three members to four members; Region 1 representation be decreased from two members to one member and Region 11 and Region 12 representation each be decreased from three members to two members.

A 15-day comment period is provided for interested persons to comment on this proposed rule. Twelve terms of existing Dairy Board members will expire on October 31, 2008. Thus, a 15-day comment period is provided to allow for a timely appointment of new Dairy Board members based on the current geographic distribution of milk production in the contiguous 48 States.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

PART 115—Dairy Promotion Program

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401

2. In § 1150.131, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(11), and (a)(12) are revised as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(1) One member from region number one comprised of the following States: Washington and Oregon.

(2) Eight members from region number two comprised of the following State: California.

(3) Four members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

(4) Four members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

* * * * *

(11) Two members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Two members from region number twelve comprised of the following State: New York.

* * * * *

Dated: July 24, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1469 Filed 7–24–08; 3:37 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1001, 1003, 1292

[Docket No. EOIR 160P; A.G. Order No. 2980–2008]

RIN 1125–AA59

Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: This rule proposes to change the rules and procedures concerning the standards of representation and professional conduct for attorneys and other practitioners who appear before the Executive Office for Immigration Review (EOIR), which includes the immigration judges and the Board of Immigration Appeals (Board), and to clarify who is authorized to represent and appear on behalf of individuals in proceedings before the Board and the immigration judges. Current regulations set forth who may represent individuals in proceedings before EOIR and also set forth the rules and procedures for imposing disciplinary sanctions against attorneys or other practitioners who engage in criminal, unethical, frivolous, or unprofessional conduct before EOIR. The proposed revisions would increase the number of grounds for discipline and improve the clarity and uniformity of the existing rules while incorporating miscellaneous technical and procedural changes. The changes proposed herein are based upon the Attorney General's recent initiative for improving the adjudicatory processes for the immigration judges and the Board, as well as EOIR's operational experience in administering the disciplinary program since the current process was established in 2000.

DATES: Written comments must be submitted on or before September 29, 2008.

ADDRESSES: Please submit written comments to John N. Blum, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia, 22041. To ensure proper handling, please reference RIN No. 1125–AA59 or EOIR docket number 160P on your correspondence. You may view an electronic version and provide comments via the Internet by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically, you must include RIN No. 1125–AA59 in the subject box. Additional information regarding the posting of public comments is in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John N. Blum, Acting 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:

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 *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 *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 by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

This rule proposes to amend 8 CFR parts 1001, 1003, and 1292 by changing the present definitions and procedures concerning professional conduct for practitioners, which term includes attorneys and representatives, who

practice before the Executive Office for Immigration Review (EOIR). The proposed rule seeks to implement measures in response to the Attorney General's recent assessment of the Board of Immigration Appeals (Board) and the Immigration Courts with respect to the authority that each tribunal utilizes in disciplining and deterring professional misconduct. The proposed rule also aims to improve EOIR's ability to effectively regulate practitioner conduct by implementing technical changes with respect to the definition of attorney and clarifying who is authorized to represent and appear on behalf of individuals in proceedings before the Board and the immigration judges.

The final regulations concerning representation and appearances were last promulgated on May 1, 1997 (62 FR 23634). The regulations for the rules and procedures concerning professional conduct were last promulgated as a final rule on June 27, 2000 (65 FR 39513). The professional conduct final rule outlined the authority of the EOIR General Counsel to investigate complaints and pursue disciplinary sanctions against attorneys and other practitioners who appear before the immigration judges and the Board and revised the process for the adjudication of those complaints. As a result, the EOIR General Counsel is now responsible for enforcing the prohibition against criminal, unethical, unprofessional and frivolous conduct occurring before the immigration judges and the Board. *See Professional Conduct for Practitioners—Rules and Procedures,* 65 FR 39513 (June 27, 2000).

The former Immigration and Naturalization Service (INS) incorporated by reference in its regulations EOIR's grounds for discipline and procedures for disciplinary proceedings. INS did so when both it and EOIR were part of the Department of Justice. Since the promulgation of the final professional conduct rule in June of 2000, the functions of the former INS were transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law No. 107–296, 116 Stat. 2135, 2178 (Nov. 25, 2002), as amended (codified primarily at 6 U.S.C. 101 *et seq.*). Accordingly, the Attorney General reorganized title 8 of the Code of Federal Regulations, creating a new chapter V in 8 CFR for functions retained by the Department of Justice, beginning with 8 CFR part 1001. 68 FR 9824 (Feb. 28, 2003); 68 FR 10349 (March 5, 2003). Chapter V now contains the regulations governing EOIR, while the immigration regulations of DHS are contained in chapter I in 8 CFR. The rules and procedures concerning professional conduct for representation and appearances before the immigration judges and the Board are now codified in 8 CFR part 1003, subpart G. The rules for representation and appearances before the immigration judges and the Board are codified in 8 CFR part 1292. The rules for representation and appearances and for professional conduct before DHS and its components remain codified in 8 CFR parts 103 and 292.

Both sets of rules provide a unified process for disciplinary hearings whether the hearing is instituted by EOIR or by DHS. *See generally Matter of Shah,* 24 I&N Dec. 282 (BIA 2007) (imposing discipline on attorney who knowingly and willfully misled USCIS by presenting an improperly obtained certified Labor Condition Application in support of a nonimmigrant worker petition). For instance, 8 CFR 292.3(b) provides for the imposition of disciplinary sanctions against practitioners who appear before DHS for violating the grounds of discipline stated in 8 CFR 3.102 (now codified as § 1003.102). *See also* 8 CFR 1292.3(b) (parallel EOIR regulations). Further, DHS disciplinary hearings are to be heard and decided according to 8 CFR 3.106(a), (b), and (c) (now codified as § 1003.106), which govern EOIR disciplinary hearings. *See* 8 CFR 292.3(f) (DHS regulations) and 1292.3(b), (f) (parallel EOIR regulations). Finally, both sets of rules provide for cross-discipline, which allows EOIR to request that any discipline imposed against a practitioner for misconduct before DHS also be imposed with respect to that practitioner's ability to represent clients before the immigration judges and the Board, and vice versa. *See* 8 CFR 292.3(e)(2) (DHS) and 1003.105(b) (EOIR).

This proposed rule amends only the EOIR regulations governing representation and appearances, and professional conduct under chapter V in 8 CFR. This rule does not make any changes to the DHS regulations governing representation and appearances or professional conduct.

Currently, the disciplinary regulations allow EOIR to sanction practitioners, including attorneys and certain non-attorneys who are permitted to represent individuals in immigration proceedings (''representatives''), when discipline is in the public interest; namely, when a practitioner has engaged in criminal, unethical, unprofessional conduct or frivolous behavior. Sanctions may include expulsion or suspension from practice before EOIR and DHS, and public or private censure. EOIR frequently suspends or expels practitioners who are subject to a final or interim order of disbarment or suspension by their state bar regulatory authorities—this is known as ''reciprocal'' discipline.[1] As of January 2008, EOIR has disciplined 380 practitioners since the rules took effect in 2000.

The Attorney General completed a comprehensive review of EOIR's responsibilities and programs, and determined that the immigration judges should have the tools necessary to control their courtrooms and protect the adjudicatory system from fraud and abuse. Accordingly, the Attorney General determined that the existing regulations, including those at 8 CFR 1003.101–109, should be amended to provide for additional sanction authority for false statements, frivolous behavior, and other gross misconduct. Additionally, the Attorney General found that the Board should have the ability to effectively sanction litigants and practitioners for defined categories of gross misconduct.

