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## DEPARTMENT OF JUSTICE

### 8 CFR Parts 1003 and 1240

[Docket No. EOIR 125F; AG Order No. 2907–2007]

RIN 1125–AA27

#### Authorities Delegated to the Director of the Executive Office for Immigration Review, and the Chief Immigration Judge

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Attorney General's regulations relating to the delegation of authority to the Director of the Executive Office for Immigration Review (EOIR) and the Chief Immigration Judge with respect to the adjudicatory process. These rules are intended to improve the management of EOIR.

**DATES:** This rule is effective October 22, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041; telephone (703) 305–0470.

#### SUPPLEMENTARY INFORMATION:

##### Background

On December 26, 2000, the Department of Justice (Department) published a proposed rule in the **Federal Register** at 65 FR 81434, to revise the Attorney General's delegation of management authority to officials of the Executive Office for Immigration Review (EOIR). Changes proposed by that rule would add specific information to 8 CFR on the organization of EOIR and outline the respective authorities of EOIR's Director, the Chairman of the

Board of Immigration Appeals, and the Chief Immigration Judge.

On November 25, 2002, the President signed into law the Homeland Security Act of 2002 (HSA) creating the new Department of Homeland Security (DHS) and transferring the functions of the former Immigration and Naturalization Service (INS) to the DHS. Pub. L. 107–296, tit. IV, subtit. D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002) (effective March 1, 2003). The Attorney General retains the functions of the EOIR in the Department of Justice. HSA § 1101, 6 U.S.C. 521; section 103(g) of the Immigration and Nationality Act (INA, or the Act), 8 U.S.C. 1103(g). In order to implement the transfer of functions under the HSA, the Attorney General reorganized title 8 of the Code of Federal Regulations and divided the regulations into chapters, so that chapter I contains regulations relating to the functions of the former INS (now DHS) and chapter V contains regulations relating to the functions of EOIR. 68 FR 9824 (Feb. 28, 2003); *see also* 68 FR 10349 (March 5, 2003). The regulations governing proceedings before EOIR are now contained in 8 CFR chapter V, beginning with part 1001.

Portions of the proposed rule relating to the organization of the Board of Immigration Appeals (Board) and the powers delegated to the Chairman of the Board have already been incorporated into a separate final rule published by the Department on August 26, 2002, entitled *Board of Immigration Appeals: Procedural Reforms To Improve Case Management*, 67 FR 54878 (Aug. 26, 2002) (now codified at 8 CFR 1003.1). The Department does not make any further changes in this rule to the powers of the Chairman or the organization of the Board.

With respect to the remaining provisions of the proposed rule relating to the organization of EOIR and the authority of the Director, the Chief Immigration Judge, and the General Counsel, this rule finalizes the provisions as proposed in that rule as final without substantial change, but makes necessary modifications to that rule to include technical changes to reflect the enactment of the HSA, including the reorganization and renumbering of 8 CFR. In addition, as discussed further below, the Department is adding additional management directives flowing from the Attorney

General's 2006 review of improving the workings of the immigration hearing process before the immigration judges and the Board.

#### Public Comments

The Department allowed a 60-day public comment period on the proposed rule that ended on February 26, 2001. The Department received comments from three members of the public on the proposed rule.

A few of the comments discussed sections which pertained to the Board. As mentioned above, the Department has already published a regulation relating to the organization of the Board and the powers delegated to the Chairman of the Board, and comments relating to the Board were fully discussed in that separate final rule, with one exception discussed here.

One commenter objected to the proposed redesignation of the members of the Board to be known as appellate immigration judges, citing possible confusion by the public. The Department has decided not to make this change and withdraws that portion of the proposed rule. The Act provides that immigration proceedings are conducted by officials known as immigration judges, but the Act also states clearly that these officials are Department of Justice attorneys who are designated by the Attorney General to conduct such proceedings, and they are subject to the Attorney General's direction and control. *See* section 101(b)(4) of the INA (8 U.S.C. 1101(b)(4)). However, there do appear to have been at least some instances of apparent confusion over time among some observers regarding the role and status of the immigration judges. Similarly, the members of the Board are Department of Justice attorneys who serve as the Attorney General's delegates in deciding the cases that come before them. *See* 8 CFR 1003.1(a)(1), (d)(1). In their quasi-judicial roles, the immigration judges and the Board members exercise very important functions, making adjudicatory decisions and exercising discretion on behalf of the Attorney General. However, they are Executive Branch adjudicators and do not serve in purely a judicial capacity. As the Supreme Court has made clear, the immigration adjudication process (and the Board's role in that process) is an

