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the injury or disease resulting in the care and treatment described in § 43.1.

(b) Claims in excess of \$300,000 may be compromised, settled, waived, and released only with the prior approval of the Department of Justice.

(c) The authority granted in this section shall not be exercised in any case in which:

(1) The claim of the United States for such care and treatment has been referred to the Department of Justice; or

(2) A suit by the third party has been instituted against the United States or the individual who received or is receiving the care and treatment described in § 43.1 and the suit arises out of the occurrence which gave rise to the third-party claim of the United States.

(d) The Departments and Agencies concerned shall consult the Department of Justice in all cases involving:

(1) Unusual circumstances;

(2) A new point of law which may serve as a precedent; or

(3) A policy question where there is or may be a difference of views between any of such Departments and Agencies.

[Order No. 1594-92, 57 FR 27356, June 19, 1992, as amended by Order No. 3141-2010, 75 FR 9103, Mar. 1, 2010]

§ 43.4 Annual reports.

The head of each Department or Agency concerned, or his designee, shall report annually to the Attorney General, by March 1, commencing in 1964, the number and dollar amount of claims asserted against, and the number and dollar amount of recoveries from third persons.

[Order No. 289-62, 27 FR 11317, Nov. 16, 1962]

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

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AUTHORITY: 8 U.S.C. 1324b, 8 U.S.C. 1103(a).

SOURCE: Order No. 1225-87, 52 FR 37409, Oct. 6, 1987, unless otherwise noted.

Subpart A—General

§ 44.100 Purpose.

The purpose of this part is to effectuate section 102 of the Immigration Reform and Control Act of 1986, which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

(a) *Charge* means a written statement under oath or affirmation that—

(1) Identifies the charging party's name, address, and telephone number;

(2) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(3) Identifies the name and address of the person or entity against whom the charge is being made;

(4) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(5) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or intimidation or retaliation, or documentation abuses;

(6) Indicates whether the injured party is a U.S. citizen, U.S. national, or alien authorized to work in the United States;

(7) Indicates, if the injured party is an alien authorized to work, whether the injured party—

(i) Has been—

(A) Lawfully admitted for permanent residence;

(B) Granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1);

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(C) Admitted as a refugee under 8 U.S.C. 1157; or

(D) Granted asylum under 8 U.S.C. 1158; and

(ii) Has applied for naturalization (and if so, indicates the date of the application);

(8) Identifies, if the injured party is an alien authorized to work, the injured party's alien registration number and date of birth.

(9) Indicates, if possible, the number of persons employed on the date of the alleged discrimination by the person or entity against whom the charge is being made;

(10) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Immigration and Naturalization Service, indicates that the charging party has the authorization of the injured party to file the charge.

(11) Indicates whether a charge based on the same set of facts has been filed with the Equal Employment Opportunity Commission, and if so, the specific office, and contact person (if known); and

(12) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) *Charging party* means—

(1) An individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice;

(2) An individual or private organization who is authorized by an individual to file a charge with the Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred.

(c) *Protected individual* means an individual who—

(1) Is a citizen or national of the United States; or

(2) Is an alien who is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted

for temporary residence under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or is granted asylum under 8 U.S.C. 1158. The status of an alien whose application for temporary resident status under 8 U.S.C. 1160(a), 8 U.S.C. 1161(a), or 8 U.S.C. 1255a(a)(1) is approved shall be adjusted to that of a lawful temporary resident as of the date indicated on the application fee receipt issued at the Immigration and Naturalization Service Legalization Office. As used in this definition, the term "protected individual" does not include an alien who—

(i) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, by May 6, 1987; or

(ii) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Immigration and Naturalization Service's processing of the application shall not be counted toward the two-year period.

(d) *Complaint* means a written submission filed with an administrative law judge by the Special Counsel or the charging party, other than an officer of the Immigration and Naturalization Service, that is based on the same charge filed with the Special Counsel.

(e) *Injured party* means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a charging party other than the injured party, is alleged to be so affected.

(f) *Respondent* means a person or entity against whom a charge of an unfair immigration-related employment practice has been filed.

(g) *Special Counsel* means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 102 of

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the Immigration Reform and Control Act of 1986, or his or her designee.

[Order No. 1225–87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520–91, 56 FR 40249, Aug. 14, 1991; Order No. 1807–93, 58 FR 59948, Nov. 12, 1993]

Subpart B—Prohibited Practices

§ 44.200 Unfair immigration-related employment practices.

(a)(1) *General.* It is unfair immigration-related employment practice for a person or other entity to knowingly and intentionally discriminate or to engage in a pattern or practice of knowing and intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(i) Because of such individual's national origin; or

(ii) In the case of a protected individual, as defined in § 44.101(c), because of such individual's citizenship status.

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Documentation abuses.* A person's or other entity's request, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin if the dis-

crimination with respect to that person or entity and that individual is covered under 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship which—

(A) Is otherwise required in order to comply with law, regulation, or Executive Order; or

(B) Is required by Federal, State, or local government contract; or

(C) Which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit or refer for a fee an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

[Order No. 1225–87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520–91, 56 FR 40249, Aug. 14, 1991; Order No. 1807–93, 58 FR 59948, Nov. 12, 1993]

Subpart C—Enforcement Procedures

§ 44.300 Filing a charge.

(a) *Who may file.* (1) Any individual who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized to act on such person's behalf, may file a charge with the Special Counsel.

(2) Any officer of the Immigration and Naturalization Service who believes that an unfair immigration-related employment practice has occurred or is occurring may file a charge with the Special Counsel.

(b) *When to file.* Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. For purposes of determining when a charge is timely under this paragraph, a charge mailed to the Special Counsel shall be deemed filed on the date it is postmarked.

