

# Rules and Regulations

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## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

#### 8 CFR Parts 1 and 292

RIN 1601-AA58

[Docket No. DHS-2009-0077]

### Professional Conduct for Practitioners: Rules, Procedures, Representation, and Appearances

**AGENCY:** Office of the Secretary, DHS.

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

**SUMMARY:** The Department of Homeland Security (DHS) is amending its regulations governing representation and appearances by, and professional conduct of, practitioners in immigration practice before its components to: Conform the grounds of discipline and procedures regulations with those promulgated by the Department of Justice (DOJ); clarify who is authorized to represent applicants and petitioners in cases before DHS; remove duplicative rules, procedures, and authority; improve the clarity and uniformity of the existing regulations; make technical and procedural changes; and conform terminology. This rule enhances the integrity of the immigration adjudication process by updating and clarifying the regulation of professional conduct of immigration practitioners who practice before DHS.

**DATES:** *Effective date:* This interim rule is effective March 4, 2010.

*Comments:* Written comments must be submitted on or before March 4, 2010.

**ADDRESSES:** Comments may be submitted, identified by DHS Docket No. DHS-2009-0077, by the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Rachel A. McCarthy, Disciplinary Counsel, Office of the Chief Counsel, U.S. Citizenship and Immigration Services, Department of Homeland Security, 70 Kimball Avenue, Room 103, S. Burlington, VT 05403. To ensure proper handling, please reference DHS Docket No. DHS-2009-0077 on correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* Rachel A. McCarthy, Disciplinary Counsel, Office of the Chief Counsel, U.S. Citizenship and Immigration Services, Department of Homeland Security, 70 Kimball Avenue, Room 103, S. Burlington, VT 05403.

#### FOR FURTHER INFORMATION CONTACT:

Rachel A. McCarthy, Disciplinary Counsel, Office of the Chief Counsel, U.S. Citizenship and Immigration Services, Department of Homeland Security, 70 Kimball Avenue, Room 103, S. Burlington, VT 05403, telephone (802) 660-5043 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

#### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim rule. DHS also invites comments that relate to the economic, environmental, or federalism affects that might result from this rule. Comments that will provide the most assistance to DHS in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

*Instructions:* All submissions received must include the agency name and DHS Docket No. DHS-2009-0077 for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

#### II. Background

DHS regulates immigration practitioners before U.S. Citizenship

and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP). DOJ, through the Executive Office for Immigration Review (EOIR), regulates immigration practitioners before the Board of Immigration Appeals (Board) and the immigration courts. When DHS was established in 2003, DOJ duplicated the regulations on professional conduct for practitioners in the new chapter V in 8 CFR.

DOJ updated its rules on Professional Conduct for Practitioners—Rules of Procedures, and Representation and Appearances. 73 FR 44178 (July 30, 2008) (proposed rule); 73 FR 76914 (Dec. 18, 2008) (final rule). This interim final rule conforms DHS regulations to the DOJ regulations to maintain a unified, consistent practice; clarifies existing regulations; and eliminates references to procedural matters that are solely within the authority of DOJ.

In preparing this interim final rule, DHS reviewed the DOJ proposed rule, the four public comments submitted on the DOJ proposed rule, and the DOJ final rule. DHS is adopting this interim final rule for the reasons stated in the DOJ final rule and also considered its experience in administering the practitioner discipline process.

#### III. Changes Made by This Rule

This interim final rule amends DHS regulations at 8 CFR parts 1 and 292 to:

- Clarify who is authorized to represent applicants and petitioners before USCIS, ICE, and CBP;
- Conform the rules governing the authority of DHS to investigate complaints;
- Conform disciplinary charges against practitioners who appear before DHS with the regulations promulgated by DOJ;
- Improve the clarity and uniformity of the existing rules; and
- Incorporate miscellaneous technical and procedural changes necessitated by the creation of DHS.

