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Part VII

Department of Justice

8 CFR Parts 1, 3, et al.

28 CFR Part 200

**Aliens and Nationality; Homeland
Security; Reorganization of Regulations;
Final Rule**

DEPARTMENT OF JUSTICE

8 CFR Parts 1, 3, 101, 103, 204, 205, 207, 208, 209, 211, 212, 214, 215, 216, 235, 236, 238, 239, 240, 241, 244, 245, 246, 249, 270, 274a, 280, 287, 292, 337, 507, 1001, 1003, 1101, 1103, 1204, 1205, 1207, 1208, 1209, 1211, 1212, 1214, 1215, 1216, 1235, 1236, 1238, 1239, 1240, 1241, 1244, 1245, 1246, 1249, 1270, 1274a, 1280, 1287, 1292, 1299, 1337

28 CFR Part 200

[EOIR No. 137F; AG Order No. 2662-2003]

RIN 1125-AA42

Aliens and Nationality; Homeland Security; Reorganization of Regulations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002, as amended, transfers the functions of the Immigration and Naturalization Service to the Department of Homeland Security. The Homeland Security Act of 2002, as amended, retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review and other functions related to immigration that are indigenous to the functions of the Attorney General. These changes require reorganization of title 8 of the Code of Federal Regulations. This final rule reflects the transfer of functions of the Immigration and Naturalization Service through the division of jurisdiction over regulations currently codified in 8 CFR chapter I, by establishing a new chapter V in 8 CFR, by transferring or duplicating certain parts and sections to the new chapter V and to 28 CFR chapter I, and by making other amendments as are necessary to continue existing authorities after the transfer of functions to the Department of Homeland Security on March 1, 2003.

DATES: This rule is effective on February 28, 2003.

FOR FURTHER INFORMATION CONTACT: Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305-0470; Civil Division: Thomas W. Hussey, Director, Office of Immigration Litigation, United States Department of Justice, 950 Pennsylvania Ave. NW., Washington, DC 20530, telephone (202) 616-4852.

SUPPLEMENTARY INFORMATION:

Background

The Homeland Security Act of 2002, as amended (“HSA”), transfers the functions of the Immigration and Naturalization Service (“Service” or “INS”) to the Department of Homeland Security (“DHS”). Pub. L. 107-296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended (“HSA”). The HSA retains in the Department of Justice, under the direction of the Attorney General, the functions of the Executive Office for Immigration Review (“EOIR”). HSA, 116 Stat. at 2273. This rule reflects that transfer through the division of jurisdiction over regulations currently codified in 8 CFR Chapter I.

EOIR was created by the Attorney General in 1983 to combine the functions of immigration judges and the Board of Immigration Appeals into a single administrative component of the Department of Justice under the Attorney General. 48 FR 8038 (Feb. 25, 1983). The Office of the Chief Administrative Hearing Officer (“OCAHO”) and its administrative law judges were added to EOIR in 1987. 52 FR 44971 (Nov. 24, 1987). This administrative structure separated the administrative adjudication functions from the enforcement and service functions of the INS, both for administrative efficiency and to foster independent judgment in adjudication. However, because both INS and EOIR were elements of the Department of Justice, the regulations affecting these components were included in the same chapter. The Attorney General, as the head of the Department, amended regulations affecting both components in a coordinated manner. The enactment of the Homeland Security Act of 2002, and its transfer of functions to the Department of Homeland Security, now requires that the INS regulations and the EOIR regulations be placed in separate chapters.

As explained more fully below, this final rule transfers certain parts that relate to the jurisdiction and procedures of EOIR to a new chapter V, *i.e.* administrative review provisions. This rule duplicates certain parts and sections of the regulations that relate to proceedings before both the INS and EOIR in both chapter I and chapter V, respectively, *i.e.*, shared provisions. The rule also makes a number of technical amendments to both chapters I and V to ensure that the authorities existing in the INS and EOIR prior to the transfer of functions of the INS to the Department of Homeland Security continue in effect after March 1, 2003.

A. Homeland Security Act of 2002 Division of Jurisdiction and Continuing Relationship

The HSA transfers the enforcement, services, and administrative functions of the INS to the Department of Homeland Security. HSA §§ 441, 451, 455, 456. In addition, the HSA abolishes the INS. HSA § 471. The new structure for immigration enforcement, services and shared services is more fully explained by the HSA, the President’s Reorganization Plan under HSA § 1512, and amendments thereto.¹ For the purposes of this rule, and to provide the Secretary of Homeland Security maximum flexibility in the further division of immigration regulations between components of the Department of Homeland Security, if he deems appropriate, this rule makes no changes in the immigration regulations for functions that are being transferred to DHS other than those necessary to effectuate the division of regulations between the functions being transferred to DHS and the functions being retained in the Department of Justice. For purposes of simplicity, this rule continues to refer to the transferred functions as functions held by the INS.

Section 103(g) of the Immigration and Nationality Act, as amended by section 1102 of the HSA provides:

(1) *In General.* The Attorney General shall have such authorities and functions under this Act and all other laws relating to the immigration and naturalization of aliens as were exercised by the Executive Office for Immigration Review, or by the Attorney General with respect to the Executive Office for Immigration Review, on the day before the effective date [of the Act].

(2) *Powers.* The Attorney General shall establish such regulations, prescribe such forms of bond, reports, entries, and other papers, issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out this section.

The final rule creates, a new chapter V within 8 CFR and moves the relevant functions to that chapter. The rule also makes other necessary conforming amendments.

After this rule makes the necessary division of regulations within title 8 CFR to reflect the transfer of INS authorities, the Secretary of DHS can

¹ The Supplementary Information refers to the successor entities to the INS collectively as the INS for the ease of the reader. The Secretary of Homeland Security has further refined the reorganization of functions within the Department of Homeland Security and a further division of the regulations is expected to be made. That division of regulations, on or after March 1, 2003, is not affected by this rule.

make substantive changes to INS rules; the Attorney General can make substantive changes to EOIR rules, and the Secretary and the Attorney General can consult each other when contemplating changes in those rules that affect both EOIR and INS.

B. General Comments

The rule makes no substantive change in the regulations. The rule is a technical rule dividing the regulations for purposes of the transfer of authorities under the HSA. For the ease of public understanding, the structure of chapter V has been created in parallel to the existing structure of chapter I. Accordingly, for example, in asylum proceedings before immigration judges, applicable provisions of chapter I, part 208 (e.g., 8 CFR 208.15(a)) are established in parallel in chapter V, part 1208 (e.g., 8 CFR 1208.15(a)). In creating this parallel structure, the Attorney General is attempting to provide as simple a format as possible for all to understand the legal effect of the transfer, while minimizing the confusion that might occur in practice before the Service and EOIR. Under this technical restructuring, incorrect citation to a regulation that has been transferred into Chapter V will be considered inconsequential. Similarly, until EOIR updates its forms, the references to sections of chapter I should be considered to be references to chapter V, as appropriate.

The rule transfers those parts and sections that deal with procedures before the immigration judges and Board of Immigration Appeals to chapter V. This transfer permits future amendment of the rules without unnecessary conflict with provisions relating to the INS. Similarly, the elimination of those provisions from chapter I that deal with proceedings before EOIR permits the amendment of the substantive regulations of the Service by the Department of Homeland Security without unnecessary conflict with the Attorney General's regulations for EOIR.

The rule duplicates a number of parts and sections that affect both the Service and EOIR, such as the asylum regulations. These provisions necessarily require coordination between the INS and EOIR. The Department of Justice has been guided by the principles of the HSA in duplicating only those provisions that directly affect the authority of EOIR, but has also necessarily duplicated some provisions that affect INS until a further and more detailed division can be accomplished in consultation with the Department of Homeland Security. In

this sense, the rule is interim in nature in that further division and elimination of a substantial number of sections is expected in the near future. The inclusion of a section in this duplication process should be understood as a temporary measure to ensure continuity, not as a permanent disposition of authority in the Department of Justice.

The rule also makes a number of specific technical amendments to continue existing authority that cannot be made by simply moving or duplicating sections. For example, the precedent decisions of the Board of Immigration Appeals and the INS are published in *Administrative Decisions under the Immigration and Nationality Laws of the United States*, cited as "I&N Dec." However, there is no rule that currently provides for the publication of Service decisions outside of 8 CFR 103.3, and that provision is incomplete. Accordingly, a provision has been added to chapter I, part 1, providing for the determination of precedent decisions within the Department of Homeland Security and publication of such decisions by EOIR in *Administrative Decisions under the Immigration and Nationality Laws of the United States*.

C. Parts and Sections Affecting EOIR Moved

Part 3, and almost all of part 240, are moved to chapter V because these provisions directly affect only the Executive Office for Immigration Review and proceedings before EOIR. A more general revision of these separated provisions is contemplated in the future to further refine the adjudicatory process, but this rule makes no substantive change in jurisdiction or procedure.

D. Parts and Sections Affecting INS and EOIR Duplicated

A larger number of parts and sections that are currently in chapter I are duplicated in chapter V because they establish processes that are common to both the INS and EOIR. In some cases, for convenience, an entire part has been moved because substantial portions effect common procedure, even though particular sections may affect only the INS or only EOIR. A concerted decision has been made to carry forward the duplication of entire parts to ensure continuity, even though the Attorney General and the Secretary may later amend their respective regulations to further separate the procedures and clarify those sections that affect each agency. It is not manageable at this time to detail a complete paragraph-by-paragraph jurisdictional split between

INS and EOIR, and the duplication assures that interpretation will be consistent until coordinated decisions are made respecting these procedures. Thus, for example, part 208, relating to asylum and related forms of relief, is duplicated in part 1208, even though specific subsections relate only with procedure before INS and other subsections relate only to procedure before EOIR. Further disposition of these sections will be made in future rulemaking.