As a result, this proposed rule seeks to preserve the fairness and integrity of immigration proceedings, and increase the level of protection afforded to aliens in those proceedings by defining additional categories of behavior that constitute gross misconduct.

In part, the proposed rule responds to the Attorney General's prescribed measures by adding substantive grounds of misconduct pursuant to the American Bar Association Model Rules of Professional Conduct (2006) (ABA Model Rules) that will subject practitioners to sanctions if they violate such standards and fail to provide adequate professional representation for their clients. Specifically, the grounds for sanctionable misconduct have been revised to include language that is similar, and sometimes identical, to the language found in the ABA Model Rules, as such disciplinary standards are widely known and accepted within the legal profession. Although EOIR does not seek to supplant the disciplinary functions of the various state bars, this proposed rule aims to strengthen the existing rules in light of the apparent gaps in the current regulation. *See Matter of Rivera-Claros,* 21 I&N Dec. 599, 604 (BIA 1996). In addition, these revisions will make the EOIR professional conduct requirements

[1] ''Reciprocal discipline'' is not to be confused with the ''cross-discipline'' between EOIR and DHS codified as ''reciprocity of disciplinary sanctions'' in 8 CFR 292.3(e)(2) and 1003.105(b).

more consistent with the ethical standards applicable in most states.

This proposed rule would also enhance the existing regulation by amending the current procedures and definitions through technical modifications that are more consistent with EOIR's authority to regulate practitioner misconduct. *See Koden* v. *U.S. Dep't of Justice,* 564 F.2d 228, 233 (7th Cir. 1977); 8 U.S.C. 1103, 1362. For example, the proposed rule would amend the definition of ''attorney'' at 8 CFR 1001.1(f) by adding language stating that an attorney is one who is eligible to practice law in a U.S. state or territory. Additionally, this proposed rule would amend the language at 8 CFR 1292.1(a)(2) to clarify that law students and law graduates must be students and graduates of accredited law schools in the United States. Accordingly, the proposed rule will allow EOIR to investigate and prosecute instances of misconduct more effectively and efficiently while ensuring the due process rights of both the client and the practitioner.

This Proposed Rule

A. Section 1001.1(f)—Definition of Attorney

Section 1001.1 paragraph (f) defines ''attorney'' as that term is used in section 8 CFR 1292.1, *Representation of others,* which regulates who may represent individuals in proceedings before the immigration judges and the Board. The proposed rule would revise the definition of ''attorney'' to clarify that any attorney who practices before EOIR must be eligible to practice law in at least one State, possession, territory, or Commonwealth of the United States, or the District of Columbia.

Presently, EOIR must recognize an attorney who is in good standing with a state licensing authority so long as the attorney has not been suspended or disbarred. However, in some states, an attorney may be able to obtain a certificate of good standing from the licensing authority, but still be administratively ineligible to practice law in that state. This proposed change will ensure that an attorney may practice before EOIR only if he or she is both in good standing and maintains a status with the state licensing authority that permits practice in the courts of that state. In many jurisdictions, the only status that will permit practice before the state courts will be ''active'' status. However, in some jurisdictions, inactive or retired attorneys have a limited right to practice before state courts if the inactive or retired attorneys' representation is without compensation (i.e., pro bono). So long as inactive or retired attorneys have such a right to limited practice and they comply with all of the requirements imposed by their state licensing authority in all of their cases before EOIR, then EOIR would consider those attorneys to be eligible to practice law for the purpose of section 1001.1(f).

B. Part 1003, Subpart G—Professional Conduct for Practitioners—Rules and Procedures

1. Section 1003.102—Grounds of Misconduct

Section 1003.102 of the regulations sets forth the grounds of discipline against practitioners. This rule proposes to revise paragraphs (e), (k), and (l) and to add several additional grounds of discipline as described below.

a. Section 1003.102(e)—Reciprocal Discipline

Presently, EOIR may impose discipline on a practitioner if the practitioner resigns, with an admission of misconduct, from practice in a state jurisdiction, a federal court, or an executive branch department, board, commission, or other government entity. The result of this rule is that EOIR cannot discipline a practitioner who resigned from practice in another jurisdiction, court, or agency while a disciplinary investigation or proceeding was pending if the practitioner did not admit misconduct during that investigation or proceeding. This provides practitioners with an incentive to resign from another jurisdiction, court, or agency without admitting misconduct in order to continue to practice before EOIR. Therefore, we propose to amend our rule to be consistent with the recommended practice of the American Bar Association, as stated in Rule III(A) of the Model Federal Rules of Disciplinary Enforcement, by permitting the imposition of discipline on an attorney who resigns while a disciplinary investigation or proceeding is pending.

b. Section 1003.102(k)—Previous Finding of Ineffective Assistance of Counsel

One ground for sanctions is the ineffective assistance of counsel as previously determined by the Board or an immigration judge. This proposed rule would extend this ground to include findings made by federal court judges. Many aliens appeal decisions by the Board to the federal circuit courts, which now receive approximately 750 petitions for review per month challenging decisions of the Board. In such cases, the federal court sometimes makes a finding that an attorney provided ineffective assistance of counsel in an immigration proceeding. Whether such a finding is made by an immigration judge, the Board, or a federal court, the harm to the alien remains the same, and this revision will allow the EOIR disciplinary process to take account of findings of ineffective assistance of counsel in EOIR proceedings made by a federal court.

c. Section 1003.102(l)—Failure To Appear in a Timely Manner

Currently § 1003.103(l) provides for disciplinary sanctions for practitioners who repeatedly fail to appear for scheduled hearings in a timely manner without good cause. This proposed rule would make the language of this ground more general, to cover failure to appear for ''pre-hearing conferences, scheduled hearings, or case-related meetings'' in a timely manner.

d. Section 1003.102(n)—Conduct Prejudicial to the Administration of Justice

This rule proposes to add a new ground for disciplinary sanctions at § 1003.102(n) with respect to conduct that is ''prejudicial to the administration of justice or undermines the integrity of the adjudicative process.''

The prohibition on conduct prejudicial to the administration of justice is found in the ABA Model Rules and such conduct is widely recognized within the legal profession as a sanctionable offense. *See* ABA Model Rule 8.4(d) (stating that ''[i]t is professional misconduct for a lawyer to * * * engage in conduct that is prejudicial to the administration of justice''). In this regard, EOIR's mandate to fairly and efficiently adjudicate cases under the immigration laws of the country remains the single most important function of the agency. As a result, safeguarding the adjudicative process from abuse is necessary in order to achieve this function, and accordingly, misconduct that jeopardizes or otherwise impairs the administration of justice will be subject to sanctions.

In discerning the most appropriate parameters for this ground, *In re Hopkins,* 677 A.2d 55, 60–61 (D.C. 1996), is instructive. In that case, the D.C. Court of Appeals held that an attorney's conduct must satisfy the following criteria for such conduct to be viewed as prejudicial to the administration of justice. First, the conduct, which includes any action or inaction, depending on the circumstances, must be considered

improper. Improper conduct occurs, for instance, when the practitioner ''violates a specific statute, court rule or procedure, or other disciplinary rule,'' but impropriety may also be found when, considering all the circumstances, the practitioner ''should know that he or she would reasonably be expected to act in such a way as to avert any serious interference with the administration of justice.'' *Id.* at 61.