executive function that implicates not only legal and factual issues, but also important immigration policy and foreign relations interests, and the “judiciary is not well positioned to shoulder primary responsibility” for such determinations. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999).<sup>1</sup> The Department has decided not to change the title of the Board members, in order to avoid possible confusion between the key executive functions of the Board and the judicial role of the Federal courts.

The following is a discussion of the remaining comments relating to the organization of EOIR and the authority of the Director and Chief Immigration Judge, and the Department’s response.

All three commenters raised concerns with the provisions that allow the setting of priorities or time frames for the resolution of cases. They expressed concern that an official could direct the outcome of a specific case by setting an unyielding completion goal which would prevent an immigration judge from taking the time necessary to adjudicate a case fairly. On this issue, one commenter believes the rule can be interpreted to abrogate the parties’ right to a full and complete hearing. This commenter would have the rule recognize that only the immigration judge should determine the amount of time necessary to complete a case.

One commenter asks whether the rule is intended (a) To authorize an official to establish time frames for particular types or classes of cases which would be guidelines for the judges to follow, but permit a departure from the guidelines in individual cases when necessary; or (b) to have an official direct a judge to cut short a particular case regardless of the judge’s need to take additional time.

The Department does not believe that the authority to establish time frames and guidelines “directs” the result of the adjudication. Time frames and guidelines are designed to ensure the timely adjudication and conclusion of proceedings, and their use is well-established in immigration procedure. For example, asylum cases have a statutory completion requirement of 180

days, pursuant to section 208(d)(5)(A)(iii) of the INA. A credible fear review by an immigration judge has a statutory completion requirement of 7 days, under section 235(b)(1)(B)(iii)(III) of the Act. In addition, the Board has an established case management system where single Board members dispose of all assigned appeals within 90 days of completion of the record on appeal, or within 180 days after an appeal is assigned to a three-member panel. 8 CFR 1003.1(e)(8)(i). Moreover, individual immigration judges set hearing calendars and prioritize cases. Within each judge’s parameters for calendaring a case, that judge will take the time necessary for the case to be completed. Some cases take less time to complete, some more, and most fall within the estimated times.

Experience has shown that the time frames do not “direct the result” of a particular case, but rather that the guidelines promote timely results. The Department shares the commenters’ concern for due process and fairness in immigration proceedings. Timely adjudications ensure due process and fairness for the aliens in proceedings, as well as for the government and its citizens who have an interest in having cases adjudicated, benefits conferred, and the laws enforced. *See generally Capital Area Immigrants’ Rights Coalition, v. U.S. Dep’t of Justice*, 264 F. Supp. 2d 14 (D.D.C. 2003) (rejecting challenges to the Attorney General’s reform of the Board’s procedures in 2002); see also *Nash, v. Bowen*, 869 F.2d 675, 681 (2d Cir. 1989) (rejecting administrative law judge (ALJ) challenge to efforts by the Social Security Administration (SSA) to improve the quality, timeliness, and efficiency of the ALJ decision making process; “those concerns are more appropriately addressed by Congress or by courts through the usual channels of judicial review in Social Security cases. The bottom line in this case is that it was entirely within the Secretary’s discretion to adopt reasonable administrative measures in order to improve the decision making process.”) (citations omitted).

Another commenter takes issue with § 1003.0(b)(2), which allows the Director to delegate his authority to others. This commenter is specifically concerned with the Director’s ability to delegate his authority to “any other EOIR employee,” arguing that such a delegation is too broad. The Department disagrees with this comment and will maintain the regulation as proposed. EOIR is comprised of three adjudicating components as well as certain administrative components and

functions. These administrative components and programs are managed by assistant directors and other senior level management officials. On occasion, as the Director shall decide, these officials may be in the best position to respond to a particular delegation of the Director’s authority. The Department expects that the Director, who is ultimately responsible for the supervision of EOIR, is best able to delegate his authority and should not be restricted to only a few agency officials.