(c) *How to file.* Charges may be:

(1) Mailed to: Office of Special Counsel for Immigration-Related Unfair

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Employment Practices, P.O. Box 27728, Washington, DC 20038-7728 or

(2) Delivered to the Office of Special Counsel at 1425 New York Avenue NW., suite 9000, Washington, DC 20005.

(d) *No overlap with EEOC complaints.* No charge may be filed respecting an unfair immigration-related employment practice described in §44.200(a)(1) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this section, unless the charge is dismissed by the Special Counsel as being outside the scope of this part.

[Order No. 1225-87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1807-93, 58 FR 59948, Nov. 12, 1993]

§ 44.301 Acceptance of charge.

(a) The Special Counsel shall notify the charging party of receipt of a charge as defined in §44.101(a) or receipt of a submission deemed to be a charge under paragraph (c)(2) of this section.

(b) The notice to the charging party shall specify the date on which the charge was received, state that the charging party, other than an officer of the Immigration and Naturalization Service, may file a complaint before an administrative law judge if the Special Counsel does not do so within 120 days of receipt of the charge, and state the last date on which such a complaint may be filed.

(c)(1) Subject to paragraph (c)(2) of this section, if a charging party's submission is inadequate to constitute a charge as defined in §44.101(a), the Special Counsel shall notify the charging party that specified additional information is needed. As of the date that adequate information is received in writing by the Special Counsel, the charging party's submission shall be deemed a filed charge and the Special Counsel shall issue the notices required

by paragraphs (b) and (e) of this section.

(2) In the Special Counsel's discretion, the Special Counsel may deem a submission to be a filed charge as of the date of its receipt even though it is inadequate to constitute a charge as defined in §44.101(a). The Special Counsel may then obtain the additional information specified in §44.101(a) in the course of investigating the charge.

(d)(1) If the Special Counsel receives a charge after 180 days of the alleged occurrence of an unfair immigration-related employment practice, the Special Counsel shall dismiss the charge with prejudice.

(2) Inadequate submissions that are later deemed charges under paragraph (c)(1) of this section are timely filed as long as—

(i) The original submission is filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice; and

(ii) Any additional information requested by the Special Counsel pursuant to paragraph (c)(1) of this section is provided in writing to the Special Counsel within the 180-day period or within 45 days of the date on which the charging party received the Special Counsel's notification pursuant to paragraph (c) of this section, whichever is later.

(e) The Special Counsel shall serve notice of the charge on the respondent by certified mail within 10 days of receipt of the charge. The notice shall include the date, place, and circumstances of the alleged unfair immigration-related employment practice.

[Order No. 1225-87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520-91, 57 FR 40249, Aug. 14, 1991; 57 FR 30397, July 9, 1992]

§ 44.302 Investigation.

(a) The Special Counsel may propound interrogatories, requests for production of documents, and requests for admissions.

(b) The Special Counsel shall have reasonable access to examine the evidence of any person or entity being investigated. The respondent shall permit access by the Special Counsel during normal business hours to such of its books, records, accounts, and other sources of information, as the Special

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Counsel may deem pertinent to ascertain compliance with this part.

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether a complaint with respect to the charge will be brought before an administrative law judge specially designated by the Attorney General to hear cases under section 102 of the Act.

(b) When the Special Counsel decides not to file a complaint with respect to such charge before an administrative law judge within the 120-day period, or at the end of the 120-day period, the Special Counsel shall issue letters of determination by certified mail which notify the charging party and the respondent of the Special Counsel's determination not to file a complaint.

(c) When the charging party receives a letter of determination issued pursuant to §44.303(b), indicating that the Special Counsel will not file a complaint with respect to such charge, the charging party, other than an officer of the Immigration and Naturalization Service, may bring his or her complaint directly before an administrative law judge within 90 days after his or her receipt of the Special Counsel's letter of determination. The charging party's complaint must be filed with an administrative law judge pursuant to the regulations issued by the Office of the Chief Administrative Hearing Officer codified at 28 CFR 68.1.

(d) The Special Counsel's failure to file a complaint with respect to such charge, before an administrative law judge within 120 days shall not affect the right of the Special Counsel to continue to investigate the charge or to bring a complaint before an administrative law judge during the additional 90-day period as defined by paragraph (c) of this section.

(e) The Special Counsel may seek to intervene at any time in any proceeding brought by a charging party before an administrative law judge.

[Order No. 1225-87, 52 FR 37409, Oct. 6, 1987, as amended by Order No. 1520-91, 56 FR 40249, Aug. 14, 1991]

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§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on his or her own initiative, conduct investigations respecting unfair immigration-related employment practices when there is reason to believe that a person or entity has engaged or is engaging in such practices.

(b) The Special Counsel may file a complaint with an administrative law judge where there is reasonable cause to believe that an unfair immigration-related employment practice has occurred within 180 days from the date of the filing of the complaint.

§ 44.305 Regional offices.

The Special Counsel, in consultation with the Attorney General, shall establish such regional offices as may be necessary to carry out his or her duties.

PART 45—EMPLOYEE RESPONSIBILITIES

Sec.

- 45.1 Cross-reference to ethical standards and financial disclosure regulations.
- 45.2 Disqualification arising from personal or political relationship.
- 45.3 Disciplinary proceedings under 18 U.S.C. 207(j).
- 45.4 Personal use of Government property.
- 45.10 Procedures to promote compliance with crime victims' rights obligations.
- 45.11 Reporting to the Office of the Inspector General.
- 45.12 Reporting to the Department of Justice Office of Professional Responsibility.
- 45.13 Duty to cooperate in an official investigation.

AUTHORITY: 5 U.S.C. 301, 7301, App. 3, 6; 18 U.S.C. 207; 28 U.S.C. 503, 528; DOJ Order 1735.1.

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the