Second, in order to fall under the domain of the ''administration of justice,'' the conduct ''must bear directly upon the judicial process * * * with respect to an identifiable case or tribunal.'' *Id.* Third, the practitioner's conduct ''must taint the judicial process in more than a *de minimis* way; that is, at least potentially impact upon the process to a serious and adverse degree.'' *Id.* As a result, conduct that will generally be subject to sanctions under this ground includes any action or inaction that seriously impairs or interferes with the adjudicative process when the practitioner should have reasonably known to avoid such conduct.

e. Section 1003.102(o)—Competence

This rule proposes to add a new ground for disciplinary sanction at section 1003.102(o). As noted above, the revised grounds for disciplinary sanctions include language that is similar, if not identical to, the ABA Model Rules. In this case, the proposed rule incorporates language from ABA Model Rule 1.1, which deals with providing competent representation, and language from the comments on Model Rule 1.1 relating to ''Thoroughness and Preparation.'' *See* ABA Model Rule 1.1. While most practitioners competently represent their clients in immigration proceedings, a small percentage of the practitioners do not meet the minimum standards set forth in this rule, which includes the requisite ''legal knowledge, skill, thoroughness, and preparation reasonably necessary'' for representation, and the use of ''methods and procedures meeting the standards of competent practitioners.'' As this principle has been one of the hallmarks of the ABA Model Rules, we find that the existing rule should incorporate a provision devoted to competence in order to ensure that all practitioners meet minimal performance standards in rendering services. We note that many clients, given their unfamiliarity with immigration law and their potentially limited ability to communicate and express themselves effectively, are likely to rely heavily on a practitioner's assistance in immigration matters. In addition, the comments in the ABA Model Rules state that the requisite level of attention and preparation are determined, in part, by what is at stake. The stakes are quite high in immigration proceedings, which determine whether aliens are allowed to remain in the United States. As such, competence is perhaps the most fundamental and necessary element in providing representation to clients in immigration proceedings.

f. Section 1003.102(p)—Scope of Representation

This rule proposes to add a new ground for disciplinary sanction at § 1003.102(p). Here, the proposed rule incorporates language from ABA Model Rule 1.2, which primarily deals with the scope of representation, and language from the comments on Model Rule 1.2 relating to ''Allocation of Authority between Client and Lawyer.'' *See* ABA Model Rule 1.2. This rule would require a practitioner to ''abide by a client's decisions concerning the objectives of representation'' and to ''consult with the client as to the means by which they are to be pursued.''

Thus, as a general matter, this obligation requires the practitioner to act in accordance with the scope of representation in attempting to meet the client's goals, as determined by the terms of the client-practitioner relationship. The scope of representation, of course, is a fact-specific matter that turns on the specific agreements in each case. By increasing the emphasis on clarity in the scope of representation agreement, this ground will also protect practitioners from spurious complaints of ineffective assistance of counsel by ensuring that parties to a representation agreement fully understand the scope of representation.

To illustrate, clients who submit complaints of ineffective assistance of counsel often allege that they retained representation for the duration of immigration proceedings—meaning that the practitioner who agreed to represent the client consented to carry out the terms of the client-practitioner agreement before the immigration judge and, if necessary, the Board—but that the practitioner in their case failed to submit an appeal brief to the Board after indicating in the Notice of Appeal that a brief would be filed. In most cases, this failure will result in a dismissal of the alien's case and a deportation or removal order will be issued as the final agency decision. If the practitioner had agreed to represent the client not only before the immigration judge but also with respect to an appeal to the Board, the practitioner's negligence or misconduct in failing to file a brief resulted in the client's objectives being thwarted in such instances. Practitioners who fail to abide by the scope of representation will be subject to discipline under this ground.

This rule also requires that the practitioner and client reach a ''mutually acceptable resolution'' should any disagreements arise, and that if such efforts are unavailing in the face of a fundamental disagreement, the practitioner is allowed to request a withdrawal from the case under the applicable standards. *See* 8 CFR 1003.17(b) (allowing for a withdrawal or substitution of an attorney or representative when an immigration judge permits such a request based on an oral or written motion) and 1003.38(g) (allowing for a withdrawal or substitution of an attorney or representative when the Board permits such a request based on a written motion); *see also Matter of Rosales,* 19 I&N Dec. 655, 657 (BIA 1988) (stating that a motion to withdraw ''should include evidence that [the practitioner] attempted to advise the respondent, at his last known address, of the date, time, and place of the scheduled hearing,'' and ''provide the immigration judge with the respondent's last known address. * * *'').

One of the primary goals of this proposed rule is to preserve the fairness and integrity of the adjudicative process in immigration proceedings. However, this goal cannot be achieved when a practitioner fails to adhere to his or her clients' objectives by effectively withdrawing from their case without providing them ample notice so that they can retain another practitioner to represent them. Indeed, improper withdrawals in immigration proceedings have been discussed by various federal circuit courts of appeals, which have generally held that such withdrawals violate a client's right to receive a fundamentally fair hearing. *See, e.g., Gjeci* v. *Gonzales,* 451 F.3d 416, 422 (7th Cir. 2006) (stating that ''a lawyer's professional responsibility upon withdrawal includes the duty to take reasonable steps to avoid foreseeable prejudice to the rights of the client, including giving notice to the client, allowing time for the employment of other counsel, and delivering to the client all [necessary] papers and property. * * *'') (citing ABA Model Rule 1.16(d) (2004)). Furthermore, immigration judges have stated that they are frequently forced to reschedule cases due to a practitioner's failure to inform the client of his or her possible nonappearance at a scheduled

hearing or to properly request a withdrawal from the case. Given the considerable caseloads that immigration judges are required to manage, a practitioner's failure to appear or improper withdrawal in a case not only may result in significant harm to the client. Such conduct may also impede the immigration judges', and consequently the agency's, ability to efficiently adjudicate cases, causing unnecessary delays for other parties seeking to have their cases timely heard and adjudicated.

g. Section 1003.102(q)—Diligence

This rule proposes to add a new ground for disciplinary sanction at section 1003.102(q). In this instance, the proposed rule incorporates language from ABA Model Rule 1.3, which pertains to acting with ''reasonable diligence and promptness in representing a client,'' and language from the comments to Model Rule 1.3 relating to: (1) Controlling and managing one's workload so that each matter can be handled competently; (2) acting with reasonable promptness particularly with respect to time and filing restrictions; and (3) continuing the representation to the conclusion of all matters undertaken for the client, unless the relationship is terminated pursuant to 8 CFR 1003.17(b) for proceedings before the immigration courts or 8 CFR 1003.38(g) for proceedings before the Board. *See* ABA Model Rule 1.3.