*Definition of attorney.* This rule amends the definition of “attorney” at 8 CFR 1.1(f), to conform with DOJ’s definition at 8 CFR 1001.1(f), by adding the requirement that an attorney must be eligible to practice law in the bar of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, in addition to the other requirements for attorneys

set forth in that regulation. State bar rules uniformly require licensed attorneys to maintain an active status in order to practice law; however, there has been some confusion as to the applicability of that requirement in determining eligibility to appear as a representative before DHS.

**Definition of practice.** This rule amends the definition of the term “practice” at 8 CFR 1.1(i) to reflect the creation of DHS, the transfer of the functions of the former Immigration and Naturalization Service (INS), and to update the definition to eliminate references to representational activities that occur before DOJ.

**Definition of preparation.** This rule amends the definition of the term “preparation” at 8 CFR 1.1(k) to reflect the creation of DHS and the transfer of the functions of the former INS to DHS.

**Definition of representation.** This rule amends the definition of the term “representation” at 8 CFR 1.1(m) to reflect the creation of DHS, the transfer of the functions of the former INS, and to eliminate the reference to representational activities that occur before DOJ.

**Representation of others.** This rule amends 8 CFR 292.1(a) to include a reference to the limitations on appearances in application and petition proceedings in 8 CFR 103.2(a)(3) and amends 8 CFR 292.1(a)(2) to clarify that law students and law graduates as defined under 8 CFR 1292.1(a)(4) appearing before DHS must be students or graduates of accredited law schools in the United States. There have been many instances of graduates of foreign law schools attempting to represent parties in DHS proceedings under this provision and this clarification is necessary to ensure that only eligible individuals are permitted to appear as representatives in immigration proceedings. This rule also amends 8 CFR 292.1(a)(2) and (6) to reflect the creation of DHS and the transfer of the functions of the former INS.

**Grounds of discipline.** This rule adopts the grounds of discipline in 8 CFR 1003.102 in their entirety and applies those grounds of discipline to practitioners before DHS. 8 CFR 292.3(b). Under this provision, DHS may seek disciplinary sanctions against a practitioner who falls within one or more of the categories enumerated in 8 CFR 1003.102, as revised by DOJ. By adopting all of the grounds of discipline, this rule clarifies that 8 CFR 1003.102(k) and (l) apply as grounds for discipline by DHS as well as EOIR. This change will encourage practitioners to timely appear for scheduled interviews and other case-related meetings before

DHS officials and to properly represent their clients in DHS proceedings.

**Immediate suspension.** This rule amends 8 CFR 292.3(c) to clarify that DHS may petition to the Board for the immediate suspension of an attorney who, while a disciplinary investigation or proceeding is pending, has resigned from practice before the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal Court, or who has been placed on an interim suspension by such body pending a final resolution of the underlying disciplinary matter. This change would conform the language in DHS regulations to the DOJ rule.

**Preliminary inquiry report.** In this rule, 8 CFR 292.3(c)(3), as revised, limits the circumstances under which DHS will prepare and serve a copy of a preliminary inquiry report on the practitioner with the Notice of Intent to Discipline. In summary disciplinary proceedings, DHS must file a certified copy of the order, judgment and/or record evidencing the underlying criminal conviction or discipline with the Board along with the Notice of Intent to Discipline. Current regulations require that DHS file a preliminary inquiry report with all Notices of Intent to Discipline. A preliminary inquiry report summarizes the source of any information uncovered in the investigation of a disciplinary complaint, including the administrative record of immigration proceedings, a record of state disciplinary proceedings, or a record of criminal conviction. In summary disciplinary proceedings before the Board based upon a conviction for a serious crime, resignation while a disciplinary investigation or proceeding is pending, or disciplinary action by a court or other disciplinary authority under 8 CFR 1003.103(b)(2), the preliminary inquiry report summarizes records that are included in the disciplinary proceeding file as attachments to the Petition for Immediate Suspension or the Notice of Intent to Discipline. In all other cases, DHS will issue a Notice of Intent to Discipline to the practitioner containing a statement of the charge(s) and a preliminary inquiry report. The rule also clarifies that DHS will promptly initiate summary disciplinary proceedings against any practitioner upon receipt of certified copies of the required documents.