One commenter objected to the General Counsel’s now being “co-equal” with the Deputy Director. The commenter expresses concern that the General Counsel is on “an equal managerial basis with its second in command.” The Department directs the reader to § 1003.0(d) and (e). The language is clear that the Deputy Director “shall advise and assist . . . in the management of EOIR,” while the General Counsel, serving as chief legal counsel of EOIR, “shall provide legal advice and assistance to the Director [and] Deputy Director”. The Department believes the language delineates the distinction in duties and responsibilities appropriately.

Finally, one commenter proposed a change to the definition of immigration court in § 1003.9(d) arguing that the definition was inaccurate and that the term “local sites” should be changed to “hearing location.” Currently, there are 54 immigration courts nationwide that create or maintain records of proceedings and serve as locations where proceedings are held before immigration judges. There are also other hearing locations in detail cities or other hearing sites such as correctional facilities where immigration hearings are held before an immigration judge. These other hearing locations are all serviced by an administrative control immigration court and do not serve as locations where documents and correspondence pertaining to a record of proceeding can be filed. Therefore these facilities do not meet the definition of “immigration court” even though hearings can be held at locations that are designated by the Office of the Chief Immigration Judge for administrative and public convenience. As the commenter correctly pointed out, state detention facilities, where hearings are held before an immigration judge, would not meet the definition of “immigration court” since these facilities do not create or maintain records of proceedings. The Department will therefore maintain the definition of immigration court as proposed in order to avoid any confusion with other

<sup>1</sup> As the Attorney General’s delegate, the Board issues precedential decisions which have been accorded appropriate deference under the Supreme Court’s decisions in *Chevron v. NRDC*, 467 U.S. 837 (1984) (deference due agency interpretation of statutes within delegated authority); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 425 (1999) (Attorney General, and hence the Board, accorded Chevron deference); and *INS v. Cardoza-Fonseca*, 480 U.S. 421, 448–49 (1987) (same), as administrative interpretations of the Act. Chevron deference is appropriate because the Board is interpreting the Act on behalf of the Attorney General. *See also Gonzales v. Thomas*, 126 S. Ct. 1613 (2006).

hearing locations where documents and correspondence pertaining to records of proceedings are not accepted.

### The Attorney General's Management Review of the Immigration Hearing Process

On January 9, 2006, the Attorney General directed a comprehensive review of the Immigration Courts and the Board of Immigration Appeals. This review was undertaken in response to concerns about the quality of decisions being issued by the immigration judges and the Board and about reports of intemperate behavior by some immigration judges. The Deputy Attorney General and the Associate Attorney General assembled a review team, which over the course of several months conducted hundreds of interviews, administered an online survey, and analyzed thousands of documents to assess the EOIR adjudicative process.

On August 9, 2006, the Attorney General announced that the review was complete, and he directed that a series of measures be taken to improve adjudications by the immigration judges and the Board. EOIR has already been implementing most of those initiatives through administrative and management actions, although several of the initiatives require changes to the existing regulations and are being implemented through separate rulemaking actions.

The following discussion reviews some of the internal management initiatives arising from the Attorney General's review. Although all of the following changes are being implemented through internal management changes within EOIR, this final rule has been revised to include a brief summary of these key initiatives as being among the Director's specific responsibilities, as a permanent reflection of these changes which will continue to be implemented over time.

Among the Attorney General's key priorities was to improve the existing processes for dealing with fraud and abuse in the immigration process. One administrative step to further this goal is the appointment of an anti-fraud officer in EOIR who will be in a position to respond to concerns about instances of fraud arising in some of the hundreds of thousands of cases being adjudicated each year by the immigration judges and the Board, providing for a single point of contact for coordination (both within EOIR and in communications with other interested agencies). U.S. Citizenship and Immigration Services (USCIS), a component of DHS, has established an Office of Fraud Detection and National

