

information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120.

List of Subjects in 21 CFR Part 876

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 876 is amended as follows:

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

■ 1. The authority citation for part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 876.2100 to subpart C to read as follows:

§ 876.2100 Pressure ulcer management tool.

(a) *Identification.* A pressure ulcer management tool is a prescription device intended for patients at risk of developing pressure ulcers. The device provides output that supports a user's decision to increase intervention. The device is an adjunct tool for pressure ulcer management that is not intended for detection or diagnostic purposes.

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter, subject to the limitations in § 876.9.

Dated: December 8, 2021.

Lauren K. Roth,

Associate Commissioner for Policy.

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DEPARTMENT OF STATE

22 CFR Part 42

[Public Notice: 11460]

RIN 1400–AF20

Waiver of Personal Appearance and In-Person Oath Requirement for Certain Immigrant Visa Applicants Due to COVID–19

AGENCY: Department of State.

ACTION: Final rule and temporary final rule.

SUMMARY: This temporary final rule (TFR) provides flexibility for consular officers to waive the personal appearance of certain repeat immigrant visa applicants who were approved for an immigrant visa in the same

classification and on the same basis as the current application on or after August 4, 2019. It also gives consular officers discretion to allow this subset of immigrant visa applicants to affirm the accuracy of the contents of their application without appearing in person before a consular officer. This TFR is effective immediately and expires after 24 months. The final rule portion of this document reinstates parts of the regulations with certain updates after the expiration of the TFR.

DATES: Amendments in instructions 2 and 3 in this temporary final rule are effective from December 13, 2021, through December 13, 2023. The amendment in instruction 4 is effective December 13, 2023.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. What changes to 22 CFR 42.62 and 42.67 does this TFR make?

The Department is temporarily authorizing consular officers, for 24 months, to waive, on a discretionary basis, the requirements in 22 CFR 42.62 and 42.67 that an immigrant visa applicant appear in person before and be interviewed by a consular officer for certain repeat immigrant visa applicants. This TFR applies to immigrant visa applicants who were issued a U.S. immigrant visa on or after August 4, 2019, who meet the following additional criteria: Individuals who would be eligible for a discretionary waiver of personal appearance and interview pursuant to this TFR must be seeking an immigrant visa in the same classification (or another classification as the result of automatic conversion due to the death or naturalization of the petitioner of the previously issued immigrant visa) and pursuant to the same approved petition as their previously approved application, and they must continue to qualify for the immigrant visa sought.

Under this TFR, the personal appearance and interview of certain applicants for an immigrant visa may be waived in the discretion of the consular officer, provided that the applicant is willing to affirm under penalty of perjury to the information provided on the Online Immigrant Visa and Alien Registration Application, Form DS–260 (or Form DS–230, Application for Immigrant Visa and Alien Registration if the consular officer authorizes the use of that form). The consular officer may

communicate with the applicant by telephone or email, may request that the applicant provide additional information that the consular officer deems necessary, and may request the applicant to appear in person. If the applicant identifies the need to change responses to Form DS–260, the consular officer or other authorized consular staff can reopen the DS–260 for the applicant to make changes to that form and re-sign it under penalty of perjury.

This TFR will automatically expire 24 months after it takes effect. As the TFR is designed to help address the problem of applicants who are unable to travel due to the COVID–19 pandemic and who must meet specific time-limited criteria, this TFR will no longer be necessary as the pandemic becomes less acute and ordinary travel resumes. The Department believes that 24 months is sufficient to process the cases described.

Pursuant to section 222(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1202(a), every immigrant visa applicant must make an application in the form, manner, and place prescribed by regulation. Except as may otherwise be prescribed by regulations, every immigrant visa application must “be signed by the applicant in the presence of the consular officer and verified by the oath of the applicant administered by the consular officer.” INA 222(e), 8 U.S.C. 1202(e). Regulations further require immigrant visa applicants to be interviewed by a consular officer. 22 CFR 42.62(b). This TFR provides an exception to these personal appearance and interview requirements pursuant to INA 222(a) and (e), 8 U.S.C. 1202(a) and (e).

II. Why is the Department promulgating this TFR?

A. 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–19.¹ On March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus that causes COVID–19 in the United States.² That proclamation declared that the emergency began in the United States on March 1, 2020. In addition to the National Emergency, a variety of Presidential Proclamations have

¹ HHS, *Determination of Public Health Emergency*, 85 FR 7316 (Feb. 7, 2020).

