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Presidential Documents

Title 3—

The President

Proclamation 10352 of March 24, 2022

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2022

By the President of the United States of America

A Proclamation

In forming a Government that reflected the burgeoning spirit of America and united our young Nation around the core principles of liberty, justice, and the rule of law, our Founders looked to the birthplace of democracy—Greece. Decades after the American Revolution, the people of Greece came together to bravely affirm their commitment to democracy and declare their own independence from the Ottoman Empire. Today, as we mark the anniversary of Greek independence, we honor our countries' deep and historic bond—forged in the struggle for liberty and self-governance—and the many contributions of the modern Hellenic Republic which promote international peace and stability and uphold our shared values.

The Greek bicentennial in 2021 was a year of celebration for Greece, for the Greek American community, and for the strong bilateral relationship between our two nations. The seeds of friendship planted long ago continue to bear fruit for both our people, with Greece and the United States standing together to defend democracy around the world. A crucial ally in the North Atlantic Treaty Organization, Greece promotes peace and prosperity in the Eastern Mediterranean, Black Sea, and Western Balkans regions, and the United States is grateful for Greece's continuing hospitality to the United States Naval Support Activity Souda Bay on Crete.

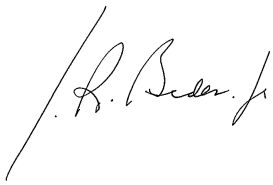
Greece and the United States are standing together to confront the challenges of our time, from meeting the climate crisis and diversifying the region's energy resources to proving that democracies deliver for our people and pushing back against the growing threat of authoritarianism. Through our ongoing Strategic Dialogue, Greece and the United States have increased cooperation across a range of critical issues, and last year's update to our Mutual Defense Cooperation Agreement will boost our defense and security cooperation for years to come.

The deep political and historical bonds that unite Greece and the United States are further reinforced by strong ties of family and affection and by the estimated 3 million Americans of Greek descent across our Nation. Throughout my career, I have seen firsthand the courage and determination of the Greek American community, and these qualities have been an invaluable source of strength to our Nation over the past year. Greek Americans have been at the forefront of the fight against the COVID–19 pandemic and our efforts to vaccinate the world. And last November, as Greek Americans proudly celebrated the construction of the Saint Nicholas Greek Orthodox Church and National Shrine in Manhattan 20 years after the original church structure had been destroyed in the September 11th terrorist attacks, they embodied our shared values of perseverance, resilience, and hope for the future.

As Greece and the United States look forward to what the next 200 years of partnership will bring, I am confident that our nations and our people will meet every challenge together. On this day, we recommit to the hard work ahead, to fortifying our democracies, and to reaffirming our ironclad friendship.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 25, 2022, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon the people of the United States to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand twenty-two, and of the Independence of the United States of America the two hundred and forty-sixth.



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Rules and Regulations

Federal Register

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0617; Project Identifier MCAI–2021–00385–T; Amendment 39–21879; AD 2021–26–20]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called Model A300–600 series airplanes). This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 3, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of May 3, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0617.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0617; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0093, dated March 30, 2021 (EASA AD 2021–0093) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A300–600 series airplanes.

EASA AD 2021–0093 specifies that it requires tasks (limitations) already required by EASA AD 2019–0090 (which corresponds to FAA AD 2019–21–01, Amendment 39–19767 (84 FR 56935, October 24, 2019) (AD 2019–21–01)) and EASA AD 2020–0111R2 (which corresponds to FAA AD 2020–23–11, Amendment 39–21327 (85 FR 75838, November 27, 2020) (AD 2020–23–11)) and invalidates prior instructions for those tasks. For AD 2019–21–01 and AD 2020–23–11, this AD terminates the limitation for the tasks identified in the service information referred to in EASA AD 2021–0093 only.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A300–600 series airplanes. The NPRM published in the **Federal Register** on August 9, 2021 (86 FR 43440). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0093.

The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural elements, which could result in reduced structural integrity of the fuselage. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from FedEx Express, who supported the NPRM without change.

The FAA received additional comments from UPS Airlines. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Revise the Proposed AD To Supersede Previous ADs

UPS Airlines requested that the FAA minimize the number of rulemaking activities in this area and suggested revising the current proposed rule to include the latest released variation information and the two current mandated rulings (AD 2019–21–01 and AD 2020–23–11), while superseding them. UPS stated that it anticipates that EASA will release a proposed AD to mandate the latest variation information. UPS asserted that multiple active rulings for the same program requirements place an unnecessary compliance tracking burden on operators for the hundreds of tasks within the airworthiness limitations section (ALS) program, while offering no enhancement or benefit to fleet airworthiness.

The FAA does not agree to revise this AD, because it is based on an unsafe condition that requires new or more restrictive airworthiness limitations, as issued by Airbus in a specific variation

of the ALS. As stated in the NPRM for this AD, the FAA determined that the unsafe condition is likely to exist or develop in other products of the same type design requiring the FAA to issue an AD of its own. Furthermore, revising the proposed AD to include new variations (*i.e.,* new requirements) would result in the need to reissue the notice and reopen the period for public comment, adding unwarranted delay to the rulemaking process. The FAA has determined that further delay of this AD is not appropriate. This AD has not been changed with regard to this request.

Request To Change Compliance Time

UPS Airlines requested a minimum of 180 days for incorporation of the new or revised ALS into their maintenance or inspection program from the AD's effective date. UPS stated that changes identified in a variation release are for ALS tasks that are not of concern for near-term airworthiness.

The FAA does not agree to the requested change. This AD merely requires operators to update their existing maintenance or inspection program within 90 days to include the revised ALS. Each ALS task has its own associated compliance time. No change has been made to this AD in response to this request.

Request To Remove Compliance Time

UPS Airlines requested that the initial compliance time (the later of the task threshold or within 90 days after the effective date) be revised to remove the 90 day requirement. UPS noted the task threshold in the ALS includes a calendar threshold in addition to flight cycle/flight hour requirements. UPS stated it believes the 90-day requirement is unnecessary and stated there is no technical data to support reducing the compliance times in the ALS.

The FAA does not agree to the requested change. The 90-day requirement does not reduce any compliance times specified in the ALS. The compliance time is the later of the times in the ALS and 90 days after the effective date. Thus if any compliance time in the ALS is later than 90 days after the effective date, operators would only need to accomplish the task within the later compliance time. No change has been made to this AD in response to this request.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0093 describes new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 118 airplanes of U.S. registry. The FAA estimates the following costs to comply with this: The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Will not affect intrastate aviation in Alaska, and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2021–26–20 Airbus SAS: Amendment 39–21879; Docket No. FAA–2021–0617; Project Identifier MCAI–2021–00385–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 3, 2022.

(b) Affected ADs

This AD affects AD 2019–21–01, Amendment 39–19767 (84 FR 56935, October 24, 2019) (AD 2019–21–01) and AD 2020–23–11, Amendment 39–21327 (85 FR 75838, November 27, 2020) (AD 2020–23–11).

(c) Applicability

This AD applies all Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, and corrosion in principal structural

elements, which could result in reduced structural integrity of the fuselage.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0093, dated March 30, 2021 (EASA AD 2021–0093).

(h) Exceptions to EASA AD 2021–0093

(1) Where EASA AD 2021–0093 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0093 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0093 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2021–0093 is at the applicable ''thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0093, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraph (4) of EASA AD 2021–0093 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0093 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0093.

(j) Terminating Action for Certain Requirements of AD 2019–21–01 and AD 2020–23–11

(1) Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2019–21–01, for the tasks identified in the service information referred to in EASA AD 2021–0093 only.

(2) Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2020–23–11, for the tasks identified in the service information referred to in EASA AD 2021–0093 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (k)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

(m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0093, dated March 30, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0093, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 15, 2021.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

Note: This document was received for publication by the Office of the Federal Register on March 24, 2022.

[FR Doc. 2022–06535 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 170

Food Additives

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 21 of the Code of Federal Regulations, Parts 170 to 199, revised as of April 1, 2021, in § 170.30, reinstate paragraph (g) to read as follows:

§ 170.30 Eligibility for classification as generally recognized as safe (GRAS).

* * * * *

(g) A food ingredient that is not GRAS or subject to a prior sanction requires a food additive regulation promulgated under section 409 of the act before it may be directly or indirectly added to food.

* * * * *

[FR Doc. 2022–06677 Filed 3–28–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 516, 520, 522, 524, 529, 556, and 558

[Docket No. FDA–2021–N–0002]

New Animal Drugs; Approval of New Animal Drug Applications; Change of Sponsor

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA or we) is amending the animal drug regulations to reflect application-related actions for new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) during October, November, and December 2021. FDA is informing the public of the availability of summaries of the basis of approval and of environmental review documents, where applicable. The animal drug regulations are also being amended to improve the accuracy of the regulations.

DATES: This rule is effective March 29, 2022.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–5689, *George.Haibel@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Approvals

FDA is amending the animal drug regulations to reflect approval actions for NADAs and ANADAs during October, November, and December 2021, as listed in table 1. In addition, FDA is informing the public of the availability, where applicable, of documentation of environmental review required under the National Environmental Policy Act (NEPA) and, for actions requiring review of safety or effectiveness data, summaries of the basis of approval (FOI Summaries) under the Freedom of Information Act (FOIA). These public documents may be seen in the office of the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Persons with access to the internet may obtain these documents at the CVM FOIA Electronic Reading Room: *https://www.fda.gov/about-fda/center-veterinary-medicine/cvm-foia-electronic-reading-room.* Marketing exclusivity and patent information may be accessed in FDA's publication, Approved Animal Drug Products Online (Green Book) at: *https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book.*

FDA has verified the website addresses as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2021

Approval date	File No.	Sponsor	Product name	Species	Effect of the action	Public documents
October 1, 2021	200–691	Virbac AH, Inc., P.O. Box 162059, Fort Worth, TX 76161.	RAC 45 CATTLE (ractopamine hydrochloride Type A medicated article).	Cattle	Original approval as a generic copy of NADA 141–221.	FOI Summary.
October 20, 2021	200–604	Dechra Veterinary Products LLC, 7015 College Blvd., Suite 525, Overland Park, KS 66211.	Amoxicillin and Clavulanate Potassium for Oral Suspension.	Dogs and cats	Original approval as a generic copy of NADA 055–101.	FOI Summary.
October 28, 2021	200–588	Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215.	Florfenicol Injection (florfenicol) Injectable Solution.	Cattle	Original approval as a generic copy of NADA 141–063.	FOI Summary.
October 29, 2021	200–628	Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215.	Enrofloxacin 100 (enrofloxacin) Injectable Solution.	Cattle and swine.	Original approval as a generic copy of NADA 141–068.	FOI Summary.
October 29, 2021	141–348	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	SYNOVEX ONE Grower (trenbolone acetate and estradiol benzoate extended-release implants).	Cattle	Supplemental approval adding cattle fed in confinement for slaughter.	FOI Summary.
November 1, 2021	200–711	Ceva Sante Animale, 10 Avenue de la Ballastière, 33500 Libourne, France.	TULAVEN 100 (tulathromycin injection) Injectable Solution.	Cattle and swine.	Original approval as a generic copy of NADA 141–244.	FOI Summary.
November 3, 2021	200–712	Ceva Sante Animale, 10 Avenue de la Ballastière, 33500 Libourne, France.	TULAVEN 25 (tulathromycin injection) Injectable Solution.	Cattle and swine.	Original approval as a generic copy of NADA 141–349.	FOI Summary.
November 3, 2021	141–508	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140.	EXPERIOR (lubabegron) Type A medicated article.	Cattle	Supplemental approval adding tolerances for residues in edible tissues of cattle.	FOI Summary.
November 12, 2021	200–668	Virbac AH, Inc., P.O. Box 162059, Fort Worth, TX 76161.	TULISSIN 25 (tulathromycin injection) Injectable Solution.	Cattle and swine.	Original approval as a generic copy of NADA 141–349.	FOI Summary.
November 15, 2021	200–253	Bimeda Animal Health Ltd., 1B The Herbert Building, The Park, Carrickmines, Dublin 18, Ireland.	PROSTAMATE (dinoprost tromethamine injection) Injectable Solution.	Cattle	Supplemental approval for use with gonadorelin or with progesterone intravaginal inserts.	FOI Summary.
November 15, 2021	200–669	Virbac AH, Inc., P.O. Box 162059, Fort Worth, TX 76161.	TULISSIN 100 (tulathromycin injection) Injectable Solution.	Cattle and swine.	Original approval as a generic copy of NADA 141–244.	FOI Summary.

