

based enterprises in domestic and export markets. The Departments have complied with the CRA's reporting requirements and have sent this final rule to Congress and to the Comptroller General as required by 5 U.S.C. 801(a)(1).

#### *E. 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 E.O. 13132, the Departments believe that this rule will not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### *F. Executive Order 12988 (Civil Justice Reform)*

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of E.O. 12988.

#### *G. Paperwork Reduction Act*

This rule does not create new, or revisions to existing, "collection[s] of information" as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

#### *H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This rule does not have "tribal implications" because it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), requires no further agency action or analysis.

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

Dated: March 17, 2021.

**Merrick B. Garland,**

*Attorney General, Department of Justice.*

[FR Doc. 2021-05931 Filed 3-19-21; 8:45 am]

**BILLING CODE 9111-97-P; 4410-30-P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **8 CFR Part 208**

[CIS No. 2671-20; DHS Docket No. USCIS-2020-0017]

RIN 1615-AC59

### **Asylum Interview Interpreter Requirement Modification Due to COVID-19**

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Final rule and temporary final rule; extension.

**SUMMARY:** The Department of Homeland Security (DHS) is extending the effective date (for 180 days) of its temporary final rule which modified certain regulatory requirements to help ensure that USCIS may continue with affirmative asylum adjudications during the COVID-19 pandemic.

**DATES:** This final rule is effective March 22, 2021. The expiration date of the temporary final rule published at 85 FR 59655 on September 23, 2020, is extended from March 22, 2021, to September 20, 2021.

**FOR FURTHER INFORMATION CONTACT:** Maureen Dunn, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588-0009; telephone 240-721-3000 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD).

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Legal Authority To Issue This Rule and Other Background**

##### *A. Legal Authority*

The Secretary of Homeland Security (Secretary) publishes this extension of the temporary final rule pursuant to his authorities concerning asylum determinations. The Homeland Security Act of 2002 (HSA), Public Law 107-296, as amended, transferred many functions related to the execution of Federal immigration law to the newly created DHS. The HSA amended the Immigration and Nationality Act (INA or the Act), charging the Secretary "with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of

aliens," INA 103(a)(1), 8 U.S.C. 1103(a)(1), and granted the Secretary the power to take all actions "necessary for carrying out" the immigration laws, including the INA, *id.* 1103(a)(3). The HSA also transferred to DHS responsibility for affirmative asylum applications, *i.e.*, applications for asylum made outside the removal context. *See* 6 U.S.C. 271(b)(3). That authority has been delegated within DHS to U.S. Citizenship and Immigration Services (USCIS). USCIS asylum officers determine, in the first instance, whether a noncitizen's affirmative asylum application should be granted. *See* 8 CFR 208.4(b), 208.9. With limited exception, the Department of Justice Executive Office for Immigration Review has exclusive authority to adjudicate asylum applications filed by noncitizens who are in removal proceedings. *See* INA 103(g), 240; 8 U.S.C. 1103(g), 1229a. This broad division of functions and authorities informs the background of this rule.

##### *B. Legal Framework for Asylum*

Asylum is a discretionary benefit that generally can be granted to eligible noncitizens who are physically present or who arrive in the United States, irrespective of their status, subject to the requirements in section 208 of the INA, 8 U.S.C. 1158, and implementing regulations, *see* 8 CFR parts 208, 1208.

Section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), imposes several mandates and procedural requirements for the consideration of asylum applications. Congress also specified that the Attorney General and Secretary of Homeland Security "may provide by regulation for any other conditions or limitations on the consideration of an application for asylum," so long as those limitations are "not inconsistent with this chapter." INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). In sum, the current statutory framework leaves the Attorney General (and, after the HSA, also the Secretary) significant discretion to regulate consideration of asylum applications. USCIS regulations promulgated under this authority set agency procedures for asylum interviews, and require that applicants unable to proceed in English "must provide, at no expense to the Service, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent." 8 CFR 208.9(g). This requirement means that all asylum applicants who cannot proceed in English must bring an interpreter to their interview, posing a serious health risk in the current climate.

