

# Rules and Regulations

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## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

#### 8 CFR Part 1003

[EOIR Docket No. 158I; AG Order No. 2848-2006]

RIN 1125-AA57

#### Board of Immigration Appeals: Composition of Board and Temporary Board Members

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

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

**SUMMARY:** This interim rule amends the Executive Office for Immigration Review (EOIR) regulations relating to the organization of the Board of Immigration Appeals (Board) by adding four Board member positions, thereby expanding the Board to 15 members. This rule also expands the list of persons eligible to serve as temporary Board members to include senior EOIR attorneys with at least ten years of experience in the field of immigration law.

**DATES:** *Effective date:* This rule is effective December 7, 2006. Written comments must be submitted on or before February 5, 2007.

**ADDRESSES:** Please submit written comments to Kevin Chapman, 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-AA57 or EOIR docket number 158I on your correspondence. You may view an electronic version of this proposed rule at [www.regulations.gov](http://www.regulations.gov). You may also comment via the Internet to the Executive Office for Immigration

Review (EOIR) at [eoir.regs@usdoj.gov](mailto:eoir.regs@usdoj.gov) or by using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically, you must include RIN No. 1125-AA57 in the subject box.

#### FOR FURTHER INFORMATION CONTACT:

Kevin Chapman, 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:

##### I. Number of Board Members

On January 9, 2006, the Attorney General directed the Deputy Attorney General and Associate Attorney General to conduct a comprehensive review of the Immigration Courts and the Board of Immigration Appeals (Board). This review was undertaken in response to concerns about the quality of decisions being issued by the immigration judges and the Board and reports of intemperate behavior on the part of some immigration judges.

On August 9, 2006, the Attorney General announced that the review was complete, and that he was directing that a series of measures be taken to improve adjudications by the immigration judges and the Board. One of these was a directive to the Director of the Executive Office of Immigration Review to increase the number of Board members from 11 to 15. This rule carries out that directive by revising the third sentence of 8 CFR 1003.1(a)(1) (leaving the remainder of paragraph (a)(1) unchanged).

The size of the Board was last set through rules promulgated in 2002 to improve case management. See 67 FR 54878-01 (Aug. 26, 2002); 8 CFR 1003.1(a), (d), (e) and (g). Those rules, among other provisions, expanded the use of affirmances without opinion and instituted single Board member review of additional cases. At that time the Department also determined that a reduction in the number of Board members was appropriate, and that the number of Board members should be set at 11. See 67 FR at 54893-94. The Department reached this conclusion based upon "the historic capacity of appellate courts and administrative appellate bodies to adjudicate the law in a cohesive manner, the ability of individuals to reach consensus on legal

issues, and the requirements of the existing and projected caseload." *Id.* at 54893. The Department specifically noted that reducing the size of the Board to 11 members "should increase the coherence of Board decisions and facilitate the *en banc* process, thereby improving the value of Board precedents." *Id.* at 54894. The commentary concluded that the Attorney General would consider reevaluating the staffing requirements of the Board in the future in light of changing caseloads and legal requirements. *Id.* at 54893.

The streamlining changes brought much needed efficiency to the review process, enabling the Board to eliminate its backlog and provide the parties with a final decision in a more timely fashion. The Attorney General has concluded, however, that some adjustments to the Board's streamlining practices are now appropriate in order to improve the quality of the Board's review of complex or problematic cases. Accordingly, in his August 9, 2006, directive, the Attorney General has instructed the Board to encourage the increased use of one-member written opinions to address poor or intemperate immigration judge decisions, allow the limited use of three-member written opinions to provide greater legal analysis in a small class of particularly complex cases, and to publish more three-member panel decisions as precedent decisions.<sup>1</sup> The Attorney General recognizes that these changes will affect the workload of the Board members by resulting in more detailed one-member orders and more three-member orders. An increase in the number of Board members is therefore warranted to put the Board in the best position to implement these changes.

Moreover, the Board has seen its filings increase from 35,000 appeals and motions in FY 2002 to 42,700 in FY 2005. The Attorney General anticipates that more immigration judges will be needed to handle a further increase in caseloads at the Immigration Courts, which will in turn result in an increase in appeals. The current caseload is extremely burdensome and may become overwhelming in the future for a Board of 11 members.

At the same time, experience suggests that if the Board becomes too large, it

<sup>1</sup> The precise scope of these changes will be specified in a separate rulemaking.

will have considerably more difficulty fulfilling its responsibility of providing coherent direction with respect to the immigration laws. Keeping in mind the goal of maintaining cohesion and the ability to reach consensus, but recognizing the challenges the Board faces in light of its current and anticipated caseload, the Attorney General has determined that four members should be added to the Board at this time.

## II. Temporary Board Members

The rules at 8 CFR 1003.1(a)(4) allow the Director of EOIR to designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary Board members. These provisions offer a mechanism through which the Department can provide the Board temporary assistance without changing the number of Board members. This is an appropriate means of responding to an unanticipated increase or temporary surge in the number, size, or type of cases, and other short-term circumstances that might impair the Board's ability to adjudicate cases in a manner that is both timely and fair. Temporary Board members appointed through this process do not participate in *en banc* Board proceedings, so these provisions also offer the Department a mechanism through which it can temporarily increase the Board's reviewing capacity without impairing its ability to review cases *en banc* as permanently expanding the Board beyond a certain number would be likely to do. The Board is presently being assisted by three immigration judges whom the Director has designated through this mechanism.