Given that most practitioners appearing in immigration matters exemplify high standards of professional conduct, this provision will primarily affect those whose conduct raises questions about their fitness to represent aliens in such matters. Nonetheless, the gravity of the consequences of failing to act diligently cannot be overstated in this context, as immigration proceedings are meant to determine who is allowed to lawfully remain in this country. Diligence is a particularly important aspect of representing clients in immigration proceedings because those proceedings are subject to numerous filing requirements and other time-sensitive conditions. Unfortunately, in too many cases, an alien's interests may be compromised due to a practitioner's failure to observe time-related and filing considerations. Indeed, complaints of ineffective assistance of counsel often include allegations regarding a practitioner's failure to timely submit notices, applications, briefs, or other relevant matters pursuant to recognized rules and practices governing filing requirements. *See, e.g.,* 8 CFR 1003.38(b) (requiring that the Notice of Appeal be filed with the Board within 30 days after an immigration judge issues his or her decision); 8 CFR 1003.2(b)(2) (requiring that a motion to reconsider be filed within 30 days after the mailing of the Board's decision); 8 CFR 1003.2(c)(2) (requiring that a motion to reopen be filed within 90 days after the date of the final administrative decision). In such instances, a client's interests might be seriously compromised if a practitioner fails to meet these deadlines.

The duty to act diligently will often function in tandem with the scope of representation, as discussed above. To the extent of the agreed-upon scope of representation, the practitioner is required to handle all matters both competently and in a timely manner, and disputes with the client do not obviate his or her duties in this regard unless the relationship is formally terminated, as described above.

Thus, given that the duty to diligently represent a client exemplifies a practitioner's most basic duty to execute the terms of the representation within a reasonable time, combined with the fact that the appeals process and most applications for relief operate under time-sensitive constraints, this proposed addition to the sanctionable grounds of misconduct represents a significant measure to safeguard the public against negligent and defective representation.

h. Section 1003.102(r)—Communication

This rule proposes to add a new ground for disciplinary sanction at section 1003.102(r). Here, the proposed rule incorporates language from ABA Model Rule 1.4, which deals with the duty to maintain communication with the client, and language from the comments on Model Rule 1.4 relating to ''Communicating with Client.'' *See* ABA Model Rule 1.4. Specifically, this duty includes (1) promptly informing and consulting with the client in any matter when his or her informed consent is reasonably required; (2) reasonably consulting with the client about the means by which the client's objectives are to be accomplished; (3) keeping the client reasonably informed about the status of the matter; and (4) promptly complying with reasonable requests for information. *Id.* This proposed rule also mandates that when a practitioner's prompt response is not feasible, he or she, or a member of his or her staff, ''should acknowledge receipt of the request and advise the client when a response may be expected.''

A practitioner's duty to maintain communication with a client is of fundamental importance. For instance, some practitioners fail to inform clients of scheduled hearings. In addition, negligence in discussing relevant facts and issues often prevents a client's objectives from being met. Ineffective assistance of counsel claims routinely involve the failure of the practitioner to meet with the client sufficiently in advance of a scheduled hearing to review material and substantive issues. And some practitioners subject clients to inadequate impromptu meetings that occur immediately before the time in which testimony by the client is to be presented to the immigration judge. Often, such poor and insufficient communication with a client not only jeopardizes the client's case but also undermines the integrity of the administrative process, which requires an examination of all relevant information while giving sufficient opportunities to the respective parties to present necessary and relevant evidence. Communications with a client should be scheduled sufficiently in advance to provide proper notice of the date and time of scheduled hearings, allow proper preparation for the hearing, and permit submission of motions, applications, evidence, and other matters in compliance with applicable deadlines, including advance filing deadlines set by the immigration judge. Finally, given the nature of immigration proceedings, the regulation makes clear that it is the obligation of the practitioner to ensure that all necessary communications are in a language that the client understands.

i. Section 1003.102(s)—Candor Toward the Tribunal

This rule proposes to add a new ground for disciplinary sanction at section 1003.102(s). In this instance, the proposed rule incorporates language from ABA Model Rule 3.3, which deals with, *inter alia,* the duty to ''disclose to the tribunal legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel.'' *See* ABA Model Rule 3.3. This rule is meant to deter a practitioner from neglecting to cite specific legal authority to the adjudicator that is known to be adverse to a client's position. Adequate representation requires an individualized assessment of a given client's factual history and the legal issues involved in his or her claim, while specifically addressing case law or other legal standards that are contrary to such a claim. Representation that fails to disclose such integral information undermines the purpose and credibility of the administrative process, and undermines the level of trust and

confidence that a client has toward a practitioner.

j. Section 1003.102(t)—Notice of Entry of Appearance

This rule proposes to add a new ground for disciplinary sanction at section 1003.102(t). This ground of the proposed rule is patterned after language in Rule 11 of the Federal Rules of Civil Procedure (FRCP), which requires that all pleadings, motions, or other papers submitted to a court be signed by at least one attorney of record, or when the client is unrepresented, by the party. In each case where the alien is represented, this proposed rule requires that ''every pleading, application, motion, or other filing * * * be signed by the practitioner of record in his or her individual name.''

In this regard, the proposed rule subjects a practitioner to sanctions should he or she fail to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative when the practitioner has ''prepared, completed, or otherwise participated in the completion or submission of any pleading, application, motion, or other filing, and * * * [h]as been deemed to engage in a pattern or practice of failing to submit such Forms as required.'' This includes the submission of Form EOIR–28, as required by § 1003.17(a) for cases pending before an immigration judge and Form EOIR–27, as required by § 1003.3(a)(3), for appeals filed with the Board.

This provision is intended to address the growing problem of practitioners who seek to avoid the responsibilities of formal representation by routinely failing to submit the required notice of entry of appearance forms. Furthermore, the difficulties in pursuing a practitioner for discipline for participating in the preparation of false or misleading documents are apparent when the practitioner fails to submit a completed notice of entry of appearance form.

The United States Court of Appeals for the Ninth Circuit has recognized that the notice of appearance requirement at 8 CFR 1003.38(g) serves important purposes. *See Singh* v. *INS,* 315 F.3d 1186, 1189 (9th Cir. 2003) (noting that the Board ''has a substantial interest in assuring that, at any given time, there is no ambiguity as to who has been given, and who has accepted, the responsibility of representing a party before it.''). Pursuant to the regulations, ''the notice of appearance constitutes an affirmative representation by the purported representative to the [Board] that he or she is qualified to be a representative under the applicable regulations, that he or she has been authorized by the party on whose behalf he or she appears, and that he or she accepts the responsibility of representation until relieved.'' *Id.* The court also held that a client's due process right to be represented by counsel of his or her choice is not impaired by ''reasonable rules of process'' that can be satisfied with minimal effort. *See id.* at 1190–91.

Given that these amendments are meant to advance the level of professional conduct in immigration matters and foster increased transparency in the client-practitioner relationship, the Department does not believe that a practitioner who agrees to undertake a client's case—thereby causing the client to reasonably rely on his or her claims as to the competency of such representation—should be able to avoid the legal obligations that flow from such a relationship. Thus, any practitioner who accepts responsibility for rendering immigration-related services to a client should be held accountable for his or her actions, including the loss of the privilege of practicing before the immigration judges and the Board, when such conduct fails to meet the minimal standards of professional conduct described in section 1003.102. In this regard, these provisions are similar to the policies of the Internal Revenue Service and other federal agencies that require signatures of professionals retained to assist in the filing of various forms and applications. In this context, the goals of incorporating such measures include accountability for the preparer and presenter of documents that are submitted to the government and the elimination of fraudulent practices that undermine a client's ability to seek recourse against a practitioner when the practitioner fails to formally acknowledge representation and subsequently provides ineffective assistance of counsel or otherwise engages in misconduct.

k. Section 1003.102(u)—Repeated Filings Indicating a Substantial Failure to Competently and Diligently Represent the Client

This rule proposes to add a new ground for disciplinary sanction at section 1003.102(u) with respect to filings made to an adjudicator. In such circumstances, the proposed rule will subject a practitioner to sanctions if he or she ''repeatedly files notices, motions, briefs, or claims that reflect little or no attention to the specifics of a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client.'' This addition to the grounds of sanctionable misconduct is being proposed because of the frequency with which this kind of behavior occurs and to ensure that practitioners are fully aware that such conduct is considered inappropriate and unacceptable.