TABLE 1—ORIGINAL AND SUPPLEMENTAL NADAS AND ANADAS APPROVED DURING OCTOBER, NOVEMBER, AND DECEMBER 2021—Continued

Approval date	File No.	Sponsor	Product name	Species	Effect of the action	Public documents
November 22, 2021	200–695	Virbac AH, Inc., P.O. Box 162059, Fort Worth, TX 76161.	TIA 12.5% (tiamulin hydrogen fumarate) Liquid Concentrate.	Swine	Original approval as a generic copy of NADA 140–916.	FOI Summary.
November 24, 2021	200–714	Aurora Pharmaceutical, Inc, 1196 Highway 3 South, Northfield, MN 55057–3009.	BARRIER for Cats (imidacloprid and moxidectin) Topical Solution.	Cats	Original approval as a generic copy of NADA 141–254.	FOI Summary.
December 10, 2021	200–705	Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140.	ZOASHIELD (zoalene) Type A medicated article and BMD (bacitracin methylenedisalicylate) Type A medicated article.	Chickens and turkeys.	Original approval as a generic copy of NADA 141–085.	FOI Summary.
December 21, 2021	141–552	Jaguar Animal Health, 200 Pine St., suite 600, San Francisco, CA 94104.	CANALEVIA–CA1 (crofelemer delayed-release tablets).	Dogs	Conditional approval for treatment of chemotherapy-induced diarrhea.	FOI Summary.
December 23, 2021	141–521	Zoetis Inc., 333 Portage St., Kalamazoo, MI 49007.	SIMPARICA TRIO (sarolaner, moxidectin, and pyrantel chewable tablets) Chewable Tablet.	Dogs	Supplemental approval for the prevention of *Borrelia burgdorferi* infection as a direct result of killing *Ixodes scapularis* vector ticks and for the treatment and control of L4 and immature adult *Ancylostoma caninum*.	FOI Summary.

II. Change of Sponsor

Elanco US Inc., 2500 Innovation Way, Greenfield, IN 46140 has informed FDA that it has transferred ownership of, and all rights and interest in, the NADAs and ANADAs listed below to Dechra, Ltd., Snaygill Industrial Estate, Keighley Rd., Skipton, North Yorkshire, BD23 2RW, United Kingdom:

File No.	Product name
047–955	ROMPUN (xylazine hydrochloride) Injectable (20 mg).
047–956	ROMPUN (xylazine hydrochloride) Injectable (100 mg).
200–322	Butorphanol Tartrate Injection.
200–408	Butorphanol Tartrate Injection.

Thorn Bioscience LLC, 1044 East Chestnut St., Louisville, KY 40204 has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 141–319 for SUCROMATE Equine (deslorelin acetate injection) to Dechra, Ltd., Snaygill Industrial Estate, Keighley Rd., Skipton, North Yorkshire, BD23 2RW, United Kingdom.

As provided in the regulatory text, the animal drug regulations are amended to reflect these changes of sponsorship.

III. Technical Amendments

FDA is making the following amendments to improve the accuracy of the animal drug regulations:

- 21 CFR 510.600 is amended to add Jaguar Animal Health and remove Thorn Bioscience LLC from the list of sponsors of approved applications.
- 21 CFR 520.88h is amended to correct indications for use in cats of an oral suspension containing amoxicillin and clavulanate.
- 21 CFR 520.2455 is amended to correct a spelling error in the limitations for use of tiamulin in drinking water of swine.
- 21 CFR 522.230 is amended to add the caution that buprenorphine injectable solution is a Schedule III opioid under the Controlled Substances Act.
- 21 CFR 522.690 is amended to reflect revised indications for use of dinoprost tromethamine injectable solution in mares.
- 21 CFR 522.1940 is amended to reflect the approved classes of cattle and limitations for use of progesterone and estradiol benzoate ear implants.
- 21 CFR 522.2343 is amended to reflect the approved classes of cattle and limitations for use of testosterone propionate and estradiol benzoate ear implants.
- 21 CFR 556.240 is amended to reflect the use of revised food consumption values in establishing permitted concentrations of residues of estradiol and related esters in edible tissues of cattle. The basis for this action is explained in the FOI Summary for supplemental NADA 141–348, approved October 29, 2021. The section is also amended to reflect a cross reference for testosterone propionate and estradiol benzoate implants, recently redesignated as 21 CFR 522.2343.
- 21 CFR 558.254 is amended to reflect the approved conditions of use for famphur in feed.
- 21 CFR 558.355 is amended to reflect use of medicated feeds containing monensin alone or in combination with bacitracin methylenedisalicylate in revised classes of chickens.
- 21 CFR 558.555 is amended to correct a spelling error in the permitted combination use of semduramicin in medicated feed.
- 21 CFR 558.633 is amended to revise expiration dates for use of pelleted or crumbled tylvalosin medicated swine feeds.
- 21 CFR 558.680 is amended to reflect the correct sponsor of an application for use of Type C medicated turkey feeds containing zoalene.

IV. Legal Authority

This final rule is issued under section 512(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C.360b(i)), which requires **Federal Register** publication of ''notice[s] . . . effective as a regulation,'' of the conditions of use of approved new animal drugs. This rule sets forth

technical amendments to the regulations to codify recent actions on approved new animal drug applications and corrections to improve the accuracy of the regulations, and as such does not impose any burden on regulated entities.

Although denominated a rule pursuant to the FD&C Act, this document does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a ''rule of particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808. Likewise, this is not a rule subject to Executive Order 12866, which defines a rule as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency.''

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 516

Administrative practice and procedure, Animal drugs, Confidential business information, Reporting and recordkeeping requirements.

21 CFR Parts 520, 522, 524, and 529

Animal drugs.

21 CFR Part 556

Animal drugs, Dairy products, Foods, Meat and meat products.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 510, 516, 520, 522, 524, 529, 556, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600:

■ a. In the table in paragraph (c)(1), add in alphabetical order an entry for ''Jaguar Animal Health'' and remove the entry for ''Thorn Bioscience LLC''; and

■ b. In the table in paragraph (c)(2), remove the entry for ''051330'' and add in numerical order an entry for ''086149''.

The additions read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * * * *	
Jaguar Animal Health, 200 Pine St., Suite 600, San Francisco, CA 94104	086149
* * * * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * * * *	
086149	Jaguar Animal Health, 200 Pine St., Suite 600, San Francisco, CA 94104.
* * * * * * *	

PART 516—NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES

■ 3. The authority citation for part 516 continues to read as follows:

Authority 21 U.S.C. 360ccc, 360ccc–2, 371.

■ 4. Add § 516.498 to subpart C to read as follows:

§ 516.498 Crofelemer.

(a) *Specifications.* Each delayed-release tablet contains 125 milligrams (mg) crofelemer.

(b) *Sponsor.* See No. 086149 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* Administer 1 tablet orally twice daily for 3 days for dogs weighing ≤140 pounds. Administer 2 tablets orally twice daily for 3 days for dogs weighing >140 pounds.

(2) *Indications for use.* For the treatment of chemotherapy-induced diarrhea in dogs.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian. It is a violation of Federal law to use this product other than as directed in the labeling.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 5. The authority citation for part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 6. Revise § 520.88h to read as follows:

§ 520.88h Amoxicillin trihydrate and clavulanate potassium for oral suspension.

(a) *Specifications.* When constituted, each milliliter (mL) of suspension contains amoxicillin trihydrate equivalent to 50 milligrams (mg) amoxicillin and clavulanate potassium equivalent to 12.5 mg clavulanic acid.

(b) *Sponsors.* See Nos. 017033, 054771, and 069043 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 6.25 mg/lb (1 mL/10 lb of body weight) twice a day. Skin and soft tissue infections such as abscesses, cellulitis, wounds, superficial/juvenile pyoderma, and periodontal infections should be treated for 5 to 7 days or for 48 hours after all signs have subsided. If no

response is seen after 5 days of treatment, therapy should be discontinued and the case reevaluated. Deep pyoderma may require treatment for 21 days; the maximum duration of treatment should not exceed 30 days.

(ii) *Indications for use.* Treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of the following organisms: Beta-lactamase-producing *Staphylococcus aureus,* non-beta-lactamase-producing *Staphylococcus aureus, Staphylococcus* spp., *Streptococcus* spp., and *Escherichia coli.* Treatment of periodontal infections due to susceptible strains of both aerobic and anaerobic bacteria.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 62.5 mg (1 mL) twice daily. Skin and soft tissue infections such as abscesses and cellulitis/dermatitis should be treated for 5 to 7 days or 48 hours after all symptoms have subsided, not to exceed 30 days. If no response is seen after 3 days of treatment, therapy should be discontinued and the case reevaluated. Urinary tract infections may require treatment for 10 to 14 days or longer. The maximum duration of treatment should not exceed 30 days.

(ii) *Indications for use.* Treatment of skin and soft tissue infections, such as wounds, abscesses, and cellulitis/dermatitis due to susceptible strains of the following organisms: Beta-lactamase-producing *Staphylococcus aureus,* non-beta-lactamase-producing *Staphylococcus aureus, Staphylococcus* spp., *Streptococcus* spp., *Escherichia coli, Pasteurella multocida,* and *Pasteurella* spp. Urinary tract infections (cystitis) due to susceptible strains of *E. coli.*

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

■ 7. In § 520.2090, revise paragraph (c)(2) to read as follows:

§ 520.2090 Sarolaner, moxidectin, and pyrantel.

* * * * *

(c) * * *

(2) *Indications for use.* For the prevention of heartworm disease caused by *Dirofilaria immitis* and for the treatment and control of roundworm (immature adult and adult *Toxocara canis* and adult *Toxascaris leonina*) and hookworm (L4, immature adult, and adult *Ancylostoma caninum* and adult *Uncinaria stenocephala*) infections. Kills adult fleas (*Ctenocephalides felis*) and is indicated for the treatment and prevention of flea infestations, and the treatment and control of tick infestations with *Amblyomma americanum* (lone star tick), *Amblyomma maculatum* (Gulf Coast tick), *Dermacentor variabilis* (American dog tick), *Ixodes scapularis* (black-legged tick), and *Rhipicephalus sanguineus* (brown dog tick) for 1 month in dogs and puppies 8 weeks of age and older, and weighing 2.8 pounds or greater. For the prevention of *Borrelia burgdorferi* infections as a direct result of killing *Ixodes scapularis* vector ticks.

* * * * *

■ 8. In § 520.2455:

■ a. Revise paragraphs (b)(1) through (4); and

■ b. In paragraph (d)(2), remove ''semduramycin'' and in its place add ''semduramicin.''

The revisions read as follows:

§ 520.2455 Tiamulin.

* * * * *

(b) * * *

(1) No. 058198 for products described in paragraph (a) of this section.

(2) No. 066104 for product described in paragraph (a)(1) of this section.

(3) Nos. 016592, 051311, and 061133 for product described in paragraph (a)(2) of this section.

(4) No. 054771 for product described in paragraph (a)(3) of this section.

* * * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 9. The authority citation for part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 10. In § 522.246, revise paragraphs (b)(2) and (3) to read as follows:

§ 522.246 Butorphanol.

* * * * *

(b) * * *

(2) No. 043264 for use of the product described in paragraph (a)(2) of this section as in paragraph (d)(2) of this section.

(3) Nos. 000061, 043264, and 059399 for use of the product described in paragraph (a)(3) of this section as in paragraph (d)(3) of this section.

* * * * *

§ 522.533 [Amended]

■ 11. In § 522.533, in paragraph (b)(2), remove ''051330'' and in its place add ''043264''.

■ 12. In § 522.690:

■ a. Revise paragraphs (a) and (b);

■ b. Revise paragraph (d)(1) introductory text and paragraph (d)(1)(i);

■ c. Add paragraph (d)(2) introductory text;

■ d. Revise paragraph (d)(2)(ii);

■ e. Add paragraph (d)(3) introductory text;

■ f. Revise paragraph (d)(3)(ii); and

■ g. Remove paragraph (d)(4).

The revisions and additions read as follows:

§ 522.690 Dinoprost.

(a) *Specifications.* Each milliliter (mL) of solution contains dinoprost tromethamine equivalent to:

(1) 5 milligrams (mg) dinoprost; or

(2) 12.5 mg dinoprost.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter as follows:

(1) Nos. 054771 and 061133 for use of product described in paragraph (a)(1) as in paragraph (d) of this section.

(2) No. 054771 for use of product described in paragraph (a)(2) as in paragraph (d)(1) of this section.

* * * * *

(d) * * *

(1) *Cattle.* Administer products described in paragraph (a) of this section as follows:

(i) *Amount.* 25 mg as an intramuscular injection of the 5 mg/mL product or as an intramuscular or subcutaneous injection of the 12.5 mg/mL product.

* * * * *

(2) * * * Administer product described in paragraph (a)(1) of this section as follows:

* * * * *

(ii) *Indications for use.* (A) For controlling the timing of estrus in estrous cycling mares.

(B) For difficult-to-breed mares (clinically anestrous mares that have a corpus luteum).

* * * * *

(3) * * * Administer product described in paragraph (a)(1) of this section as follows:

* * * * *

(ii) *Indications for use.* For parturition induction in swine.

■ 13. In § 522.812, revise paragraph (b)(2) to read as follows:

§ 522.812 Enrofloxacin.

* * * * *

(b) * * *

(2) Nos. 055529, 058005, 058198, and 061133 for use of product described in paragraph (a)(2) of this section as in paragraphs (e)(2) and (3) of this section.