**Public notice of suspension.** This rule revises 8 CFR 292.3(h)(3) to clarify that DHS may publicly post notices of immediate suspension. This change is necessary to ensure consistency with DOJ regulations at 8 CFR 1003.106(c),

which currently provide that notice of disciplinary sanctions may be posted publicly.

**Filing of complaints of misconduct occurring before DHS.** This rule revises the procedures in 8 CFR 292.3(d) for filing complaints with allegations of professional misconduct by practitioners in matters before DHS. The changes are necessary to reflect current requirements resulting from the creation of DHS and its component agencies.

Finally, this rule includes technical changes such as removing references to the “Office of the General Counsel of the Service,” the “Immigration and Naturalization Service,” or “INS,” and other out-of-date terms to conform the regulations with current DHS terminology and structure. This rule corrects technical errors, and implements minor changes to improve regulatory structure and readability in the affected sections.

#### IV. Administrative Procedure Act

This rule relates to agency practice and procedure and is not subject to the requirements of advance notice and comment under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). To the extent that this interim final rule is a rule of agency practice and procedure under 5 U.S.C. 553(b)(A), DHS is requesting public comments as a matter of discretion.

Moreover, to the extent that a provision of this rule could be construed as not being a matter of agency procedure, DHS has determined that delaying the effect of this rule during the period of public comment would be impractical, unnecessary and contrary to the public interest. If the implementation of the provisions of this rule were delayed pending public comments, the Board of Immigration Appeals and Adjudicating Officials would be required to conduct practitioner disciplinary proceedings under one set of regulations for cases initiated by EOIR disciplinary counsel and under another for cases initiated by DHS disciplinary counsel. As discussed above, DOJ has promulgated a final rule amending the relevant rules of professional conduct for practitioners and representation and appearances. 73 FR 76914 (Dec. 18, 2008). As a result of the amendments made by the DOJ rule, some provisions of the existing DHS regulations are inconsistent with the DOJ regulations on the same subject matter for immigration practitioners in a separate but often overlapping practice area. Therefore, to avoid this result, DHS has determined that this rule should be implemented as soon as possible to avoid disparate or

inconsistent disciplinary standards. This rule conforms to the DOJ rule. In promulgating this final rule, DHS has considered the record of proceedings before DOJ, including the public comments.

Accordingly, DHS has determined that it would be impractical, unnecessary and contrary to the public interest to delay promulgation of this rule pending review of public comments. 5 U.S.C. 553(b)(B). This interim final rule is effective 30 days after publication in the **Federal Register**. DHS invites comments and will address those comments in the final rule.

## V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. When a rule is exempt from APA notice and comment requirements, however, the RFA does not require an agency to prepare a regulatory flexibility analysis. This rule makes changes for which notice and comment are not required under the APA; therefore DHS is not required to prepare a regulatory flexibility analysis for this rule.

## VI. 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.

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

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804(2). 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.

## VIII. Executive Order 12866

This rule is not a “significant regulatory action” under Executive Order 12866, section 3(f). This rule adds no costs to the agency, imposes no direct costs to the public, has no budgetary impact, nor does it raise any novel legal or policy issues. Thus, the Office of Management and Budget (OMB) has not reviewed this rule.

## IX. 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, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

## X. Executive Order 12988 Civil Justice Reform

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

## XI. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule does not impose any new, or modify an existing, reporting or recordkeeping requirements under the Paperwork Reduction Act.

### List of Subjects

#### 8 CFR Part 1

Administrative practice and procedures, Immigration.

#### 8 CFR Part 292

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

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

### PART 1—DEFINITIONS

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

**Authority:** 5 U.S.C. 301; 6 U.S.C. 112; 8 U.S.C. 1101 and 1103.

■ 2. Section 1.1 is amended by revising paragraphs (b), (f) (i), (k), and (m) to read as follows:

#### § 1.1 Definitions.

\* \* \* \* \*

(b) The term *Act* or *INA* means the Immigration and Nationality Act, as amended.