The Board has experienced situations in which the same practitioner repeatedly, on behalf of different clients, files boilerplate briefs and motions, with no recitation of the specific facts and little or no application of law to the facts of a case. Moreover, the Board has experienced situations in which the same practitioner repeatedly submits appellate briefs that are nearly identical, with little or no regard for the specific facts in his or her client's case. EOIR has also observed that in these situations, the practitioners often fail to brief the issues that are critical to their client's case.

Practitioners who engage in this behavior may be subject to sanctions when the behavior indicates a substantial failure to competently and diligently represent the client. *See, e.g.,* ABA Model Rules 1.1, 1.3, and proposed § 1003.102(o). While such behavior may be subject to sanctions under other grounds, the Department believes that a separate category for practitioners who repeatedly engage in this behavior will tend to deter practitioners from taking advantage of clients who lack the knowledge or language skills to protect themselves. This additional category will also enhance the government's ability to preserve the integrity of immigration matters as well as prevent abuse of the administrative process.

2. Section 1003.103—Immediate Suspension and Summary Disciplinary Proceedings; Duty of Practitioner To Notify EOIR of Conviction or Discipline

a. Section 1003.103(a)—Immediate Suspension

Section 1003.103(a) allows for immediate suspension of a practitioner who has been convicted of a serious crime, or an attorney who has been disbarred or suspended or has resigned with an admission of misconduct. This rule proposes to revise section 1003.103(a)(1) to clarify that immediate suspension under this section may be imposed against an attorney placed on an interim suspension in state licensing authority or federal court discipline proceedings pending a final resolution of the underlying disciplinary matter. Certain misconduct poses such an immediate threat to the public that a

state licensing authority or federal court will immediately suspend an attorney pending final determination of the ultimate discipline to be imposed. An attorney who is thus restricted by a state licensing authority or federal court in the practice of law is not authorized to represent individuals pursuant to 8 CFR 1292 (representation and appearances). Accordingly, this proposed rule clarifies the existing regulation to ensure conformity with the rules on representation and appearances, and also to ensure that individuals in immigration proceedings are sufficiently protected from practitioners who engage in the most egregious misconduct. Further, we propose to remove the requirement that an attorney resign with an admission of misconduct and instead add a new standard, which permits an immediate suspension when an attorney resigns while a disciplinary investigation or proceeding is pending. This change is consistent with our proposal to modify section 1003.102(e) as explained earlier.

b. Section 1003.103(a)(2)—Public Postings of Immediate Suspensions

This rule proposes to revise section 1003.103(a)(2) to clarify that notices of immediate suspensions may be posted publicly. This change is proposed to ensure consistency with 8 CFR 1003.106(c), which currently provides that notice of disciplinary sanctions may be posted publicly, and corrects an oversight in the prior publication of the rule.

c. Section 1003.103(b)—Initiation of Disciplinary Proceedings

Section 1003.103(b) provides that summary disciplinary proceedings shall be initiated ''promptly'' against a practitioner who has been convicted of a serious crime, or an attorney who is subject to a final order of suspension or disbarment or who has resigned with an admission of misconduct. In reciprocal discipline cases (when an attorney has already been suspended or disbarred), summary disciplinary proceedings can only be initiated by EOIR once a final order has been issued in the state licensing authority or federal court disciplinary proceeding. 8 CFR 1003.102(e)(1). Such state licensing authority or federal court disciplinary proceedings can sometimes take months, if not years, to complete. Because EOIR summary disciplinary proceedings found at 8 CFR 1003.103(b) require the submission of a certified copy of the final order from the licensing state or federal court, EOIR cannot commence those proceedings until the underlying disciplinary process has been completed. Therefore, this rule proposes to revise § 1003.103(b) to clarify that EOIR summary disciplinary proceedings will be promptly commenced upon receipt of a certified copy of the final decision of the state licensing authority or federal court. Consistent with the proposed changes to §§ 1003.102(e) and 1003.103(a)(1), we propose to modify this provision by changing the basis for summary disciplinary proceedings from a resignation with an admission of misconduct to a resignation while a disciplinary investigation or proceeding is pending.

d. Section 1003.103(b)(2)—Burden of Proof

Section 1003.103(b)(2)—in addition to §§ 1003.106(a)(1)(iv), 1003.106(b), and 1003.107(b)(1)—currently employs a burden of proof that requires the practitioner, counsel for the government, or adjudicating official to demonstrate certain aspects of the disciplinary proceeding by ''clear, unequivocal, and convincing evidence.'' This proposed rule would amend the burden of proof in these instances by removing the term ''unequivocal'' in order to conform with the standard of ''clear and convincing evidence'' that is currently used by immigration judges and the Board in, *inter alia,* determining deportability. *See* section 240(c)(3) of the Act, 8 U.S.C. 1229a(c)(3). This change in the burden of proof was originally mandated by section 304 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which removed the term ''unequivocal'' from section 240(c)(3) of the Act. *See id.* (stating that the government ''has the burden of establishing by clear and convincing evidence that * * * the alien is deportable''). Further, the current rule at § 1003.106(a)(1)(v) states that ''[d]isciplinary proceedings shall be conducted in the same manner as Immigration Court proceedings as is appropriate. * * *'' *See* 8 CFR 1003.106(a)(1)(v). Thus, in order to provide a disciplinary process that corresponds to existing procedures and burdens of proof, as well as authorize adjudicating officials to utilize prevailing standards and terminology in the course of their decisionmaking, this rule proposes to eliminate the ''unequivocal'' language in the aforementioned sections. While such a change likely will not result in much, if any, measurable effect, it is appropriate to maintain consistency with existing procedures in proceedings before the immigration judges to allow all parties to operate under a familiar and widely accepted framework.

3. Section 1003.104(d)—Referral of Complaints

Section 1003.104(d) provides that EOIR shall make a referral to the Inspector General and, if appropriate, to the FBI of credible information or allegations of criminal conduct involving a practitioner. In the light of experience, and the transfer of the authority of the former INS to DHS, this rule proposes to revise section 1003.104(d) also to provide for referral of such information or allegations to DHS, the U.S. Attorney, or other law enforcement agency.

4. Section 1003.105—Notice of Intent To Discipline

Section 1003.105 provides that EOIR will serve a Notice of Intent to Discipline, containing a statement of the charge(s) and a preliminary inquiry report, if sufficient evidence exists to warrant charging a practitioner with professional misconduct. We propose to modify this section regarding service of the Notice of Intent to Discipline and to limit the circumstances under which we will serve a preliminary inquiry report with a Notice of Intent to Discipline. We also plan to divide this section into two subparagraphs. Finally, we plan to specify that we will serve a copy of the Notice of Intent to Discipline on the practitioner who was the subject of the preliminary inquiry, and that the Office of the General Counsel for EOIR will file the Notice of Intent to Discipline with the Board.