Accordingly, this temporary rule extends the temporary final rule published at 85 FR 59655 to continue to address the international spread of pandemic Coronavirus Disease 2019 (COVID-19) by seeking to slow the transmission and spread of the disease during asylum interviews before USCIS asylum officers. To that end, this temporary rule will extend the requirement in certain instances that noncitizens interviewed for this discretionary asylum benefit use USCIS Government-provided interpreters.

### C. The COVID-19 Pandemic

On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19.<sup>1</sup> On February 24, 2021, the President issued a continuation of the National Emergency concerning the COVID-19 pandemic<sup>2</sup> and on January 7, 2021 the U.S. Department of Health and Human Services renewed the determination that a public health emergency exists.<sup>3</sup> A more detailed background discussion of the COVID-19 pandemic is found in the original temporary rule and USCIS incorporates in this extension the discussion of the pandemic in to this extension. 85 FR 59655.

Since publication of the original rule, several variants of the virus that causes COVID-19 have been reported in the United States.<sup>4</sup> Some evidence already suggests that at least one variant may be associated with an increased risk of death.<sup>5</sup> As of February 23, 2021, there have been approximately 110,763,898 cases of COVID-19 identified globally, resulting in approximately 2,455,331 deaths; approximately 27,702,074 cases have been identified in the United States, with about 480,467 new cases being identified in the 7 days preceding February 23rd, and approximately 491,894 reported deaths due to the disease.<sup>6</sup>

<sup>1</sup> HHS, Determination of Public Health Emergency, 85 FR 7316 (Feb. 7, 2020).

<sup>2</sup> Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 86 FR 11599 (Feb. 26, 2021); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

<sup>3</sup> HHS, Renewal of Determination That A Public Health Emergency Exists (Jan. 7, 2021), <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-07Jan2021.aspx>.

<sup>4</sup> CDC, Emerging SARS-CoV-2 Variants (Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>.

<sup>5</sup> Id.

<sup>6</sup> WHO, Weekly epidemiological update—23 February 2021 (Feb. 23, 2021), available at <https://www.who.int/publications/m/item/weekly-epidemiological-update—23-february-2021>.

As of February 27, 2021, the U.S. Food and Drug Administration (FDA) has issued emergency use authorizations (EUAs) for three COVID-19 vaccines.<sup>7</sup> One vaccine is produced by Pfizer-BioNTech, one by Moderna, and one by Janssen.<sup>8</sup> The Pfizer-BioNTech and Moderna vaccines require two doses to be effective at preventing COVID-19 illness.<sup>9</sup> The Janssen vaccine requires only one dose.<sup>10</sup> As of February 17th 2021, only 15,471,536 people in the United States had completed a COVID-19 vaccine regimen.<sup>11</sup> The vaccine supply is currently limited, but the federal government is working to expand access to the COVID-19 vaccines to everyone in the United States.<sup>12</sup> Health experts do not yet know what percentage of people in the U.S. will need to be vaccinated before enough individuals in the community are protected to meaningfully reduce the spread of the disease from person to person.<sup>13</sup> Experts are still learning about how effectively the vaccines prevent those who have been vaccinated from spreading the virus that causes COVID-19 to other people.<sup>14</sup> There are also multiple variants of the virus that causes COVID-19 circulating in the United States. Scientists are still working to determine how effective the currently authorized vaccines are against these variants.<sup>15</sup>

<sup>7</sup> FDA, COVID-19 Vaccines (Feb. 12, 2021), <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>.

<sup>8</sup> FDA, COVID-19 Vaccines (Feb. 12, 2021), <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines>. Janssen Biotech Inc., the manufacturer of the third vaccine granted an EUA by the FDA, is a Janssen Pharmaceutical Company of Johnson & Johnson.

<sup>9</sup> CDC, Information about the Moderna COVID-19 Vaccine (Jan. 25, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html>; CDC, Information about the Pfizer-BioNTech COVID-19 Vaccine (Jan. 25, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html>.

<sup>10</sup> FDA, FDA Issues Emergency Use Authorization for Third COVID-19 Vaccine (Feb. 27, 2021), <https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine>.

<sup>11</sup> CDC, COVID Data Tracker—COVID-19 Vaccinations in the United States (Feb. 17, 2021), <https://covid.cdc.gov/covid-data-tracker/#vaccinations>.