² *Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak*, 85 FR 15337 (Mar. 18, 2020).

suspended entry of certain noncitizens into the United States since the public health emergency began. On January 31, 2020, then-President Trump issued Presidential Proclamation 9984, which, subject to limitations, suspended and limited the entry of certain noncitizens who had been physically present in the People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) for the 14-day period prior to their entry into the United States.³ Similar suspensions of entry were issued under Presidential Proclamation 9992, dated February 29, 2020 (the Islamic Republic of Iran);⁴ Presidential Proclamation 9993, dated March 11, 2020 (the Schengen Area);⁵ Presidential Proclamation 9996, dated March 14, 2020 (the United Kingdom (excluding overseas territories outside of Europe) and the Republic of Ireland);⁶ Presidential Proclamation 10014, dated April 22, 2020 (immigrants who present a risk to the U.S. labor market)⁷ (subsequently revoked by Presidential Proclamation 10149, dated February 24, 2021);⁸ Presidential Proclamation 10041, dated May 24, 2020 (the Federative Republic of Brazil);⁹ Presidential Proclamation 10143, dated January 25, 2021 (the Schengen Area, the United Kingdom (excluding overseas territories outside of Europe), the Republic of Ireland, the Federative Republic of Brazil, and the Republic of South Africa);¹⁰ and Presidential

Proclamation 10199, dated April 30, 2021 (the Republic of India).¹¹

COVID-19 is a communicable disease caused by a coronavirus, SARS-CoV-2. It appears to spread easily and sustainably within communities.¹² The SARS-CoV-2 virus is thought to transfer primarily by person-to-person contact through respiratory droplets produced when an infected person coughs or sneezes; it may also transfer through contact with surfaces or objects contaminated with these droplets or by airborne transmission through exposure to virus in small droplets and particles that can linger in the air for minutes to hours.¹³ People who are infected but do not show symptoms can also spread the virus to others.¹⁴ The ease of transmission presents a risk of a surge in hospitalizations for COVID-19, which would reduce available hospital capacity.

Symptoms include fever and chills, cough, shortness of breath, fatigue, muscle and body aches, headache, loss of taste or smell, sore throat, congestion or runny nose, nausea, or diarrhea, which typically appear two to 14 days after exposure.¹⁵ Manifestations of severe disease have included pneumonia, hypoxemic respiratory failure/ARDS, sepsis and septic shock, cardiomyopathy and arrhythmia, acute kidney injury, and complications from prolonged hospitalization, including secondary bacterial and fungal infections, thromboembolism, gastrointestinal bleeding, and critical illness polyneuropathy/myopathy.¹⁶ Older adults and people who have severe chronic medical conditions are also at higher risk for more serious COVID-19 illness.¹⁷

As of November 16, 2021, there were approximately 254,174,536 identified

Pose a Risk of Transmitting Coronavirus Disease 2019, 86 FR 7467 (Jan. 28, 2021).

¹¹ Proclamation 10199 of April 30, 2021, *Suspension of Entry as Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019*, 86 FR 24297 (May 6, 2021).

¹² CDC, *How COVID-19 Spreads* (May 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ CDC, *Coronavirus Disease 2019 (COVID-19)* (Feb. 22, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

¹⁶ 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>.

¹⁷ CDC, *People with Certain Medical Conditions* (Aug. 20, 2021), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html.

cases of COVID-19 globally, resulting in approximately 5,112,325 deaths; and approximately 46,993,724 identified cases in the United States, and approximately 760,266¹⁸ deaths, with new cases being reported daily.

On March 20, 2020, in response to significant worldwide challenges related to the COVID-19 pandemic, the Department temporarily suspended routine visa services at all U.S. Embassies and Consulates.¹⁹ The Department authorized posts to begin a phased resumption of visa services, on a post-by-post basis, beginning on July 15, 2020, consistent with the Department's guidance for safely returning the Department's workforce to its facilities.²⁰ The Department noted that local conditions such as medical infrastructure, COVID-19 cases, emergency response capabilities, and restrictions on leaving home may affect when Department facilities can begin to provide routine services.²¹ The Department's embassies and consulates are implementing safeguards to keep staff and customers safe, including implementing physical distancing in waiting rooms, scheduling fewer interviews at a time, frequent disinfection of high touch areas, and following local health and safety regulations.²²