* * * * *

§ 522.955 [Amended]

■ 14. In § 522.955, in paragraph (b)(3), remove ''No. 086050'' and in its place

add ''Nos. 058005 and 086050''; and in paragraph (d)(1)(ii)(C), remove ''No. 000061'' and in its place add ''Nos. 000061, 058005, and 086050''.

■ 15. In § 522.1077, revise paragraph (d)(1)(iv) to read as follows:

§ 522.1077 Gonadorelin.

* * * * *

(d) * * *

(1) * * *

(iv) Dinoprost injection for use as in paragraph (e)(1)(vi) of this section as provided by Nos. 054771 and 061133 in § 510.600(c) of this chapter.

* * * * *

■ 16. In § 522.1940, revise the paragraph (c)(1) heading, paragraph (c)(1)(iii), the paragraph (c)(2) heading, and paragraph (c)(2)(iii) to read as follows:

§ 522.1940 Progesterone and estradiol benzoate.

* * * * *

(c) * * *

(1) *Suckling beef calves at least 45 days old and up to 400 lb of body weight*—* * *

* * * * *

(iii) *Limitations.* For subcutaneous ear implantation, one dose per animal. Do not use in beef calves less than 45 days of age, dairy calves, and veal calves because effectiveness and safety have not been established. Do not use in animals intended for subsequent breeding, or in dairy cows. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) *Growing beef steers weighing 400 lb or more*—* * *

* * * * *

(iii) *Limitations.* For subcutaneous ear implantation, one dose per animal. Do not use in beef calves less than 45 days of age, dairy calves, and veal calves because effectiveness and safety have not been established. Do not use in animals intended for subsequent breeding, or in dairy cows. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

* * * * *

■ 17. In § 522.2343, revise paragraph (c) introductory text and paragraph (c)(3) to read as follows:

§ 522.2343 Testosterone propionate and estradiol benzoate.

* * * * *

(c) *Conditions of use.* For implantation in growing beef heifers weighing 400 lb or more as follows:

* * * * *

(3) *Limitations.* For subcutaneous ear implantation, one dose per animal. Not for use in dairy or beef replacement heifers. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves because safety and effectiveness have not been established. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

■ 18. In § 522.2478, redesignate paragraph (d)(3) as paragraph (d)(4); add new paragraph (d)(3); and revise newly redesignated paragraph (d)(4) heading and paragraph (d)(4)(i)(C) to read as follows:

§ 522.2478 Trenbolone acetate and estradiol benzoate.

* * * * *

(d) * * *

(3) *Growing beef steers and heifers fed in confinement for slaughter.* (i) For an implant as described in paragraph (a)(2)(ii) of this section:

(A) *Amount.* 150 mg trenbolone acetate and 21 mg estradiol benzoate in an extended-release implant.

(B) *Indications for use.* For increased rate of weight gain for up to 200 days.

(C) *Limitations.* Implant pellets subcutaneously in ear only. Not approved for repeated implantation (reimplantation) with this or any other cattle ear implant within each separate production phase. Safety and effectiveness following reimplantation have not been evaluated. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves because effectiveness and safety have not been established. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in dairy cows or in animals intended for subsequent breeding. Use in these cattle may cause drug residues in milk and/or in calves born to these cows.

(ii) [Reserved]

(4) *Growing beef steers and heifers on pasture (stocker, feeder, and slaughter).* (i) * * *

(C) *Limitations.* Implant pellets subcutaneously in ear only. Not approved for repeated implantation (reimplantation) with this or any other cattle ear implant within each separate production phase. Safety and effectiveness following reimplantation have not been evaluated. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves because effectiveness and safety have not been established. Do not use in beef calves less than 2 months of age, dairy calves, and veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in dairy cows or in animals intended for subsequent breeding. Use in these cattle may cause drug residues in milk and/or in calves born to these cows.

* * * * *

■ 19. In 522.2630, revise paragraphs (b)(1) and (2) to read as follows:

§ 522.2630 Tulathromycin.

* * * * *

(b) * * *

(1) Nos. 013744, 051311, 054771, 058198, and 061133 for use of product described in paragraph (a)(1) as in paragraphs (d)(1)(i) and (ii), (d)(1)(iii)(A), and (d)(2) of this section.

(2) Nos. 013744, 051311, and 054771 for use of product described in paragraph (a)(2) as in paragraphs (d)(1)(i), (d)(1)(ii)(B), (d)(1)(iii)(B), and (d)(2) of this section.

* * * * *

■ 20. In § 522.2662, revise paragraph (b)(3) to read as follows:

§ 522.2662 Xylazine.

* * * * *

(b) * * *

(3) Nos. 043264 and 061651 for use of product described in paragraph (a)(1) of this section as in paragraph (d)(1) of this section; and product described in paragraph (a)(2) of this section as in paragraphs (d)(2), (d)(3)(i), (d)(3)(ii)(A), and (d)(3)(iii) of this section.

* * * * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 21. The authority citation for part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 22. In § 524.1146, revise paragraphs (b)(2) and (3) to read as follows:

§ 524.1146 Imidacloprid and moxidectin.

* * * * *

(b) * * *

(2) Nos. 051072, 017030, 058198, and 061651 for use of product described in paragraph (a)(2) of this section as in paragraph (d)(2) of this section.

(3) Nos. 051072 and 058198 for use of product described in paragraph (a)(2) of this section as in paragraph (d)(3) of this section.

* * * * *

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 23. The authority citation for part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 24. In § 529.1940, revise the last sentence in paragraph (e)(1)(iii) to read as follows:

§ 529.1940 Progesterone intravaginal inserts.

* * * * *

(e) * * *

(1) * * *

(iii) * * * Dinoprost injection for use as in paragraphs (e)(1)(ii)(A) and (B) of this section as in § 522.690 of this chapter, provided by Nos. 054771 and 061133 in § 510.600(c) of this chapter.

* * * * *

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 25. The authority citation for part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 26. In 556.240, revise paragraphs (b)(1) and (c) to read as follows:

§ 556.240 Estradiol and related esters.

* * * * *

(b) * * *

(1) *Cattle.* (i) Muscle: 0.2 ppb.

(ii) Liver: 0.6 ppb.

(iii) Kidney: 1.2 ppb.

(iv) Fat: 1.2 ppb.

* * * * *

(c) *Related conditions of use.* See §§ 522.840, 522.850, 522.1940, 522.2343, 522.2477, and 522.2478 of this chapter.

■ 27. In § 556.370, revise paragraph (b) to read as follows:

§ 556.370 Lubabegron.

* * * * *

(b) *Tolerances.* The tolerances for lubabegron (marker residue) are:

(1) *Cattle.* (i) Liver (target tissue): 10 ppb.

(ii) Muscle: 3 ppb.

(iii) Kidney: 20 ppb.

(2) [Reserved]

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 28. The authority citation for part 558 continues to read as follows:

Authority: 21 U.S.C. 354, 360b, 360ccc, 360ccc–1, 371.

■ 29. In § 558.254, revise paragraph (e) to read as follows:

§ 558.254 Famphur.

* * * * *

(e) *Conditions of use.* It is used in cattle feed as follows:

Famphur amount	Indications for use	Limitations	Sponsor
(1) To provide 1.1 milligrams per pound (mg/lb) body weight per day.	Beef cattle and nonlactating dairy cattle: For control of grubs and as an aid in control of sucking lice.	Feed for 30 days. Withdraw from dry dairy cows and heifers 21 days prior to freshening. Withdraw 4 days prior to slaughter.	000061
(2) To provide 2.3 mg/lb body weight per day.	Beef cattle and nonlactating dairy cattle: For control of grubs.	Feed for 10 days. Withdraw from dry dairy cows and heifers 21 days prior to freshening. Withdraw 4 days prior to slaughter.	000061

■ 30. In § 558.355, revise paragraphs (d)(8)(vi) and (f)(1)(ii), (iv), and (vi) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(8) * * *

(vi) Not for replacement chickens intended to become broiler breeding chickens.

* * * * *

(f) * * *

(1) * * *

Monensin in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(ii) 90 to 110		Layer replacement chickens: As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*	Feed continuously as the sole ration. Do not feed to chickens over 16 weeks of age. Do not feed to laying chickens.	058198
*	*	*	*	*
(iv) 90 to 110	Bacitracin methylenedisalicylate, 4 to 50.	Layer replacement chickens: As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. Do not feed to chickens over 16 weeks of age. Do not feed to laying chickens. Monensin sodium provided by No. 058198, bacitracin methylenedisalicylate provided by No. 054771 in § 510.600(c) of this chapter.	054771
*	*	*	*	*
(vi) 90 to 110	Bacitracin methylenedisalicylate, 50.	Broiler and layer replacement chickens: As an aid in the prevention of coccidiosis caused by *E. necatrix, E. tenella, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for improved feed efficiency, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. Do not feed to chickens over 16 weeks of age. Do not feed to laying chickens. Monensin sodium provided by No. 058198, bacitracin methylenedisalicylate provided by No. 054771 in § 510.600(c) of this chapter.	054771
*	*	*	*	*

* * * * *

■ 31. In § 558.500, revise paragraphs (b) and (e)(2)(i), (iii), and (vi) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) No. 058198: Type A medicated articles containing 9 or 45.4 grams per pound (g/lb) ractopamine hydrochloride.

(2) Nos. 016592, 051311, and 054771: Type A medicated articles containing 45.4 g/lb ractopamine hydrochloride.

* * * * *

(e) * * *

(2) * * *

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 8.2 to 24.6		Cattle fed in confinement for slaughter: For increased rate of weight gain and improved feed efficiency during the last 28 to 42 days on feed.	Feed continuously as sole ration during the last 28 to 42 days on feed. Not for animals intended for breeding.	016592 051311 054771 058198
*	*	* *	* * *	
(iii) 9.8 to 24.6		Cattle fed in confinement for slaughter: For increased rate of weight gain, improved feed efficiency, and increased carcass leanness during the last 28 to 42 days on feed.	Feed continuously as sole ration during the last 28 to 42 days on feed. Not for animals intended for breeding.	016592 051311 054771 058198
*	*	* *	* * *	
(vi) Not to exceed 800; to provide 70 to 400 mg/head/day.	.....	Cattle fed in confinement for slaughter: For increased rate of weight gain and improved feed efficiency during the last 28 to 42 days on feed.	Top dress ractopamine at a minimum of 1.0 lb/head/day of medicated feed continuously during the last 28 to 42 days on feed. Not for animals intended for breeding..	016592 051311 054771 058198
*	*	* *	* * *	

* * * * *

§ 558.555 [Amended]

■ 32. In § 558.555, in paragraph (f), remove ''Semduramycin'' and in its place add ''Semduramicin''.

■ 33. In § 558.633, revise paragraph (d)(3) to read as follows:

§ 558.633 Tylvalosin.

* * * * *

(d) * * *

(3) Pelleted Type C medicated feeds must bear an expiration date of 30 days after the date of manufacture. Crumbled Type C medicated feeds must bear an expiration date of 7 days after the date of manufacture.

* * * * *

■ 34. In § 558.680, revise paragraphs (d)(1)(iii), (iv), (vii), and (viii) and (d)(2) to read as follows:

§ 558.680 Zoalene.

* * * * *

(d) * * *

(1) * * *

Zoalene in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	* *	* * *	
(iii) 36.3 to 113.5	Bacitracin methylenedisalicylate, 50.	Replacement chickens: For development of active immunity to coccidiosis; and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as the sole ration as in the subtable in item (i). Grower ration not to be fed to birds over 14 weeks of age. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771 058198
(iv) 36.3 to 113.5	Bacitracin methylenedisalicylate, 100 to 200.	Replacement chickens: For development of active immunity to coccidiosis; and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration as in the subtable in item (i). To control necrotic enteritis, start medication at first clinical signs of disease; vary bacitracin dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771 058198
*	*	* *	* * *	
(vii) 113.5	Bacitracin methylenedisalicylate, 50.	Broiler chickens: For prevention and control of coccidiosis; and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as the sole ration. Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771 058198
(viii) 113.5	Bacitracin methylenedisalicylate,. 100 to 200	Broiler chickens: For prevention and control of coccidiosis; and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. To control necrotic enteritis, start medication at first clinical signs of disease; vary bacitracin dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Bacitracin methylenedisalicylate as provided by No. 054771 in § 510.600(c) of this chapter.	054771 058198
*	*	* *	* * *	

(2) *Turkeys*—

Zoalene in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
(i) 113.5 to 170.3		Growing turkeys: For prevention and control of coccidiosis.	Feed continuously as sole ration. For turkeys grown for meat purposes only. Not to be fed to laying birds.	054771 058198
(ii) 113.5 to 170.3	Bacitracin methylenedisalicylate, 4 to 50.	Growing turkeys: For prevention and control of coccidiosis; and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration until 14 to 16 weeks of age. For turkeys grown for meat purposes only. Not to be fed to laying birds.	054771 058198

* * * * *

Dated: March 21, 2022.

Andi Lipstein Fristedt,

Deputy Commissioner for Policy, Legislation, and International Affairs, U.S. Food and Drug Administration.