<sup>12</sup> CDC, Key Things to Know About COVID-19 Vaccines (Feb. 9, 2021), [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2F8-things.html).

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> CDC, Emerging SARS-CoV-2 Variants (Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>.

Furthermore, hospitalization and mechanical respiratory support may still be required in severe cases of COVID-19 illness.<sup>16</sup> Testing is available to confirm suspected cases of COVID-19 infection. At present, the time it takes to receive results varies, based on type of test used, laboratory capacity, and geographic location, among other factors.<sup>17</sup> The CDC warns that a negative test result could stem from the collection of the sample used in the test occurring too early in the course of that individual's infection, and highlights that the individual may still get sick or test positive later in the course of their infection.<sup>18</sup>

Many states and businesses are reopening in various phases, yet there are numerous challenges. The CDC has posted guidance for workplaces that either have reopened, or plan to do so, which include: Ensuring social distancing, installing physical barriers, modifying workspaces, closing communal spaces, staggering shifts, limiting travel, modifying commuting practices, and actively encouraging employees who have symptoms to stay home.<sup>19</sup>

## II. Purpose of This Temporary Final Rule

In light of the pandemic and to protect its workforce and help mitigate the spread of COVID-19, USCIS temporarily suspended all face-to-face services with the public from March 18, 2020 to June 4, 2020. In an effort to promote safety as USCIS reopened offices to the public for in-person services and resumed necessary operations, so that applicants for asylum and other USCIS immigration benefits could continue with their applications and petitions and not face adverse delays, USCIS implemented various mitigation efforts to protect the health and safety of the employees and the public, including: Requiring facial covers for all employees and members

[more/science-and-research/scientific-brief-emerging-variants.html](https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html).

<sup>16</sup> CDC, Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) (Feb. 16, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

<sup>17</sup> CDC, Test for Current Infection (Viral Test) (Feb. 16, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/testing/diagnostic-testing.html>.

<sup>18</sup> Id.

<sup>19</sup> CDC, Guidance for Businesses and Employers Responding to Coronavirus Disease 2019 (COVID-19) (Jan. 4, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html>; CDC, Guidance for Cleaning and Disinfecting Public Spaces, Workplaces, Businesses, Schools, and Homes (Jan. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/community/reopen-guidance.html>.

of the public above the age of two; limiting the number of employees and members of the public in the office; conducting interviews from separate offices to ensure that employees are not in the same room as members of the public; and installing plexiglass where necessary to provide a barrier for employees when social distancing is not possible. Other mitigation efforts, such as mandatory temperature screening for visitors and voluntary checks for employees, were implemented in January 2021.

DHS implemented a temporary rule on September 23, 2020 in order to reduce visitors to asylum offices in support of the overall COVID-19 mitigation strategies described above. Between September 23, 2020 and March 10, 2021, USCIS conducted 7,764 asylum interviews. That temporary rule, along with other noted public safety measures, have been effective in keeping our workforce and the public safe. As of March 5, 2021, there have been 1,577 confirmed cases of COVID-19 exposure among USCIS employees and contractors. The USCIS exposure rate (5.6%) remains below the national average (8.6%).

Therefore, DHS has determined that it is in the best interest of the public and USCIS employees and contractors to extend the temporary rule for another 180 days. Under this extension, asylum applicants who are unable to proceed with the interview in English will ordinarily be required to proceed with government-provided telephonic contract interpreters so long as they speak one of the 47 languages found on the Required Languages for Interpreter Services Blanket Purchase Agreement/ U.S. General Services Administration Language Schedule (“GSA Schedule”). If the applicant does not speak a language on the GSA Schedule or elects to speak a language that is not on the GSA Schedule, the applicant will be required to bring his or her own interpreter to the interview who is fluent in English and the elected language (not on the GSA schedule).

USCIS incorporates into this extension the justifications, as well as the discussion on the benefits of providing telephonic contract interpreters in reducing the risk of contracting COVID-19 for applicants, attorneys, interpreters, and USCIS employees from the original rule.