B. Allocation of Limited Consular Resources

Individuals who have been issued an immigrant visa may need to seek a subsequent immigrant visa for a variety of reasons. Immigrant visas have a maximum validity of six months. That means recipients of immigrant visas typically have up to a maximum of six months to travel to the United States and apply for admission with a DHS immigration officer after visa issuance. If admitted, the individual becomes a lawful permanent resident. Individuals who were issued an immigrant visa may have been unable or unwilling to seek admission during the period of validity; they may know that they will be unable to use the visa during the period of

¹⁸ Johns Hopkins, *COVID-19 Map*, (Oct. 5, 2021), <https://coronavirus.jhu.edu/map.html>;

CDC, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.* (Oct. 5, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

¹⁹ Department of State, *Suspension of Routine Visa Services* (Mar. 20, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>.

²⁰ Department of State, *Phased Resumption of Visa Services*, (Apr. 6, 2021), <https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html>.

²¹ *Id.*

²² *Id.*

³ Proclamation 9984 of January 31, 2020, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus and Other Appropriate Measures To Address This Risk*, 85 FR 6709 (Feb. 5, 2020).

⁴ Proclamation 9992 of February 29, 2020, *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, 85 FR 12855 (Mar. 4, 2020).

⁵ Proclamation 9993 of March 14, 2020, *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, 85 FR 15045 (Mar. 16, 2020).

⁶ Proclamation 9996 of March 11, 2020, *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, 85 FR 15341 (Mar. 18, 2020).

⁷ Proclamation 10014 of April 22, 2020, *Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 85 FR 23441 (Apr. 27, 2020).

⁸ Proclamation 10149 of February 24, 2021, *A Proclamation on Revoking Proclamation 10014*, 86 FR 11847 (Mar. 1, 2021).

⁹ Proclamation 10041 of May 24, 2020, *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting 2019 Novel Coronavirus*, 85 FR 31933 (May 28, 2020).

¹⁰ Proclamation 10143 of January 25, 2021, *Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who*

validity; or their visa may have been lost or mutilated. Depending on the circumstances, a repeat immigrant visa applicant may be required to submit a new Form DS-260/DS-230, in which case the applicant must submit any required supporting documents and must pay a new fee.²³ This TFR makes no changes to form or fee requirements.

As set forth in 22 CFR 42.62 and 42.67, immigrant visa applicants ordinarily must appear in person before a consular officer to execute their application and subscribe to the contents of their application under oath, and they must be interviewed by a consular officer.

The requirement for immigrant visa applicants to be interviewed by a consular officer and to execute and affirm the information presented on the Form DS-260/DS-230 application before a consular officer provides benefits to the Department and applicants alike. Consular officers have an opportunity to assess the credibility of immigrant visa applicants when they appear in person, while visa applicants are provided an opportunity, if necessary, to correct, any information on their application, which the applicants sign under penalty of perjury. Applicants could face civil and criminal consequences for material misrepresentations. However, there is reduced benefit from requiring the recipient of a previously approved immigrant visa to return to the consular post to execute their application in person, take an in-person oath, and be interviewed for an identical or substantially similar application, and those actions would significantly strain consular resources. Accordingly, in light of current resource considerations due to the COVID-19 pandemic, the Department is temporarily permitting consular officers to waive a second personal appearance and interview at the consular officer's discretion.

Local conditions such as medical infrastructure, COVID-19 cases, emergency response capabilities, and restrictions on leaving home may affect when and the extent to which Department facilities can provide routine services, including scheduling appointments and the ability of applicants to obtain documentation and medical screening appointments. The Department's embassies and consulates

are implementing safeguards to keep staff and customers safe, including implementing physical distancing in waiting rooms, scheduling fewer interviews at a time, frequently disinfecting high touch areas, and following local health and safety regulations. The Department is facing a high demand for visa services, and the policy announced in this TFR will help allocate scarce resources to areas where personal appearances by and interviews of visa applicants are relatively more beneficial.

The Department conducted a database query to determine how many individuals may benefit from this rule and determined that nearly 49,000 individuals were issued immigrant visas between August 4, 2019 (180 days before the first Presidential Proclamation suspending entry into the United States of certain immigrants in relation to the COVID-19 pandemic) and September 30, 2021, and have not yet sought admission. Of the individuals issued immigrant visas between August 4, 2019, and May 31, 2021, over 11,000 did not seek admission before their immigrant visas expired. Additionally, according to the Department's database query, at least 244 individuals were refused admission into the United States at a port of entry between August 4, 2019, and September 30, 2021, though it is not certain how many of those refusals of admission were due to suspensions of entry relating to the COVID-19 pandemic. Some individuals in this population may be eligible to benefit from this rule.