Section 1003.105 currently states that the Office of the General Counsel for EOIR will serve a Notice of Intent to Discipline in the manner specified in 8 CFR 103.5a. Although § 103.5a was originally promulgated when former INS was part of the Department of Justice, section 103.5a is now a DHS regulation. Accordingly, we are removing the cross-reference to a DHS regulation and replacing it with a full text explanation of how we will serve a Notice of Intent to Discipline. For this same reason and as indicated below, we are proposing to delete two cross-references to § 103.5a that appear in § 1003.106, and instead cross-reference existing EOIR regulations concerning service.

We propose to state that service of a Notice of Intent to Discipline will be made either by certified mail to the practitioner's last known address or personal delivery. As proposed, a practitioner's last known address will be the address that EOIR has on record for the practitioner if the practitioner is

representing a party before EOIR on the date the Notice of Intent to Disqualify is served. If the practitioner does not have an active case before EOIR, the last known address of the practitioner would depend on the practitioner's status. If the practitioner is an attorney, then the last known address would be the address that the attorney's state licensing authority has on record for the attorney. The last known address for an accredited representative would be that of the recognized organization with which the accredited representative is affiliated. Finally, the last known address for an accredited official would be the embassy of the foreign government that employs the accredited official.

We also propose to limit the circumstances under which we will prepare and serve a copy of a preliminary inquiry report with the Notice of Intent to Disqualify. 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 licensing authority or federal court disciplinary proceedings, or a record of criminal conviction. In summary disciplinary cases brought either as a result of state licensing authority or federal court disciplinary proceedings, or criminal convictions, the preliminary inquiry document provides no additional information that is not also contained in the Notice of Intent to Discipline. Therefore, this rule proposes to revise § 1003.105(a) to state that in summary disciplinary proceedings EOIR is not required to file a preliminary inquiry report along with the Notice of Intent to Discipline.

5. Section 1003.106—Hearing and Disposition

a. Request for Hearing

Section 1003.106 sets forth hearing procedures for disciplinary proceedings. In summary discipline cases brought either as a result of state licensing authority or federal court disciplinary proceedings or criminal convictions, the underlying basis to impose sanctions against a practitioner already has been established via a disciplinary or criminal proceeding. In such cases, there may be no need to re-litigate or replicate the factual findings given that such authorized tribunals or agencies have already made a finding of misconduct, or a violation of criminal law which is often tantamount to a finding of misconduct. Thus, in order to promote efficiency and avoid conducting unnecessary evidentiary hearings, this rule proposes to amend the language in 8 CFR 1003.105(c)(3) and 8 CFR 1003.106 to provide that a hearing will be held in disciplinary cases when a practitioner can demonstrate that such a hearing is warranted.

Specifically, when a practitioner who is subject to summary disciplinary proceedings pursuant to § 1003.103(b) requests a hearing, he or she must make a prima facie showing either that ''[h]e or she can rebut the presumption of professional misconduct by establishing one or more of the exceptions set forth in [sections] 1003.103(b)(2)(i)–(iii)'' or that ''[m]itigating factors exist and should be considered with regard to the level of discipline to be imposed.'' The proposed rule also retains the provision that the opportunity for a hearing will be deemed waived when such a request is not made.

b. Fifteen Day Waiting Period

Sections 1003.105(d)(2) and 1003.106(c) contain provisions stating that any final order imposing discipline shall take effect no sooner than fifteen days from the date of the order to provide disciplined practitioners an opportunity to withdraw from pending matters and notify clients. However, in cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103, the practitioner has already ceased practice and has had the opportunity to withdraw from pending immigration matters. Therefore, by the time the Board issues a final order imposing a suspension or expulsion, the practitioner does not need the fifteen-day waiting period, as described above, prior to the effective date of the final order of discipline. Accordingly, this rule proposes to delete the fifteen-day waiting period at 8 CFR 1003.105(d)(2) and 1003.106(c) for cases in which the Board has already imposed an immediate suspension prior to the issuance of a final order of discipline.

c. Service of Hearing Notices and Board Decisions

As discussed above in conjunction with the proposed changes to § 1003.105, we have decided to delete two cross-references to a DHS regulation, 8 CFR 103.5a, in § 1003.106. We propose to modify § 1003.106 to cross-reference EOIR's existing regulations concerning service.

6. Section 1003.107—Renewing an Entry of Appearance

Section 1003.107 permits a practitioner's reinstatement following an expulsion or suspension provided that the practitioner complies with the procedures set forth in the regulation. This rule proposes to add a paragraph clarifying the practitioner's obligation to renew his or her notice of entry of appearance by filing the appropriate forms in every case in which he or she resumes representation before the Board and the Immigration Courts.

C. Part 1292—Representation and Appearances

In § 1292.1, paragraph (a)(2) provides that law students and law graduates may represent individuals in proceedings before the immigration judges and the Board. This provision has created some confusion about graduates of foreign law schools who claim to be eligible to practice before EOIR. The rule on appearances by law students and law graduates was promulgated with the intent that such individuals would provide representation only under proper supervision and within the context of pro bono representation sponsored by an accredited law school or a non-profit organization. *See* 55 FR 49250 (Nov. 27, 1990). This rule was not intended to permit graduates of foreign law schools to practice law before EOIR without becoming duly licensed in the United States. This proposed rule would amend the language at 8 CFR 1292.1(a)(2) to clarify that law students and law graduates must be students and graduates of accredited U.S. law schools.

This proposed rule also removes paragraph (a)(6) of § 1292.1, which refers to foreign attorneys in matters being adjudicated outside the United States. While the corresponding provision in the DHS regulations, 8 CFR 292.1(a)(6), is relevant for foreign attorneys who are involved in DHS adjudications conducted abroad, this provision is not necessary for EOIR regulations since all EOIR adjudications are conducted in the United States.

Regulatory Requirements

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only those practitioners who practice immigration law before EOIR. This rule will not affect small entities, as that term is defined in 5 U.S.C. 601(6), because the rule is similar in substance to the existing regulatory process.

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 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—Regulatory Planning and Review

The Attorney General has determined that this rule is a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has been submitted to the Office of Management and Budget for review.

Executive Order 13132—Federalism

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.

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.

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 proposed rule because there are no new or revised record keeping or reporting requirements.

List of Subjects

8 CFR Part 1001

Administrative practice and procedures, Immigration, Legal Services.

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, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, parts 1001, 1003, and 1292 of title 8 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1001—DEFINITIONS

1. The authority citation for part 1001 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103.

2. Amend § 1001.1 by revising paragraph (f) to read as follows:

§ 1001.1 Definitions.

* * * * *

(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, disbarring, or otherwise restricting him in the practice of law.

* * * * *

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103; 1252 note, 1252b, 1324b, 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.

§ 1003.1 [Amended]

4–5. Amend § 1003.1 by removing from paragraph (d)(5) the citation ''§ 1.1(j) of this chapter'' and adding in its place the citation ''§ 1001.1(j) of this chapter''.

Subpart G—Professional Conduct for Practitioners—Rules and Procedures

6. Amend § 1003.102 by:

a. Removing from paragraph (j)(2) the citation ''§ 1003.1(d)(1–a)'' and adding in its place the citation ''§ 1003.1(d)'';

b. Revising paragraphs (e) introductory text, (k), (l), and (m); and by

c. Adding paragraphs (n) through (u), to read as follows:

§ 1003.102 Grounds.