### III. Discussion of Regulatory Change: 8 CFR 208.9(h)<sup>20</sup>

DHS has determined that there are reasonable grounds for regarding potential exposure to COVID-19 as a public health concern and thus sufficient to continue to modify the interpreter requirement for asylum applicants to lower the number of in-person attendees at asylum interviews. DHS will continue to require asylum applicants to proceed with the asylum interview using USCIS’s interpreter services for another 180 days following publication of this temporary final rule if they are fluent in one of the 47 languages discussed in the temporary rule at 85 FR at 59657.<sup>21</sup> After the 180 days concludes, asylum applicants unable to proceed in English will again be required to provide their own interpreters under 8 CFR 208.9(g).

DHS noted in the original temporary final rule that it would evaluate the public health concerns and resource allocation to determine whether to extend the rule. DHS has determined that extending this rule is necessary for public safety, and accordingly, DHS is extending this rule for 180 days unless it is further extended at a later date, and it continues to apply to all asylum interviews across the nation. USCIS has determined that an extension of 180 days is appropriate given that (1) the pandemic is ongoing;<sup>22</sup> (2) there is much that remains unknown about the transmissibility, severity, and other features associated with COVID-19; (3) mitigation is especially important before additional vaccines and treatments become widely available; and (4) several variants of the virus that causes COVID-19 are circulating in the US. Health experts are still learning how easily these variants can be transmitted and

<sup>20</sup> The interpreter interview provisions can be found in two parallel sets of regulations: Regulations under the authority of DHS are contained in 8 CFR part 208; and regulations under the authority of the Department of Justice (DOJ) are contained in 8 CFR part 1208. Each set of regulations contains substantially similar provisions regarding asylum interview processes, and each articulates the interpreter requirement for interviews before an asylum officer. Compare 8 CFR 208.9(g), with 8 CFR 1208.9(g). This temporary final rule revises only the DHS regulations at 8 CFR 208.9. Notwithstanding the language of the parallel DOJ regulations in 8 CFR 1208.9, as of the effective date of this TFR, the revised language of 8 CFR 208.9(h) is binding on DHS and its adjudications for 180 days. DHS would not be bound by the DOJ regulation at 8 CFR 1208.9(g).

<sup>21</sup> DHS notes that this extension does not modify 8 CFR 208.9(g); rather the extension temporary rule is written so that any asylum interviews occurring while the temporary rule is effective will be bound by the requirements at 8 CFR 208.9(h).

<sup>22</sup> See 86 FR 11599; 85 FR 15337; HHS, Renewal of Determination that a Public Health Emergency exists.

how effectively the currently authorized vaccines provide protection against the variants. Prior to the expiration of this extension to the temporary rule, DHS will again evaluate the public health concerns and resource allocation to determine if another extension is appropriate to further the goals of promoting public safety. If necessary, DHS would publish any such extension via a rulemaking in the **Federal Register**.

### IV. Regulatory Requirements

#### A. Administrative Procedure Act (APA)

DHS is issuing this extension as a temporary final rule pursuant to the APA’s “good cause” exception. 5 U.S.C. 553(b)(B). DHS may forgo notice-and-comment rulemaking and a delayed effective date because the APA provides an exception from those requirements when an agency “for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B); see 5 U.S.C. 553(d)(3).

The good cause exception for forgoing notice-and-comment rulemaking “excuses notice and comment in emergency situations, or where delay could result in serious harm.” *Jifry v. FAA*, 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good cause exception is “narrowly construed and only reluctantly countenanced,” *Tenn. Gas Pipeline Co. v. FERC*, 969 F.2d 1141, 1144 (D.C. Cir 1992), DHS has appropriately invoked the exception in this case, for the reasons set forth below. Additionally, on multiple occasions, agencies have relied on this exception to promulgate both communicable disease-related<sup>23</sup> and immigration-related<sup>24</sup>

<sup>23</sup> HHS Control of Communicable Diseases; Foreign Quarantine, 85 FR 7874 (Feb. 12, 2020) (interim final rule to enable the CDC “to require airlines to collect, and provide to CDC, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions”); Control of Communicable Diseases; Restrictions on African Rodents, Prairie Dogs, and Certain Other Animals, 68 FR 62353 (Nov. 4, 2003) (interim final rule to modify restrictions to “prevent the spread of monkeypox, a communicable disease, in the United States.”).

