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Reorganization of Title 8 Regulations Due to Transfer of Functions

The Homeland Security Act of 2002 (HSA) transferred the functions of the Immigration and Naturalization Service (INS) to the Department of Homeland Security (DHS). Within DHS, former INS functions are now administered by the Directorate of Border and Transportation Security and the Bureau of Citizenship and Immigration Services. The HSA, however, retained the Executive Office for Immigration Review (EOIR) in the Department of Justice under the direction of the Attorney General. This functional change required the reorganization of Title 8 of the Code of Federal Regulations (8 CFR).

The 8 CFR changes were published in the *Federal Register* on February 28 and March 5, 2003, and included the following key provisions:

- ! Prior to these changes, all regulations in 8 CFR relating to EOIR and INS were codified in Chapter I. As part of the reorganization of 8 CFR, a new Chapter V in 8 CFR, entitled "Executive Office for Immigration Review, Department of Justice," was established.
- ! Part 3 of Chapter I and almost all of part 240 of Chapter I were moved to the new Chapter V because these provisions relate to the jurisdiction and procedures of EOIR. Thus, part 3 of Chapter I was moved to part 1003 of Chapter V. Similarly, a large portion of part 240 of Chapter I was moved to part 1240 of Chapter V.
- ! When referring to a regulation that has been moved to Chapter V, the new citation for this regulation should be used in legal filings. For example, former 8 CFR § 3.23 (reopening or reconsideration before the Immigration Court) should now be cited as 8 CFR § 1003.23. Similarly, former 8 CFR § 240.8 (burdens of proof in removal proceedings) should now be cited as 8 CFR § 1240.8. Under this technical restructuring, however, an incorrect citation to a regulation that was moved to Chapter V will be considered inconsequential.
- ! In addition, a large number of parts and sections of Chapter I were duplicated in the new Chapter V because they relate to proceedings before EOIR and INS. For example, in

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Reorganization of Title 8, U.S. Code

Page 2

asylum proceedings before Immigration Judges, applicable provisions of Chapter I, part 208 (e.g., 8 CFR § 208.15(a)) are established in parallel in Chapter V, part 1208 (e.g., 8 CFR § 1208.15(a)).

- ! When referring to a regulation in Chapter I that has been duplicated in Chapter V (i.e., where there are parallel provisions in both chapters), citation to that regulation in either chapter would be correct under this technical restructuring. For example, 8 CFR § 208.13 (establishing asylum eligibility) has been duplicated in Chapter V as 8 CFR § 1208.13. You may continue to refer to this regulation as 8 CFR § 208.13.

- ! The March 5, 2003 final rule in the *Federal Register* amends the rule published on February 28 by changing certain internal reference citations. For example, the reference in §1003.1(b)(2) of Chapter V to “Part 240” has been changed to “Part 1240.”