\* \* \* \* \*

(f) The term *attorney* means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbaring, or otherwise restricting him or her in the practice of law.

\* \* \* \* \*

(i) The term *practice* means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS.

\* \* \* \* \*

(k) The term *preparation*, constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed DHS forms, by one whose remuneration, if any, is nominal and who does not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

\* \* \* \* \*

(m) The term *representation* before DHS includes practice and preparation as defined in paragraphs (i) and (k) of this section.

\* \* \* \* \*

## PART 292—REPRESENTATION AND APPEARANCES

■ 3. The authority citation for part 292 is revised to read as follows:

**Authority:** 6 U.S.C. 112; 8 U.S.C. 1103, 1252b, 1362.

■ 4. Section 292.1 is amended by:

- a. Revising paragraph (a) introductory text;
  - b. Revising paragraphs (a)(2) introductory text and (a)(2)(iv);
  - c. Revising paragraph (a)(3)(iv); and
  - d. Revising paragraph (a)(6).
- The revisions read as follows:

### § 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following, subject to the limitations in 8 CFR 103.2(a)(3):

\* \* \* \* \*

(2) *Law students and law graduates not yet admitted to the bar.* A law student who is enrolled in an accredited U.S. law school, or a graduate of an accredited U.S. law school who is not yet admitted to the bar, provided that:

\* \* \* \*

(iv) The law student's or law graduate's appearance is permitted by the DHS official before whom he or she wishes to appear. The DHS official may require that a law student be accompanied by the supervising faculty member, attorney, or accredited representative.

(3) \* \* \*

(iv) His or her appearance is permitted by the DHS official before whom he or she seeks to appear, provided that such permission will not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself or herself out to the public as qualified to do so.

\* \* \* \*

(6) *Attorneys outside the United States.* An attorney, other than one described in 8 CFR 1.1(f), who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which he or she resides and who is engaged in such practice, may represent parties in matters before DHS, provided that he or she represents persons only in matters outside the geographical confines of the United States as defined in section 101(a)(38) of the Act, and that the DHS official before whom he or she wishes to appear allows such representation as a matter of discretion.

\* \* \* \*

■ 4. Section 292.3 is revised to read as follows:

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

(a) *General provisions.* (1) *Authority to sanction.* An adjudicating official or the Board of Immigration Appeals (Board) may impose disciplinary sanctions against any practitioner if it finds it to be in the public interest to do so. It will be in the public interest to impose disciplinary sanctions against a practitioner who is authorized to practice before DHS when such person has engaged in criminal, unethical, or unprofessional conduct, or in frivolous behavior, as set forth in 8 CFR 1003.102. In accordance with the disciplinary proceedings set forth in 8 CFR part 1003, an adjudicating official or the Board may impose any of the following disciplinary sanctions:

(i) Expulsion which is permanent, from practice before the Board and the Immigration Courts, or DHS, or before all three authorities;

(ii) Suspension, including immediate suspension, from practice before the Board and the Immigration Courts, or DHS, or before all three authorities;

(iii) Public or private censure; or

(iv) Such other disciplinary sanctions as the adjudicating official or the Board deems appropriate.

(2) *Persons subject to sanctions.*

Persons subject to sanctions include any practitioner. A practitioner is any attorney as defined in 8 CFR 1.1(f) who does not represent the federal government, or any representative as defined in 8 CFR 1.1(j). Attorneys employed by DHS will be subject to discipline pursuant to paragraph (i) of this section.

(b) *Grounds of discipline.* It is deemed to be in the public interest for the adjudicating official or the Board to impose disciplinary sanctions as described in paragraph (a)(1) of this section against any practitioner who falls within one or more of the categories enumerated in 8 CFR 1003.102. These categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest. Nothing in this regulation should be read to denigrate the practitioner's duty to represent zealously his or her client within the bounds of the law.