<sup>24</sup> See, e.g., Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (interim rule citing good cause to immediately require a passport and visa from certain H2-A Caribbean agricultural workers to avoid “an increase in applications for admission in bad faith by persons who would otherwise have been denied visas and are seeking to avoid the visa requirement and consular screening process during the period between the publication of a proposed and a final rule”); Suspending the 30-Day and Annual Interview Requirements From the Special Registration Process for Certain Nonimmigrants, 68 FR 67578, 67581 (Dec. 2, 2003) (interim rule

interim rules, as well as extend such rules.<sup>25</sup>

DHS is publishing this extension as a temporary final rule because of the continuing COVID-19 crisis and incorporates into this extension the discussion of good cause from the original temporary rule. Additionally, as discussed earlier in this preamble, on January 7, 2021, the Secretary of Health and Human Services renewed the determination that a COVID-19 public health emergency exists.<sup>26</sup> On February 26, 2021, President Biden published a notice on the continuation of the state of the National Emergency concerning the COVID-19 outbreak.<sup>27</sup>

As of February 23, 2021, there have been approximately 110,763,898 cases of COVID-19 identified globally, resulting in approximately 2,455,331 deaths; approximately 27,702,074 cases have been identified in the United States, with about 480,467 new cases being identified in the 7 days preceding February 23rd, and approximately 491,894 reported deaths due to the disease.<sup>28</sup>

Hospitalization may still be required in severe cases and mechanical respiratory support may be needed in the most severe cases. Additionally, several variants of the virus that causes COVID-19 have been reported in the United States.<sup>29</sup> Some evidence already suggests that at least one variant may be associated with an increased risk of death.<sup>30</sup>

Based on the continuing health emergency, DHS has concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this temporary final rule extension. Delaying implementation of this rule until the conclusion of notice-and-comment procedures and the 30-day delayed effective date would be impracticable and contrary to the public interest due to the need to continue agency operations and reduce associated risk to

claiming the good cause exception for suspending certain automatic registration requirements for nonimmigrants because “without [the] regulation approximately 82,532 aliens would be subject to 30-day or annual re-registration interviews” over a six-month period).

<sup>25</sup> See, e.g., Temporary Changes to Requirements Affecting H-2A Nonimmigrants Due To the COVID-19 National Emergency: Partial Extension of Certain Flexibilities, 85 FR 51304 (Aug. 20, 2020) (temporary final rule extending April 20, 2020 temporary final rule).

<sup>26</sup> HHS, Renewal of Determination that a Public Health Emergency exists.

<sup>27</sup> 86 FR 11599.

<sup>28</sup> WHO, Weekly epidemiological update.

<sup>29</sup> CDC, Emerging SARS-CoV-2 Variants (Jan. 28, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/scientific-brief-emerging-variants.html>.

<sup>30</sup> Id.

asylum office staff, as well as the public, with the spread of COVID-19.

As of March 10, 2021, USCIS had 397,451 asylum applications, on behalf of 625,220 noncitizens, pending final adjudication. Over 94% of these pending applications are awaiting an interview by an asylum officer. The USCIS backlog will continue to increase unless USCIS can safely and efficiently conduct asylum interviews.

This extension temporary final rule is promulgated as a response to COVID-19. It is temporary, limited in application to only those asylum applicants who cannot proceed with the interview in English, and narrowly tailored to mitigate the spread of COVID-19. To not extend such a measure could cause serious and far-reaching public safety and health effects.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). A regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking.

#### C. Unfunded Mandates Reform Act of 1995

This temporary final rule extension 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. Congressional Review Act

This temporary final rule extension is not a major rule as defined by section 804 of the Congressional Review Act, 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 enterprises to compete with foreign-based enterprises in domestic and export markets.

#### E. Executive Order 12866 Executive Order 13563

Executive Orders (E.O.) 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is designated a significant regulatory action under E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. DHS, however, is proceeding under the emergency provision of Executive Order 12866 Section 6(a)(3)(D) based on the need to move expeditiously during the current public health emergency.