[FR Doc. 2022–06395 Filed 3–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 822

[Docket No. FDA–2021–N–0246]

Medical Devices; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is amending its medical device regulations to update mailing address information and to reduce (from three to one) the number of copies of certain documents that need to be submitted to FDA. The rule does not impose any new regulatory requirements on affected parties. This action is editorial in nature and is intended to improve the accuracy of the Agency's regulations, and to remove a submission requirement that is no longer necessary.

DATES: This rule is effective March 29, 2022.

FOR FURTHER INFORMATION CONTACT: Madhusoodana Nambiar, Office of Policy, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 5519, Silver Spring, MD 20993–0002, 301–796–5837.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Center for Devices and Radiological Health (CDRH) has reorganized to create an agile infrastructure that can adapt to future organizational, regulatory, and scientific needs (84 FR 22854, May 20, 2019; 85 FR 18439, April 2, 2020). The newly formed Office of Product Evaluation and Quality (OPEQ) combined the former Office of Compliance, the Office of Device Evaluation, the Office of Surveillance and Biometrics, and the Office of In Vitro Diagnostics and Radiological Health, with a focus on a Total Product Lifecycle (TPLC) approach to medical device oversight. Within OPEQ there are Offices of Health Technology that focus on the TPLC review of specific types of medical devices as well as cross-cutting offices focusing on specific policy and programmatic needs including the Office of Regulatory Programs and the Office of Clinical Evidence and Analysis. As part of this technical amendment, we are making a change to correctly identify the address for obtaining particular information. We are also amending the requirement for the submission of multiple copies of certain documents to a single copy, as FDA's receipt of multiple copies is no longer necessary. The changes published in this notice are non-substantive and editorial in nature.

II. Description of the Technical Amendments

One regulation specified in this notice is being revised to make a non-substantive editorial change to update particular mailing address information. For the other two regulations specified in this notice, we are removing the requirements for submission of multiple copies of certain postmarket surveillance-related documents, to instead require submission of only one copy, because the requirement for multiple copies is no longer necessary. The rule does not impose any new regulatory requirements on affected parties. The amendments are editorial in nature and should not be construed as modifying any substantive standards or requirements.

III. Notice and Public Comment

Publication of this document constitutes final action under the Administrative Procedure Act (APA). The APA generally exempts ''rules of agency organization, procedure, or practice'' from the requirements of notice and comment rulemaking. (5 U.S.C. 553(b)(A)). Rules are also generally exempt from such requirements when an Agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(B)).

FDA has determined that this rulemaking meets the APA's notice and comment exemption requirements. All the revisions FDA publishes through this notice make technical or non-substantive changes. Some of these revisions pertain solely to the CDRH reorganization, and constitute ''rules of agency organization, procedure, or practice'' not subject to the requirements of notice and comment under 5 U.S.C. 553(b)(A). The balance of these revisions reduces (from three to one) the number of copies of certain documents that need to be submitted to FDA. Such technical, non-substantive change is ''a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' (*Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 94 (D.C. Cir. 2012)) (quotation marks and citation omitted). FDA accordingly for good cause finds that notice and public procedure thereon are unnecessary for this reduction in the number of copies of certain documents that must be submitted.

The APA allows an effective date less than 30 days after publication as ''provided by the agency for good cause found and published with the rule'' (5 U.S.C. 553(d)(3)). An effective date 30 or more days from the date of publication is unnecessary in this case because the amendments do not impose any new regulatory requirements on affected parties, and affected parties do not need time to ''adjust to the new regulation'' before the rule takes effect (*Am. Federation of Government Emp., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981)). Therefore, FDA finds good cause for the amendments to become effective on the date of publication of this action.

List of Subjects in 21 CFR Part 822

Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 822 is amended as follows:

PART 822—POSTMARKET SURVEILLANCE

■ 1. The authority citation for part 822 continues to read as follows:

Authority: 21 U.S.C. 331, 352, 360i, 360l, 371, 374.

■ 2. Revise § 822.8 to read as follows:

§ 822.8 When, where, and how must I submit my postmarket surveillance plan?

You must submit your plan to conduct postmarket surveillance within 30 days of the date you receive the postmarket surveillance order. For devices regulated by the Center for Biologics Evaluation and Research, send your submission to the Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center, 10903 New Hampshire Ave., Bldg. 71, Rm. G112, Silver Spring, MD 20993–0002. For devices regulated by the Center for Drug Evaluation and Research, send your submission to the Central Document Room, Center for Drug Evaluation and Research, Food and Drug Administration, 5901–B, Ammendale Rd., Beltsville, MD 20705–1266. For devices regulated by the Center for Devices and Radiological Health, send your submission to the Document Mail Center, 10903 New Hampshire Ave., Bldg. 66, Rm. G609, Silver Spring, MD 20993–0002. When we receive your original submission, we will send you an acknowledgment letter identifying the unique document number assigned to your submission. You must use this number in any correspondence related to this submission.

■ 3. Amend § 822.12 by revising the first sentence to read as follows:

§ 822.12 Do you have any information that will help me prepare my submission or design my postmarket surveillance plan?

Guidance documents that discuss our current thinking on preparing a postmarket surveillance submission and designing a postmarket surveillance plan are available on the Center for Devices and Radiological Health's website, the Food and Drug Administration main website, and from the Food and Drug Administration, Center for Devices and Radiological Health, Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. * * *

■ 4. Revise § 822.21 to read as follows:

§ 822.21 What must I do if I want to make changes to my postmarket surveillance plan after you have approved it?

You must receive our approval in writing before making changes in your plan that will affect the nature or validity of the data collected in accordance with the plan. To obtain our approval, you must submit the request to make the proposed change and revised postmarket surveillance plan to the applicable address listed in § 822.8. You may reference information already submitted in accordance with § 822.14. In your cover letter, you must identify your submission as a supplement and cite the unique document number that we assigned in our acknowledgment letter for your original submission, specifically identify the changes to the plan, and identify the reasons and justification for making the changes. You must report changes in your plan that will not affect the nature or validity of the data collected in accordance with the plan in the next interim report required by your approval order.

Dated: March 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06508 Filed 3–28–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.301 to 1.400), revised as of April 1, 2021, in § 1.362–4, revise paragraph (j) to read as follows:

§ 1.362–4 Basis of loss duplication property.

* * * * *

(j) *Effective/applicability date.* This section applies to transactions occurring after September 3, 2013, unless effected pursuant to a binding agreement that was in effect prior to September 3, 2013, and at all times thereafter. In addition, taxpayers may apply these regulations to transactions occurring after October 22, 2004. The introductory text and Example 11 of paragraph (h) of this section apply with respect to transactions occurring on or after March 28, 2016, and also with respect to transactions occurring before such date as a result of an entity classification election under § 301.7701–3 of this chapter filed on or after March 28, 2016, unless such transaction is pursuant to a binding agreement that was in effect prior to March 28, 2016 and at all times thereafter. In addition, taxpayers may apply such provisions to any transaction occurring after October 22, 2004.

[FR Doc. 2022–06670 Filed 3–28–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.301 to 1.400), revised as of April 1, 2021, in § 1.351–3, revise paragraph (f) to read as follows:

§ 1.351–3 Records to be kept and information to be filed.

* * * * *

(f) *Effective/applicability date.* This section applies to any taxable year beginning on or after May 30, 2006. However, taxpayers may apply this section to any original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such original return) timely filed on or after May 30, 2006. For taxable years beginning before May 30, 2006, see § 1.351–3 as contained in 26 CFR part 1 in effect on April 1, 2006. Paragraphs (a)(3) and (b)(3) of this section apply with respect to exchanges under section 351 occurring on or after March 28, 2016, and also with respect to exchanges under section 351 occurring before such date as a result of an entity classification election under § 301.7701–3 of this chapter filed on or after March 28, 2016, unless such exchange is pursuant to a binding agreement that was in effect

prior to March 28, 2016 and at all times thereafter.

[FR Doc. 2022–06669 Filed 3–28–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Income Taxes

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 26 of the Code of Federal Regulations, Part 1 (§§ 1.301 to 1.400), revised as of April 1, 2021, in § 1.358–6, revise paragraph (f)(1) and revise the first sentence of paragraph (f)(3) to read as follows:

§ 1.358–6 Stock basis in certain triangular reorganizations.

* * * * *

(f) * * *

(1) *General rule.* Except as otherwise provided in this paragraph (f), this section applies to triangular reorganizations occurring on or after December 23, 1994.

* * * * *

(3) *Triangular G reorganization and special rule for triangular reorganizations involving members of a consolidated group.* Paragraph (e)(1) of this section shall apply to triangular reorganizations occurring on or after September 17, 2008. * * *

* * * * *

[FR Doc. 2022–06668 Filed 3–28–22; 8:45 am]

BILLING CODE 0099–10–D

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2001

[FDMS No. NARA–22–0002; NARA–2022–021]

RIN 3095–AC06

Classified National Security Information

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Direct final rule.

SUMMARY: We are revising our Classified National Security Information regulation to permit digital signatures that meet certain requirements on the Standard Form (SF) 312, which is the non-disclosure agreement required prior to accessing classified information. Due to agency needs during the COVID–19 pandemic and remote work situations, combined with developments in digital signatures since a regulatory prohibition on electronic signatures was implemented in 2010, it is both urgent and appropriate to make this administrative change at this time.

DATES: This rule is effective on May 9, 2022, unless we receive adverse comments by April 28, 2022 that warrant revising or rescinding this rulemaking.

ADDRESSES: You may submit comments, identified by RIN 3095–AC06, by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Search for RIN 3095–AC06 and follow the site's instructions for submitting comments.

We may publish any comments we receive without changes, including any personal information you include.

During the COVID–19 pandemic and remote work situation we cannot accept comments my mail or delivery because we do not have staff in the office.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov,* or by telephone at 301.837.3151.

SUPPLEMENTARY INFORMATION: These regulations were last revised in 2010. At that time, these regulations included a prohibition against signing the Standard Form (SF) 312 electronically, due to concerns about integrity and legal enforceability of any form of electronic signature (e-signature) at the time. In the decade-plus since then, encryption and other measures for e-signatures have advanced and they are now regularly encouraged or required and deemed legally enforceable. In addition, Federal agencies are required to digitize services and forms and accelerate the use of e-signatures as much as possible (*see, e.g.,* 2018 21st Century Integrated Digital Experience Act (21st Century IDEA), 44 U.S.C. 3501 note).

Since the COVID–19 pandemic began in March 2020, numerous Federal agencies have had to engage in remote work to varying degrees and have had difficulty bringing new workers onboard who require access to classified information, due to the requirement for handwritten signatures on the SF 312. It has been placing employees at risk of spreading the virus, as well as creating logistical and other difficulties. Multiple agencies have been consistently requesting the ability to allow e-signatures as a result, and the need became critical and urgent once the COVID–19 pandemic extended much longer than originally anticipated.

The advances in technical ability to ensure valid e-signatures, and legal acceptance of such signatures, is clearly the way of the future and necessary to support a modernized classified national security information system. However, the timing to make this change is more urgent now because of COVID–19 related health risks.

Under laws such as the Government Paperwork Elimination Act (GPEA), 44 U.S.C. 3504 note, the Uniform Electronic Transactions Act (UETA), a model act since adopted by 47 states and the District of Columbia (the remaining three states have comparable laws), and the Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. 7001, *et seq.,* an e-signature has the same legal weight as a handwritten signature and cannot be considered invalid simply due to being electronic. The laws establish criteria for valid e-signatures, along the following lines: Intent to sign, consent to do business electronically, association of the signature with the record, attribution to the person signing, and a record of the digital transactions. The United States practices an open-technology approach, meaning there's no law requiring use of a specific signing technology for an e-signature to be legally binding, as long as it meets the criteria.

However, for the purpose of e-signatures on the SF 312, ISOO has established certain requirements agencies must meet if they wish to allow such signatures. We require that agencies use digital signatures (rather than other forms of e-signature) on the SF 312 because digital signatures provide the requisite level of security and authenticity appropriate for these agreements. Digital signatures are a specific signature technology type of e-signature that allows users to sign documents and authenticate the signer. Digital signatures are based on a standard, accepted format, called public key infrastructure (PKI), to provide the highest levels of security and universal acceptance through use of a mathematical algorithm and other features. The mathematical algorithm acts like a cipher and encrypts the data matching the signed document. The resulting encrypted data is the digital signature, which is also marked with the

time the document was signed and is invalidated if the document is changed after signing. To protect the integrity of the signature, PKI also includes other requirements, including a reliable certificate authority (CA) that can ensure key security and provide necessary digital certificates.

The PKI and CA combination used for digital signatures ensures authentication (*i.e.,* that the digital signature was made by the person it claims to have been made by); consent (*i.e.,* that the person who digitally signed the form meant to do so); and integrity (*i.e.,* that the SF 312 has not changed since the signature was made). As a result, we require agencies to use digital signatures if they allow e-signatures on their SF 312s. Digital signatures created using Federal Government personal identity verification (PIV) cards or common access cards (CACs) require the card holder to enter their personal identification number (PIN), and meet the requirements outlined above, so it is possible for Federal employees and contractors with such cards to digitally sign the SF 312 using these cards. Agencies may choose to use other digital signature providers than the PIV or CAC cards, as long as they meet the same requirements.