E. Specific Technical Amendments

A number of technical amendments are required to effect a proper division of the authorities from chapter I. In certain instances, new sections must be written, and in others cross-references are required. This is particularly true where only one section or paragraph refers to processes within EOIR, but otherwise the part or section refers only to processes of INS. For example, a number of INS processes result in a decision on an application that may be renewed before an immigration judge or an appeal taken to the Board of Immigration Appeals. Where the part or section is otherwise entirely within the scope of the functions transferred to DHS, only a technical amendment may be necessary to provide for the appeal with the appropriate cross-reference. The major technical changes—which go beyond these cross-references—and the continuity that these changes provide are described below.

Existing 8 CFR § 3.1(g) provides that precedent decisions of the Board of Immigration Appeals and the Attorney General are binding on all Service officers. This historical specification was made by the Attorney General in the course of his overall management of the Service. However, because of the transfer of functions of the Service to the Department of Homeland Security, it is necessary to specify this result in the ongoing regulations of the Service, as well as EOIR. The provision of § 3.1(g) is, therefore, duplicated in chapter I, part 1, § 103.37(g). This restatement of the binding effect of precedent decisions effectuates the clear intent of the Congress in section 1101(2) of the HSA, as amended, amending section 103 of the Immigration and Nationality Act, 8 U.S.C. 1103, by adding subsection (g), and in transferring the Service to DHS while leaving the immigration adjudicatory functions of EOIR under the Attorney General.

Moreover, it is necessary to clarify that the Secretary of Homeland Security may refer cases or questions of law to the Attorney General for decision at any time, both generally, and pursuant to

the proviso of section 103(a)(1) of the Act, 8 U.S.C. 1103(a)(1), relating to the Attorney General's resolution of legal issues. At the same time, the Attorney General has specified the reservation of the parallel authority to refer cases to himself for decision at any time.

Similarly, the authority to publish precedential decisions of the Service in *Administrative Decisions under the Immigration and Nationality Laws of the United States* is set forth in new 8 CFR §§ 103.37 and 1003.1(i). New § 103.37 is added to ensure that the Secretary of Homeland Security can continue to publish appropriate precedent decisions. See, e.g., *Matter of Safetran*, 20 I&N Dec. 49 (Comm. 1989).

The fees that are charged for applications for relief filed with the INS are also collected in conjunction with applications filed with the immigration judges and, on occasion, on motions to reopen before the Board of Immigration Appeals. A specific authorization is included in chapter V, referencing the fees charged by the Service for these applications. A separate table is not developed within EOIR for the simple reason that the INS must recalculate the fees periodically to conform them to the actual costs, as more fully explained in each of the fee change regulations. Rather than coordinate each change, in a situation in which EOIR does not have an interest in the substance of the fee calculation, but only in the actual fee imposed, it makes more sense to reference the fees charged by the Service as established in 8 CFR 103.7. This provision does not alter the filing fee for appeals and motions before the Board of Immigration Appeals.

Finally, some specific provisions are moved or not moved, duplicated or not duplicated, because that process provides the simplest means of effecting the division of the regulations without substantive effect. For example, part 240 of chapter I is moved to part 1240 of chapter V, with the exception of § 240.25, which deals with the Service's authority to grant voluntary departure. Similarly, § 240.21 and Subpart H are duplicated because these provisions affect both INS and EOIR.

F. Summary of the Changes From 8 CFR Chapter I to Chapter V

Set out below are general descriptions of the sets of changes in chapter I to chapter V and the rationale for each set of changes.

Part 1—Definitions, is duplicated in part 1001, because the same definitions apply to INS and EOIR.

Part 3—Executive Office for Immigration Review, is transferred to part 1003, because this part is the

organic regulation for EOIR. Additionally, provisions have been added to clarify certification procedures and the authority of the Secretary of Homeland Security to designate specific officials to certify cases and questions of law to the Attorney General pursuant to redesignated 8 CFR 1003.1(h). These provisions are provided in parallel for the Department of Homeland Security in a new section of part 3. Finally, savings provisions are added to part 103 and part 1003 to clarify that the jurisdiction and procedures in effect on February 28, 2003, continue in effect after the transition on March 1, 2003.

Part 101—Presumption of lawful admission, is duplicated as part 1101, because it establishes a necessary presumption under the Act for both INS and EOIR.

Part 103—Powers and duties of service officers; availability of service records, is partially duplicated and is amended in several sections to ensure that the existing practices of EOIR are not changed through the transfer of functions.

Part 205—Revocation of approval of petitions, is duplicated as part 1205 because the revocation of petitions involves substantial appeals to the Board of Immigration Appeals and the provisions intermingle the jurisdiction and procedures before the Board of Immigration Appeals with the substantive provisions for revocation of approval of petitions.

Part 207—Admission of refugees, is duplicated in part in part 1207. Only § 207.3 necessarily involves procedure before the Executive Office for Immigration Review and this is the only section that is duplicated.

Part 208—Proceedings for asylum and withholding of removal, is duplicated in part 1208 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. The Department of Justice expects that further division will be accomplished by the Department of Homeland Security and the Department of Justice at a later time.

Part 209—Adjustment of status of refugees and aliens granted asylum, is duplicated as part 1209. For the most part, adjustment of status is accomplished administratively by INS, but provisions that are affected by EOIR are intermingled in this part.

Part 211—Documentary requirements; immigrants; waivers, is duplicated in part in part 1211. The only section that is duplicated is § 211.4, Waiver of documents of returning residents, and this section is duplicated because the section contains the predicate jurisdiction of immigration judges to

consider an renewed application in proceedings.

Part 212—Documentary requirements; nonimmigrants: waivers; admission of certain inadmissible aliens; parole, is duplicated in part 1212 because these provisions relate to both INS and EOIR and are so interrelated that no simple division of jurisdiction is possible. Part 212 provides the predicates and standards for proceedings to exclude aliens from the United States.

Part 214—Nonimmigrant classes, is duplicated in part in part 1214, because the specific duplicated provisions provide the jurisdictional predicates for review of certain waiver applications by immigration judges.

Part 215—Controls of aliens departing from the United States, is duplicated in part 1215. Although these provisions have been rarely used, they include a number of jurisdictional predicates for review of administrative decisions by an immigration judge, called a special inquiry officer in these sections. These regulations are joint regulations with the Secretary of State, see 22 CFR part 46, and may require further refinement in the future.

Part 216—Conditional basis of lawful permanent residence status, is duplicated in part 1216. This part contains both the administrative and adjudicatory process for revoking the conditional basis for lawful permanent residence based upon marriage.

Part 235—Inspection of persons applying for admission, is duplicated in part 1235 because nearly all of the provisions of this part affect bond hearings before immigration judges.

Part 236—Apprehension and detention of inadmissible and deportable aliens, removal of aliens ordered removed, is duplicated in part in part 1236. Subpart A relates to the determinations of inadmissibility and deportability of aliens and is duplicated in part 1236. Subpart B of part 236, however, relates to the INS Family Unity Program, which does not relate to EOIR processes. Accordingly, Subpart B is not duplicated, although it may be interpreted in appropriate proceedings.

Part 238—Expedited removal of aggravated felons, is duplicated in part 1238 because the expedited removal under this part can be converted to ordinary removal proceedings before an immigration judge under part 240, and initiated proceedings under part 240 may, upon approval of the immigration judge, be terminated and the INS may then file expedited removal proceedings under part 238.

Part 239—Initiation of removal proceedings, is duplicated as part 1239 because the initiation of proceedings

before immigration judges is a detailed mix of authority of service officers to initiate and file charges before an immigration judge.

Part 240—Proceedings to determine removability of aliens in the United States, is largely transferred to part 1240, as proceedings before immigration judges. However, 8 CFR 240.25, which is the INS authority for voluntary departure, is not transferred. Furthermore, 8 CFR 240.21, and subpart H, are duplicated in new part 1240 because these provisions affect both the INS and EOIR. The Department expects, as in many other cases, a further division of these parts will be effected by further regulatory actions by the Department of Homeland Security and the Department of Justice.

Part 241—Apprehension and detention of aliens ordered removed, is duplicated in part 1241 because the finality and implementation of final orders of removal issued by immigration judges and the Board of Immigration Appeals regularly involve the authority of EOIR and interpretation of these regulations by both the INS and EOIR. In particular, changes in the bonding and surrender process currently under consideration will require changes in the authority of both EOIR and the successor agencies of INS within DHS.

Part 244—Temporary protected status for national of designated states, is duplicated in part 1244 because many of the decisions under temporary protected status are made by immigration judges and the Board of Immigration Appeals. Sections 244.1, 244.7, 244.11, and 244.18 all refer to immigration judges' decisional authority. Section 244.20 has a unique fee waiver provisions that also implicates administration and proceedings before EOIR. This duplication will require further refinement to clarify the authority of Secretary of Homeland Security to designate countries for temporary protected status purposes and the duplication should not be viewed as any indication that the Department of Justice is involved in those future decisions. The duplication is necessary at this time to ensure continuity and will be subject to further adjustment by the Department of Homeland Security and the Department of Justice.

Part 245—Adjustment of status to that of person admitted for permanent residence, is duplicated in part 1245 because jurisdiction is intermingled throughout the part. See *Matter of Artigas*, 23 I&N Dec. 99 (BIA 2001). Further refinement of the division of authority and detailed technical amendments will be required in the future.

Part 246—Rescission of adjustment of status, is duplicated in part 1246 because the part provides the comprehensive procedure before both the Service and EOIR for the rescission of adjustment of status to lawful permanent residence.

Part 249—Creation of records of lawful admission for permanent residence, is duplicated in part 1249 because this part includes both the Service and EOIR procedures for registry of lawful permanent residence. Although the statutory requirements for registry limit the number of cases that arise under this part, the division of authority requires further detailed analysis.