This extension of the original temporary rule will continue to help asylum applicants proceed with their interviews in a safe manner, while protecting agency staff. As a result of the original temporary rule, between September 23, 2020 and March 10, 2021, USCIS conducted 7,764 asylum interviews, with interpreters available telephonically. This extension of the original temporary rule is not expected to result in any additional costs to the applicant or to the government. As previously explained, the contract interpreters will be provided at no cost to the applicant. USCIS already has an existing contract to provide telephonic interpretation and monitoring in interviews for all of its case types. USCIS has provided monitors for many years. Almost all interviews that utilize a USCIS provided interpreter after this rulemaking would have had a contracted monitor under the status quo. As the cost of monitoring and interpretation are identical under the contract and monitors will no longer be needed for these interviews, the implementation of this rule is projected to be cost neutral or negligible as USCIS is already paying for these services even without this rule.

#### 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, it is determined that this

rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

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

This rule meets the applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988.

*H. Paperwork Reduction Act*

This rule does not propose new, or revisions to existing, “collection[s] of information” as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. As this is an extension of a temporary final rule and would only span 180 days, USCIS does not anticipate a need to update the Form I–589, Application for Asylum and for Withholding of Removal, despite the existing language on the Instructions regarding interpreters, because it will be primarily rescheduling interviews that were cancelled due to COVID–19. USCIS will post updates on its I–589 website, <https://www.uscis.gov/i-589>, and other asylum and relevant web pages regarding the new interview requirements in this regulation, as well as provide personal notice to applicants via the interview notices issued to applicants prior to their interview.

**List of Subjects in 8 CFR Part 208**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR part 208 as follows:

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

■ 1. The authority citation for part 208 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. Section 208.9(h) introductory text is revised to read as follows:

**§ 208.9 Procedure for interview before an asylum officer.**

\* \* \* \* \*

(h) *Asylum applicant interpreters.* For asylum interviews conducted between

September 23, 2020 through September 20, 2021:

\* \* \* \* \*

**Alejandro Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2021–05872 Filed 3–19–21; 8:45 am]

**BILLING CODE 9111–97–P**

**DEPARTMENT OF TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Parts 3 and 5**

[Docket ID OCC–2021–0002]

RIN 1557–AF09

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 217**

[Regulation Q; Docket No. R–1741 ]

RIN 7100–AG11

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 324**

RIN 3064–AF73

**Regulatory Capital Rule: Emergency Capital Investment Program**

**AGENCY:** Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Interim final rule; request for public comment.

**SUMMARY:** In order to support and facilitate the timely implementation and acceptance of the Congressionally authorized Emergency Capital Investment Program (ECIP) for the Department of the Treasury to make capital investments in low- and moderate-income community financial institutions, the OCC, Board, and FDIC (together, the agencies) are issuing an interim final rule that provides that preferred stock issued under ECIP qualifies as additional tier 1 capital and that subordinated debt issued under ECIP qualifies as tier 2 capital under the agencies’ capital rule.

**DATES:** This rule is effective on March 22, 2021. Comments must be received on or before May 21, 2021.

**ADDRESSES:**

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal, if possible. Please

use the title “Amendments to the Capital Rule to Facilitate the Emergency Capital Investment Program” to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

**Federal eRulemaking Portal:** Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2021–0002” in the Search Box and click “Search.” Public comments can be submitted via the “Comment” box below the displayed document information or by clicking on the document title and then clicking the “Comment” box on the top-left side of the screen. For help with submitting effective comments please click on “View Commenter’s Checklist.” For assistance with the *Regulations.gov* site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday-Friday, 9am–5pm ET or email [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

**Mail:** Chief Counsel’s Office, Attn: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

**Hand Delivery/Courier:** 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

**Instructions:** You must include “OCC” as the agency name and “Docket ID OCC–2021–0002” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this action by the following method:

Go to <https://www.regulations.gov/>. Enter “Docket ID OCC–2021–0002” in the Search box and click “Search.” Click on the “Documents” tab and then the document’s title. After clicking the document’s title, click the “Browse Comments” tab. Comments can be viewed and filtered by clicking on the “Sort By” drop-down on the right side of the screen or the “Refine Results” options on the left side of the screen. Supporting materials can be viewed by clicking on the “Documents” tab and filtered by clicking on the “Sort By” drop-down on the right side of the