This TFR applies to a narrow category of immigrant visa applicants. To qualify for the discretionary in-person waiver, an applicant must:

(1) Have been issued a U.S. immigrant visa on or after August 4, 2019;

(2) Seek an immigrant visa in the same classification and pursuant to the same approved petition as the previously issued immigrant visa, or an immigrant visa pursuant to the same approved petition as the previously issued visa but in a different classification because it was automatically converted due to the death or naturalization of the petitioner of the previously issued immigrant visa;

(3) Qualify for an immigrant visa in the same classification, or another classification as the result of automatic conversion due to the death or naturalization of the petitioner of the previously issued immigrant visa, and pursuant to the same approved petition as the previously issued immigrant visa; and

(4) Have no changed circumstances that could affect the applicant's eligibility for the visa.

This TFR furthers the Department's commitment to the health and safety of consular officers and customers by reducing personal appearances, as appropriate, which could potentially expose consular officers, locally employed staff, applicants, and customers to COVID-19. This will also save time and travel expenses for applicants who wish to apply for another immigrant visa after having been unable or unwilling to use their original visa. This TFR is effective until 24 months following its publication in the **Federal Register**.

III. Regulatory Findings

A. Administrative Procedure Act (APA)

This TFR is being issued without prior notice and opportunity to comment and with an immediate effective date pursuant to 5 U.S.C. 553(a)(1), (b)(A), (b)(B), and (d)(3), the Administrative Procedure Act (APA), 5 U.S.C. 551, *et seq.*

1. Foreign Affairs

This TFR involves a foreign affairs function of the United States. In *Raoof v. Sullivan*, the U.S. District Court for the District of Columbia found that the Department properly exercised the foreign affairs exception under the APA when it "did not engage in formal rule-making" for the J-1 nonimmigrant visa two-year foreign residence requirement because "the exchange visitor program—with its statutory mandate for international interaction through nonimmigrants—certainly relates to foreign affairs and diplomatic duties conferred upon the Secretary of State and the State Department." 315 F.Supp.3d 34, 44 (D.D.C. 2018). The COVID-19 pandemic has caused considerable disruption to routine visa services. This TFR will help visa-issuing consular posts around the world allocate scarce resources to areas where personal appearances and interviews are more beneficial relative to other areas, including for the protection of U.S. national security. The TFR will also protect embassy and consulate staff, visa applicants, and U.S. citizens seeking consular services from potential exposure to COVID-19 and the serious illness or death that may result from such exposure.

In many countries, the consular section of the U.S. Embassy is the United States' most public-facing direct engagement with a host country's populace. An outbreak of COVID-19 that could be sourced to a U.S. Embassy

²³ 22 CFR part 42 governs immigrant visas. 22 CFR 42.71 governs immigrant visa fees. 22 CFR 42.72 sets the maximum immigrant visa validity period at six months, and 22 CFR 42.74 addresses certain new, replacement, and duplicate visas. Individuals seeking another visa pursuant to 22 CFR 42.74 are not required to submit a new application and are not impacted by this TFR.

consular section waiting room could have an impact on U.S. relations with the host country, particularly if there were mitigating measures that could have been taken that were not.

Recognizing that the Department's continued ability to facilitate visa processing for applicants from any given country has a significant impact on that country's bilateral relationship with the United States, this TFR clearly and directly impacts foreign affairs functions of the United States and "implicat[es] matters of diplomacy directly." *City of N.Y. v. Permanent Mission of India to the U.N.*, 618 F.3d 172, 202 (2d Cir. 2010). This TFR reflects changes to U.S. foreign policy, specifically in the context of U.S. visas. In acknowledging its limited consular resources and local conditions, the Department noted that medical infrastructure, COVID-19 cases, emergency response capabilities, and restrictions on leaving home may affect when, and the extent to which, Department facilities can begin to provide routine services. This TFR, by granting greater flexibility to accommodate the immigrant visa process in light of the dynamic conditions posed by the COVID-19 pandemic, will allow the Department to better facilitate immigration of foreign nationals to the United States, a key foreign affairs function of the United States. This TFR, which temporarily provides flexibility to consular officers to issue immigrant visas under limited circumstances, directly relates to the Department's authority to carry out diplomatic duties and inherently involves the Secretary of State's foreign affairs functions.