* * * * *

(e) Is subject to a final order of disbarment or suspension, or has resigned while a disciplinary investigation or proceeding is pending;

* * * * *

(k) Engages in conduct that constitutes ineffective assistance of counsel, as previously determined in a finding by the Board, an immigration judge in an immigration proceeding, or a Federal court judge or panel, and a disciplinary complaint is filed within one year of the finding;

(l) Repeatedly fails to appear for pre-hearing conferences, scheduled hearings, or case-related meetings in a timely manner without good cause;

(m) Assists any person, other than a practitioner as defined in § 1003.101(b), in the performance of activity that constitutes the unauthorized practice of law;

(n) Engages in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process;

(o) Fails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners;

(p) Fails to abide by a client's decisions concerning the objectives of representation and, in accordance with paragraph (r) of this section, fails to consult with the client as to the means by which they are to be pursued. In the case of a disagreement between the practitioner and the client, the practitioner should consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the practitioner has a fundamental disagreement with the client, the practitioner may move to withdraw from the representation in compliance with applicable rules and regulations. Conversely, the client may resolve the disagreement by discharging the practitioner;

(q) Fails to act with reasonable diligence and promptness in representing a client.

(1) A practitioner's workload must be controlled and managed so that each matter can be handled competently.

(2) A practitioner has the duty to act with reasonable promptness. This duty includes, but shall not be limited to, complying with all time and filing limitations. This duty, however, does not preclude the practitioner from agreeing to a reasonable request for a postponement that will not prejudice the practitioner's client.

(3) A practitioner should carry through to conclusion all matters undertaken for a client, consistent with the scope of representation as previously determined by the client and practitioner, unless the client terminates the relationship or the practitioner obtains permission to withdraw in compliance with applicable rules and regulations. If a practitioner has handled a proceeding that produced a result adverse to the client and the practitioner and the client have not agreed that the practitioner will handle the matter on appeal, the practitioner must consult with the client about the client's appeal rights and the terms and conditions of possible representation on appeal;

(r) Fails to maintain communication with the client throughout the duration of the client-practitioner relationship. It is the obligation of the practitioner to ensure that all necessary communications are in a language that the client understands. In order to properly maintain communication, the practitioner should:

(1) Promptly inform and consult with the client concerning any decision or circumstance with respect to which the client's informed consent is reasonably required;

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished. Reasonable consultation with the client includes the duty to meet with the client sufficiently in advance of a hearing or other matter to ensure adequate preparation of the client's case and compliance with applicable deadlines;

(3) Keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation; and

(4) Promptly comply with reasonable requests for information, except that in circumstances when a prompt response is not feasible, the practitioner, or a member of the practitioner's staff, should acknowledge receipt of the request and advise the client when a response may be expected;

(s) Fails to disclose to the adjudicator legal authority in the controlling jurisdiction known to the practitioner to be directly adverse to the position of the client and not disclosed by opposing counsel;

(t) Fails to submit a signed and completed Notice of Entry of Appearance as Attorney or Representative in compliance with applicable rules and regulations when the practitioner:

(1) Has prepared, completed, or otherwise participated in the completion or submission of any pleading, application, motion, or other filing, and

(2) Has been deemed to have engaged in a pattern or practice of failing to submit such forms, in compliance with applicable rules and regulations. Notwithstanding the foregoing, in each case where the respondent is represented, every pleading, application, motion, or other filing shall be signed by the practitioner of record in his or her individual name; or

(u) Repeatedly files notices, motions, briefs, or claims that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client.

7. Amend § 1003.103 by:

a. Revising the first sentence in paragraph (a)(1);

b. Adding a new sentence after the second sentence in paragraph (a)(2);

c. Revising the first and second sentences in paragraph (b) introductory text; and by

d. Revising paragraph (b)(2) introductory text.

The revisions and addition read as follows:

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

(a) *Immediate Suspension*—

(1) *Petition.* The Office of the General Counsel of EOIR shall file a petition with the Board to suspend immediately from practice before the Board and the Immigration Courts any practitioner who has been found guilty of, or pleaded guilty or nolo contendere to, a serious crime, as defined in § 1003.102(h), or 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) *Immediate suspension.* * * * If an immediate suspension is imposed upon a practitioner, the Board may require that notice of such suspension be posted at the Board, the Immigration Courts, or the DHS. * * *

(b) *Summary disciplinary proceedings.* The Office of the General Counsel of EOIR 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, and/or record evidencing the underlying criminal conviction, discipline, or resignation, and accompanied by a certified copy of such document. However, delays in initiation of summary disciplinary proceedings under this section will not impact an immediate suspension imposed pursuant to paragraph (a) of this section. * * *

* * * * *

(2) In the case of a summary proceeding based upon a final order of disbarment or suspension, or a resignation while a disciplinary investigation or proceeding is pending (i.e., reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. Disciplinary sanctions shall follow in such a proceeding unless the attorney can rebut the presumption by demonstrating clear and convincing evidence that:

* * * * *

§ 1003.104 [Amended]

8. Amend § 1003.104(d) by removing the phrase ''the Inspector General and, if appropriate, to the Federal Bureau of Investigation'' and adding in its place the phrase ''the Department of Homeland Security or the U.S. Attorney, and if appropriate, to the Inspector General, the Federal Bureau of Investigation, or other law enforcement agency''.

9. Amend § 1003.105 by:

a. Revising paragraph (a);

b. Revising paragraph (c)(3);

c. Adding paragraph (c)(4); and by

d. Revising paragraph (d)(2), to read as follows:

§ 1003.105 Notice of Intent to Discipline.

(a) *Issuance of Notice to practitioner.* (1) If, upon completion of the preliminary inquiry, the Office of the General Counsel of EOIR determines that sufficient prima facie evidence exists to warrant charging a practitioner

with professional misconduct as set forth in § 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 (a)(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 § 1003.103(b), a preliminary inquiry report is not required to be filed with the Notice of Intent to Discipline.

(2) For the purposes of this section, the last known address of a practitioner is the practitioner's address as it appears in EOIR's case management system if the practitioner is actively representing a party before EOIR on the date that the Office of the General Counsel for EOIR issues the Notice of Intent to Discipline. If the practitioner does not have a matter pending before EOIR 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 EOIR's case management system for the most recent matter on which the practitioner represented a party.

* * * * *

(c) * * *

(3) *Request for hearing.* The practitioner shall also state in the answer whether he or she requests a hearing on the matter. If no request for a hearing is made, the opportunity for a hearing will be deemed waived. If a practitioner who is subject to summary disciplinary proceedings pursuant to § 1003.103(b) requests a hearing, he or she must make a prima facie showing to an adjudicating official, as set forth in § 1003.106, in the answer demonstrating either that:

(i) He or she can rebut the presumption of professional misconduct by establishing one or more of the exceptions set forth in § 1003.103(b)(2)(i) through (iii); or

(ii) Mitigating factors exist and should be considered with regard to the level of discipline to be imposed.

(4) *Failure to make prima facie showing.* Failure to make such a prima facie showing with respect to summary disciplinary proceedings pursuant to § 1003.103(b) shall result in the denial of the request for a hearing.