Part 270—Penalties for document fraud, is duplicated in part 1270 because this part sets forth the procedures for document fraud cases before both the Service and the administrative law judges of EOIR. See also 28 CFR Part 68.

Part 274a—Control of employment of aliens, is duplicated as part 1274a because it contains substantial definitional and procedural material relevant to both the INS and the Special Counsel for Immigration-Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice under 28 CFR 0.53, as well as the predicates to administrative proceedings before administrative law judges in EOIR.

Part 280—Imposition and collection of fines, is duplicated in part 1280 because this part is interpreted by the Board of Immigration Appeals in fines appeals. Substantial portions of this duplicated part will ultimately be removed as the jurisdiction of such fines is ultimately transferred from the Board of Immigration Appeals to the administrative law judges of EOIR as previously proposed in other rulemaking. 67 FR 7309 (Feb. 22, 2002).

Part 287—Field officers; powers and duties, is duplicated in part in part 1287 because several discrete provisions of this part provide the underpinnings for specific authority of immigration judges. In particular, the subpoena authority of § 287.4 provides the mechanism for subpoenas before immigration judges. Certification of official records before an immigration judge is provided in § 287.6.

Several sections of part 287 that are not amended or duplicated implicate other authorities of the Attorney General as the United States' prosecutor, including § 287.5 delegations of authority to the Deputy Attorney General to approve the expansion of criminal law enforcement authority in certain areas. That provision, in

particular, relates to the Attorney General's inherent authority to manage the criminal law enforcement community, and the delegations that he has made to the Deputy Attorney General to manage the Department. 28 CFR 0.15(a). As with the past practice of the Department, changes in these criminal law enforcement powers are governed by executive branch policies that include review and recommendations from the Criminal Division, through the Deputy Attorney General, to the Attorney General for final determination regarding agencies outside the Department of Justice. The unique regulatory authority in part 287 is the product of statutory requirements in section 287(a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1357(a)(4), as amended by 503(a) of the Immigration Act of 1990, Pub. L. No. 101-690, 104 Stat. 4978 (Nov. 29, 1990). These provisions will require further coordination between the Department of Homeland Security and the Department of Justice.

Part 292—Representation and appearances, is duplicated in part 1292 because representation of aliens before INS and EOIR has historically been considered as a single process and will continue to be so considered for the foreseeable future.

Part 299—Immigration forms, is not duplicated, but is referred to in new part 1299. EOIR will continue to utilize INS forms for most purposes, such as to establish a basis for asylum, adjustment of status, etc. There is no need to create new forms to replicate the forms that are already in use. By the same token, however, there are a number of forms that provide information that is useful to immigration judges in adjudicating cases, and, therefore, the Director of EOIR is authorized to designate the version of the forms to be used.

Part 337—Oath of allegiance, is duplicated in part 1337 only because it involves the authority of immigration judges to administer the oath of citizenship in naturalization ceremonies, and related authorities.

Part 507—Alien terrorist removal procedures, is moved to newly created 28 CFR part 200, to reflect the operational functions of the Office for Immigration Litigation within the Civil Division, which is delegated authority to represent the United States before the Alien Terrorist Removal Court, and the fact that this process is not administrative in nature, but judicial, before Article III judges designated by the Chief Justice of the United States. The sole provision in this part refers to the Attorney General's authority to make a final determination of eligibility

for relief from a judicial order of removal from the Alien Terrorist Removal Court on the grounds that such post-judicial removal would violate the Convention Against Torture.

H. Changes Deferred

A number of changes will need to be made in the future, but are not made at this time. For example, part 215, concerning departure control, refers to "special inquiry officers" instead of immigration judges. This is not uncommon in the older provisions of 8 CFR that have not been amended since 1987. Amendments to this particular part require the concurrence of the Secretary of State because this part is a parallel to 22 CFR part 46. Rather than attempt to conform two separate parts, neither of which will remain within the jurisdiction of the Attorney General, this commonly understood term—a historical anomaly that predates the creation of EOIR and means "immigration judge"—is left in place until such time as the Secretary of State and the Secretary of Homeland Security determine to change the substantive regulations, at which time they, and the Attorney General, will make this necessary but only technical adjustment.

I. Cross-References

The Department will publish in the very near future a table of changes of cross-references in parts of chapter V to other parts of chapter V, and other conforming technical changes.

Administrative Procedure Act

The Department of Justice finds that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553 because this rule only makes technical amendments to the organization, procedures, and practices of the Department of Justice to improve the organization of the regulations of the Department of Justice and reflects the transfer of functions contemplated by the Homeland Security Act of 2002. Similarly, because this final rule makes changes in internal delegations and procedures, and is a recodification of existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

Regulatory Flexibility Act

Because no notice of proposed rule-making is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised record keeping or reporting requirements.

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 section 251 of 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 has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and 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, the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant 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

8 CFR Part 1

Administrative practice and procedure and Immigration.

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 101

Immigration.

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements and Surety bonds.

8 CFR Part 204

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

8 CFR Part 205

Administrative practice and procedure and Immigration.

8 CFR Part 207

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 208

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

8 CFR Part 211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 212

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

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange programs, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements and Students.

8 CFR Part 215

Administrative practice and procedure, Aliens and Travel restrictions.

8 CFR Part 216

Administrative practice and procedure, and Aliens.

8 CFR Part 235

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

8 CFR Part 236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 239

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 240

Administrative practice and procedure and Aliens.

8 CFR Part 241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 244

Administrative practice and procedure and Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 246

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 280

Administrative practice and procedure, Immigration and Penalties.

8 CFR Part 287

Immigration and Law enforcement officers.

8 CFR Part 292

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

8 CFR Part 337

Citizenship and naturalization and Courts.

8 CFR Part 507

Aliens, terrorism.

8 CFR Part 1001

Administrative practice and procedure and Immigration.

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and function (Government agencies).

8 CFR Part 1101

Immigration.

8 CFR Part 1103

Administrative practice and procedure, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

8 CFR Part 1204

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

8 CFR Part 1205

Administrative practice and procedure and Immigration.

8 CFR Part 1207

Immigration, Refugees and Reporting and recordkeeping requirements.

8 CFR Part 1208

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

8 CFR Part 1211

Immigration, Passports and visas and Reporting and recordkeeping requirements.

8 CFR Part 1212

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

8 CFR Part 1214

Administrative practice and procedure, Aliens.

8 CFR Part 1215

Administrative practice and procedure, Aliens and Travel restrictions.

8 CFR Part 1216

Administrative practice and procedure, and Aliens.

8 CFR Part 1235

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

8 CFR Part 1236

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1238

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1239

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1240

Administrative practice and procedure and Aliens.

8 CFR Part 1241

Administrative practice and procedure, Aliens and Immigration.

8 CFR Part 1244

Administrative practice and procedure and Immigration.

8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1246

Administrative practice and procedure, Aliens and Immigration

8 CFR Part 1249

Aliens, Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1270

Administrative practice and procedure, Aliens, Employment, Fraud and Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, and Reporting and recordkeeping requirements.

8 CFR Part 1280

Administrative practice and procedure, Immigration and Penalties.

8 CFR Part 1287

Immigration and Law enforcement officers.

8 CFR Part 1292

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

8 CFR Part 1299

Immigration and Reporting and recordkeeping requirements.

8 CFR Part 1337
Citizenship and naturalization and Courts.

28 CFR Part 200

Aliens, terrorism.

Authority and Issuance

For the reasons set forth in the preamble, the Department of Justice amends titles 8 and 28 of the Code of Federal Regulations as follows:

TITLE 8—ALIENS AND NATIONALITY
CHAPTER V—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE
Subchapter A—General Provisions
Subchapter B—Immigration Regulations
Subchapter C—Nationality Regulations

1. Amend title 8 CFR by establishing chapter V and its related subchapters to read as set forth above.

Chapter I, Subchapter A
PART 1—[DUPLICATED AS CHAPTER V, PART 1001]
Chapter V, Subchapter A
PART 1001—DEFINITIONS

2. All sections in part 1 are duplicated in part 1001, as set out in the following table:

| Part 1 | Heading | Is duplicated in Part 1001 as |
|-------------|-------------------|-------------------------------|
| § 1.1 | Definitions | § 1001.1 |

2a. The authority citation for newly designated part 1001 continues to read as follows:

Authority: 8 U.S.C. 1101; 8 CFR part 2.

Chapter I, Subchapter A
PART 3—[REDESIGNATED AS PART 1003]

3. Transfer 8 CFR part 3 from chapter I, subchapter A, to chapter V, subchapter A, and designate as 8 CFR part 1003.

Chapter V, Subchapter A
PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

4. All sections of the newly redesignated part 1003 are set forth in the following table:

| Part 3 | Heading | Is transferred and designated as Part 1003 |
|-------------|---|--|
| § 3.0 | Executive Office for Immigration Review | § 1003.0 |

Subpart A

| | | |
|-------------|--|----------|
| § 3.1 | Organization, jurisdiction, and powers of the Board of Immigration Appeals | § 1003.1 |
| § 3.2 | Reopening or reconsideration before the Board of Immigration Appeals | § 1003.2 |
| § 3.3 | Notice of Appeal | § 1003.3 |
| § 3.4 | Withdrawal of appeal | § 1003.4 |
| § 3.5 | Forwarding of record on appeal | § 1003.5 |
| § 3.6 | Stay of execution of decision | § 1003.6 |
| § 3.7 | Notice of Certification | § 1003.7 |
| § 3.8 | Fees | § 1003.8 |

Subpart B

| | | |
|--------------|---|-----------|
| § 3.9 | Chief Immigration Judge | § 1003.9 |
| § 3.10 | Immigration Judges | § 1003.10 |
| § 3.11 | Administrative control Immigration Courts | § 1003.11 |