The existing SF 312 has been approved by the General Services Administration (GSA) as a standard form. In conjunction with this rulemaking action, we are working with the appropriate agencies to revise the form to make it electronically fillable and to allow digital signatures.

Regulatory Analysis

Administrative Procedure

Under the Administrative Procedure Act, an agency may waive the normal notice and comment procedures if the action is a rule of agency organization, procedure, or practice. See 5 U.S.C. 553(b)(3)(A). Since this rule modifies administrative procedures and practice regarding how agencies may allow a form to be signed and maintained, notice and comment are not necessary.

Executive Order 12866, Regulatory Planning and Review, and Executive Order 13563, Improving Regulation and Regulation Review

The Office of Management and Budget (OMB) has reviewed this rulemaking and determined it is not ''significant'' under section 3(f) of Executive Order 12866. It is not significant because it is a rule of agency procedure and practice, describing our procedures for agencies to handle and process the Standard Form (SF) 312, and we do not anticipate it having an economic impact on the public. It will help ensure easier onboarding and access to classified information for employees and contractors, safeguard employees and others from risks of COVID infection, reduce logistical complications and difficulties during the pandemic and thereafter, and update the form's procedures for easier use with current technological developments.

Regulatory Flexibility Act (5 U.S.C. 601, et seq.)

This review requires an agency to prepare an initial regulatory flexibility analysis and publish it when the agency publishes the rule. This requirement does not apply if the agency certifies that the rulemaking will not, if promulgated, have a significant economic impact on a substantial number of small entities (5 U.S.C. 603). We certify, after review and analysis, that this rulemaking will not have a significant adverse economic impact on small entities.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*) requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from OMB for each collection of information we conduct, sponsor, or require through regulations. The existing SF 312 is such an information collection and has already been approved by OMB/GSA. This rulemaking does not impose additional information collection requirements on the public.

Executive Order 13132, Federalism

Executive Order 13132 requires agencies to ensure state and local officials have the opportunity for meaningful and timely input when developing regulatory policies that may have a substantial, direct effect on the states, on the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. If the effects of the rule on state and local governments are sufficiently substantial, the agency must prepare a Federal assessment to assist senior policy makers. This rulemaking will not have any effects on state and local governments within the meaning of the E.O. Therefore, no federalism assessment is required.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4; 2 U.S.C. 1532)

The Unfunded Mandates Reform Act requires that agencies determine whether any Federal mandate in the rulemaking may result in state, local, and tribal governments, in the aggregate, or the private sector, expending $100 million in any one year. This rule does not contain a Federal mandate that may result in such an expenditure.

List of Subjects in 32 CFR Part 2001

Archives and records, Records disposition, Records management, Records schedules, Reporting and recordkeeping requirements, Scheduling records.

For the reasons stated, NARA amends 32 CFR part 2001 as follows:

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

■ 1. The authority citation for part 2001 continues to read as follows:

Authority: Sections 5.1(a) and (b), E.O. 13526, (75 FR 707, January 5, 2010).

■ 2. Amend § 2001.80 by:
■ a. Revising paragraph (d)(2)(ii);
■ b. In paragraph (d)(2)(v), adding a sentence to the end of the paragraph; and
■ c. In paragraph (d)(2)(vii), adding the parenthetical ''(either in paper form or electronic form)'' to the second sentence, in between the words ''The original'' and '', or a legally enforceable facsimile''.

The revision and addition read as follows:

§ 2001.80 Prescribed standard forms.

* * * * *

(d) * * *

(2) * * *

(ii) The SF 312 may be filled out electronically or by hand, then must be signed. It may be signed by hand and scanned, if the implementing agency permits and the scanned version is done in a way that constitutes a legally enforceable facsimile. Alternatively, the form may be digitally signed if the implementing agency permits, and if the digital signature mechanism employs public key cryptography in a way that meaningfully guarantees authenticity (*i.e.,* that the digital signature was made by the person it claims to have been made by); consent (*i.e.,* that the person who digitally signed the form meant to do so); and integrity (*i.e.,* that the SF 312 has not changed since the signature was made). Digital signatures created using Personal Identity Verification (PIV) cards or common access cards (CACs) issued by the U.S. Government that are

compliant with Homeland Security Presidential Directive 12 (HSPD–12), or its successor, meet the requirements of this paragraph (d)(2)(ii). They include public key infrastructure (PKI), digital signature certificates issued by a certificate authority (CA), and a PIN the signer must enter in order to digitally sign. Agencies may choose to use other digital signature mechanisms than the PIV or CAC cards, as long as they meet the requirements of this paragraph (d)(2)(ii). The form may not be signed using other forms of electronic signature (e-signature), such as typing ''/s/[first and last name]'' or attaching an image of a handwritten signature.

* * * * *

(v) * * * If the SF 312 is digitally signed, it does not require a witness to observe and verify the digital signature, and therefore also does not require an official to subsequently accept the signature.

* * * * *

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2022–06548 Filed 3–28–22; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–0157]

Safety Zone; Recurring Events in Captain of the Port Duluth—Bridgefest Regatta Fireworks

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for the Bridgefest Regatta Fireworks in Houghton, MI from 9:30 p.m. through 10:30 p.m. This action is necessary to protect participants and spectators during the Bridgefest Regatta Fireworks. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative.

DATES: The regulations in 33 CFR 165.943 will be enforced for the location identified in Item 1 of Table 1 to § 165.943 from 9:30 p.m. through 10:30 p.m. on June 18, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email LTJG Joseph R. McGinnis, telephone 218–725–3818, email *DuluthWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the regulations in 33 CFR 165.943 for the Bridgefest Regatta Fireworks event identified in Item 1 of Table 1 to § 165.943 on all waters of the Keweenaw Waterway bounded by the arc of a circle with a 100-yard radius from the fireworks launch site with its center in approximate position 47°07′28″ N, 088°35′02″ W from 9:30 p.m. through 10:30 p.m.on June 18, 2022. This action is necessary to protect participants and spectators during the Bridgefest Regatta Fireworks.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or their designated on-scene representative. The Captain of the Port's designated on-scene representative may be contacted via VHF Channel 16.

This document is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552 (a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners.

Dated: March 23, 2022.

F.M. Smith,

CDR, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2022–06522 Filed 3–28–22; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 87, No. 60
Tuesday, March 29, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 2022–07]

Electioneering Communications Reporting

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a petition for rulemaking filed on October 5, 2012, by the Center for Individual Freedom. The petition asks that the Commission revise two regulations on the reporting of electioneering communications. The Commission has decided not to initiate a rulemaking in response to the petition because the regulatory changes it sought have already been implemented in a separate rulemaking. The petition and other documents relating to this matter are available on the Commission's website, *https://www.fec.gov/fosers/* (REG 2012–01 Electioneering Communications Reporting).

DATES: March 29, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A. Hemsley, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 5, 2012, the Commission received a petition for rulemaking from the Center for Individual Freedom. The petitioner asked that the Commission revise 11 CFR 104.20(c)(8) and (9) ''by deleting the phrase 'pursuant to 11 CFR 114.15,' thereby explicitly applying the electioneering communication disclosure obligations of corporations and labor unions to any form of electioneering communication.'' Center for Individual Freedom, Petition for Rulemaking (Oct. 5, 2012), REG 2012–01, *https://sers.fec.gov/fosers/showpdf.htm?docid=122723*. For the reasons explained below, the Commission has decided not to initiate a rulemaking in response to the petition.

The Federal Election Campaign Act, 52 U.S.C. 30101–45, requires persons who pay for ''electioneering communications'' to satisfy certain reporting requirements. An electioneering communication is a broadcast, cable, or satellite communication that refers to a clearly identified candidate for federal office, is publicly distributed within 60 days before a general election or 30 days before a primary election and is targeted to the relevant electorate. 52 U.S.C. 30104(f)(3)(A)(i); 11 CFR 100.29(a). Every person who makes disbursements for the direct costs of producing and airing electioneering communications in an aggregate amount that exceeds $10,000 in a calendar year, must file a report with the Commission. 52 U.S.C. 30104(f)(1), (2); 11 CFR 104.20.

Commission regulation 11 CFR 104.20(c) specifies the information that must be included in electioneering communications reports. When the instant petition was filed, paragraph (c)(8) provided that, ''[i]f the disbursements [for the electioneering communications] were not paid exclusively from a segregated bank account . . . and were not made by a corporation or labor organization pursuant to 11 CFR 114.15,'' the reports must include ''the name and address of each donor who donated an amount aggregating $1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.'' 11 CFR 104.20(c)(8) (2012). Similarly paragraph (c)(9) provided that, ''[i]f the disbursements [for the electioneering communications] were made by a corporation or labor organization pursuant to 11 CFR 114.15,'' the electioneering communications reports must include ''the name and address of each person who made a donation aggregating $1,000 or more to the corporation or labor organization, aggregating since the first day of the preceding calendar year, which was made for the purpose of furthering electioneering communications.'' 11 CFR 104.20(c)(9) (2012). Section 11 CFR 114.15, in turn, established certain criteria for electioneering communications that corporations and labor organizations were permitted to finance with their general treasury funds.

The Commission published a Notice of Availability on October 26, 2012, to ask for public comment on the petition. 77 FR 65332 (Oct. 26, 2012). The Commission received two substantive comments: One from the petitioner endorsing its own petition, and one arguing generally that corporations should be subject to disclosure requirements.

The Commission considered the petition and the comments at its open meeting on March 7, 2013, but did not approve the initiation of a rulemaking by the affirmative vote of four or more Commissioners. *See* Certification of Commission Vote, Agenda Document 13–10 (Mar. 7, 2013), REG 2012–01, *https://sers.fec.gov/fosers/showpdf.htm?docid=296278; see also* 52 U.S.C. 30106(c) and 30107(a)(8) (requiring an affirmative vote of at least four Commissioners to take any action to amend a regulation). Accordingly, the Commission directed the Office of General Counsel to draft a notice of disposition that included a summary of the statements expressed by Commissioners regarding the petition.

The Commission has not made public or deliberated on a draft notice of disposition addressing the merits of the petition. Instead, pursuant to 11 CFR 200.4(b), the Commission is now issuing this notice of disposition to explain that the Commission is not initiating a rulemaking in response to the petition because the regulatory changes it sought have already been implemented in a separate rulemaking. Specifically, on October 21, 2014, the Commission published changes to its rules governing independent expenditures and electioneering communications by corporations and labor organizations. Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 FR 62797, 62816 (Oct. 21, 2014); *see also* Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 80 FR 12079 (Mar. 6, 2015) (noting that amendments became effective on January 27, 2015). Among other changes, these amendments deleted section 114.15 in its entirety and removed the references to it from 11 CFR 104.20(c)(8) and (9). 79 FR at 62817, 62819.

Accordingly, the Commission declines to initiate a rulemaking in

response to the petition because all of the changes it sought have already been made.

Dated: March 23, 2022.

On behalf of the Commission.

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–06594 Filed 3–28–22; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0381; Project Identifier MCAI–2021–01314–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, AS–365N2, AS 365 N3, SA–365N, SA–365N1, EC 155B, and EC155B1 helicopters. This proposed AD was prompted by investigation results from an engine compartment fire, which determined some of the internal parts of the engine upper fixed cowling (engine cowling) were painted with finish paint on top of the primer layer. This proposed AD would require a one-time inspection of certain part-numbered engine cowlings, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by May 13, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0381; Project Identifier MCAI–2021–01314–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *https://www.regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0265, dated November 23, 2021 (EASA AD 2021–0265), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Sud Aviation, Model SA 365 N, SA 365 N1, AS 365 N2, AS 365 N3, EC 155 B, EC 155 B1, AS 355 E, AS 355 F, AS 355 F1 and AS 355 F2 helicopters, all serial numbers.

This proposed AD was prompted by investigation results from an engine compartment fire, which determined some of the internal parts of the engine cowling were painted with finish paint on top of the primer layer. The FAA is proposing this AD to detect finish paint inside the duct of the engine cowling. The unsafe condition, if not addressed, could result in fire propagation in case of exposure to high temperature, damage to the helicopter, and injury to the occupants. See EASA AD 2021–0265 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0265 requires a one-time inspection of certain part-numbered engine cowlings (*e.g.,* an affected part as defined in EASA AD 2021–0265) for finish paint and depending on the inspection results, accomplishment of applicable corrective actions. EASA AD 2021–0265 also allows an affected part to be installed on any helicopter, provided it is a serviceable part as defined in EASA AD 2021–0265. Corrective actions include repainting the affected part and replacing the affected part.

This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS355–53.00.38, ASB No. AS365–53.00.65, and ASB No. EC155–53A040, all Revision 0, and all dated October 27, 2021, which specify procedures for inspecting the inside of the duct of the engine cowling for finish paint and corrective actions.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0265, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between this Proposed AD and EASA AD 2021–0265.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0265 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0265 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0265 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0265. Service information referenced in EASA AD 2021–0265 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381 after the FAA final rule is published.

