

# Rules and Regulations

Federal Register

Vol. 77, No. 9

Friday, January 13, 2012

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

#### 8 CFR Parts 1003 and 1292

[EOIR Docket No. 174; A.G. Order No 3317–2012]

RIN 1125–AA66

#### Reorganization of Regulations on the Adjudication of Department of Homeland Security Practitioner Disciplinary Cases

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Department of Justice is amending its regulations governing the discipline of immigration practitioners as follows. First, the Department is removing unnecessary regulations and adding appropriate references to applicable regulations of the Department of Homeland Security (DHS). Second, the Department is making technical amendments to the Executive Office for Immigration Review's (EOIR) practitioner disciplinary regulations and clarifying the Department of Justice's final rule on Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, which became effective on January 20, 2009.

**DATES:** *Effective date:* This rule is effective January 13, 2012.

*Comment date:* Comments on this rule must be received by February 13, 2012.

**ADDRESSES:** Comments may be mailed to Robin M. Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. To ensure proper handling, please reference EOIR

Docket No. 174 on your correspondence. You may submit comments electronically or view an electronic version of this interim rule at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Robin M. Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470 (not a toll-free call).

#### SUPPLEMENTARY INFORMATION:

##### I. Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at [www.regulations.gov](http://www.regulations.gov). Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on [www.regulations.gov](http://www.regulations.gov).

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER**

**INFORMATION CONTACT** paragraph above for agency counsel's contact information.

## II. Regulatory Background

The Attorney General created the Executive Office for Immigration Review in 1983 to combine the functions performed by special inquiry officers (now immigration judges) and the Board of Immigration Appeals (Board) into a single administrative agency within the Department of Justice (Department), separate from the former Immigration and Naturalization Service (INS). 48 FR 8038 (Feb. 25, 1983). This administrative structure separated the adjudication functions from the enforcement and service functions of INS, both for efficiency and to foster independent judgment in adjudication. Because both INS and EOIR were agencies within the Department at that time, the regulations affecting these agencies were included in the same chapter (chapter I) of title 8 of the Code of Federal Regulations. Most of the immigration regulations were organized by subject, which often resulted in provisions relating to INS and EOIR being intermingled in the same parts and sections, including the authority of INS and EOIR to discipline private immigration practitioners who appeared before either or both of those agencies.

Prior to the creation of EOIR in 1983, the Department promulgated regulations at 8 CFR 292.3 that created a unified disciplinary system for attorneys and representatives who practiced before the Board and INS. 23 FR 2670, 2672–73 (April 23, 1958). Under the original system, INS officers investigated and prosecuted practitioners who allegedly committed misconduct before the Board or INS, and INS appointed special inquiry officers to hold disciplinary hearings. The Board reviewed special inquiry officer disciplinary decisions before they could become effective. After EOIR's creation, INS continued to be responsible for all investigative and prosecutorial functions related to allegations of practitioner misconduct occurring before EOIR and INS; however, EOIR's immigration judges, rather than INS officers, were tasked with holding disciplinary hearings. 52 FR 24980 (July 2, 1987).

In 2000, the Department promulgated regulations that retained INS's authority to investigate and prosecute practitioner

misconduct occurring before INS; however, EOIR became responsible for investigating and prosecuting practitioners who committed misconduct while practicing before EOIR. 65 FR 39513 (June 27, 2000). The newly revised and expanded practitioner disciplinary regulations for EOIR were established at 8 CFR 3.101 to 3.109. At the same time, the Department amended 8 CFR 292.3 to make many of the new provisions in EOIR's regulations applicable to INS's disciplinary proceedings. *Id.* The two sets of rules established nearly identical grounds for discipline and a unified process for disciplinary proceedings. Finally, the two sets of rules provided for cross-discipline, allowing EOIR to request that any discipline imposed against a practitioner for misconduct before INS also be imposed with respect to that practitioner's ability to represent clients before EOIR, and vice versa. See 8 CFR 3.105(b) (EOIR) and 292.3(e)(2) (INS) (2001).

The Homeland Security Act of 2002, as amended (HSA), transferred the functions of the former INS to the Department of Homeland Security. Public Law 107-296, tit. IV, subtit., D, E, F, 116 Stat. 2135, 2192 (Nov. 25, 2002), as amended. The HSA, however, retained the functions of EOIR within the Department, under the direction of the Attorney General. 6 U.S.C. 521; 8 U.S.C. 1103(g); see generally Matter of D—J—, 23 I&N Dec. 572 (A.G. 2003).