Subpart C

| | | |
|--------------|---|-----------|
| § 3.12 | Scope of rules | § 1003.12 |
| § 3.13 | Definitions | § 1003.13 |
| § 3.14 | Jurisdiction and commencement of proceedings | § 1003.14 |
| § 3.15 | Contents of the order to show cause and notice to appear and notification of change of address. | § 1003.15 |
| § 3.16 | Representation | § 1003.16 |
| § 3.17 | Appearances | § 1003.17 |
| § 3.18 | Scheduling of cases | § 1003.18 |
| § 3.19 | Custody/bond | § 1003.19 |
| § 3.20 | Change of venue | § 1003.20 |
| § 3.21 | Pre-hearing conferences and statement | § 1003.21 |
| § 3.22 | Interpreters | § 1003.22 |
| § 3.23 | Reopening or reconsideration before the Immigration Court | § 1003.23 |
| § 3.24 | Fees pertaining to matters within the jurisdiction of the Immigration Judge | § 1003.24 |
| § 3.25 | Form of the proceeding | § 1003.25 |
| § 3.26 | In absentia hearings | § 1003.26 |

| Part 3 | Heading | Is transferred and designated as Part 1003 |
|---------------------------|--|--|
| § 3.27 | Public access to hearings | § 1003.27 |
| § 3.28 | Recording equipment | § 1003.28 |
| § 3.29 | Continuances | § 1003.29 |
| § 3.30 | Additional charges in deportation or removal hearings | § 1003.30 |
| § 3.31 | Filing documents and applications | § 1003.31 |
| § 3.32 | Service and size of documents | § 1003.32 |
| § 3.33 | Translation of documents | § 1003.33 |
| § 3.34 | Testimony | § 1003.34 |
| § 3.35 | Depositions and subpoenas | § 1003.35 |
| § 3.36 | Record of proceeding | § 1003.36 |
| § 3.37 | Decisions | § 1003.37 |
| § 3.38 | Appeals | § 1003.38 |
| § 3.39 | Finality of decision | § 1003.39 |
| § 3.40 | Local operating procedures | § 1003.40 |
| § 3.41 | Evidence of criminal conviction | § 1003.41 |
| § 3.42 | Review of credible fear determination | § 1003.42 |
| § 3.43 | Motions to reopen for suspension of deportation and cancellation of removal pursuant to section 203(c) of NACARA and section 1505(c) of the LIFE Act Amendments. | § 1003.43 |
| § 3.44 | Motion to reopen to apply for section 212(c) relief for certain aliens in deportation proceedings before April 24, 1996. | § 1003.44 |
| § 3.46 | Protective orders, sealed submissions in Immigration Courts | § 1003.46 |
| Subpart D—Reserved | | |
| Subpart E | | |
| § 3.61 | List | § 1003.61 |
| § 3.62 | Qualifications | § 1003.62 |
| § 3.63 | Applications | § 1003.63 |
| § 3.64 | Approval and denial of applications | § 1003.64 |
| § 3.65 | Removal of an organization or attorney from list | § 1003.65 |
| Subpart F—Reserved | | |
| Subpart G | | |
| § 3.101 | General provisions | § 1003.101 |
| § 3.102 | Grounds | § 1003.102 |
| § 3.103 | Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline. | § 1003.103 |
| § 3.104 | Filing of complaints; preliminary inquires; resolutions; referral of complaints | § 1003.104 |
| § 3.105 | Notice of Intent to Discipline | § 1003.105 |
| § 3.106 | Hearing and disposition | § 1003.106 |
| § 3.107 | Reinstatement after expulsion or suspension | § 1003.107 |
| § 3.108 | Confidentiality | § 1003.108 |
| § 3.109 | Discipline of government attorneys | § 1003.109 |

4a. The authority citation for the newly redesignated part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 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.

5. A new 8 CFR part 3 is added to read as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 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.

§ 3.0 Executive Office for Immigration Review

Regulations of the Executive Office for Immigration Review relating to the adjudication of immigration matters before immigration judges (referred to in some regulations as special inquiry

officers) and the Board of Immigration Appeals are located in 8 CFR chapter V, part 1003.

PART 1003—[FURTHER AMENDED]

6. Section 1003.1 is amended by revising paragraphs (g) and (h) and adding paragraphs (i) through (j) to read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(g) *Decisions as precedents.* Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and

decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases that:

- (i) The Attorney General directs the Board to refer to him.
 - (ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.
 - (iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.
- (2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service

as provided in paragraph (f) of this section.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and, upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.

(j) *Continuation of jurisdiction and procedure.* The jurisdiction of, and procedures before, the Board of Immigration Appeals in exclusion, deportation, removal, rescission, asylum-only, and any other proceedings, shall remain in effect as in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or to an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

7. Section 1003.14 is amended by adding a new paragraph (d) to read as follows:

§ 1003.14 Jurisdiction and commencement of proceedings.

* * * * *

(d) The jurisdiction of, and procedures before, immigration judges in exclusion, deportation and removal, rescission, asylum-only, and any other proceedings shall remain in effect as it was in effect on February 28, 2003, until the regulations in this chapter are further modified by the Attorney General. Where a decision of an officer of the Immigration and Naturalization Service was, before March 1, 2003, appealable to the Board or an immigration judge, or an application denied could be renewed in proceedings before an immigration judge, the same authority and procedures shall be followed until further modified by the Attorney General.

Chapter I, Subchapter B

PART 101—[DUPLICATED AS CHAPTER V, PART 1101]

Chapter V, Subchapter B

PART 1101—PRESUMPTION OF LAWFUL ADMISSION

8. All the sections in part 101 are duplicated in a new part 1101 in 8 CFR chapter V, subchapter B, as set forth in the following table:

| Part 101 | Heading | Is duplicated as Part 1101 |
|----------|--|----------------------------|
| § 101.1 | Presumption of lawful admission | § 1101.1 |
| § 101.2 | Presumption of lawful admission; entry under erroneous name or other errors | § 1101.2 |
| § 101.3 | Creation of record of lawful permanent resident status for person born under diplomatic status in the United States. | § 1101.3 |
| § 101.4 | Registration procedure | § 1101.4 |
| § 101.5 | Special immigrant status for certain G-4 nonimmigrants | § 1101.5 |

8a. The authority citation newly duplicated part 1101 continues to read as follows:

Authority: 8 U.S.C. 1103, 8 CFR part 2.

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

9. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

10. Amend § 103.3 by removing from paragraph (c) “§ 3.1(g) of this chapter,” and adding in its place “§ 1003.1(g) of chapter V,” and by adding at the beginning of paragraph (c) a new sentence to read as follows:

§ 103.3 Denials, appeals, and precedent decisions.

* * * * *

(c) Service precedent decisions. The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to

the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. * * *

11. Add § 103.37 to read as follows:

§ 103.37 Precedent decisions.

(a) Proceedings before the immigration judges, the Board of Immigration Appeals and the Attorney

General are governed by part 1003 of 8 CFR chapter V.

(b)–(f) [Reserved.]

(g) Decisions as precedents. Except as Board decisions may be modified or overruled by the Board or the Attorney General, decisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States. By majority vote of the permanent Board members, selected decisions of the Board rendered by a three-member panel or by the Board en banc may be designated to serve as precedents in all proceedings involving the same issue or issues. Selected decisions designated by the Board, decisions of the Attorney General, and decisions of the Secretary of Homeland Security to the extent authorized in paragraph (i) of this section, shall serve

as precedents in all proceedings involving the same issue or issues.

(h) Referral of cases to the Attorney General. (1) The Board shall refer to the Attorney General for review of its decision all cases which:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, refers to the Attorney General for review.

(2) In any case the Attorney General decides, the Attorney General's decision shall be stated in writing and shall be transmitted to the Board or Secretary, as appropriate, for transmittal and service as provided in paragraph (f) of this section.

(i) Publication of Secretary's precedent decisions. The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General Service precedent decisions as set forth in § 103.3(c).

Chapter I, Subchapter B

PART 103—[DUPLICATED IN PART AS PART 1103]

Chapter V, Subchapter B

PART 1103—APPEALS, RECORDS, AND FEES

12. Sections 103.3, 103.4 and 103.7 of part 103 are duplicated in part 1103 and redesignated as set forth in the following table:

| Part 103 | Heading | Is duplicated as Part 1103 |
|---------------|---|----------------------------|
| § 103.3 | Denials, appeals, and precedent decisions | § 1103.3 |
| § 103.4 | Certifications | § 1103.4 |
| § 103.7 | Fees | § 1103.7 |

12a. The authority citation for newly duplicated part 1103 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; 28 U.S.C. 509, 510.

Chapter V, Subchapter B

13. Add part 1204 to read as follows:

PART 1204—IMMIGRANT PETITIONS

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255, 1641; 8 CFR part 2.

§ 1204.1 Single level of appellate review.

The decision of the Board of Immigration Appeals concerning the denial of a relative visa petition under 8 CFR chapter I, part 204 because the petitioner failed to establish eligibility for the bona fide marriage exemption contained in that part will constitute the single level of appellate review established by statute.

PART 205—[DUPLICATED AS PART 1205]

Chapter V, Subchapter B

PART 1205—REVOCAION OF APPROVAL OF PETITIONS

14. All sections in part 205 are duplicated in part 1205, as set out in the following table:

| Part 205 | Heading | Is duplicated as Part 1205 |
|---------------|----------------------------|----------------------------|
| § 205.1 | Automatic Revocation | § 1205.1 |
| § 205.2 | Revocation on notice | § 1205.2 |

14a. The authority citation for newly designated part 1205 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182, and 1186a.

Chapter I, Subchapter B

PART 207—[DUPLICATED IN PART AS PART 1207]

Chapter V, Subchapter B

PART 1207—ADMISSION OF REFUGEES

15. Section 207.3 is duplicated in part 1207 of chapter V, subchapter B of 8 CFR, as section 1207.3.

15a. The authority citation for newly designated part 1207 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1157, 1159, 1182; 8 CFR part 2.