(c) *Immediate suspension and summary disciplinary proceedings; duty of practitioner to notify DHS of conviction or discipline.* (1) *Immediate suspension proceedings.* Immediate suspension proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.103. DHS shall file a petition with the Board to suspend immediately from practice before DHS any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h), any practitioner who has been suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or who has been placed on an interim suspension pending a final resolution of the underlying disciplinary matter.

(2) *Copies and proof of service.* A copy of the petition will be forwarded to EOIR, which 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 the Immigration Courts. Proof of service on the practitioner of EOIR's request to broaden the scope of any immediate suspension must be filed with the Board.

(3) *Summary disciplinary proceedings.* Summary disciplinary proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.103. DHS shall promptly initiate summary disciplinary proceedings against any practitioner described in paragraph (c)(1) of this section by the issuance of a Notice of Intent to Discipline, upon receipt of a certified copy of the order, judgment, and/or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a certified copy of such document. Delays in initiation of summary disciplinary proceedings under this section will not impact an immediate suspension imposed pursuant to paragraph (c)(1) of this section. Any such proceeding will not be concluded until all direct appeals from an underlying criminal conviction have been completed.

(4) *Duty of practitioner to notify DHS of conviction or discipline.* Within 30 days of the issuance of the initial order, even if an appeal of the conviction or discipline is pending, of any conviction or discipline for professional misconduct entered on or after July 27, 2000, a practitioner must notify DHS disciplinary counsel if the practitioner has been: Found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in 8 CFR 1003.102(h); suspended or disbarred by, or while a disciplinary investigation or proceeding is pending has resigned from, the highest court of any State, possession, territory, or Commonwealth of the United States, or the District of Columbia, or any Federal court; or placed on an interim suspension pending a final resolution of the underlying disciplinary matter. Failure to notify DHS disciplinary counsel as required may result in immediate suspension as set forth in paragraph (c)(1) of this section.

(d) *Filing of complaints of misconduct occurring before DHS; preliminary inquiry; resolutions; referral of complaints.* (1) *Filing of complaints of misconduct occurring before DHS.* Complaints of criminal, unethical, or unprofessional conduct, or of frivolous behavior by a practitioner before DHS must be filed with the DHS disciplinary counsel. Disciplinary complaints must be submitted in writing and must state in detail the information that supports the basis for the complaint, including,

but not limited to, the names and addresses of the complainant and the practitioner, the date(s) of the conduct or behavior, the nature of the conduct or behavior, the individuals involved, the harm or damages sustained by the complainant, and any other relevant information. The DHS disciplinary counsel will notify EOIR disciplinary counsel of any disciplinary complaint that pertains, in whole or in part, to a matter before the Board or the Immigration Courts.

(2) *Preliminary inquiry.* Upon receipt of a disciplinary complaint or on its own initiative, the DHS disciplinary counsel will initiate a preliminary inquiry. If a complaint is filed by a client or former client, the complainant thereby waives the attorney-client privilege and any other applicable privilege, to the extent necessary to conduct a preliminary inquiry and any subsequent proceeding based thereon. If the DHS disciplinary counsel determines that a complaint is without merit, no further action will be taken. The DHS disciplinary counsel may, in his or her discretion, close a preliminary inquiry if the complainant fails to comply with reasonable requests for assistance, information, or documentation. The complainant and the practitioner will be notified of any such determination in writing.

(3) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* The DHS disciplinary counsel may, in his or her discretion, issue warning letters and admonitions, and may enter into agreements in lieu of discipline, prior to the issuance of a Notice of Intent to Discipline.