Security with specific responsibility for identifying instances of fraud among the applications for immigration benefits filed with USCIS, and U.S. Immigration and Customs Enforcement (ICE) has ongoing enforcement efforts against aliens who have submitted fraudulent documents or who seek immigration benefits by fraud or misrepresentation. The United States Attorneys have also successfully prosecuted, or obtained indictments against, numerous individuals and rings that have engaged in widespread immigration fraud (in some cases involving hundreds of instances of fraud in separate cases perpetrated by the same conspirators). Although the immigration judges and the Board are authorized to respond to such fraud on a case-by-case basis,<sup>2</sup> there is also a need for a more systematic response to identified instances of fraud, particularly where there are indications of wide-scale organized efforts to engage in immigration fraud. This final rule has been revised to include a new provision for the General Counsel of EOIR to designate an anti-fraud officer to serve as a point of contact and coordination with respect to instances of fraud arising in administrative proceedings before EOIR.

The final rule also includes new general provisions relating to training, support, and review of the quality of the adjudicatory process, reflecting several of the directives contained in the Attorney General's memorandum of August 9, 2006. Among the Attorney General's other specific directives in the August 9 memorandum were:

- #1—Performance appraisals for immigration judges and Board members
- #2—Evaluation of newly-appointed immigration judges and Board members within 2 years
- #3—Examination in immigration law for newly-appointed immigration judges and Board members
- #4—Improved training for immigration judges and Board members
- #5—Improved training and guidance for EOIR staff
- #6—Improved on-bench reference materials and decision templates

<sup>2</sup> See, e.g., *Ye v. U.S. Dep't of Justice*, 489 F.3d 517 (2d Cir. 2007) (upholding adverse credibility finding where the immigration judge noted 23 striking similarities in form and substance between an alien's asylum affidavit and another applicant's affidavit submitted in a separate asylum case, advised the alien of his concern about the similarities, arranged for DHS to provide her with a redacted copy of the affidavit submitted in the other case, gave the alien several opportunities to address the similarities and provide any innocent explanation, and the alien failed to respond to the immigration judge's concerns).

- #7—Mechanisms to detect poor conduct and quality
- #11—Complaint procedures

In order to summarize and reflect these new initiatives, for the information of participants in immigration proceedings and the general public, this final rule adds several brief new paragraphs to the existing description of the duties of the Director of EOIR in 8 CFR 1003.0(b)(1), as follows:

- Adding a new para (v) to "Provide for performance appraisals for immigration judges and Board members while fully respecting their roles as adjudicators, including a process for reporting adjudications that reflect temperament problems or poor decisional quality" (with respect to Attorney General directives #1 and #7)
- Adding a new para (vi) to "Administer an examination for newly-appointed immigration judges and Board members with respect to their familiarity with key principles of immigration law before they begin to adjudicate matters, and evaluate the temperament and skills of each new immigration judge or Board member within 2 years of appointment" (with respect to Attorney General directives #2 and #3)
- Adding a new para (vii) to "Provide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality and consistency of adjudications" (with respect to Attorney General directives #4, #5, and #6)
- Adding a new para (viii) to "Implement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators" (with respect to Attorney General directive #11)

### Regulatory Requirements

#### Administrative Procedure Act

The provisions of this rule, in general, finalize without substantive change a proposed rule previously published for public notice and comment.

This final rule also incorporates certain management directives relating to the appointment of an anti-fraud officer, and new general provisions relating to training, support, and review of the quality of the adjudicatory process, reflecting several of the directives contained in the Attorney General's memorandum of August 9, 2006. All of these changes are a matter of agency organization, management, or personnel and do not require prior

notice and comment, and accordingly they are being included in this final rule relating to EOIR. See 5 U.S.C. 553(a)(2) (exempting "a matter relating to agency management or personnel"); Id. § 553(b)(A) (exempting "rules of agency organization, procedure, or practice").

#### *Regulatory Flexibility Act*

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and, by approving it, certifies that it will affect only Department employees, individuals in immigration proceedings before the EOIR, and practitioners who appear before EOIR. Therefore, this rule will not have a significant economic impact on a substantial number of small entities.

#### *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. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 § 3(d)(3) and, therefore, is not a "regulation" or "rule" as defined

by this Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

#### *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.

#### *Congressional Review Act*

This action pertains to agency management, personnel and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

#### **List of Subjects**

##### *8 CFR Part 1003*

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

##### *8 CFR Part 1240*

Administrative practice and procedure and Aliens.