The enactment of the HSA and its transfer of functions of the former INS to DHS required the creation of a new chapter for the regulations pertaining to EOIR, separate from the DHS regulations. Accordingly, the Attorney General published a rule transferring certain provisions that related to the jurisdiction and procedures of EOIR to a new chapter V of 8 CFR. 68 FR 9824 (Feb. 28, 2003). When the transfer of authority from the former INS to DHS took place on March 1, 2003, the time available before the transfer did not permit a thorough review of each of the provisions of the regulations where EOIR's and the former INS's responsibilities appeared in the same sections. As a result, the Department's rule duplicated in chapter V certain parts and sections of the regulations that related to the responsibilities of both the former INS and EOIR, respectively. The rule also made a number of technical amendments to chapters I and V to ensure that the authorities existing in the former INS and EOIR regulations prior to the transfer of functions to DHS remained in effect.

As discussed above, before this transfer of authority, the Department

had created a unified immigration practitioner disciplinary system in which EOIR adjudicated all disciplinary cases involving immigration practitioners, regardless of whether EOIR or INS initiated proceedings. It was for this reason and out of an abundance of caution that, in 2003, the Attorney General duplicated § 292.3, found in chapter I of title 8, into a new § 1292.3, located in chapter V. 68 FR at 9845. At the same time, the EOIR disciplinary rules in 8 CFR part 3, subpart G, beginning with § 3.101, were transferred to part 1003, subpart G. *Id.* at 9830–31. The Department intended to address over time the regulatory overlaps resulting from the 2003 rule by eliminating or substantially reducing any duplicative parts and sections that intermingled EOIR's and the former INS's authority. *Id.* at 9825.

### III. Rationale for This Rule

In 2008, the Department published proposed amendments to the regulations at 8 CFR parts 1001, 1003, and 1292. 73 FR 44178 (July 30, 2008). The proposed changes included adding or amending several grounds for discipline and creating a new procedure by which the Board could issue final orders in cases brought under the summary disciplinary procedures. *Id.* at 44186–44188. However, this “rule [did] not make any changes to the DHS regulations governing representation and appearances or professional conduct.” *Id.* at 44179. Following receipt and review of public comments, the Department published an amended final rule that became effective on January 20, 2009. 73 FR 76914 (Dec. 18, 2008).<sup>1</sup>

DHS has published an interim rule, 75 FR 5225 (Feb. 2, 2010), that modifies § 292.3, in part to conform with the Department's revised disciplinary regulations at §§ 1003.101 to 1003.108.

Therefore, § 292.3 of the Department's regulations, which is no longer identical to § 292.3 of the DHS regulations, should not remain in its current form because the Department's regulations concerning DHS's disciplinary cases should not be worded differently than DHS's regulations on that subject. Based on a review of § 292.3 and EOIR's experience acquired since the transfer of the former INS's authority to DHS, it is apparent that most of the duplicative provisions in § 292.3 pertain to matters that are the responsibility of DHS, and, to some

extent, they overlap with the provisions relating to disciplinary proceedings already codified in 8 CFR 1003.103, 1003.105 and 1003.106. Further, duplication of the majority of § 292.3 is not only unnecessary but potentially confusing. Accordingly, there is no reason for the Department to retain the current § 292.3 or reproduce the modified version of § 292.3 in the Department's regulations.

For these reasons, the Department is removing § 292.3, and is replacing it with cross references to the applicable disciplinary provisions in 8 CFR part 1003, subpart G, and the corresponding DHS provision, 8 CFR 292.3.

Although the Department is removing the existing text of § 292.3, it is transferring certain aspects of § 292.3 by adding new text at 8 CFR 1003.103 and 1003.105, as described below. One critical aspect of § 292.3 that the Department will retain in part 1003 is the regulatory authority to adjudicate DHS disciplinary cases. 8 CFR 1292.3(a). Indeed, DHS's revised version of § 292.3 provides that DHS disciplinary cases will be adjudicated by EOIR under EOIR's disciplinary regulations in 8 CFR part 1003. 75 FR at 5228–30. Further, the Department's regulations must reflect that EOIR may issue suspension and expulsion orders in DHS cases that also similarly restrict those practitioners from practice before EOIR. 8 CFR 1292.3(a)(1)(i)–(ii); see also *id.* at 1292.3(c). Rather than retain these two aspects of § 292.3 for two brief provisions concerning practitioner disciplinary cases, the Department is transferring the relevant text to EOIR's disciplinary regulations in part 1003.