(e) *Notice of Intent to Discipline.* (1) *Issuance of Notice to Practitioner.* If, upon completion of the preliminary inquiry, the DHS disciplinary counsel determines that sufficient prima facie evidence exists to warrant charging a practitioner with professional misconduct as set forth in 8 CFR 1003.102, it will file with the Board and issue to the practitioner who was the subject of the preliminary inquiry a Notice of Intent to Discipline. Service of this notice will be made upon the practitioner by either certified mail to his or her last known address, as defined in paragraph (e)(2) of this section, or by personal delivery. Such notice shall contain a statement of the charge(s), a copy of the preliminary inquiry report, the proposed disciplinary sanctions to be imposed, the procedure for filing an answer or requesting a hearing, and the mailing address and telephone number of the Board. In summary disciplinary proceedings brought pursuant to

§ 292.3(c), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline. Notice of Intent to Discipline proceedings will be conducted in accordance with the provisions set forth in 8 CFR 1003.105 and 1003.106.

(2) *Practitioner's address.* For the purposes of this section, the last known address of a practitioner is the practitioner's address as it appears in DHS records if the practitioner is actively representing an applicant or petitioner before DHS on the date the DHS disciplinary counsel issues the Notice of Intent to Discipline. If the practitioner does not have a matter pending before DHS on the date of the issuance of a Notice of Intent to Discipline, then the last known address for a practitioner will be as follows:

(i) *Attorneys in the United States:* The attorney's address that is on record with a state jurisdiction that licensed the attorney to practice law.

(ii) *Accredited representatives:* The address of a recognized organization with which the accredited representative is affiliated.

(iii) *Accredited officials:* The address of the embassy of the foreign government that employs the accredited official.

(iv) *All other practitioners:* The address for the practitioner that appears in DHS records for the application or petition proceeding in which the DHS official permitted the practitioner to appear.

(3) *Copy of Notice to EOIR; reciprocity of disciplinary sanctions.* A copy of the Notice of Intent to Discipline shall be forwarded to the EOIR disciplinary counsel. Under Department of Justice regulations in 8 CFR chapter V, the EOIR disciplinary counsel 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 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 Board or the adjudicating official.

(4) *Answer.* The practitioner shall file a written answer or a written request for a hearing to the Notice of Intent to Discipline in accordance with 8 CFR 1003.105. If a practitioner fails to file a timely answer, proceedings will be conducted according to 8 CFR 1003.105.

(f) *Right to be heard and disposition; decision; appeal; and reinstatement after expulsion or suspension.* Upon the filing of an answer, the matter shall be

heard, decided, and appeals filed according to the procedures set forth in 8 CFR 1003.106. Reinstatement proceedings after expulsion or suspension shall be conducted according to the procedures set forth in 8 CFR 1003.107.

(g) *Referral.* In addition to, or in lieu of, initiating disciplinary proceedings against a practitioner, the DHS disciplinary counsel may notify any appropriate Federal and/or state disciplinary or regulatory authority of any complaint filed against a practitioner. Any final administrative decision imposing sanctions against a practitioner (other than a private censure) will be reported to any such disciplinary or regulatory authority in every jurisdiction where the disciplined practitioner is admitted or otherwise authorized to practice.

(h) *Confidentiality.* (1) *Complaints and preliminary inquiries.* Except as otherwise provided by law or regulation or as authorized by this regulation, information concerning complaints or preliminary inquiries is confidential. A practitioner whose conduct is the subject of a complaint or preliminary inquiry, however, may waive confidentiality, except that the DHS disciplinary counsel may decline to permit a waiver of confidentiality if it is determined that an ongoing preliminary inquiry may be substantially prejudiced by a public disclosure before the filing of a Notice of Intent to Discipline.

(i) *Disclosure of information for the purpose of protecting the public.* The DHS disciplinary counsel may disclose information concerning a complaint or preliminary inquiry for the protection of the public when the necessity for disclosing information outweighs the necessity for preserving confidentiality in circumstances including, but not limited to, the following:

(A) A practitioner has caused, or is likely to cause, harm to client(s), the public, or the administration of justice, such that the public or specific individuals should be advised of the nature of the allegations. If disclosure of information is made pursuant to this paragraph, the DHS disciplinary counsel may define the scope of information disseminated and may limit the disclosure of information to specified individuals or entities;

(B) A practitioner has committed criminal acts or is under investigation by law enforcement authorities;

(C) A practitioner is under investigation by a disciplinary or regulatory authority, or has committed acts or made omissions that may reasonably result in investigation by such an authority;

(D) A practitioner is the subject of multiple disciplinary complaints and the DHS disciplinary counsel has determined not to pursue all of the complaints. The DHS disciplinary counsel may inform complainants whose allegations have not been pursued of the status of any other preliminary inquiries or the manner in which any other complaint(s) against the practitioner have been resolved.

(ii) *Disclosure of information for the purpose of conducting a preliminary inquiry.* The DHS disciplinary counsel may, in his or her discretion, disclose documents and information concerning complaints and preliminary inquiries to the following individuals or entities:

(A) To witnesses or potential witnesses in conjunction with a complaint or preliminary inquiry;

(B) To other governmental agencies responsible for the enforcement of civil or criminal laws;

(C) To agencies and other jurisdictions responsible for conducting disciplinary investigations or proceedings;

(D) To the complainant or a lawful designee; and

(E) To the practitioner who is the subject of the complaint or preliminary inquiry or the practitioner's counsel of record.

(2) *Resolutions reached prior to the issuance of a Notice of Intent to Discipline.* Resolutions, such as warning letters, admonitions, and agreements in lieu of discipline, reached prior to the issuance of a Notice of Intent to Discipline, will remain confidential. However, such resolutions may become part of the public record if the practitioner becomes subject to a subsequent Notice of Intent to Discipline.

(3) *Notices of Intent to Discipline and action subsequent thereto.* Notices of Intent to Discipline and any action that takes place subsequent to their issuance, except for the imposition of private censures, may be disclosed to the public, except that private censures may become part of the public record if introduced as evidence of a prior record of discipline in any subsequent disciplinary proceeding. Settlement agreements reached after the issuance of a Notice of Intent to Discipline may be disclosed to the public upon final approval by the adjudicating official or the Board. Disciplinary hearings are open to the public, except as noted in 8 CFR 1003.106(a)(v).

(i) *Discipline of government attorneys.* Complaints regarding the conduct or behavior of DHS attorneys shall be directed to the Office of the Inspector General, DHS. If disciplinary action is

warranted, it will be administered pursuant to the Department's attorney discipline procedures.

■ 5. Section 292.4 is amended by:

■ a. Revising paragraph (a); and

■ b. Revising the term "Service" to read "DHS" wherever that term appears in paragraph (b).

The revisions read as follows:

#### § 292.4 Appearances.

(a) *Authority to appear and act.* An appearance must be filed on the appropriate form as prescribed by DHS by the attorney or accredited representative appearing in each case. The form must be properly completed and signed by the petitioner, applicant, or respondent to authorize representation in order for the appearance to be recognized by DHS. The appearance will be recognized by the specific immigration component of DHS in which it was filed until the conclusion of the matter for which it was entered. This does not change the requirement that a new form must be filed with an appeal filed with the Administrative Appeals Office of USCIS. Substitution may be permitted upon the written withdrawal of the attorney or accredited representative of record or upon the filing of a new form by a new attorney or accredited representative. When an appearance is made by a person acting in a representative capacity, his or her personal appearance or signature will constitute a representation that under the provisions of this chapter he or she is authorized and qualified to appear as a representative as provided in 8 CFR 103.2(a)(3) and 292.1. Further proof of authority to act in a representative capacity may be required.

\* \* \* \* \*

#### § 292.6 [Amended]

■ 6. Section 292.6 is amended by revising the term "part 3 of this chapter" to read "8 CFR part 1003".

**Janet Napolitano,**

*Secretary.*

[FR Doc. 2010-2149 Filed 2-1-10; 8:45 am]

**BILLING CODE 9110-9B-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30707; Amdt. No. 3358]

#### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

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

**ACTION:** Final rule.

**SUMMARY:** This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective February 2, 2010. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 2, 2010.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

*Availability—*All SIAPs and Takeoff Minimums and ODPs are available