Differences Between This Proposed AD and EASA AD 2021–0265

Service information referenced in EASA AD 2021–0265 specifies recording compliance of the applicable ASBs, whereas this proposed AD would not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 93 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Inspecting each engine cowling would take about 1 work-hour for an estimated cost of $85 per helicopter and $7,905 for the U.S. fleet.

Repainting each engine cowling with primer only would take about 8 work-hours for an estimated cost of $680 per helicopter.

Replacing an engine cowling with a ''serviceable part'' as defined in EASA AD 2021–0265 would take about 4 work-hours and parts would cost up to $7,800 for an estimated cost of up to $8,140 per replacement.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Airbus Helicopters: Docket No. FAA–2022–0381; Project Identifier MCAI–2021–01314–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, AS–365N2, AS 365 N3, SA–365N, SA–365N1, EC 155B, and EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 7110, Engine Cowling System.

(e) Unsafe Condition

This AD was prompted by investigation results from an engine compartment fire, which determined some of the internal parts of the engine upper fixed cowling (engine cowling) were painted with finish paint on top of the primer layer. The FAA is issuing this AD to detect finish paint inside the duct of the engine cowling. The unsafe condition, if not addressed, could result in fire propagation in case of exposure to high temperature, damage to the helicopter, and injury to the occupants.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0265, dated November 23, 2021 (EASA AD 2021–0265).

(h) Exceptions to EASA AD 2021–0265

(1) Where EASA AD 2021–0265 requires compliance in terms of flight hours (FH), this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0265 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0265 specifies ''in accordance with the instructions of paragraph 3.B of the applicable ASB,'' for this AD replace ''in accordance with the instructions of paragraph 3.B of the applicable ASB'' with ''in accordance with the Accomplishment Instructions, paragraphs 3.B.2.a. through 3.B.2.b. of the applicable ASB.''

(4) Where paragraph (2) of EASA AD 2021–0265 specifies to repaint or replace the affected part, replace the text ''repaint (with primer layer only) that affected part or replace it with a serviceable part in accordance with the instructions of paragraph 3.B. of the applicable ASB,'' with ''repaint (with primer layer only) that affected part in accordance with the instructions of paragraph 3.B.2.b. of the applicable ASB, or replace the affected part with a 'serviceable part' as defined in EASA AD 2021–0265.''

(5) Where the service information referenced in EASA AD 2021–0265 specifies ''identify again the engine upper fixed cowling (a), refer to paragraph 3.C.,'' this AD does require modifying your helicopter by marking ''ASB No. 53.00.38,'' ''ASB No. 53A40,'' or ''ASB No. 53.00.65,'' as applicable to your helicopter, after the old P/N on the engine cowling with indelible ink, but does not require compliance with paragraph 3.C. of the ''applicable ASB'' as defined in EASA AD 2021–0265.

(6) Where the service information referenced in EASA AD 2021–0265 specifies during the interpretation of results from the visual check of the inside of the duct of the engine cowling, if there is any finish paint inside the duct, obey with paragraph 3.B.2.b. (*i.e.,* perform corrective actions) not more than 6 months after you complied with paragraph 3.B.2.a., for this AD, if there is any finish paint inside the duct of the engine cowling, perform the corrective actions not more than 6 months after you complied with paragraph 3.B.2.a. Work Card 20–04–05–402 (MTC), referenced in the Accomplishment Instructions, paragraph 3.B.2.b. of the ''applicable ASB'' as defined in EASA AD 2021–0265 is for reference only and is not required for the actions in this AD.

(7) Where the Accomplishment Instructions, paragraph 3.B.2.b of Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–53.00.65, and ASB EC155–53A040, both Revision 0, and both dated October 27, 2021, specify to refer to Work Card 53–50–00–402 (MET), or Task 53–54–00–061(AMM), to remove and install the engine cowling, for this AD those instructions are for reference only and are not required for the actions in this AD.

(9) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0265.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0265 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(l) Related Information

(1) For EASA AD 2021–0265, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find EASA AD 2021–0265 on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0381.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on March 24, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06577 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0086]

RIN 1625–AA08

Special Local Regulations; Recurring Marine Events, Sector St. Petersburg

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise existing regulations by removing an event that no longer takes place, and by updating the location of an existing event in the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone. The Coast Guard invites your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 28, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0086 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Marine Science Technician Second Class Regina L. Cuevas, Sector St. Petersburg Prevention Department, Coast Guard; telephone (813) 228–2191, email *Regina.L.Cuevas@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

This rulemaking pertains to the recurring marine events in the geographic boundaries of the Seventh Coast Guard District Captain of the Port (COTP) St. Petersburg Zone that are listed in 33 CFR 100.703, Table 1 to § 100.703. Three of these events in Table 1 to § 100.703 need corrections. The first change is in Line No. 4, ''The St. Pete Beach Grand Prix of the Gulf/Powerboat P–1 USA, LLC.'' The event sponsor has changed the time of year that it plans to host the event from June to September. The sponsor has also requested to move the event from St. Petersburg Beach, on the Gulf of Mexico, to the waters of Tampa Bay, adjacent to the St. Petersburg Pier. In addition, this event will appear in Line No. 5 instead of Line No. 4 in the Table. The second change is for ''The Battle of the Bridges/Sarasota Sculler Youth Rowing Program, hosted in Venice, FL,'' in September. This event appears in Line No. 6 in the Table. This event sponsor has halted all events for the foreseeable future. Therefore, we will be removing this event from the Table.

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

This rule proposes to make the following changes in 33 CFR 100.703:

1. Move the event listed in Table 1 to § 100.703, Line No. 5, ''Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC to Line No. 4. We are not making any other changes to this event.
2. Move Table 1 to § 100.703, Line No. 4 to Line No. 5, and revise the event to reflect a name change, course location, and date and time for the event.
3. Delete the event listed in Table 1 to § 100.703, Line No. 6, ''Battle of the Bridges/Sarasota Scullers Youth Rowing Program.''

Marine events listed in Table 1 to § 100.703 are listed as recurring over a particular time, during each month and each year. Exact dates are intentionally omitted since calendar dates for specific events change from year to year. Once dates for a marine event are known, the Coast Guard notifies the public it intends to enforce the special local regulation through various means including a notice of enforcement published in the **Federal Register**, Local Notice to Mariners, and Broadcast Notice to Mariners.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the special local regulations. These areas are limited in size and duration, and usually do not affect high vessel traffic areas. Moreover, the Coast Guard would provide advance notice of the regulated areas to the local maritime community by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM marine channel 16, and the rule would allow vessels to seek permission to enter the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect 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. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect 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. If you believe this proposed rule has

implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves removing one event from the list of recurring marine events in the COTP St. Petersburg Zone, and revising an existing recurring event to reflect a name change, course location, and date and time for the event. Normally such actions are categorically excluded from further review under paragraphs L61 in Table 3–1 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1, because it involves a revised special local regulation related to a marine event permit for marine parades, regattas, and other marine events. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Harbors, Marine safety, navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for Part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. In § 100.703, revise Table 1 to read as follows:

* * * * *

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
1. One Saturday in January, Time (Approximate): 11:30 a.m. to 2 p.m.	Gasparilla Invasion and Parade/Ye Mystic Krewe of Gasparilla.	Tampa, Florida	Location: A regulated area is established consisting of the following waters of Hillsborough Bay and its tributaries north of 27°51′18″ N and south of the John F. Kennedy Bridge: Hillsborough Cut "D" Channel, Seddon Channel, Sparkman Channel and the Hillsborough River south of the John F. Kennedy Bridge. Additional Regulation: (1) Entrance into the regulated area is prohibited to all commercial marine traffic from 9 a.m. to 6 p.m. EST on the day of the event. (2) The regulated area will include a 100 yard Safety Zone around the vessel JOSE GASPAR while docked at the Tampa Yacht Club until 6 p.m. EST on the day of the event. (3) The regulated area is a "no wake" zone. (4) All vessels within the regulated area shall stay 50 feet away from and give way to all officially entered vessels in parade formation in the Gasparilla Marine Parade. (5) When within the marked channels of the parade route, vessels participating in the Gasparilla Marine Parade may not exceed the minimum speed necessary to maintain steerage. (6) Jet skis and vessels without mechanical propulsion are prohibited from the parade route. (7) Vessels less than 10 feet in length are prohibited from the parade route unless capable of safely participating. (8) Vessels found to be unsafe to participate at the discretion of a present Law Enforcement Officer are prohibited from the parade route.

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG—Continued

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
			(9) Northbound vessels in excess of 65 feet in length without mooring arrangement made prior to the date of the event are prohibited from entering Seddon Channel unless the vessel is officially entered in the Gasparilla Marine Parade. (10) Vessels not officially entered in the Gasparilla Marine Parade may not enter the parade staging area box within the following coordinates: 27°53′53″ N, 082°27′47″ W; 27°53′22″ N, 082°27′10″ W; 27°52′36″ N, 082°27′55″ W; 27°53′02″ N, 082°28′31″ W.
2. One Saturday in February, Time (Approximate): 9:00 a.m. to 9:00 p.m.	Bradenton Area River Regatta/City of Bradenton.	Bradenton, FL	Location(s) *Enforcement Area #1.* All waters of the Manatee River between the Green Bridge and the CSX Train Trestle contained within the following points: 27°30′43″ N, 082°34′20″ W, thence to position 27°30′44″ N, 082°34′09″ W, thence to position 27°30′00″ N, 082°34′04″ W, thence to position 27°29′58″ N, 082°34′15″ W, thence back to the original position, 27°30′43″ N, 082°34′20″ W. *Enforcement Area #2.* All waters of the Manatee River contained within the following points: 27°30′35″ N, 082°34′37″ W, thence to position 27°30′35″ N, 082°34′26″ W, thence to position 27°30′26″ N, 082°34′26″ W, thence to position 27°30′26″ N, 082°34′37″ W, thence back to the original position, 27°30′35″ N, 082°34′37″ W.
3. One weekend (Friday, Saturday, and Sunday) in March, Time (Approximate): 8:00 a.m. to 5:00 p.m.	Gulfport Grand Prix/Gulfport Grand Prix LLC.	Gulfport, FL	Location(s): (1) Race *Area.* All waters of Boca de Ciego contained within the following points: 27°44′10″ N, 082°42′29″ W, thence to position 27°44′07″ N, 082°42′40″ W, thence to position 27°44′06″ N, 082°42′40″ W, thence to position 27°44′04″ N, 082°42′29″ W, thence to position 27°44′07″ N, 082°42′19″ W, thence to position 27°44′08″ N, 082°42′19″ W, thence back to the original position, 27°44′10″ N, 082°42′29″ W. (2) *Buffer Zone.* All waters of Boca de Ciego encompassed within the following points: 27°44′10″ N, 082°42′47″ W, thence to position 27°44′01″ N, 082°42′44″ W, thence to position 27°44′01″ N, 082°42′14″ W, thence to position 27°44′15″ N, 082°42′14″ W.
4. One weekend (Saturday and Sunday) in July, Time (Approximate): 8:00 a.m. to 5:00 p.m.	Sarasota Powerboat Grand Prix/Powerboat P–1 USA, LLC.	Sarasota, FL	Location: All waters of the Gulf of Mexico contained within the following points: 27°18′44″ N, 082°36′14″ W, thence to position 27°19′09″ N, 082°35′13″ W, thence to position 27°17′42″ N, 082°34′00″ W, thence to position 27°16′43″ N, 082°34′49″ W, thence back to the original position, 27°18′44″ N, 082°36′14″ W.
5. One weekend (Saturday and Sunday) in September, Time (Approximate): 8:00 a.m. to 4:00 p.m.	St.Petersburg P–1 Powerboat Grand Prix.	St. Petersburg, FL	Location: All waters of the Tampa Bay encompassed within the following points: 27°46′56.22″ N, 082°36′55.50″ W, thence to position 27°47′08.82″ N, 082°34′33.24″ W, thence to position 27°46′06.96″ N, 082°34′29.04″ W, thence to position 27°45′59.22″ N, 082°37′02.88″ W, thence back to the original position 27°46′24.24″ N, 082°37′30.24″ W.
6. One Sunday in September, Time (Approximate): 11:30 a.m. to 4:00 p.m.	Clearwater Offshore Nationals/Race World Offshore.	Clearwater, FL	Locations: (1) *Race Area.* All waters of the Gulf of Mexico contained within the following points: 27°58′34″ N, 82°50′09″ W, thence to position 27°58′32″ N, 82°50′02″ W, thence to position 28°00′12″ N, 82°50′10″ W, thence to position 28°00′13″ N, 82°50′10″ W, thence back to the original position, 27°58′34″ N, 82°50′09″ W. (2) *Spectator Area.* All waters of Gulf of Mexico seaward no less than 150 yards from the race area and as agreed upon by the Coast Guard and race officials. (3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 28°58′40″ N, 82°50′37″ W, thence to position 28°00′57″ N, 82°49′45″ W, thence to position 27°58′32″ N, 82°50′32″ W, thence to position 27°58′23″ N, 82°49′53″ W, thence back to position 28°58′40″ N, 82°50′37″ W.
7. One Thursday, Friday, and Saturday in October, Time (Approximate): 10:00 a.m. to 5:00 p.m.	Roar Offshore/OPA Racing LLC.	Fort Myers Beach, FL	Locations: All waters of the Gulf of Mexico west of Fort Myers Beach contained within the following points: 26°26′27″ N, 081°55′55″ W, thence to position 26°25′33″ N, longitude 081°56′34″ W, thence to position 26°26′38″ N, 081°58′40″ W, thence to position 26°27′25″ N, 081°58′8″ W, thence back to the original position 26°26′27″ N, 081°55′55″ W.
8. One weekend (Friday, Saturday, and Sunday) in November, Time (Approximate): 8:00 a.m. to 6:00 p.m.	OPA World Championships/Englewood Beach Waterfest.	Englewood Beach, FL	Locations: (1) Race *Area.* All waters of the Gulf of Mexico contained within the following points: 26°56′00″ N, 082°22′11″ W, thence to position 26°55′59″ N, 082°22′16″ W, thence to position 26°54′22″ N, 082°21′20″ W, thence to position 26°54′24″ N, 082°21′16″ W, thence to position 26°54′25″ N, 082°21′17″ W, thence back to the original position, 26°56′00″ N, 082°21′11″ W.