Chapter I, Subchapter B

PART 208—[DUPLICATED AS PART 1208]

Chapter V, Subchapter B

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

16. All sections in part 208 are duplicated in part 1208, as set out in the following table:

| Part 208 | Heading | Is duplicated as Part 1208 |
|------------------|--|----------------------------|
| Subpart A | | |
| § 208.1 | General | § 1208.1 |
| § 208.2 | Jurisdiction | § 1208.2 |
| § 208.3 | Form of application | § 1208.3 |
| § 208.4 | Filing the application | § 1208.4 |
| § 208.5 | Special duties toward aliens in custody of the Service | § 1208.5 |
| § 208.6 | Disclosure to third parties | § 1208.6 |
| § 208.7 | Employment authorization | § 1208.7 |
| § 208.8 | Limitations on travel outside the United States | § 1208.8 |
| § 208.9 | Procedure for interview before an asylum officer | § 1208.9 |
| § 208.10 | Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprint processing. | § 1208.10 |
| § 208.11 | Comments from the Department of State | § 1208.11 |
| § 208.12 | Reliance on information compiled by other sources | § 1208.12 |
| § 208.13 | Establishing asylum eligibility | § 1208.13 |
| § 208.14 | Approval, denial, referral, or dismissal of application | § 1208.14 |
| § 208.15 | Definition of “firm resettlement” | § 1208.15 |
| § 208.16 | Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture. | § 1208.16 |
| § 208.17 | Deferral of removal under the Convention Against Torture | § 1208.17 |
| § 208.18 | Implementation of the Convention Against Torture | § 1208.18 |
| § 208.19 | Decisions | § 1208.19 |
| § 208.20 | Determining if an asylum application is frivolous | § 1208.20 |
| § 208.21 | Admission of the asylee’s spouse and children | § 1208.21 |
| § 208.22 | Effect on exclusion, deportation, and removal proceedings | § 1208.22 |
| § 208.23 | Restoration of status | § 1208.23 |
| § 208.24 | Termination of asylum or withholding of removal or deportation | § 1208.24 |
| § 208.25 | Reserved | § 1208.25 |
| § 208.26 | Reserved | § 1208.26 |
| § 208.27 | Reserved | § 1208.27 |
| § 208.28 | Reserved | § 1208.28 |
| § 208.29 | Reserved | § 1208.29 |
| Subpart B | | |
| § 208.30 | Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act. | § 1208.30 |
| § 208.31 | Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act. | § 1208.31 |

16a. The authority citation for newly duplicated part 1208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

Chapter I, Subchapter B

PART 209—[DUPLICATED AS PART 1209]

Chapter V, Subchapter B

PART 1209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

17. All sections in part 209 are duplicated in part 1209, as set out in the following table:

| Part 209 | Heading | Is duplicated as Part 1209 |
|---------------|--|----------------------------|
| § 209.1 | Adjustment of status of refugees | § 1209.1 |
| § 209.2 | Adjustment of status of alien granted asylum | § 1209.2 |

17a. The authority citation for newly designated part 1209 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1157, 1158, 1159, 1228, 1252, 1282; 8 CFR part 2.

PART 211—[DUPLICATED IN PART AS PART 1211]

Chapter V, Subchapter B

PART 1211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

18. Section 211.4 is duplicated in part 1211, as section 1211.4.

18a. The authority citation for newly designated part 1211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257; 8 CFR part 2.

PART 1212—[DUPLICATED AS PART 1212]

Chapter V, Subchapter B

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

19. All sections in part 212 are duplicated in part 1212, as set out in the following table:

| Part 212 | Heading | Is duplicated as Part 1212 |
|----------------|--|----------------------------|
| § 212.1 | Documentary requirements for nonimmigrants | § 1212.1 |
| § 212.2 | Consent to reapply for admission after deportation, removal or departure at Government expense. | § 1212.2 |
| § 212.3 | Application for the exercise of discretion under section 212(c) | § 1212.3 |
| § 212.4 | Application for the exercise of discretion under section 212(d)(1) and 212(d)(3) | § 1212.4 |
| § 212.5 | Parole of aliens into the United States | § 1212.5 |
| § 212.6 | Border crossing identification cards | § 1212.6 |
| § 212.7 | Waiver of certain grounds of inadmissibility | § 1212.7 |
| § 212.8 | Certification requirement of section 212(a)(14) | § 1212.8 |
| § 212.9 | Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants. | § 1212.9 |
| § 212.10 | Section 212(k) waiver | § 1212.10 |
| § 212.11 | Controlled substance convictions | § 1212.11 |
| § 212.12 | Parole determinations and revocations respecting Mariel Cubans | § 1212.12 |
| § 212.13 | [Reserved] | § 1212.13 |
| § 212.14 | Parole determinations for alien witnesses and informants for whom a law enforcement authority ("LEA") will request S classification. | § 1212.14 |
| § 212.15 | Certificates for foreign health care workers | § 1212.15 |
| § 212.16 | Applications for exercise of discretion relating to T nonimmigrant status | § 1212.16 |

19a. The authority citation for newly designated part 1212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

Chapter V, Subchapter B

20. Add part 1214 to chapter V to read as follows:

PART 1214—REVIEW OF NONIMMIGRANT CLASSES

Sec.

- 1214.1 Review of requirements for admission, extension, and maintenance of status.
- 1214.2 Review of alien victims of severe forms of trafficking in persons; aliens in pending immigration proceedings.
- 1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

§ 1214.1 Review of requirements for admission, extension, and maintenance of status.

Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, shall establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien shall present a valid passport and valid visa unless either or both documents have been waived. However, an alien applying for extension of stay shall present a passport only if requested to do so by the Service. The passport of an alien applying for admission shall be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter, and the alien shall agree to abide by the terms and conditions of his or her admission. The passport of an alien applying for extension of stay shall be valid at the time of application for extension, unless otherwise provided in this chapter, and the alien shall agree to maintain the validity of his or her passport and to abide by all the terms and conditions of his extension. The alien shall also agree to depart the United States at the expiration of his or her authorized period of admission or extension, or upon abandonment of his or her authorized nonimmigrant status. At the time a nonimmigrant alien applies for admission or extension of stay he or she shall post a bond on Form I–352 in the sum of not less than \$500, to insure the maintenance of his or her nonimmigrant status and departure from the United States, if required to do so by the director, immigration judge or Board of Immigration Appeals.

§ 1214.2 Review of alien victims of severe forms of trafficking in persons; aliens in pending immigration proceedings.

(a) *Applications for T visas while in proceedings.* Individuals who believe they are victims of severe forms of trafficking in persons and who are in pending immigration proceedings must inform the Service if they intend to apply for T nonimmigrant status under this section. With the concurrence of Service counsel, a victim of a severe form of trafficking in persons in proceedings before an immigration judge or the Board of Immigration Appeals may request that the proceedings be administratively closed (or that a motion to reopen or motion to reconsider be indefinitely continued) in order to allow the alien to pursue an application for T nonimmigrant status with the Service. If the alien appears eligible for T nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, may grant such a request to administratively close the proceeding or continue a motion to reopen or motion to reconsider indefinitely. In the event the Service finds an alien ineligible for T–1 nonimmigrant status, the Service may recommence proceedings that have been administratively closed by filing a motion to re-calendar with the immigration court or a motion to reinstate with the Board. If the alien is in Service custody pending the completion of immigration proceedings, the Service may continue to detain the alien until a decision has been rendered on the application. An alien who is in custody and requests bond or a bond redetermination will be governed by the provisions of part 236 of this chapter.

(b) *Stay of final order of exclusion, deportation, or removal.* A determination by the Service that an application for T–1 nonimmigrant status is bona fide automatically stays the execution of any final order of exclusion, deportation, or removal. This stay shall remain in effect until there is a final decision on the T application. The filing of an application for T nonimmigrant status does not stay the

execution of a final order unless the Service has determined that the application is bona fide. Neither an immigration judge nor the Board of Immigration Appeals has jurisdiction to adjudicate an application for a stay of execution, deportation, or removal order, on the basis of the filing of an application for T nonimmigrant status.

§ 1214.3 Certain spouses and children of lawful permanent residents; aliens in proceedings; V visas.

An alien who is already in immigration proceedings and believes that he or she may become eligible to apply for V nonimmigrant status should request before the immigration judge or the Board of Immigration Appeals, as appropriate, that the proceedings be administratively closed (or before the Board that a previously-filed motion for reopening or reconsideration be indefinitely continued) in order to allow the alien to pursue an application for V nonimmigrant status with the Service. If the alien appears eligible for V nonimmigrant status, the immigration judge or the Board, whichever has jurisdiction, shall administratively close the proceeding or continue the motion indefinitely. In the event that the Service finds an alien eligible for V nonimmigrant status, the Service can adjudicate the change of status under this section. In the event that the Service finds an alien ineligible for V nonimmigrant status, the Service shall recommence proceedings by filing a motion to re-calendar.