2. Statement of Department Procedure and Practice

This TFR provides for a temporary change in the Department's procedures and practice regarding the adjudication of certain immigrant visa applications. The APA provides that notice and comment is not required for "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice." 5 U.S.C. 553(b)(A). Some individuals who have been issued immigrant visas did not use them for reasons related to the impact of the COVID-19 pandemic, including personal choice, a lack of travel options, or official travel restrictions. Whether such individuals must appear in person to apply for a new immigrant visa or may proceed with the application steps without such an appearance is a matter of Department procedure and practice.

Courts have said that substantive rules "create new law, rights, or duties"

or "change existing rights and obligations," whereas procedural rules do not "alter the rights or interests of parties" but instead only "the manner in which the parties *present themselves or their viewpoints to the agency.*" *Time Warner Cable Inc. v. FCC*, 729 F.3d 137 (2d Cir. 2013) (emphasis added); *see also Kaspar Wire Works, Inc. v. Sec'y of Labor*, 268 F.3d 1123, 1131-1132 (D.C. Cir. 2001) (finding even an agency's approach of imposing per-instance penalties to be a procedural "agency housekeeping rule"). Whether an applicant for an immigrant visa who had previously been issued a visa in the same classification, pursuant to the same approved petition (or that was automatically converted to another classification due to the death or naturalization of the petitioner of the previously-granted immigrant visa) must appear before a consular officer when re-applying does not alter a visa applicant's rights or the duties of the Department, but merely the manner in which such applicants present themselves to the Department.

3. Good Cause To Forgo Notice and Comment Rulemaking

The APA authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). 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), the Department invokes that exception for this TFR, for the reasons set forth below.

As discussed earlier in this preamble, as many as 49,000 individuals who were issued an immigrant visa on or after August 4, 2019, may have been unable or unwilling to travel to the United States to seek admission as a lawful permanent resident due to extended travel restrictions and health conditions or concerns related to the COVID-19 pandemic. Those restrictions derived from a series of Presidential Proclamations beginning in January 2020, the National Emergency declared in March 2020, and the Department's suspension of routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates in March 2020. To partially address the concerns of the risks of spreading the virus that

causes COVID-19 while simultaneously resuming consular operations to the greatest extent possible, the Department is acting expeditiously to put in place temporary flexibility to provide consular officers with discretion to waive the personal appearance and interview requirements for certain individuals who are submitting another application for an immigrant visa and to allow them to affirm the accuracy of the contents of the application under penalty of perjury rather than in person.

Consistent with the above analysis, notice and comment on this rulemaking would be impracticable and unnecessary. The TFR is narrowly construed to allow for the personal appearance and interview waiver of certain applicants who previously appeared and were issued a visa and who now seek to obtain a new visa to travel to the United States.

This TFR expires 24 months after its publication in the **Federal Register**. This action is temporary in nature and includes appropriate conditions to ensure that it is narrowly tailored to the disruption in travel to the United States related to the COVID-19 pandemic. Considering the public health emergency caused by the spread of the virus associated with COVID-19, delaying implementation of this rule until the conclusion of notice-and-comment procedures would be impracticable and contrary to the public interest due to the need to resume consular operations, and due to the associated COVID-19 transmission risk to consular office staff as well as the public.

4. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). There is a less restrictive standard for the good-cause exception to requirement for a 30-day delayed effective, than for forgoing notice and comment rulemaking due to good cause. *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL-CIO v. Block*, 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp. v. EPA*, 605 F.2d 283, 289-90 (7th Cir. 1979). An agency shows good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions that the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.*, 605 F.2d at 290; *United States v. Gavrilovic*, 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons as set forth above, the Department also concludes that it has

good cause to dispense with the 30-day effective date requirement, given that this TFR is necessary to prevent serious risk to the health of consular officers, other embassy and consulate staff, immigrant visa applicants, and other customers due to COVID-19.

B. Regulatory Flexibility Act/Executive Order 13272: Small Business

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to perform an analysis of the potential impact of regulations on small business entities when regulations are subject to the notice and comment procedures of the APA. Because this TFR is exempt from notice and comment rulemaking requirements under 5 U.S.C. 553, it is exempt from the regulatory flexibility analysis requirements set forth by the Regulatory Flexibility Act (5 U.S.C. 603 and 604). Therefore, a regulatory flexibility analysis is not required. Furthermore, this TFR will not have a significant economic impact on a substantial number of small business entities.