■ Accordingly, parts 1003 and 1240 of chapter V of title 8 of the Code of Federal Regulations are amended as follows:

#### **PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

■ 1. The authority citation for 8 CFR part 1003 continues to read as follows:

**Authority:** 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, 111 Stat. 2196-200; sections 1506 and 1510 of Pub. L. 106-386, 114 Stat. 1527-29, 1531-32; section 1505 of Pub. L. 106-554, 114 Stat. 2763A-326 to -328.

■ 2. Revise § 1003.0 to read as follows:

#### **§ 1003.0 Executive Office for Immigration Review.**

(a) *Organization.* Within the Department of Justice, there shall be an Executive Office for Immigration Review (EOIR), headed by a Director who is appointed by the Attorney General. The Director shall be assisted by a Deputy Director and by a General Counsel. EOIR shall include the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and such other staff as the Attorney General or Director may provide.

(b) *Powers of the Director.*— (1) *In general.* The Director shall manage EOIR and its employees and shall be responsible for the direction and supervision of the Board, the Office of the Chief Immigration Judge, and the Office of the Chief Administrative Hearing Officer in the execution of their respective duties pursuant to the Act and the provisions of this chapter. Unless otherwise provided by the Attorney General, the Director shall report to the Deputy Attorney General and the Attorney General. The Director shall have the authority to:

(i) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(ii) Direct the conduct of all EOIR employees to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases; to direct that the adjudication of certain cases be deferred; to regulate the assignment of adjudicators to cases; and otherwise to manage the docket of matters to be decided by the Board, the immigration judges, the Chief Administrative Hearing Officer, or the administrative law judges;

(iii) Provide for appropriate administrative coordination with the other components of the Department of Justice, with the Department of Homeland Security, and with the Department of State;

(iv) Evaluate the performance of the Board of Immigration Appeals, the Office of the Chief Immigration Judge, the Office of the Chief Administrative Hearing Officer, and other EOIR activities, make appropriate reports and inspections, and take corrective action where needed;

(v) Provide for performance appraisals for immigration judges and Board members while fully respecting their

roles as adjudicators, including a process for reporting adjudications that reflect temperament problems or poor decisional quality;

(vi) Administer an examination for newly-appointed immigration judges and Board members with respect to their familiarity with key principles of immigration law before they begin to adjudicate matters, and evaluate the temperament and skills of each new immigration judge or Board member within 2 years of appointment;

(vii) Provide for comprehensive, continuing training and support for Board members, immigration judges, and EOIR staff in order to promote the quality and consistency of adjudications;

(viii) Implement a process for receiving, evaluating, and responding to complaints of inappropriate conduct by EOIR adjudicators; and

(ix) Exercise such other authorities as the Attorney General may provide.

(2) *Delegations.* The Director may delegate the authority given to him by this part or by the Attorney General to the Deputy Director, the General Counsel, the Chairman of the Board of Immigration Appeals, the Chief Immigration Judge, the Chief Administrative Hearing Officer, or any other EOIR employee.

(c) *Limit on the Authority of the Director.* The Director shall have no authority to adjudicate cases arising under the Act or regulations and shall not direct the result of an adjudication assigned to the Board, an immigration judge, the Chief Administrative Hearing Officer, or an Administrative Law Judge; provided, however, that nothing in this part shall be construed to limit the authority of the Director under paragraph (b) of this section.

(d) *Deputy Director.* The Deputy Director shall advise and assist the Director in the management of EOIR and the formulation of policy and guidelines. Unless otherwise limited by law or by order of the Director, the Deputy Director shall exercise the full authority of the Director in the discharge of his or her duties.

(e) *General Counsel.* Subject to the supervision of the Director, the General Counsel shall serve as the chief legal counsel of EOIR. The General Counsel shall provide legal advice and assistance to the Director, Deputy Director, and heads of the components within EOIR, and shall supervise all legal activities of EOIR not related to adjudications arising under the Act or this chapter.

