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(b) *Acceptance*. For the purposes of section 241(b) of the Act (8 U.S.C. 1231(b)), the Secretary retains discretion to determine the effect, if any, of acceptance or lack thereof, when an acceptance by a country is required, and what constitutes sufficient acceptance.

(c) *Absence or lack of response*. The absence of or lack of response from a de jure or functioning government (whether recognized by the United States, or otherwise) or a body acting as a de jure or functioning government in the receiving country does not preclude the removal of an alien to a receiving country.

(d) *Prior commitment*. No commitment of acceptance by the receiving country is required prior to designation of the receiving country, before travel arrangements are made, or before the alien is transported to the receiving country.

(e) *Specific provisions regarding acceptance*. Where the Department cannot remove an alien under section 241(b)(2)(A)–(D) of the Act, acceptance is not required to remove an alien to a receiving country pursuant to section 241(b)(2)(E)(i)–(vi) of the Act. Where the Department cannot remove an arriving alien under section 241(b)(1)(A) or (B) of the Act, acceptance is not required to remove an alien to a receiving country pursuant to section 241(b)(1)(C)(i)–(iii) of the Act.

(f) *Interest of the United States controlling*. The Secretary or his designee may designate a country previously identified in section 241(b)(2)(A)–(D) of the Act when selecting a removal country under section 241(b)(2)(E) of the Act (and may designate a country previously identified in section 241(b)(1)(A) or (B) of the Act when selecting an alternative removal country under subsection 241(b)(1)(C) of the Act) if the Secretary or his designee determines that such designation is in the best interests of the United States.

(g) *Limitation on construction*. Nothing in this section shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

[70 FR 673, Jan. 5, 2005]

§§ 241.16–241.19 [Reserved]

Subpart B—Deportation of Excluded Aliens (for Hearings Commenced Prior to April 1, 1997)

§ 241.20 Proceedings commenced prior to April 1, 1997.

Subpart B of 8 CFR part 241 applies to exclusion proceedings commenced prior to April 1, 1997. All references to the Act contained in this subpart are references to the Act in effect prior to April 1, 1997.

§ 241.21 Stay of deportation of excluded alien.

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the Act under such conditions as he or she may prescribe.

§ 241.22 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to 8 CFR part 240, subpart D may at any time surrender himself or herself to the custody of the Service and shall surrender to such custody upon notice in writing of the time and place for his or her surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his or her consent thereto filed in writing with the district director in charge of the place of his or her detention. An alien in foreign contiguous territory shall be informed that he or she may remain there in lieu of surrendering to the Service, but that he or she will be deemed to have acknowledged the execution of the order of exclusion and deportation in his or her case upon his or her failure to surrender at the time and place prescribed.

§ 241.23 Cost of maintenance not assessed.

A claim pursuant to section 237(a)(1) of the Act shall be established to the satisfaction of the district director in charge of the port of arrival, from

whose adverse decision no appeal shall lie. The district director shall afford the line a reasonable time within which to submit affidavits and briefs to support its claim.

§ 241.24 Notice to transportation line of alien's exclusion.

(a) An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the district director, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation that will assist in effecting his or her deportation. If special care and attention are required, the provisions of § 241.10 shall apply.

(b) Failure of the carrier to accept for removal an alien who has been ordered excluded and deported shall result in the carrier being assessed any costs incurred by the Service for detention after the carrier's failure to accept the alien for removal including the cost of any transportation. The User Fee Account shall not be assessed for expenses incurred because of the carrier's violation of the provisions of section 237 of the Act and this paragraph. The Service will, at the carrier's option, retain custody of the excluded alien for an additional 7 days beyond the date of the deportation/exclusion order. If, after the third day of this additional 7-day period, the carrier has not made all the necessary transportation arrangements for the excluded alien to be returned to his or her point of embarkation by the end of the additional 7-day period, the Service will make the arrangements and bill the carrier for its costs.

§ 241.25 Deportation.

(a) *Definitions of terms*. For the purposes of this section, the following terms mean:

(1) *Adjacent island*—as defined in section 101(b)(5) of the Act.

(2) *Foreign contiguous territory*—any country sharing a common boundary with the United States.

(3) *Residence in foreign contiguous territory or adjacent island*—any physical presence, regardless of intent, in a foreign contiguous territory or an adjacent island if the government of such territory or island agrees to accept the alien.

(4) *Aircraft or vessel*—any conveyance and other mode of travel by which arrival is effected.

(5) *Next available flight*—the carrier's next regularly scheduled departure to the excluded alien's point of embarkation regardless of seat availability. If the carrier's next regularly scheduled departure to the excluded aliens point of embarkation is full, the carrier has the option of arranging for return transportation on other carriers which service the excluded aliens point of embarkation.

(b) *Place to which deported*. Any alien (other than an alien crewmember or an alien who boarded an aircraft or vessel in foreign contiguous territory or an adjacent island) who is ordered excluded shall be deported to the country where the alien boarded the vessel or aircraft on which the alien arrived in the United States. Otherwise, the Secretary may, as a matter of discretion, deport the alien to the country of which the alien is a subject, citizen, or national; the country where the alien was born; the country where the alien has a residence; or any other country.

(c) *Contiguous territory and adjacent islands*. Any alien ordered excluded who boarded an aircraft or vessel in foreign contiguous territory or in any adjacent island shall be deported to such foreign contiguous territory or adjacent island if the alien is a native, citizen, subject, or national of such foreign contiguous territory or adjacent island, or if the alien has a residence in such foreign contiguous territory or adjacent island. Otherwise, the alien shall be deported, in the first instance, to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island.

(d) *Land border pedestrian arrivals*. Any alien ordered excluded who arrived