TABLE 1 TO § 100.703—SPECIAL LOCAL REGULATIONS; RECURRING MARINE EVENTS, SECTOR ST. PETERSBURG—Continued

[Datum NAD 1983]

Date/time	Event/sponsor	Location	Regulated area
			(2) *Spectator Area.* All waters of the Gulf of Mexico contained with the following points: 26°55′33″ N, 082°22′21″ W, thence to position 26°54′14″ N, 082°21′35″ W, thence to position 26°54′11″ N, 082°21′40″ W, thence to position 26°55′31″ N, 082°22′26″ W, thence back to position 26°55′33″ N, 082°22′21″ W. (3) *Enforcement Area.* All waters of the Gulf of Mexico encompassed within the following points: 26°56′09″ N, 082°22′12″ W, thence to position 26°54′13″ N, 082°21′03″ W, thence to position 26°53′58″ N, 082°21′43″ W, thence to position 26°55′56″ N, 082°22′48″ W, thence back to position 26°56′09″ N, 082°22′12″ W.

Dated: March 23, 2022.

Matthew A. Thompson,

Captain, U.S. Coast Guard, Captain of the Port Sector St. Petersburg.

[FR Doc. 2022–06492 Filed 3–28–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0175]

RIN 1625–AA00

Safety Zone; Recurring Safety Zone in Captain of the Port Sault Sainte Marie Zone

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its recurring safety zone regulations in the Captain of the Port Sault Sainte Marie Zone. This proposed rule would update two safety zone locations and dates. This proposed amendment action is necessary to provide for the safety of life associated with annual marine events and firework displays on these navigable waters near Mackinaw City, MI, and Mackinac Island, MI. This proposed rulemaking would prohibit persons and vessels from being in the safety zones unless authorized by the Captain of the Port Sault Sainte Marie or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 28, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0175 using the Federal eRulemaking Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Deaven Palenzuela, Sector Sault Sainte Marie Waterways Management Division, U.S. Coast Guard; telephone 906–635–3223, email *ssmprevention@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 21, 2018, the Coast Guard published an NPRM in the **Federal Register** (83 FR 12307) entitled ''Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie Zone.'' The NPRM proposed to amend 20 permanent safety zones for annually recurring events in the Captain of the Port Sault Sainte Marie Zone under § 165.918. The NPRM was open for comment for 30 days.

On April 20, 2018, the Coast Guard published the final rule in the **Federal Register** (83 FR 12307), after receiving no comments on the NPRM. Since that time there have been changes to the event that were listed in the final rule. Through this proposed rule the Coast Guard seeks to update § 165.918 to reflect the current status of a recurring marine event in the Captain of the Port Sault Sainte Marie Zone.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 1000-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The Captain of the Port Sault Sainte Marie (COTP) determines that an amendment to the recurring safety zones list as published in 33 CFR 165.918 is necessary to: Update two existing safety zone locations and duration of the events (Mackinaw Area Visitors Bureau Friday Night Fireworks and Mackinac Island Fourth of July Celebration Fireworks). The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event and to improve the overall clarity and readability of the rule. The regulatory text we are proposing appears at the end of this document.

The amendment to this proposed rule is necessary to ensure the safety of vessels and people during annual events taking place on or near federally maintained waterways in the Captain of the Port Sault Sainte Marie Zone. Although this proposed rule will be in effect year-round, the specific safety zones listed in Table 165.918 will only be enforced during a specified period of time.

When a Notice of Enforcement for a particular safety zone is published, entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sault Sainte Marie, or his or her designated representative. The Captain of the Port Sault Sainte Marie or his or her designated representative may be contacted via VHF Channel 16 or telephone at 906–635–3319. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 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. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and time-of-day for each safety zone. Vessel traffic will be able to safely transit around all safety zones which will impact small designated areas within the COTP zone for short durations of time. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect 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. We have analyzed this proposed rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a three safety zones: The Mackinac City Tuesday and Friday Night Firworks will have one safety zone lasting 2.5 hours that would prohibit entry within 1,000 feet of a fireworks barge and the Annual Mackinac Island Independence Day Fireworks will have two safety zones lasting 1 hour that would prohibit entry within 750 feet of the fireworks barges. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at

https://www.regulations.gov. To do so, go to *https://www.regulations.gov,* type USCG–2022–0175 in the search box and click ''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Amend § 165.918 by revising entries (1) and (11) of Table 165.918 to read as follows:

§ 165.918 Safety Zones; Recurring Safety Zones in Captain of the Port Sault Sainte Marie.

* * * * *

TABLE 165.918

[Datum NAD 1983]

Event	Location	Event date
(1) Mackinaw Area Visitors Bureau's Tuesday and Friday Night Fireworks; Mackinaw City, MI.	All U.S. navigable waters of the Straits of Mackinac within an approximate 1000-foot radius from the fireworks launch site located in position 45°46′28″ N, 084°43′12″ W.	On or around July 4 and Tuesday and Friday nights between late May and late September.
* *	* * *	* *
(11) Mackinac Island Fourth of July Celebration Fireworks; Mackinac Island, MI.	All U.S. navigable waters of Lake Huron within an approximate 750-foot radius of the fireworks launch site, centered in position 45°50′35″N, 084°37′38″ W and 45°50′30″ N, 084°36′30″ W.	On or around July 4th.
* *	* * *	* *

Dated: March 22, 2022.

A.R. Jones,

Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.

[FR Doc. 2022–06488 Filed 3–28–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA–HQ–OPPT–2017–0245; FRL–8452–02–OCSPP]

RIN 2070–AK94

Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update the incorporation by reference of several voluntary consensus standards in the Agency's formaldehyde standards for composite wood products regulations under the Toxic Substances Control Act (TSCA) that have since been updated, superseded, or withdrawn by the issuing organizations. In addition, EPA is proposing to address remote inspections for third-party certifiers (TPCs) required to conduct on-site inspections in the event of unsafe conditions such as the on-going COVID–19 pandemic or other unsafe conditions such as natural disasters, outbreaks, political unrest, and epidemics. Finally, EPA is proposing certain technical corrections and conforming changes including updating standards within the definitions section, clarifying language as it relates to production, and creating greater flexibilities for the third-party certification process.

DATES: Comments must be received on or before April 28, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2017–0245, using the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is opened to visitors only by appointment. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jeffrey Putt, Existing Chemicals Risk Management Division (Mail Code 7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–3703; email address: *putt.jeffrey@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–

1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this proposed rule if you manufacture (including import), sell, supply, or offer for sale in the United States any of the following: Hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials. You may also be affected by this proposed rule if you test or work with certification firms that certify such materials. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.,* merchant wholesale distributors of manufactured homes (*i.e.,* mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).
- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

EPA is proposing this rule pursuant to the authority in section 601 of TSCA, 15 U.S.C. 2697 relating to formaldehyde emission standards for composite wood products.

C. What action is the Agency taking?

The Agency is proposing to take the following actions:

1. Update Incorporation-By-Reference (IBR) for Certain Voluntary Consensus Standards

EPA is proposing to update the IBR of certain voluntary consensus standards in 40 CFR 770.99 to reflect the most recent editions of those standards issued by the relevant standards organizations. The relevant standards organizations updated these standards after EPA incorporated them in 40 CFR 770.99. The proposed rule would require regulated entities to adhere to the updated editions of the voluntary consensus standards when complying with the requirements of 40 CFR part 770. These amendments are further explained in Unit II.B.

2. Conform Voluntary Consensus Standards in Scope and Definitions

As a result of the proposed list of updated standards in Unit II.B., EPA is proposing to update 40 CFR 770.1 and 770.3 to reflect the current standards that are proposed to be incorporated by reference in 40 CFR 770.99.

3. Increase Flexibility for TPC Certification Process

EPA is also proposing revisions at 40 CFR 770.7, subsections (a)(5)(i)(A), (c)(1)(iii), (c)(2)(v), and (c)(4)(i)(F). These proposed changes add mention of section 6.2.2 under ISO/IEC 17065:2012(E). The addition of section 6.2.2 under ISO/IEC 17065:2012(E) would allow TPCs to utilize external evaluation resources, such as contracting out inspections to a third party in order to complete the certification process in which TPCs certify that the products are TSCA Title VI compliant. Under ISO/IEC 17065:2012(E), the requirements for the certification process under section 6.2.2 are the same as section 6.2.1, which involves an internal certification process. Adding section 6.2.2 would give TPCs flexibility to choose to contract out inspections to a third party to satisfy the requirements in 40 CFR 770.7 to conduct inspections of composite wood products.

4. Address Remote Inspections in Limited Circumstances

Additionally, EPA is proposing to address remote inspections for third-party certifiers under subsections (c)(4)(i)(G) and (c)(4)(viii)(A)(3) under 40 CFR 770.7, as well as 40 CFR 770.15, subsection (c)(1)(viii) in certain circumstances. During the COVID–19 pandemic, EPA provided its regulatory interpretation that TPCs could conduct remote inspections via video teleconference to satisfy the requirements of 40 CFR 770.7(c)(4)(i)(F) and 770.15(c)(1)(viii) and allowed TPCs to work with the panel producer quality control managers at the time of the remote inspection to select, package, sign, and ship the TPC panels/samples for the quarterly test according to 40 CFR 770.20(c). EPA is proposing to amend the part 770 regulation to reflect its regulatory interpretation that TPCs may conduct the required initial on-site inspection or quarterly inspections and sample collections remotely when in person, on-site inspections are temporarily impossible because of unsafe conditions caused by natural disasters, health crises, or political unrest. These amendments are further explained in Unit II.B.3.

5. Improve Regulatory Consistency Through Technical Corrections

Furthermore, EPA is proposing to clarify data requirements for emission standards under 40 CFR 770.17(c)(2) and 770.18(d)(2). Under these sections, EPA proposes to add language that clarifies the requirements for testing data for no added formaldehyde-based resins and ultra-low-emitting formaldehyde resins. The clarification states that that for NAF based exemptions ninety percent of the three months of routine quality control testing data and the results of the one primary or secondary method test must be shown to be no higher than 0.04 ppm. For ULEF based exemptions, the clarification states that ninety percent of six months of routine quality control testing data and the results of two quarterly primary or secondary method tests must be shown to be no higher than a ULEF-target value of 0.04 ppm. This proposal would fully align with the California Air Resource Board (CARB) quality control data under section 93120.3 of title 17 of the California Code

of Regulations (the Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products rule, or the ATCM) (Ref. 3) to create better consistency.

Additionally, EPA is proposing several technical corrections under 40 CFR 770.20. Under 40 CFR 770.20(a)(1), EPA proposes to clarify the period in which panels must be tested after their production. This clarification aligns with language in 40 CFR 770.20(c)(3) and CARB section 93120.12 Appendix 3(d)(1) under the ATCM rule. Finally, under 40 CFR 770.20(d)(1)(iii), EPA is proposing that equivalence determinations be included to align with CARB requirements under 93120.9(a)(2)(B)(5) of the ATCM rule. These technical corrections are further explained in Unit II.B.

D. Why is the Agency taking this action?

The Agency is proposing this action to adopt several voluntary consensus standards for incorporation by reference at 40 CFR 770.99. This rulemaking would update several voluntary consensus standards under 40 CFR 770.99 to their current editions to address outdated, superseded, and withdrawn standards that have been updated between 2019 and 2021. These new updates are needed because outdated versions may not be used by industry and have been replaced by these new standards. EPA is proposing to update these voluntary consensus standards to reflect the current editions that could be in use by regulated entities and industry stakeholders in the future. EPA believes that this action is warranted to facilitate regulated entities using the most up to date voluntary consensus standards to comply with the regulation at 40 CFR part 770.