(1) *Professional standards.* The General Counsel shall administer programs to protect the integrity of immigration proceedings before EOIR,

including administering the disciplinary program for attorneys and accredited representatives under subpart G of this part.

(2) *Fraud issues.* The General Counsel shall designate an anti-fraud officer who shall—

(i) Serve as a point of contact relating to concerns about possible fraud upon EOIR, particularly with respect to matters relating to fraudulent applications or documents affecting multiple removal proceedings, applications for relief from removal, appeals, or other proceedings before EOIR;

(ii) Coordinate with investigative authorities of the Department of Homeland Security, the Department of Justice, and other appropriate agencies with respect to the identification of and response to such fraud; and

(iii) Notify the EOIR disciplinary counsel and other appropriate authorities with respect to instances of fraud, misrepresentation, or abuse pertaining to an attorney or accredited representative.

(f) *Citizenship Requirement for Employment.* (1) An application to work at EOIR, either as an employee or a volunteer, must include a signed affirmation from the applicant that he or she is a citizen of the United States of America. If requested, the applicant must document United States citizenship.

(2) The Director of EOIR may, by explicit written determination and to the extent permitted by law, authorize the appointment of an alien to an EOIR position when necessary to accomplish the work of EOIR.

#### **Subpart B—Office of the Chief Immigration Judge**

■ 3. Revise the heading of Subpart B to read as set forth above.

■ 4. Revise § 1003.9 to read as follows:

##### **§ 1003.9 Office of the Chief Immigration Judge.**

(a) *Organization.* Within the Executive Office for Immigration Review, there shall be an Office of the Chief Immigration Judge (OCIJ), consisting of the Chief Immigration Judge, the immigration judges, and such other staff as the Director deems necessary. The Attorney General shall appoint the Chief Immigration Judge. The Director may designate immigration judges to serve as Deputy and Assistant Chief Immigration Judges as may be necessary to assist the Chief Immigration Judge in the management of the OCIJ.

(b) *Powers of the Chief Immigration Judge.* Subject to the supervision of the

Director, the Chief Immigration Judge shall be responsible for the supervision, direction, and scheduling of the immigration judges in the conduct of the hearings and duties assigned to them. The Chief Immigration Judge shall have the authority to:

(1) Issue operational instructions and policy, including procedural instructions regarding the implementation of new statutory or regulatory authorities;

(2) Provide for appropriate training of the immigration judges and other OCIJ staff on the conduct of their powers and duties;

(3) Direct the conduct of all employees assigned to OCIJ to ensure the efficient disposition of all pending cases, including the power, in his discretion, to set priorities or time frames for the resolution of cases, to direct that the adjudication of certain cases be deferred, to regulate the assignment of immigration judges to cases, and otherwise to manage the docket of matters to be decided by the immigration judges;

(4) Evaluate the performance of the Immigration Courts and other OCIJ activities by making appropriate reports and inspections, and take corrective action where needed;

(5) Adjudicate cases as an immigration judge; and

(6) Exercise such other authorities as the Director may provide.

(c) *Limit on the Authority of the Chief Immigration Judge.* The Chief Immigration Judge shall have no authority to direct the result of an adjudication assigned to another immigration judge, provided, however, that nothing in this part shall be construed to limit the authority of the Chief Immigration Judge in paragraph (b) of this section.

(d) *Immigration Court.* The term Immigration Court shall refer to the local sites of the OCIJ where proceedings are held before immigration judges and where the records of those proceedings are created and maintained.

■ 5. Revise § 1003.10 to read as follows:

##### **§ 1003.10 Immigration judges.**

(a) *Appointment.* The immigration judges are attorneys whom the Attorney General appoints as administrative judges within the Office of the Chief Immigration Judge to conduct specified classes of proceedings, including hearings under section 240 of the Act. Immigration judges shall act as the Attorney General's delegates in the cases that come before them.

(b) *Powers and duties.* In conducting hearings under section 240 of the Act and such other proceedings the

Attorney General may assign to them, immigration judges shall exercise the powers and duties delegated to them by the Act and by the Attorney General through regulation. In deciding the individual cases before them, and subject to the applicable governing standards, immigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases. Immigration judges shall administer oaths, receive evidence, and interrogate, examine, and cross-examine aliens and any witnesses. Subject to §§ 1003.35 and 1287.4 of this chapter, they may issue administrative subpoenas for the attendance of witnesses and the presentation of evidence. In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations.