The new language being added in part 1003 is not an exact duplicate of any provision now existing in § 292.3, but is based in part on language currently found in § 292.3(c) and (e). The new language states that DHS may file with the Board petitions for immediate suspension before DHS, and Notices of Intent to Discipline. The new language also provides for the EOIR disciplinary counsel, who investigates alleged misconduct and initiates formal disciplinary proceedings, to request that EOIR make any disciplinary order issued in a DHS-initiated disciplinary case applicable to the practitioner's right to practice before EOIR. Finally, it also provides for DHS to request that EOIR make any disciplinary order in an EOIR-initiated disciplinary case applicable to the practitioner's right to practice before DHS.

In addition, this rule revises some of the existing language of § 1003.105(d)(2) to refer to “counsel for the government” rather than “EOIR disciplinary counsel”

<sup>1</sup> The final rule also included technical changes to 8 CFR 1003.101–108, as well as an additional substantive change to 8 CFR 1003.102, that were not included in the proposed rule. 73 FR 76918, 76921–22, 76923–27.

so as to make clear that this language applies whether the disciplinary proceedings are initiated by EOIR or by DHS. In the recent amendments to EOIR's practitioner disciplinary regulations, found at 73 FR 76914, the Department used the term "counsel for the government" to indicate either the EOIR or DHS attorney who is prosecuting a disciplinary case. This rule expands the use of the term "counsel for the government" rather than "EOIR disciplinary counsel" in § 1003.105(d)(2), in light of the removal of the text of section 1292.3.

#### IV. Effect

This rule does not result in a substantive change and does not alter the interpretation of any of the Department's regulations or affect the legal rights of any person. The changes reflected here are to bring the Department's regulations into conformity with DHS's regulations and to remove most of an unnecessary, duplicative regulation. The removal of entirely duplicative provisions in § 1292.3 does not alter the legal status quo.

This rule does not affect 8 CFR 292.3, the corresponding rule for practice before DHS. The substantive and procedural regulations in § 292.3 are within DHS's authority to promulgate and revise, whereas the regulatory provisions that go to the powers, procedures, and authority of EOIR's adjudicators and the EOIR disciplinary counsel are within the Attorney General's exclusive authority.

#### V. Technical Amendments and Clarifications to the Regulations

This rule also includes two technical amendments and a clarification of EOIR's practitioner disciplinary regulations.

In 8 CFR 1003.101(a)(1) and 1003.107(b), the terms "expulsion" and "expelled" are being changed to "disbarment" and "disbarred," respectively. The reason for this change is to conform the terminology in the regulations to section 240(b)(6)(C) of the INA, 8 U.S.C. 1229a(b)(6)(C), which indicates that the Attorney General may impose appropriate sanctions on attorneys, including disbarment. The terms "disbarment" and "disbarred" will have the same meaning and effect that the terms "expulsion" and "expelled" presently have, and any practitioner who is presently under an order of expulsion will have the same rights and obligations as he or she had before the terminology was changed in the regulations.

The Department is also revising 8 CFR 1003.106(a)(1). Section 1003.106(a)(1) currently provides the Board with narrow authority to retain jurisdiction and issue a final order for cases in summary disciplinary proceedings if a practitioner's answer to a Notice of Intent to Discipline, see 8 CFR 1003.105, fails to make a prima facie showing that there is a material issue of fact in dispute. A practitioner is subject to summary disciplinary proceedings if, among other grounds, he or she is found guilty of or pleaded guilty or nolo contendere to a serious crime; is disbarred or suspended by the highest court of a state or a Federal court; or resigns from practicing before these tribunals pending a disciplinary investigation or proceeding. 8 CFR 1003.103. Therefore, these practitioners have already received or had the opportunity to receive a trial or hearing in another forum, and a summary adjudication by the Board is appropriate. However, in a case involving an original charge of misconduct, i.e., misconduct arising from practice before the Department or DHS, the practitioner is not subject to summary disciplinary proceedings. A case involving an original charge of misconduct must be adjudicated by a finder of fact once the practitioner has filed a timely answer to the Notice of Intent to Discipline, regardless of whether the practitioner has made a prima facie showing that there is a material issue of fact in dispute. See 8 CFR 1003.105(c) and 1003.106(a).

This rule revises § 1003.106(a)(1) to clarify the procedures in summary disciplinary cases in two respects. First, this rule clarifies that a case in summary disciplinary proceedings is referred to an adjudicator if the practitioner, in a timely answer to the Notice of Intent to Discipline, makes a prima facie showing that there is a material issue of fact in dispute, regardless of whether the practitioner also requests a hearing. Second, this rule inserts additional sentences at the end of § 1003.106(a)(1) clarifying that the Board will refer to the Chief Immigration Judge cases not subject to the summary disciplinary proceeding provisions, whenever the practitioner files a timely answer. These revisions do not substantively change the legal rights of practitioners and are only intended to ensure that practitioners who have original charges of misconduct filed against them, and file an answer in response to those charges, receive the process provided under the procedures in § 1003.106 before EOIR issues a final order.