C. Unfunded Mandates Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, generally requires agencies to prepare a statement before proposing any rule that may result in an annual expenditure of \$100 million or more by State, local, or Tribal governments, or by the private sector. 2 U.S.C. 1532. This TFR does not require the Department to prepare a statement because it will not result in any such expenditure, nor will it significantly or directly affect small governments, including State, local, or Tribal governments, or the private sector. This TFR involves visas for noncitizens, which are administered by federal agencies under federal law, and it does not directly or substantially affect State, local, or Tribal governments, or businesses.

D. Congressional Review Act of 1996

This TFR is not a major rule as defined in 5 U.S.C. 804. This TFR 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 import markets.

E. Executive Order 12866

The Department has reviewed this TFR to ensure its consistency with the regulatory philosophy and principles set

forth in Executive Order 12866. The policy announced in this TFR will further national security by allowing consular officers to allocate scarce resources to cases that had not been previously adjudicated and issued, where personal appearances and interviews are relatively more beneficial. It will help protect from the spread of COVID-19 embassy and consulate staff worldwide, visa applicants, and U.S. citizens or others seeking consular services who might otherwise come into proximity with immigrant visa applicants. It will also provide time and cost savings to those visa applicants who will not need to travel to a consular post to provide an in-person oath. It will not result in new costs. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action under Executive Order 12866. As such, OMB has reviewed this regulation accordingly.

F. Executive Order 13563

Along with Executive Order 12866, Executive Order 13563 directs agencies to assess 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, distributed impacts, and equity effects). The Department has reviewed the TFR under Executive Order 13563 and has determined that this rulemaking is consistent with the guidance therein.

G. Executive Orders 12372 and 13132—Federalism

This TFR 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. Nor will the TFR have federalism implications relevant under Executive Orders 12372 and 13132.

H. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

I. Executive Order 12988—Civil Justice Reform

The Department has reviewed the TFR in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

J. Paperwork Reduction Act

This TFR does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 42

Administrative practice and procedure, Aliens, Passports and visas.

For the reasons stated in the preamble, the Department amends 22 CFR part 42 as follows:

PART 42—VISAS: DOCUMENTATION OF IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

- 1. The authority citation for part 42 continues to read as follows:

Authority: 8 U.S.C. 1104 and 1182; Pub. L. 105–277, 112 Stat. 2681; Pub. L. 108–449, 118 Stat. 3469; The Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (done at the Hague, May 29, 1993), S. Treaty Doc. 105–51 (1998), 1870 U.N.T.S. 167 (Reg. No. 31922 (1993)); 42 U.S.C. 14901–14954 (Pub. L. 106–279, 114 Stat. 825); 8 U.S.C. 1101 (Pub. L. 111–287, 124 Stat. 3058); 8 U.S.C. 1154 (Pub. L. 109–162, 119 Stat. 2960); 8 U.S.C. 1201 (Pub. L. 114–70, 129 Stat. 561).

- 2. Effective December 13, 2021, through December 13, 2023, revise § 42.62 to read as follows:

§ 42.62 Personal appearance and interview of applicant.

(a) *Personal appearance of applicant before consular officer.* Every applicant applying for an immigrant visa other than an applicant described in paragraph (c) of this section, including an applicant whose application is executed by another person pursuant to § 42.63(a)(2), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* (1) Every applicant executing an immigrant visa application other than an applicant described in paragraph (c) of this section must be interviewed by a consular officer who shall determine on the basis of the applicant's

representations and the visa application and other relevant documentation—

(i) The proper immigrant classification, if any, of the visa applicant, and

(ii) The applicant's eligibility to receive a visa.

(2) The officer has the authority to require that the alien answer any question deemed material to these determinations.

(c) *Certain repeat applications due to COVID-19.* The personal appearance and interview of any applicant for an immigrant visa may be waived in the discretion of the consular officer until December 13, 2023, provided that—

(1) The applicant was issued a U.S. immigrant visa on or after August 4, 2019, and is:

(i) Seeking an immigrant visa in the same classification and pursuant to the same approved petition as the previously issued immigrant visa; or

(ii) Seeking an immigrant visa pursuant to the same approved petition as the previously issued immigrant visa but in a classification that automatically converted from the classification of the previously issued immigrant visa due to the death or naturalization of the petitioner;

(2) The applicant qualifies for an immigrant visa in the same classification as the previously issued immigrant visa, or in another classification as a result of automatic conversion from the classification of the previously issued immigrant visa due to the death or naturalization of the petitioner, and pursuant to the same approved petition as the previously issued immigrant visa; and

(3) The applicant has not undergone a change in circumstances that could affect the applicant's eligibility for the visa.