(d) * * *

(2) Upon such a default by the practitioner, the Office of the General Counsel for EOIR shall submit to the Board proof of service of the Notice of Intent to Discipline. The practitioner shall be precluded thereafter from requesting a hearing on the matter. The Board shall issue a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice. With the exception of cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction.

10. Amend § 1003.106 by:

a. Revising the section heading;

b. Revising the heading of paragraph (a);

c. Revising the first and second sentences of paragraph (a)(1)(ii),

d. Revising paragraphs (a)(1)(iii) and (a)(1)(iv);

e. Revising the first sentence of paragraph (a)(1)(v) introductory text;

f. Revising paragraph (a)(2) introductory text;

g. Revising paragraph (a)(2)(ii); and by

h. Revising paragraphs (b) and (c).

The revisions read as follows:

§ 1003.106 Right to be heard and disposition.

(a) *Right to be heard*—(1) * * *

(ii) Except as provided in § 1003.105(c)(3), upon the practitioner's request for a hearing, the adjudicating official may designate the time and place of the hearing with due regard to the location of the practitioner's practice or residence, the convenience of witnesses, and any other relevant factors. When designating the time and place of a hearing, the adjudicating official shall provide for the service of a notice of hearing, as the term ''service'' is defined in 8 CFR 1003.13, on the practitioner and the counsel for the government. * * *

(iii) The practitioner may be represented by counsel at no expense to the government. Counsel for the practitioner shall file a Notice of Entry of Appearance on Form EOIR–28 in accordance with the procedures set forth in this part. The practitioner shall have a reasonable opportunity to examine and object to evidence presented by the government, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the government.

(iv) In rendering a decision, the adjudicating official shall consider the following: The complaint, the preliminary inquiry report, the Notice of Intent to Discipline, the answer, any supporting documents, and any other evidence, including pleadings, briefs, and other materials. Counsel for the government shall bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear and convincing evidence.

(v) The record of proceedings, regardless of whether an immigration judge or an administrative law judge is the adjudicating official, shall conform to the requirements of 8 CFR part 1003, subpart C and 8 CFR 1240.9. * * *

* * * * *

(2) *Failure to appear in proceedings.* If the practitioner requests a hearing as provided in section 1003.105(c)(3) but fails to appear, the adjudicating official shall then proceed and decide the case in the absence of the practitioner, in accordance with paragraph (b) of this section, based upon the available record, including any additional evidence or arguments presented by EOIR or DHS at the hearing. In such a proceeding, the Office of the General Counsel of EOIR or the Office of the Chief Counsel, United States Citizenship and Immigration Services, DHS, shall submit to the adjudicating official proof of service of the Notice of Intent to Discipline as well as the Notice of the Hearing. The practitioner shall be precluded thereafter from participating further in the proceedings. A final order of discipline issued pursuant to this paragraph shall not be subject to further review, except that the practitioner may file a motion to set aside the order, with service of such motion on the Office of the General Counsel of EOIR or the Office of the Chief Counsel, United States Citizenship and Immigration Services, DHS, whichever office

initiated the disciplinary proceedings, provided:

* * * * *

(ii) His or her failure to appear was due to exceptional circumstances (such as serious illness of the practitioner or death of an immediate relative of the practitioner, but not including less compelling circumstances) beyond the control of the practitioner.

(b) *Decision.* The adjudicating official shall consider the entire record and, as soon as practicable, render a decision. If the adjudicating official finds that one or more of the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear and convincing evidence, he or she shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended. If the adjudicating official determines that the practitioner should be suspended, the time period for such suspension shall be specified. Any grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline that have not been established by clear and convincing evidence shall be dismissed. The adjudicating official shall provide for the service of a written decision or a memorandum summarizing an oral decision, as the term ''service'' is defined in 8 CFR 1003.13, on the practitioner and the counsel for the government. Except as provided in paragraph (a)(2) of this section, the adjudicating official's decision becomes final only upon waiver of appeal or expiration of the time for appeal to the Board, whichever comes first, nor does it take effect during the pendency of an appeal to the Board as provided in § 1003.6.

(c) *Appeal.* Upon the issuance of a decision by the adjudicating official, either party or both parties may appeal to the Board to conduct a review pursuant to § 1003.1(d)(3). Parties must comply with all pertinent provisions for appeals to the Board, including provisions relating to forms and fees, as set forth in Part 1003, and must use the Form EOIR–45. The decision of the Board is a final administrative order as provided in § 1003.1(d)(7), and shall be served upon the practitioner as provided in 8 CFR 1003.1(f). With the exception of cases in which the Board has already imposed an immediate suspension pursuant to § 1003.103, any final order imposing discipline shall not become effective sooner than 15 days from the date of the order to provide the practitioner opportunity to comply with the terms of such order, including, but not limited to, withdrawing from any pending immigration matters and notifying immigration clients of the imposition of any sanction. A copy of the final administrative order of the Board shall be served upon the Office of the General Counsel of EOIR and the Office of Chief Counsel, United States Citizenship and Immigration Services, DHS. If disciplinary sanctions are imposed against a practitioner (other than a private censure), the Board may require that notice of such sanctions be posted at the Board, the Immigration Courts, or DHS for the period of time during which the sanctions are in effect, or for any other period of time as determined by the Board.

* * * * *

11. Amend § 1003.107 by:

a. Removing the words ''clear, unequivocal, and convincing'' in the first sentence in paragraph (b)(1) and adding in their place the words ''clear and convincing''; and by

b. Adding a new paragraph (c), to read as follows:

§ 1003.107 Reinstatement after expulsion or suspension.

* * * * *

(c) *Appearance after reinstatement.* A practitioner who has been reinstated to practice by the Board must file a new Notice of Entry of Appearance of Attorney or Representative in each case on the form required by applicable rules and regulations, even if the reinstated practitioner previously filed such a form in a proceeding before the practitioner was disciplined.

PART 1292—REPRESENTATION AND APPEARANCES

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

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

13. In § 1292.1, remove paragraph (a)(6) and revise paragraph (a)(2) introductory text, to read as follows:

§ 1292.1 Representation of others.

(a) * * *

(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:

* * * * *

Dated: July 10, 2008.

Michael B. Mukasey,

Attorney General.

[FR Doc. E8–17340 Filed 7–29–08; 8:45 am]

BILLING CODE 4410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1321]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; proposed staff interpretation.

SUMMARY: The Board is proposing to amend Regulation C (Home Mortgage Disclosure) to revise the rules for reporting price information on higher-priced loans. The rules would be conformed to the definition of ''higher-priced mortgage loan'' adopted by the Board under Regulation Z (Truth in Lending) contemporaneously with this proposal. Regulation C currently requires lenders to report the spread between the annual percentage rate (APR) on a loan and the yield on Treasury securities of comparable maturity if the spread meets or exceeds 3.0 percentage points for a first-lien loan (or 5.0 percentage points for a subordinate-lien loan). Under the proposal, a lender would report the spread between the loan's APR and a survey-based estimate of rates currently offered on prime mortgage loans of a comparable type if the spread meets or exceeds 1.5 percentage points for a first-lien loan (or 3.5 percentage points for a subordinate-lien loan).

DATES: Comments must be received by August 29, 2008.

ADDRESSES: You may submit comments, identified by Docket No. R–1321, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be