This rule also adds a new § 1003.106(a)(2) making clear that the

adjudication provisions of § 1003.106 do not apply if the Board chooses not to refer disciplinary proceedings to the Chief Immigration Judge pursuant to § 1003.106(a)(1), or if a hearing is precluded as provided in § 1003.105(d). This rule also amends the first sentence of § 1003.106(a)(2)(ii) to delete an unnecessary reference to 8 CFR 1003.105(c)(3).

In 8 CFR 1003.107(a), the words "the Service" are being changed to "DHS." In the recent amendments to EOIR's disciplinary regulations, the Department sought to change all references to the former INS to DHS. 73 FR at 76921–22. The previous final rule failed to make this change to § 1003.107(a).

#### Regulatory Requirements

##### *Administrative Procedure Act*

The Department of Justice finds that good cause exists for adopting this rule as an interim rule with provision for post-promulgation public comment under the Administrative Procedure Act (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 Department's regulations and to reflect the transfer of functions made by the Homeland Security Act of 2002. Similarly, because this interim rule merely makes changes in internal delegations and procedures, and is a recodification of existing regulations, this interim 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 interim rule because there are no new or revised recordkeeping 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.

*Congressional Review Act*

This action pertains to agency organization, procedures, and practices 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.

*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, and accordingly this rule has not been reviewed by the Office of Management and Budget (OMB).

*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 1003*

Administrative practice and procedures, Immigration, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

*8 CFR Part 1292*

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

For the reasons set forth in the preamble, parts 1003 and 1292 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 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. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

**Subpart G—Professional Conduct for Practitioners—Rules And Procedures**

**§ 1003.101 [Amended]**

■ 2. Amend § 1003.101 by removing from paragraph (a)(1) the word “Expulsion” and adding in its place the word “Disbarment”.

■ 3. Amend § 1003.103 by:

- a. Removing the second and third sentences in paragraph (a)(1);
- b. Redesignating paragraph (a)(2) as paragraph (a)(4);
- c. Adding new paragraphs (a)(2) and (3);
- d. Removing from the first sentence of newly redesignated paragraph (a)(4) the words “by the EOIR disciplinary counsel,” and adding in their place the words “pursuant to §§ 1003.103(a)(1) or 1003.103(a)(2)”;
- e. Revising the first sentence of paragraph (b).

The additions and revision read as follows:

**§ 1003.103 Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify EOIR of conviction or discipline.**

(a) \* \* \*

(2) DHS petition. DHS may file a petition with the Board to suspend immediately from practice before DHS any practitioner described in paragraph (a)(1) of this section. See 8 CFR 292.3(c).

(3) Copy of petition. A copy of a petition filed by the EOIR disciplinary counsel shall be forwarded to DHS, which may submit a written request to the Board that entry of any order immediately suspending a practitioner before the Board or the Immigration Courts also apply to the practitioner’s authority to practice before DHS. A copy of a petition filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board that entry of any order immediately suspending a practitioner before DHS also apply to the practitioner’s authority to practice before the Board and Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of an immediate suspension or proposed discipline must be filed with the Board or the adjudicating official.

\* \* \* \* \*

(b) *Summary disciplinary proceedings.* The EOIR disciplinary counsel (or DHS pursuant to 8 CFR 292.3(c)(3)) shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (a) of this section by the issuance of a Notice of Intent to Discipline, upon receipt of a certified copy of the order, judgment, or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a certified copy of such document. \* \* \*

\* \* \* \* \*

■ 4. Amend § 1003.105 by:

- a. Adding paragraph (a)(3);
- b. Revising paragraph (b); and by
- c. Removing from paragraph (d)(2) the words “EOIR disciplinary counsel” from the last sentence and adding in their place “counsel for the government”.

The addition and revision read as follows:

**§ 1003.105 Notice of Intent to Discipline.**

(a) \* \* \*

(3) *DHS Issuance of Notice to practitioner.* DHS may file a Notice of Intent to Discipline with the Board in accordance with 8 CFR 292.3(e).