Chapter I, Subchapter B

PART 215—[DUPLICATED AS PART 1215]

Chapter V, Subchapter B

PART 1215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

21. All sections in part 215 are duplicated in part 1215, as set out in the following table:

| Part 215 | Heading | Is duplicated as Part 1215 |
|---------------|--|----------------------------|
| § 215.1 | Definitions | § 1215.1 |
| § 215.2 | Authority of departure-control officer to prevent alien's departure from the United States. | § 1215.2 |
| § 215.3 | Alien whose departure is deemed prejudicial to the interests of the United States | § 1215.3 |
| § 215.4 | Procedure in case of alien prevented from departing from the United States | § 1215.4 |
| § 215.5 | Hearing procedure before special inquiry officer | § 1215.5 |
| § 215.6 | Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States. | § 1215.6 |
| § 215.7 | Instructions from the Administrator required in certain cases | § 1215.7 |

21a. The authority citation for newly designated part 1215 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

Chapter I, Subchapter B

PART 216—[DUPLICATED AS PART 1216]

Chapter V, Subchapter B

PART 1216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

22. All sections in part 216 are duplicated in part 1216, as set out in the following table:

| Part 216 | Heading | Is duplicated as Part 1216 |
|---------------|--|----------------------------|
| § 216.1 | Definitions of conditional permanent resident | § 1216.1 |
| § 216.2 | Notification requirements | § 1216.2 |
| § 216.3 | Termination of conditional resident status | § 1216.3 |
| § 216.4 | Joint petition to remove conditional basis of lawful permanent resident status for alien spouse. | § 1216.4 |
| § 216.5 | Waiver of requirement to file joint petition to remove conditions by alien spouse | § 1216.5 |
| § 216.6 | Petition by entrepreneur to remove conditional basis of lawful permanent resident status. | § 1216.6 |

22a. The authority citation for newly designated part 1216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

Chapter I, Subchapter B

PART 235—[DUPLICATED IN PART AS PART 1235]

Chapter V, Subchapter B

PART 1235—INSPECTION OF PERSONS APPLYING FOR PERMISSION

23. The following sections in part 235 are duplicated in part 1235, as set out in the following table:

| Part 235 | Heading | Is duplicated as Part 1235 |
|----------------|---|----------------------------|
| § 235.1 | Scope of examination | § 1235.1 |
| § 235.2 | Parole for deferred inspection | § 1235.2 |
| § 235.3 | Inadmissible aliens and expedited removal | § 1235.3 |
| § 235.4 | Withdrawal of application for admission | § 1235.4 |
| § 235.5 | Preinspection | § 1235.5 |
| § 235.6 | Referral to immigration judge | § 1235.6 |
| § 235.8 | Inadmissibility on security and related grounds | § 1235.8 |
| § 235.9 | Northern Marianas identification card | § 1235.9 |
| § 235.10 | U.S. Citizen Identification Card | § 1235.10 |
| § 235.11 | Admission of conditional permanent residents | § 1235.11 |
| § 235.12 | [Redesignated] | § 1235.12 |
| § 235.13 | [Redesignated] | § 1235.13 |

23a. The authority citation for newly designated part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1201, 1224, 1225, 1226, 1228; 8 CFR part 2.

Chapter I, Subchapter B

PART 236—[DUPLICATED AS PART 1236]

Chapter V, Subchapter B

PART 1236—APPREHENSION AND DETENTION OF INADMISSABLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

24. All sections in part 236, Subpart A, are duplicated in part 1236, as set out in the following table:

| Part 236 | Heading | Is duplicated as Part 1236 |
|------------------|--|----------------------------|
| Subpart A | | |
| § 236.1 | Apprehension, custody, and detention | § 1236.1 |
| § 236.2 | Confined aliens, incompetents, and minors | § 1236.2 |
| § 236.3 | Detention and release of juveniles | § 1236.3 |
| § 236.4 | Removal of S-5, S-6, and S-7 nonimmigrants | § 1236.4 |
| § 236.5 | Fingerprints and photographs | § 1236.5 |
| § 236.6 | Information regarding detainees | § 1236.6 |
| § 236.7 | [Reserved] | § 1236.7 |
| § 236.8 | [Reserved] | § 1236.8 |
| § 236.9 | [Reserved] | § 1236.9 |

24a. The authority citation for newly designated part 1236 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.

Chapter I, Subchapter B

PART 238—[DUPLICATED AS PART 1238]

Chapter V, Subchapter B

PART 1238—EXPEDITED REMOVAL OF AGGRAVATED FELONS

25. Section 238.1 is duplicated in part 1238, as § 1238.1.

25a. The authority citation for newly designated part 1238 continues to read as follows:

Authority: 8 U.S.C. 1228; 8 CFR part 2.

Chapter I, Subchapter B

PART 239—[DUPLICATED AS PART 1239]

Chapter V, Subchapter B

PART 1239—INITIATION OF REMOVAL PROCEEDINGS

26. All sections in part 239 are duplicated in part 1239, as set out in the following table:

| Part 239 | Heading | Is duplicated as Part 1239 |
|---------------|---|----------------------------|
| § 239.1 | Notice to appear | § 1239.1 |
| § 239.2 | Cancellation of notice to appear | § 1239.2 |
| § 239.3 | Effect of filing notice to appear | § 1239.3 |

26a. The authority citation for newly designated part 1239 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1229; 8 CFR part 2.

Chapter I, Subchapter B

PART 240—[REDESIGNATED IN PART AS PART 1240]

Chapter V, Subchapter B

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

27. Transfer the following sections of 8 CFR part 240 from chapter I,

subchapter B, to chapter V, subchapter B, and designate as 8 CFR part 1240, as set out in the following table:

| Part 240 | Heading | Is transferred and redesignated as Part 1240 |
|------------------|--|--|
| Subpart A | | |
| § 240.1 | Immigration judges | § 1240.1 |
| § 240.2 | Service counsel | § 1240.2 |
| § 240.3 | Representation by counsel | § 1240.3 |
| § 240.4 | Incompetent respondents | § 1240.4 |
| § 240.5 | Interpreter | § 1240.5 |
| § 240.6 | Postponement and adjournment of hearing | § 1240.6 |
| § 240.7 | Evidence in removal proceedings under section 240 of the Act | § 1240.7 |
| § 240.8 | Burdens of proof in removal proceedings | § 1240.8 |
| § 240.9 | Contents of record | § 1240.9 |
| § 240.10 | Hearing | § 1240.10 |
| § 240.11 | Ancillary matters, applications | § 1240.11 |
| § 240.12 | Decision of the immigration judge | § 1240.12 |
| § 240.13 | Notice of decision | § 1240.13 |
| § 240.14 | Finality of order | § 1240.14 |
| § 240.15 | Appeals | § 1240.15 |
| § 240.16 | Application of new procedures or termination of proceedings in old proceedings pursuant to section 309(c) of Public Law 104–208. | § 1240.16 |
| § 240.17 | [Reserved] | § 1240.17 |
| § 240.18 | [Reserved] | § 1240.18 |
| Subpart B | | |
| § 240.19 | [Reserved] | § 1240.19 |
| § 240.20 | Cancellation of removal and adjustment of status under section 240A of the Act | § 1240.20 |
| § 240.22 | [Reserved] | § 1240.22 |
| § 240.23 | [Reserved] | § 1240.23 |
| § 240.24 | [Reserved] | § 1240.24 |
| Subpart C | | |
| § 240.26 | Voluntary departure—authority of the Executive Office for Immigration Review | § 1240.26 |
| § 240.27 | [Reserved] | § 1240.27 |
| § 240.28 | [Reserved] | § 1240.28 |
| § 240.29 | [Reserved] | § 1240.29 |
| Subpart D | | |
| § 240.30 | Proceedings prior to April 1, 1997 | § 1240.30 |
| § 240.31 | Authority of immigration judges | § 1240.31 |
| § 240.32 | Hearing | § 1240.32 |
| § 240.33 | Applications for asylum or withholding of deportation | § 1240.33 |
| § 240.34 | Renewal of application for adjustment of status under section 245 of the Act | § 1240.34 |
| § 240.35 | Decision of the immigration judge; notice to the applicant | § 1240.35 |
| § 240.36 | Finality of order | § 1240.36 |
| § 240.37 | Appeals | § 1240.37 |
| § 240.38 | Fingerprinting of excluded aliens | § 1240.38 |
| § 240.39 | [Reserved] | § 1240.39 |
| Subpart E | | |
| § 240.40 | Proceedings commenced prior to April 1, 1997 | § 1240.40 |
| § 240.41 | Immigration Judges | § 1240.41 |
| § 240.42 | Representation by counsel | § 1240.42 |
| § 240.43 | Incompetent respondents | § 1240.43 |
| § 240.44 | Interpreter | § 1240.44 |
| § 240.45 | Postponement and adjournment of hearing | § 1240.45 |
| § 240.46 | Evidence | § 1240.46 |
| § 240.47 | Contents of record | § 1240.47 |
| § 240.48 | Hearing | § 1240.48 |
| § 240.49 | Ancillary matters, applications | § 1240.49 |
| § 240.50 | Decision of the immigration judge | § 1240.50 |
| § 240.51 | Notice of decision | § 1240.51 |
| § 240.52 | Finality of order | § 1240.52 |
| § 240.53 | Appeals | § 1240.53 |
| § 240.54 | [Reserved] | § 1240.54 |
| Subpart F | | |
| § 240.55 | Proceedings commenced prior to April 1, 1997 | § 1240.55 |

| Part 240 | Heading | Is transferred and redesignated as Part 1240 |
|----------------|-----------------------------------|--|
| § 240.56 | Application | § 1240.56 |
| § 240.57 | Extension of time to depart | § 1240.57 |
| § 240.58 | Extreme hardship | § 1240.58 |

Subpart G—Reserved

28. The following sections in part 240 are duplicated in part 1240, as set out in the following table:

| Part 240 | Heading | Is duplicated as Part 1240 |
|----------|---------|----------------------------|
|----------|---------|----------------------------|

Subpart B

| | | |
|----------------|--|-----------|
| § 240.21 | Suspension of deportation and adjustment of status under section 244(a) of the Act (as in effect before April 1, 1997) and cancellation of removal and adjustment of status under section 240A(b) of the Act for certain nonpermanent residents. | § 1240.21 |
|----------------|--|-----------|

Subpart H

| | | |
|----------------|--|-----------|
| § 240.60 | Definitions | § 1240.60 |
| § 240.61 | Applicability | § 1240.61 |
| § 240.62 | Jurisdiction | § 1240.62 |
| § 240.63 | Application process | § 1240.63 |
| § 240.64 | Eligibility—general | § 1240.64 |
| § 240.65 | Eligibility for suspension of deportation | § 1240.65 |
| § 240.66 | Eligibility for special rule cancellation of removal | § 1240.66 |
| § 240.67 | Procedure for interview before an asylum officer | § 1240.67 |
| § 240.68 | Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting. | § 1240.68 |
| § 240.69 | Reliance on information compiled by other sources | § 1240.69 |
| § 240.70 | Decision by the Service | § 1240.70 |

28a. The authority citation for newly redesignated part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 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.

