*

(e) \* \* \*

(2)(i) *On notice.* In cases not covered by paragraph (e)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of one of the officials listed in paragraph (a) of this section, neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status that he or she had at the time of parole. When a charging document is served on the alien, the charging document will constitute written notice of termination of parole, unless otherwise specified. Any further inspection or hearing shall be

conducted under section 235 or 240 of the Act and this chapter, or any order of exclusion, deportation, or removal previously entered shall be executed. If the exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless in the opinion of the official listed in paragraph (a) of this section the public interest requires that the alien be continued in custody.

\* \* \* \* \*

Dated: June 3, 2003.

**Tom Ridge,**

*Secretary of Homeland Security.*

[FR Doc. 03–14932 Filed 6–10–03; 2:49 pm]

**BILLING CODE 4410–10–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2003–NM–98–AD; Amendment 39–13191; AD 2003–12–06]

**RIN 2120–AA64**

**Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes**

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. This action also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number. This action also provides for an optional terminating action for the AFM revision and inspection. This action is necessary to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 27, 2003.