This rule enhances the utility of the temporary appointment authority by making an additional category of people eligible to serve as temporary Board members. It amends 8 CFR 1003.1(a)(4) to allow the Director, with the approval of the Deputy Attorney General, to designate senior EOIR attorneys with at least ten years of experience in the field of immigration law to serve for up to six months in this capacity. Because immigration judges generally are already required to handle an exceptionally large caseload, designation of immigration judges to sit on the Board as temporary Board members is not always practical. In addition to taking immigration judges away from their dockets, their designation can result in significant agency expenses, including travel and housing. By contrast, many senior EOIR attorneys with 10 years of experience

are co-located with the Board, minimizing expense and disruption, and allowing them to assume their new duties immediately upon designation. This change will accordingly expand the pool of available candidates to provide a modicum of additional flexibility in making these appointments.

This change serves a similar function to a provision that at one time authorized the Chief Attorney Examiner to serve as a temporary Board member in exigent circumstances. Since the position of Chief Attorney Examiner no longer exists, that particular provision is no longer included in the current rules, but this rule similarly authorizes a senior and highly experienced EOIR attorney to serve as a temporary Board member. In order to allow greater flexibility, the rule does not specify particular titles or job descriptions. Instead, this rule simply authorizes the Director, with the approval of the Deputy Attorney General, to designate one or more senior EOIR attorneys with at least ten years of experience in the field of immigration law to serve as a temporary Board member.

This rule also amends the current rule to state explicitly that temporary Board members have the authority of a permanent Board member, with the exception that a temporary Board member may not vote in *en banc* proceedings.

Because this is a rule of internal agency organization, notice and comment are not required prior to its promulgation. The Department is nonetheless promulgating it as an interim rule with opportunity for post-promulgation comment in order to provide an opportunity for public comment before it issues a final rule on these matters.

## Regulatory Requirements

### A. Administrative Procedure Act

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking or delayed effective date is unnecessary as this rule addresses only internal agency organization and management. Accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), and the reporting requirement of 5 U.S.C. 801 does not apply.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is "required by section 553 \* \* \*, or any

other law, to publish general notice of proposed rule making for any proposed rule." 5 U.S.C. 603(a). RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). This rule is exempt from notice and comment rulemaking. Therefore, no RFA analysis under 5 U.S.C. 603 is required for this rule.

### C. 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.

### D. 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, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

### E. Executive Order 12866 (Regulatory Planning and Review)

The Department does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review.

### F. 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, this rule does not have sufficient federalism implications to warrant preparation of a federalism summary impact statement.

### G. Executive Order 12988 (Civil Justice Reform)

This rule has been prepared in accordance with the standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

**H. Paperwork Reduction Act**

This rule does not create any information collection requirement.

**List of Subjects in 8 CFR Part 1003**

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

n Accordingly, for the reasons stated in the preamble, chapter V of title 8 of the Code of Federal Regulations is amended as follows:

**PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

n 1. The authority citation for part 1003 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

n 2. Section 1003.1 is amended by revising paragraphs (a)(1) and (a)(4) to read as follows:

**§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.**

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review (EOIR). The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them. The Board shall consist of 15 members. A vacancy, or the absence or unavailability of a Board member, shall not impair the right of the remaining members to exercise all the powers of the Board.

\* \* \* \* \*

(4) *Temporary Board members.* The Director may in his discretion designate immigration judges, retired Board members, retired immigration judges, and administrative law judges employed within, or retired from, EOIR to act as temporary Board members for terms not to exceed six months. In addition, with the approval of the Deputy Attorney General, the Director may designate one or more senior EOIR attorneys with at least ten years of experience in the field of immigration law to act as temporary Board members for terms not to exceed six months. A temporary Board member shall have the authority of a Board

member to adjudicate assigned cases, except that temporary Board members shall not have the authority to vote on any matter decided by the Board *en banc*.

\* \* \* \* \*

Dated: November 30, 2006.

**Alberto R. Gonzales,**  
*Attorney General.*

[FR Doc. E6–20720 Filed 12–6–06; 8:45 am]

BILLING CODE 4410–30–P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. FAA–2006–25327; Directorate Identifier 2006–NM–116–AD; Amendment 39–14842; AD 2006–09–06 R1]

RIN 2120–AA64

**Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR Series Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is revising an existing airworthiness directive (AD) that applies to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR series airplanes. That AD currently requires repetitive inspections to detect cracking of certain lower lobe fuselage frames, and repair if necessary. This new AD specifies appropriate service information for certain corrective actions. This AD results from reports indicating that fatigue cracks were found in lower lobe frames on the left side of the fuselage. We are issuing this AD to detect and correct fatigue cracking of certain lower lobe fuselage frames, which could lead to fatigue cracks in the fuselage skin, and consequent rapid decompression of the airplane.

**DATES:** The effective date of this AD is June 7, 2006.

On June 7, 2006 (71 FR 25926, May 3, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2408, Revision 1, dated April 4, 2002.

On May 5, 1999 (64 FR 15298, March 31, 1999), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2408, dated April 25, 1996.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:****Examining the Docket**

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

**Discussion**

The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an airworthiness directive (AD) to revise AD 2006–09–06, amendment 39–14576 (71 FR 25926, May 3, 2006). The existing AD applies to certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747–400, 747–400D, and 747SR series airplanes. The proposed AD was published in the **Federal Register** on July 13, 2006 (71 FR 39600) to require repetitive inspections to detect cracking of certain lower lobe fuselage frames, and repair if necessary, and to specify appropriate service information for certain corrective actions.

**Comments**

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

**Support for the Proposed AD**

Boeing supports the proposed AD.

**Request To Change Incorporation of Certain Information**

The Modification and Replacement Parts Association (MARPA) states that, typically, airworthiness directives are based on service information originating with the type certificate holder or its suppliers. MARPA adds that manufacturer service documents are