Chapter I, Subchapter B

PART 241—[DUPLICATED AS PART 1241]

Chapter V, Subchapter B

PART 1241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

29. All sections in part 241 are duplicated in part 1241, as set out in the following table:

| Part 241 | Heading | Is duplicated as Part 1241 |
|----------|---------|----------------------------|
|----------|---------|----------------------------|

Subpart A

| | | |
|---------------|--|----------|
| § 241.1 | Final order of removal | § 1241.1 |
| § 241.2 | Warrant of removal | § 1241.2 |
| § 241.3 | Detention of aliens during removal period | § 1241.3 |
| § 241.4 | Continued detention of inadmissible, criminal, and other aliens beyond the removal period. | § 1241.4 |
| § 241.5 | Conditions of release after removal period | § 1241.5 |
| § 241.6 | Administrative stay of removal | § 1241.6 |
| § 241.7 | Self-removal | § 1241.7 |
| § 241.8 | Reinstatement of removal orders | § 1241.8 |
| § 241.9 | Notice to transportation line of alien's removal | § 1241.9 |

| Part 241 | Heading | Is duplicated as Part 1241 |
|----------|---|----------------------------|
| § 241.10 | Special care and attention of removable aliens | § 1241.10 |
| § 241.11 | Detention and removal of stowaways | § 1241.11 |
| § 241.12 | Nonapplication of costs of detention and maintenance | § 1241.12 |
| § 241.13 | Determination of whether there is a significant likelihood of removing a detained alien in the reasonably foreseeable future. | § 1241.13 |
| § 241.14 | Continued detention of removable aliens on account of special circumstances | § 1241.14 |
| § 241.15 | Information regarding detainees | § 1241.15 |
| § 241.16 | Reserved | § 1241.16 |
| § 241.17 | Reserved | § 1241.17 |
| § 241.18 | Reserved | § 1241.18 |
| § 241.19 | Reserved | § 1241.19 |

Subpart B

| | | |
|----------|--|-----------|
| § 241.20 | Proceedings commenced prior to April 1, 1997 | § 1241.20 |
| § 241.21 | Stay of deportation of excluded alien | § 1241.21 |
| § 241.22 | Notice to surrender for deportation | § 1241.22 |
| § 241.23 | Cost of maintenance not assessed | § 1241.23 |
| § 241.24 | Notice to transportation line of alien's exclusion | § 1241.24 |
| § 241.25 | Deportation | § 1241.25 |
| § 241.26 | Reserved | § 1241.26 |
| § 241.27 | Reserved | § 1241.27 |
| § 241.28 | Reserved | § 1241.28 |
| § 241.29 | Reserved | § 1241.29 |

Subpart C

| | | |
|----------|--|-----------|
| § 241.30 | Proceedings commenced prior to April 1, 1997 | § 1241.30 |
| § 241.31 | Final order of deportation | § 1241.31 |
| § 241.32 | Warrant of deportation | § 1241.32 |
| § 241.33 | Expulsion | § 1241.33 |

29a. The authority citation for newly designated part 1241 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1251, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

Chapter I, Subchapter B

PART 244—[DUPLICATED AS PART 1244]

Chapter V, Subchapter B

PART 1244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

30. All sections in part 244 are duplicated in part 1244, as set out in the following table:

| Part 244 | Heading | Is duplicated as Part 1244 |
|----------|--|----------------------------|
| § 244.1 | Definitions | § 1244.1 |
| § 244.2 | Eligibility | § 1244.2 |
| § 244.3 | Applicability of grounds of inadmissibility | § 1244.3 |
| § 244.4 | Ineligible aliens | § 1244.4 |
| § 244.5 | Temporary treatment benefits for eligible aliens | § 1244.5 |
| § 244.6 | Application | § 1244.6 |
| § 244.7 | Filing the application | § 1244.7 |
| § 244.8 | Appearance | § 1244.8 |
| § 244.9 | Evidence | § 1244.9 |
| § 244.10 | Decision by the director or Administrative Appeals Unit (AAU) | § 1244.10 |
| § 244.11 | Renewal of application; appeal to the Board of Immigration Appeals | § 1244.11 |
| § 244.12 | Employment authorization | § 1244.12 |
| § 244.13 | Termination of temporary treatment benefits | § 1244.13 |
| § 244.14 | Withdrawal of Temporary Protected Status | § 1244.14 |
| § 244.15 | Travel abroad | § 1244.15 |
| § 244.16 | Confidentiality | § 1244.16 |
| § 244.17 | Annual registration | § 1244.17 |
| § 244.18 | Issuance of charging documents; detention | § 1244.18 |
| § 244.19 | Termination of designation | § 1244.19 |

| Part 244 | Heading | Is duplicated as Part 1244 |
|----------------|----------------------|----------------------------|
| § 244.20 | Waiver of Fees | § 1244.20 |

30a. The authority citation for newly designated part 1244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

Chapter I, Subchapter B

PART 245—[DUPLICATED AS PART 1245]

Chapter V, Subchapter B

PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

31. All sections in part 245 are duplicated in part 1245, as set out in the following table:

| Part 245 | Heading | Is duplicated as Part 1245 |
|----------------|---|----------------------------|
| § 245.1 | Eligibility | § 1245.1 |
| § 245.2 | Application | § 1245.2 |
| § 245.3 | Adjustment of status under section 13 of the Act of September 11, 1957, as amended. | § 1245.3 |
| § 245.4 | Documentary requirements | § 1245.4 |
| § 245.5 | Medical examination | § 1245.5 |
| § 245.6 | Interview | § 1245.6 |
| § 245.7 | Adjustment of status of certain Soviet and Indochinese parolees under the Foreign Operations Appropriations Act for Fiscal Year 1990 (Pub. L. 101-167). | § 1245.7 |
| § 245.8 | Adjustment of status as a special immigrant under section 101(a)(27)(K) of the Act .. | § 1245.8 |
| § 245.9 | Adjustment of status of certain nationals of the People's Republic of China under Public Law 102-404. | § 1245.9 |
| § 245.10 | Adjustment of status upon the payment of additional sum under section 245(i) | § 1245.10 |
| § 245.11 | Adjustment of aliens in S nonimmigrant classification | § 1245.11 |
| § 245.12 | What are the procedures for certain Polish and Hungarian parolees who are adjusting status to that of permanent resident under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996? | § 1245.12 |
| § 245.13 | Adjustment of status of certain nationals of Nicaragua and Cuba under Public Law 105-100. | § 1245.13 |
| § 245.14 | Adjustment of status of certain health care workers | § 1245.14 |
| § 245.15 | Adjustment of status of certain Haitian nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA). | § 1245.15 |
| § 245.18 | How can physicians (with approved Forms I-140) that are serving in medically underserved areas or at a Veterans Affairs facility adjust status? | § 1245.18 |
| § 245.20 | Adjustment of status of Syrian asylees under Public Law 106-378 | § 1245.20 |
| § 245.21 | Adjustment of status of certain nationals of Vietnam, Cambodia, and Laos (section 586 of Public Law 106-429) Syrian asylees under Public Law 106-378. | § 1245.21 |
| § 245.22 | Evidence to demonstrate an alien's physical presence in the United States on a specific date. | § 1245.22 |

31a. The authority citation for newly designated part 1245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub.L. 105-100, 111 Stat. 2160, 2193; sec. 902, Pub.L. 105-277, 112 Stat. 2681; 8 CFR part 2.

Chapter I, Subchapter B

PART 246—[DUPLICATED AS PART 1246]

Chapter V, Subchapter B

PART 1246—RESCISSION OF ADJUSTMENT OF STATUS

32. All sections in part 246 are duplicated in part 1246, as set out in the following table:

| Part 246 | Heading | Is duplicated as Part 1246 |
|---------------|---|----------------------------|
| § 246.1 | Notice | § 1246.1 |
| § 246.2 | Allegations admitted; no answer filed; no hearing requested | § 1246.2 |
| § 246.3 | Allegations contested or denied; hearing requested | § 1246.3 |
| § 246.4 | Immigration judge's authority; withdrawal and substitution | § 1246.4 |
| § 246.5 | Hearing | § 1246.5 |
| § 246.6 | Decision and order | § 1246.6 |
| § 246.7 | Appeals | § 1246.7 |
| § 246.8 | [Reserved] | § 1246.8 |
| § 246.9 | Surrender of Form I-551 | § 1246.9 |

32a. The authority citation for newly designated part 1246 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

Chapter I, Subchapter B

PART 249—[DUPLICATED AS PART 1249]

Chapter V, Subchapter B

PART 1249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

33. All sections in part 249 are duplicated in part 1249, as set out in the following table:

| Part 249 | Heading | Is duplicated as Part 1249 |
|---------------|-------------------------------------|----------------------------|
| § 249.1 | Waiver of inadmissibility | § 1249.1 |
| § 249.2 | Application | § 1249.2 |
| § 249.3 | Reopening and reconsideration | § 1249.3 |

33a. The authority citation for newly designated part 1249 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1259; 8 CFR part 2.