(b) *Copy of notice; reciprocity of discipline.* A copy of the Notice of Intent to Discipline filed by the EOIR disciplinary counsel shall be forwarded to DHS, which may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner which restricts his or her authority to practice before the Board and the Immigration Courts also apply to the practitioner’s authority to practice before DHS. A copy

of the Notice of Intent to Discipline filed by DHS shall be forwarded to the EOIR disciplinary counsel, who may submit a written request to the Board or the adjudicating official requesting that any discipline imposed upon a practitioner that restricts his or her authority to practice before DHS also apply to the practitioner's authority to practice before the Board and the Immigration Courts. Proof of service on the practitioner of any request to broaden the scope of the proposed discipline must be filed with the adjudicating official.

\* \* \* \* \*

- 5. Amend § 1003.106 by:
- a. Revising paragraph (a)(1);
  - b. Adding paragraph (a)(2) introductory text; and by
  - c. Removing from the first sentence in paragraph (a)(2)(ii) the words "Except as provided in §§ 1003.105(c)(3), upon" and adding in their place "Upon".

The addition and revision read as follows:

**§ 1003.106 Right to be heard and disposition.**

(a) \* \* \*

(1) *Summary disciplinary proceedings.* A practitioner who is subject to summary disciplinary proceedings pursuant to § 1003.103(b) must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in § 1003.103(b)(2)(i) through (iii). If the practitioner files a timely answer and the Board determines that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in § 1003.103(b)(2)(i) through (iii), then the Board shall refer the case to the Chief Immigration Judge for the appointment of an adjudicating official. If the practitioner fails to make such a prima facie showing, the Board shall retain jurisdiction over the case and issue a final order. Notwithstanding the foregoing, the Board shall refer any case to the Chief Immigration Judge for the appointment of an adjudicating official in which the practitioner has filed a timely answer and the case involves a charge or charges that cannot be adjudicated under the summary disciplinary proceedings provisions in § 1003.103(b). The Board shall refer such a case regardless of whether the practitioner has requested a hearing.

(2) *Procedure.* The procedures of paragraphs (b) through (d) of this section apply to cases in which the

practitioner files a timely answer to the Notice of Intent to Discipline, with the exception of cases in which the Board issues a final order pursuant to § 1003.105(d)(2) or § 1003.106(a)(1).

\* \* \* \* \*

**§ 1003.107 [Amended]**

- 6. Amend § 1003.107 by:
  - a. Removing from the section heading the word "expulsion" and adding in its place the word "disbarment".
  - b. Removing from paragraph (a) the words "the Service" and adding in their place the term "DHS";
  - c. Removing from the first sentence of paragraph (b) introductory text the word "expelled" and adding in its place the word "disbarred";
  - d. Removing from the third sentence of paragraph (b) introductory text the word "expelled" and adding in its place the word "disbarred";
  - e. Removing from the second sentence of paragraph (b)(1) the word "expelled" and adding in its place the word "disbarred"; and by
  - f. Removing from the second sentence of paragraph (b)(1) the word "expulsion" and adding in its place the word "disbarment".

**PART 1292—REPRESENTATION AND APPEARANCES**

- 7. The authority citation for part 1292 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1252b, 1362.

- 8. Section 1292.3 is revised to read as follows:

**§ 1292.3 Professional conduct for practitioners—Rules and procedures.**

Attorneys and representatives practicing before the Board, the Immigration Courts, or DHS are subject to the imposition of disciplinary sanctions as provided in 8 CFR part 1003, subpart G, § 1003.101 *et seq.* See also 8 CFR 292.3 (pertaining to practice before DHS).

Dated: January 3, 2012.

**Eric H. Holder, Jr.,**

*Attorney General.*

[FR Doc. 2012-602 Filed 1-12-12; 8:45 am]

**BILLING CODE 4410-30-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 33**

[Docket No. NE130; Special Conditions No. 33-008-SC]

**Special Conditions: Pratt and Whitney Canada Model PW210S Turboshift Engine**

*Correction*

In rule document 2011-14113 appearing on pages 33981-33982 in the issue of Friday, June 10, 2011, make the following correction:

On page 33981, in the first column, in the heading, Special Conditions No. "33-008-SCI" should read "33-008-SC".

[FR Doc. C1-2011-14113 Filed 1-12-12; 8:45 am]

**BILLING CODE 1505-01-D**

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Part 4022**

**Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in February 2012. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

**DATES:** Effective February 1, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Catherine B. Klion  
(*Klion.Catherine@pbgc.gov*), Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, (202) 326-4024. (TTY/TDD users may call the Federal relay service toll-free at 1-(800) 877-8339 and ask to be connected to (202) 326-4024.)

**SUPPLEMENTARY INFORMATION:** PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits