

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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