Chapter I, Subchapter B

PART 270—[DUPLICATED AS PART 1270]

Chapter V, Subchapter B

PART 1270—PENALTIES FOR DOCUMENT FRAUD

34. All sections in part 270 are duplicated in part 1270, as set out in the following table:

| Part 270 | Heading | Is duplicated as Part 1270 |
|---------------|------------------------------|----------------------------|
| § 270.1 | Definitions | § 1270.1 |
| § 270.2 | Enforcement procedures | § 1270.2 |
| § 270.3 | Penalties | § 1270.3 |

34a. The authority citation for newly designated part 1270 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

Chapter I, Subchapter B

PART 274a—[DUPLICATED AS PART 1274a]

Chapter V, Subchapter B

PART 1274a—CONTROL OF EMPLOYMENT OF ALIENS

35. All sections in part 274a are duplicated in part 1274a, as set out in the following table:

| Part 274a | Heading | Is duplicated as Part 1274a |
|------------------|--|-----------------------------|
| Subpart A | | |
| § 274a.1 | Definitions | § 1274a.1 |
| § 274a.2 | Verification of employment eligibility | § 1274a.2 |
| § 274a.3 | Continuing employment of unauthorized aliens | § 1274a.3 |
| § 274a.4 | Good faith defense | § 1274a.4 |
| § 274a.5 | Use of labor through contract | § 1274a.5 |
| § 274a.6 | State employment agencies | § 1274a.6 |
| § 274a.7 | Pre-enactment provisions for employees hired prior to November 7, 1986 | § 1274a.7 |
| § 274a.8 | Prohibition of indemnity bonds | § 1274a.8 |
| § 274a.9 | Enforcement procedures | § 1274a.9 |
| § 274a.10 | Penalties | § 1274a.10 |
| § 274a.11 | Reserved | § 1274a.11 |
| Subpart B | | |
| § 274a.12 | Classes of aliens authorized to accept employment | § 1274a.12 |
| § 274a.13 | Application for employment authorization | § 1274a.13 |
| § 247a.14 | Termination of employment authorization | § 1274a.14 |

35a. The authority citation for newly designated part 1274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

Chapter I, Subchapter B

PART 280—[DUPLICATED AS PART 1280]

Chapter V, Subchapter B

PART 1280—IMPOSITION AND COLLECTION OF FINES

36. All sections in part 280 are duplicated in part 1280, as set out in the following table:

| Part 280 | Heading | Is duplicated as Part 1280 |
|----------------|---|----------------------------|
| § 280.1 | Notice of intention to fine; administrative proceedings not exclusive | § 1280.1 |
| § 280.2 | Special provisions relating to aircraft | § 1280.2 |
| § 280.3 | Departure of vessel or aircraft prior to denial of clearance | § 1280.3 |
| § 280.4 | Data concerning cost of transportation | § 1280.4 |
| § 280.5 | Mitigation or remission of fines | § 1280.5 |
| § 280.6 | Bond to obtain clearance; form | § 1280.6 |
| § 280.7 | Approval of bonds or acceptance of cash deposit to obtain clearance | § 1280.7 |
| § 280.11 | Notice of intention to fine; procedure | § 1280.11 |
| § 280.12 | Answer and request or order for interview | § 1280.12 |
| § 280.13 | Disposition of case | § 1280.13 |
| § 280.14 | Record | § 1280.14 |
| § 280.15 | Notice of final decision to district director of customs | § 1280.15 |
| § 280.21 | Seizure of aircraft | § 1280.21 |
| § 280.51 | Application for mitigation or remission | § 1280.51 |
| § 280.52 | Payment of fines | § 1280.52 |
| § 280.53 | Civil monetary penalties inflation adjustment | § 1280.53 |

36a. The authority citation for newly designated part 1280 continues to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

Chapter I, Subchapter B

PART 287—[DUPLICATED IN PART AS PART 1287]

Chapter V, Subchapter B

PART 1287—FIELD OFFICERS; POWERS AND DUTIES

37. The following sections in part 287 are duplicated in part 1287, as set out in the following table:

| Part 287 | Heading | Is duplicated as Part 1287 |
|---------------|---------------------------------|----------------------------|
| § 287.4 | Subpoena | § 1287.4 |
| § 287.6 | Proof of official records | § 1287.6 |

37a. The authority citation for newly designated part 1287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

Chapter I, Subchapter B

PART 292—[DUPLICATED AS PART 1292]

Chapter V, Subchapter B

PART 1292—REPRESENTATION AND APPEARANCES

38. All sections in part 292 are duplicated in part 1292, as set out in the following table:

| Part 292 | Heading | Is duplicated as Part 1292 |
|---------------|---|----------------------------|
| § 292.1 | Representation of others | § 1292.1 |
| § 292.2 | Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster. | § 1292.2 |
| § 292.3 | Professional conduct for practitioners—Rules and procedures | § 1292.3 |
| § 292.4 | Appearances | § 1292.4 |
| § 292.5 | Service upon and action by attorney or representative of record | § 1292.5 |
| § 292.6 | Interpretation | § 1292.6 |

38a. The authority citation for newly designated part 1292 continues to read as follows:

Authority: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

Chapter V, Subchapter B

PART 1299—IMMIGRATION REVIEW FORMS

39. Part 1299 is added to chapter V, subchapter C, to read as follows:

- Sec.
- 1299.1 Use of immigration forms.
- 1299.2 Specific immigration review forms.

Authority: 8 U.S.C. 1103, 1252, 1429, 1443; Homeland Security Act of 2002, Pub. L. 107–296.

§ 1299.1 Use of immigration forms.

In addition to forms prepared by the Executive Office for Immigration Review, the Executive Office for Immigration Review, immigration judges, the Board of Immigration Appeals, and administrative law judges use forms listed under 8 CFR chapter I, part 299.

§ 1299.2 Specific immigration review forms.

The Director of the Executive Office for Immigration Review may designate

the specific version of a form listed in 8 CFR chapter I, part 299, which shall be utilized in filings before the immigration judges, the Board of Immigration Appeals, and administrative law judges.

Chapter I, Subchapter C

PART 337—[DUPLICATED AS PART 1337]

Chapter V, Subchapter C

PART 1337—OATH OF ALLEGIANCE

40. All sections in part 337 are duplicated in part 1337, as set out in the following table:

| Part 337 | Heading | Is duplicated as Part 1337 |
|---------------|--------------------------|----------------------------|
| § 337.1 | Oath of allegiance | § 1337.1 |

| Part 337 | Heading | Is duplicated as Part 1337 |
|----------------|--|----------------------------|
| § 337.2 | Oath administered by the Immigration and Naturalization Service or an Immigration Judge. | § 1337.2 |
| § 337.3 | Expedited administration of oath of allegiance | § 1337.3 |
| § 337.4 | When requests for change of name granted | § 1337.4 |
| § 337.5 | [Reserved] | § 1337.5 |
| § 337.6 | [Reserved] | § 1337.6 |
| § 337.7 | Information and assignment of individuals under exclusive jurisdiction | § 1337.7 |
| § 337.8 | Oath administered by the courts | § 1337.8 |
| § 337.9 | Effective date of naturalization | § 1337.9 |
| § 337.10 | Failure to appear for oath administration ceremony | § 1337.10 |

40a. The authority citation for newly designated part 1337 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443, 1448; 8 CFR part 2.

41. All references in part 1003 to “§ 3.” are revised to read “§ 1003.”.

42. All references in part 1101 to “§ 101.” are revised to read “§ 1101.”.

43. All references in part 1103 to “§ 103.3” are revised to read “§ 1103.3”; references in part 1103 to “§ 103.4” are revised to read “§ 1103.4”, and references in part 1103 to “§ 103.7” are revised to read “§ 1103.7”.

44. All references in part 1205 to “§ 205.” are revised to read “§ 1205.”.

45. All references in part 1208 to “§ 208.” are revised to read “§ 1208.”.

46. All references in part 1209 to “§ 209.” are revised to read “§ 1209.”.

47. All references in part 1211 to “§ 211.” are revised to read “§ 1211.”.

48. All references in part 1212 to “§ 212.” are revised to read “§ 1212.”.

49. All references in part 1215 to “§ 215.” are revised to read “§ 1215.”.

50. All references in part 1216 to “§ 216.” are revised to read “§ 1216.”.

51. All references in part 1235 to “§ 235.” are revised to read “§ 1235.”, except any reference to “235.7” shall not be revised.

52. All references in part 1236 to “§ 236.” are revised to read “§ 1236.”.

53. All references in part 1239 to “§ 239.” are revised to read “§ 1239.”.

54. All references in part 1240 to “§ 240.” are revised to read “§ 1240.”, except that any reference to “240.25” shall not be revised.

55. All references in part 1241 to “§ 241.” are revised to read “§ 1241.”.

56. All references in part 1244 to “§ 244.” are revised to read “§ 1244.”.

57. All references in part 1245 to “§ 245.” are revised to read “§ 1245.”.

58. All references in part 1246 to “§ 246.” are revised to read “§ 1246.”.

59. All references in part 1249 to “§ 249.” are revised to read “§ 1249.”.

60. All references in part 1270 to “§ 270.” are revised to read “§ 1270.”.

61. All references in part 1274a to “§ 274a.” are revised to read “§ 1274a.”.

62. All references in part 1280 to “§ 280.” are revised to read “§ 1280.”.

63. All references in part 1287 to “§ 287.4” are revised to read “§ 1287.4”,

and references to “§ 287.6” are revised to read “1287.6”.

64. All references in part 1292 to “§ 292.” are revised to read “§ 1292.”.

65. All references in part 1337 to “§ 337.” are revised to read “§ 1337.”.

Chapter I, Subchapter C

PART 507—[REDESIGNATED AS 28 CFR Part 200]

28 CFR—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 200—ALIEN TERRORIST REMOVAL PROCEDURES

66. 8 CFR part 507 is transferred to 28 CFR chapter I and redesignated as part 200, consisting of § 200.1.

66a. The authority citation for part 200 continues to read as follows:

Authority: Pub. L. 105–277, 112 Stat. 2681.

Dated: February 26, 2003.

John Ashcroft,
Attorney General.

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