■ 3. Effective December 13, 2021, through December 13, 2023, in § 42.67, add paragraph (a)(4) to read as follows:

§ 42.67 Execution of application, registration, and fingerprinting.

(a) * * *

(4) *Form of attestation for certain repeat applications due to COVID-19.* The swearing to or signature of an application before a consular officer by an immigrant visa applicant may be waived in the discretion of the consular officer until December 13, 2023, provided the applicant is willing to affirm under penalty of perjury to the information provided on Form DS-260 or Form DS-230.

* * * * *

■ 4. Effective December 13, 2023, revise § 42.62 to read as follows:

§ 42.62 Personal appearance and interview of applicant.

(a) *Personal appearance of applicant before consular officer.* Every alien applying for an immigrant visa, including an alien whose application is executed by another person pursuant to § 42.63(a)(2), shall be required to appear personally before a consular officer for the execution of the application or, if in Taiwan, before a designated officer of the American Institute in Taiwan, except that the personal appearance of any child under the age of 14 may be waived at the officer's discretion.

(b) *Interview by consular officer.* (1) Every alien executing an immigrant visa application must be interviewed by a consular officer who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation—

(i) The proper immigrant classification, if any, of the visa applicant, and

(ii) The applicant's eligibility to receive a visa.

(2) The officer has the authority to require that the alien answer any question deemed material to these determinations.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, U.S. Department of State.

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DEPARTMENT OF JUSTICE

28 CFR Part 85

[Docket No. OAG 173; AG Order No. 5236-2021]

Civil Monetary Penalties Inflation Adjustment for 2021

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is adjusting for inflation the civil monetary penalties assessed or enforced by components of the Department, in accordance with the provisions of the Bipartisan Budget Act of 2015, for penalties assessed after December 13, 2021 with respect to violations occurring after November 2, 2015.

DATES: This rule is effective December 13, 2021.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, Room 4252, RFK Building, 950 Pennsylvania Avenue NW, Washington, DC 20530, telephone (202) 514-8059 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Statutory Process for Implementing Annual Inflation Adjustments

Section 701 of the Bipartisan Budget Act of 2015, Public Law 114-74 (Nov. 2, 2015) (“BBA”), 28 U.S.C. 2461 note, substantially revised the prior provisions of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Public Law 101-410 (the “Inflation Adjustment Act”), and substituted a different statutory formula for calculating inflation adjustments on an annual basis.

In accordance with the provisions of the BBA, on June 30, 2016 (81 FR 42491), the Department of Justice published an interim rule (“June 2016 interim rule”) to adjust for inflation the civil monetary penalties assessed or enforced by components of the Department after August 1, 2016, with respect to violations occurring after November 2, 2015, the date of enactment of the BBA. Readers may refer to the Supplementary Information (also known as the preamble) of the Department's June 2016 interim rule for additional background information regarding the statutory authority for adjustments of civil monetary penalty amounts to take account of inflation and the Department's past implementation of inflation adjustments. The June 2016 interim rule was finalized without change by the publication of a final rule on April 5, 2019 (84 FR 13525).

After the initial adjustments in 2016, the BBA also provides for agencies to adjust their civil penalties on January 15 of each year to account for inflation during the preceding year, rounded to the nearest dollar. Accordingly, on February 3, 2017 (82 FR 9131), and on January 29, 2018 (83 FR 3944), the Department published final rules pursuant to the BBA to make annual inflation adjustments in the civil monetary penalties assessed or enforced by components of the Department after those dates, with respect to violations occurring after November 2, 2015.

Most recently, the Department published a final rule on June 19, 2020 (85 FR 37004), to adjust the Department's civil money penalties. The Department did not publish an inflation adjustment rule in 2019, but the 2020 adjustments incorporated the civil penalty adjustments for both 2019 and 2020, so that the current penalty amounts are the same as if two separate rules had been published.

II. Inflation Adjustments Made by This Rule

As required, the Department is publishing this final rule to adjust for