(c) *Review.* Decisions of immigration judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction as provided in 8 CFR 1003.1.

(d) *Governing standards.* Immigration judges shall be governed by the provisions and limitations prescribed by the Act and this chapter, by the decisions of the Board, and by the Attorney General (through review of a decision of the Board, by written order, or by determination and ruling pursuant to section 103 of the Act).

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

■ 6. The authority citation for 8 CFR 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.

### Subpart A—Removal Proceedings

#### § 1240.1 [Amended]

■ 7. Amend § 1240.1 by removing the first and second sentences of paragraph (a)(2).

Dated: September 12, 2007.

**Alberto R. Gonzales,**

*Attorney General.*

[FR Doc. E7–18526 Filed 9–19–07; 8:45 am]

BILLING CODE 4410–30–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 43

[Docket No. FAA–2007–28631; Amendment No. 43–41]

RIN 2120–AJ11

#### Recording of Major Repairs and Major Alterations

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends instructions to aviation maintenance providers regarding submittal of FAA Form 337, Major Repair and Alteration, for either major repair or major alteration; or for extended-range fuel tanks installed within the passenger compartment or a baggage compartment. This change clarifies the mailing instructions when submitting Form 337 to the FAA. The intent of this action is to amend the regulation to ensure mailing requirements are clear and accurate.

**DATES:** This amendment becomes effective September 20, 2007.

**FOR FURTHER INFORMATION CONTACT:** Kim Barnette, Aircraft Maintenance Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202–493–4922); facsimile: (202–267–5115); e-mail: [kim.a.barnette@faa.gov](mailto:kim.a.barnette@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

The FAA is issuing this rulemaking under the authority set forth in 49 U.S.C. 44701(a)(5). This regulation is within the scope of that authority because the Administrator is charged with promoting safe flight of civil aircraft by, among other things, prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

##### Background

On September 9, 1987, the FAA published a final rule entitled "Aircraft Identification and Retention of Fuel System Modification Records," (52 FR

34096). Among other changes, this rule amended part 43, Appendix B, by revising the introductory text of paragraph (a) and adding a new paragraph (d). This rule provided instructions so major alterations for fuel tanks and system modifications would be segregated from other major repairs and alterations.

The new paragraph (d) provided instructions for disposition of the Form 337, Major Repair and Alteration, whenever extended-range fuel tanks are installed within the passenger compartment or a baggage compartment. As part of those instructions, paragraph (c)(2) of Appendix B is referenced for distribution of Form 337.

The FAA has found that since adding paragraph (d), there has been a decline in Form 337s received for extended-range fuel tanks. Review of part 43, Appendix B revealed a wrong address. As currently written, paragraph (c)(2) directs individuals to send a copy of Form 337 to an incorrect address. Any FAA Form 337 that describes a modification to an aircraft fuel system or that shows additional tanks installed, should be mailed to the FAA, Aircraft Registration Branch, AFS–751, P.O. Box 25724, Oklahoma City, OK. All other FAA Form 337s should be mailed to the FAA, Aircraft Registration Branch, AFS–750, P.O. Box 25504, Oklahoma City, OK.

The change in this final rule will clarify and correct the mailing instructions and does not affect any other requirements in part 43.

##### Reason for Final Rule

This final rule amends the mailing instructions for FAA Form 337 in part 43, Appendix B, paragraphs (c) and (d). The change will allow submission of FAA Form 337 to the correct address. The intent of this action is to amend the regulation to ensure that instructions for submitting this form are clear and accurate.

##### Justification for Immediate Adoption

Because the circumstances described herein warrant immediate action, the Administrator finds that notice and public comment under 5 U.S.C. 553(b) is impracticable and contrary to the public interest. Further, the Administrator finds that good cause exists under 5 U.S.C. 553(d) for making this rule effective in less than 30 days after publication in the **Federal Register**. The amendment ensures FAA's commitment to the Anti Drug Abuse Act of 1988, Subtitle E, FAA Drug Enforcement Assistance Act of 1988.