EPA is also proposing to address remote inspections for third-party certifiers because of unsafe conditions such as the on-going COVID–19 pandemic or other unsafe conditions such as natural disasters, outbreaks, political unrest, and epidemics. The proposed remote inspections are designed to allow inspectors flexibility to comply with TSCA Title VI regulations and regional emergency declarations.

Furthermore, EPA is proposing several technical corrections to better align with CARB requirements. These technical corrections include the timing of panel testing after production, equivalency determinations, and the third-party certification process. Alignment with CARB allows EPA's TSCA Title VI program and CARB's ATCM program to work in tandem with one another in order to create an effective and efficient formaldehyde emissions regulatory system. These corrections also would result in less burden on industry working or seeking to work in either or both the California and U.S. markets.

E. What are the incremental economic impacts?

EPA anticipates no additional costs to stakeholders associated with this notice of proposed rulemaking for updated standards. This is a routine action that updates voluntary consensus standards referenced in the incorporation by reference section of the regulation at 40 CFR part 770 to address updated, superseded, and withdrawn versions of the referenced standards. Additionally, regulatory language added to address remote inspections for TPCs to conduct the required on-site inspections and sample collections are also expected to result in no additional costs as this language is intended to codify practices that are currently on-going due to the COVID–19 pandemic.

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through *regulations.gov* or email (see the above **ADDRESSES** section for submitting comments either by mail or hand delivery). Clearly mark the part or all of the information that you claim to be CBI. For confidential information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Background

A. Regulatory Overview

1. Formaldehyde Emission Standards for Composite Wood Products

The Formaldehyde Standards for Composite Wood Products Act of 2010 (Pub. L. 111–199) created Title VI of TSCA (15 U.S.C. 2697), established emission standards for formaldehyde from composite wood products, and directed EPA to implement and enforce a number of provisions covering composite wood products. On December 12, 2016, EPA published a final rule (2016 final rule) (Ref. 1) to reduce exposure to formaldehyde emissions from certain wood products produced domestically or imported into the United States. EPA worked with CARB to help align the 2016 final rule with the ATCM to the extent EPA deemed appropriate and practical considering TSCA Title VI. By including provisions for laminated products, product-testing requirements, labeling, recordkeeping, and import certification, the 2016 final rule requires that hardwood plywood, medium-density fiberboard, and particleboard products sold, supplied, offered for sale, imported to, or manufactured in the United States be in compliance with the emission standards. The 2016 final rule also established a third-party certification program for laboratory testing and oversight of formaldehyde emissions from manufactured and/or imported composite wood products.

2. 2018 Voluntary Consensus Standards Amendment

On February 7, 2018, EPA published a final rule (Ref. 2) to update several voluntary consensus standards incorporated by reference at 40 CFR 770.99. These updates applied to emission testing methods and regulated composite wood product construction characteristics. Several of those voluntary consensus standards (*i.e.,* technical specifications for products or processes developed by standard-setting bodies) were updated, superseded, and/or withdrawn through the normal course of business by these bodies to take into account new information, technology, and methodologies.

3. 2019 Technical Issues Amendment

On August 21, 2019, EPA further amended 40 CFR part 770 (Ref. 4) (2019 final rule) to address certain technical issues. The 2019 final rule:

- Further aligned testing requirements with the CARB ATCM;
- Clarified provisions addressing non-complying lots and how those provisions apply to fabricators, importers, retailers, and distributors who are notified by panel producers that composite wood products they were supplied are found to be non-compliant after those composite wood products have been further fabricated into component parts or finished goods;
- Clarified that regulated composite wood products and finished goods

containing composite wood products must be labeled at the point of manufacture or fabrication, and if imported, the label must be applied to the products as a condition of importation;

- Addressed TSCA Title VI ''manufactured-by'' date issues; and
- Updated two voluntary consensus standards that were incorporated by reference in 40 CFR 770.99.

B. Proposed Amendments

1. Voluntary Consensus Standards IBR Update

a. IBR Update

EPA is proposing to update the IBR of certain voluntary consensus standards in 40 CFR 770.99 to reflect the most recent editions of the following standards assembled by the American National Standards Institute (ANSI), the American Society for Testing and Materials (ASTM), the British Standards Institute (BSI), the International Organization for Standardization (ISO), the Japanese International Standards (JIS), and the National Institute of Standards and Technology (NIST):

i. American National Standard for Hardwood and Decorative Plywood (ANSI/HPVA HP–1–2020)

This standard was developed by the Hardwood Plywood and Veneer Association (HPVA) and approved through ANSI. The ANSI/HPVA standard details the specific requirements for all face, back, and inner ply grades of hardwood plywood as well as formaldehyde emission limits, moisture content, tolerances, sanding, and grade marking. ANSI/HPVA last updated this standard on August 17, 2020 (Ref. 5). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from ANSI/HPVA HP–1–2016 to ANSI/HPVA HP–1–2020.

ii. Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists (ASTM D5055–19e1)

This standard was issued by ASTM and identifies procedures for establishing, monitoring, and reevaluating structural capacities of prefabricated wood I-joists, such as shear, moment, and stiffness. The specification also provides procedures for establishing common details and itemizes certain design considerations specific to wood I-joists. The ASTM standard was last updated in January 2020 (Ref. 6). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from ASTM D5055–16 to ASTM D5055–19e1.

iii. Standard Specification for Evaluation of Structural Composite Lumber Products (ASTM D5456–21e1)

This standard was issued by ASTM and describes initial qualification sampling, mechanical and physical tests, analysis, and design value assignments. The standard includes requirements for a quality-control program and cumulative evaluations to ensure maintenance of allowable design values for the product. The ASTM standard was last updated in June 2021 (Ref. 7). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from ASTM D5456–14b to ASTM D5456–21e1.

iv. Wood-Based Panels—Determination of Formaldehyde Release—Part 3: Gas Analysis Method (BS EN ISO 12460–3:2020)

This standard was approved through ISO, the European Committee for Standardization (CEN), and BSI and describes a procedure for determination of accelerated formaldehyde release from wood-based panels. The standard was last updated on October 31, 2020 (Ref. 8). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from BS EN ISO 12460–3:2015(E) to BS EN ISO 12460–3:2020. EPA would replace the source for BS EN ISO 12460–3:2020 from the European Committee for Standardization (CEN) to the British Standards Institution (BSI). EPA would also replace the source for BS EN ISO 12460–5:2015 E from CEN to BSI in 40 CFR 770.99, although there are no updates to the standard itself and the previous IBR approval for the section in which this standard appears (*i.e.,* 40 CFR 770. 20(b)) would remain unchanged.

v. Wood-Based Panels—Determination of Formaldehyde Release—Part 3: Gas Analysis Method (ISO 12460–3:2020)

This standard was approved through ISO and describes a procedure for determination of accelerated formaldehyde release from wood-based panels. The standard was last updated in October 2020 (Ref. 9). EPA proposes to include this new standard to incorporate by reference in 40 CFR 770.99 since ISO 12460–3:2020 is identical to BS EN ISO 12460–3:2020. To avoid potential confusion by regulated stakeholders, EPA is proposing to include this ISO standard as well as the BS EN ISO 12460–3:2020 so that each manufacturer may choose which standard to use in each respective country.

vi. Determination of the Emission of Formaldehyde From Building Boards—Desiccator Method (JIS A 1460:2021)

This standard was approved through the Japanese Industrial Standards and describes a method for testing formaldehyde emissions from construction boards by measuring the concentration of formaldehyde absorbed in distilled or deionized water from samples of a specified surface area placed in a glass desiccator for 24 hours. The JIS standard was last updated in February 2021 (Ref. 10). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from JIS A 1460:2015(E) to JIS A 1460:2021.

vii. Structural Plywood (PS–1–19)

This standard was issued by NIST and describes the principal types and grades of structural plywood, covering the wood species, veneer grading, adhesive bonds, panel construction and workmanship, dimensions and tolerances, marking, moisture content and packaging of structural plywood intended for construction and industrial uses. Test methods to determine compliance and a glossary of trade terms and definitions are included, as is a quality certification program involving inspection, sampling, and testing of products identified as complying with this standard by qualified testing agencies. The NIST standard was last updated on December 1, 2019 (Ref. 11). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from PS–1–09 to PS–1–19.

viii. Performance Standard for Wood-Based Structural-Use Panels (PS–2–18)

This standard was issued by NIST and covers performance requirements, adhesive bond performance, panel construction and workmanship, dimensions and tolerances, marking, and moisture content of structural-use panels, such as plywood, waferboard, oriented strand board, structural particle board, and composite panels. The standard includes test methods, a glossary of trade terms and definitions, and a quality certification program involving inspection, sampling, and testing of products for qualification under the standard. The NIST standard was last updated in March 2019 (Ref. 12). EPA proposes to update the version of the standard incorporated by reference in 40 CFR 770.99 from PS–2–10 to PS–2–18.

EPA will initiate additional notice-and-comment rulemaking when necessary to reflect any future changes to voluntary consensus standards incorporated by reference in 40 CFR 770.99.

b. Public Access to Voluntary Consensus Standards

i. ANSI/HPVA HP–1–2020

Copies of this standard may be purchased from the Decorative Hardwoods Association (formerly known as Hardwood Plywood and Veneer Association (HPVA)), 42777 Trade West Dr., Sterling, VA 20166, or by calling (703) 435–2900, or at *https://www.decorativehardwoods.org.* Relevant sections of HPVA standards referenced in this rule are also available for public review in read-only format in the Decorative Hardwood Association Reading Room at *https://www.decorativehardwoods.org/sites/default/files/2022-01/ansi-hpva-hp-1-2020.pdf* only for the duration of the public comment period.

ii. ASTM D5055–19e1 and ASTM D5456–21e1

Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at *https://www.astm.org.* ASTM standards referenced in this rule are also available for public review in read-only format in the ASTM Reading Room at *https://www.astm.org/epa.htm* only for the duration of the public comment period.

iii. BS EN ISO 12460–3:2020

Copies of these materials may be obtained from BSI, 12950 Worldgate Dr., Suite 800, Herndon, VA 20170, or by calling (800) 862–4977, or at *https://www.bsigroup.com/.* This British Standard Institute standard is an adoption of EN ISO 12460–3:2020.

iv. ISO 12460–3:2020

Copies of these materials may be obtained from the International Organization for Standardization, 1, ch. de la Voie-Creuse, CP 56, CH–1211, Geneve 20, Switzerland, or by calling +41–22–749–01–11, or at *https://www.iso.org.* ISO standards referenced in this rule are also available for public review in read-only format on the ANSI Standards Incorporated by Reference Portal at *https://ibr.ansi.org/* only for the duration of the public comment period.

v. JIS A 1460:2021

Copies of these materials may be obtained from the Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan, or by calling +81–3–3583–8000, or at *https://www.jsa.or.jp.*

vi. PS 1–19 and PS 2–18

Electronic copies of these materials may be obtained from the NIST at no cost at: *https://www.nist.gov.* You may purchase printed copies of these materials from NIST by calling (800) 553–6847. You must have an order number to purchase a NIST publication. Order numbers may be obtained from the Public Inquiries Unit at (301) 975–NIST. Mailing address: Public Inquiries Unit, NIST, 100 Bureau Dr., Stop 1070, Gaithersburg, MD 20899–1070. In addition, you may also purchase printed copies of NIST publications from or from the U.S. Government Publishing Office (GPO) if you have a GPO stock number. GPO orders may be mailed to: U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197–9000, placed by telephone at (866) 512–1800 (DC Area only: (202) 512–1800), or faxed to (202) 512–2104.

Copies of the standards identified in section II.B. of **SUPPLEMENTARY INFORMATION** have been placed in the rulemaking docket for this action. Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open by appointment only. Visitors must complete docket material requests in advance and then make an appointment to retrieve them. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.* If you have a disability and the format of any material on an EPA web page interferes with your ability to access the information, please contact EPA's Rehabilitation Act Section 508 (29 U.S.C. 794d) Program at *https://www.epa.gov/accessibility/forms/contact-us-about-section-508-accessibility* or via email at *section508@epa.gov.* To enable us to respond in a manner most helpful to you, please indicate the nature of the accessibility issue, the web address of the requested material, your preferred format in which you want to receive the material (electronic format (ASCII, etc.), standard print, large print, etc.), and your contact information.

2. Technical Correction(s)

a. Conform Voluntary Consensus Standards in Scope and Definitions

As a result of the proposed list of updated standards in section II.B.1. of **SUPPLEMENTARY INFORMATION**, EPA is updating 40 CFR 770.1 and 770.3 to reflect the current standards that are proposed to be incorporated by reference in 40 CFR 770.99.

b. Submission of Petitions Seeking the Initiation of a Rulemaking for Additional Exemptions for Laminated Products From the Definition of the Term ''Hardwood Plywood''

The proposed rule would update the address to which petitions and supporting materials, including any supporting materials that may contain CBI or other controlled unclassified information, should be submitted.

c. Timing of Panel Testing After Production

EPA is proposing a clarification under 40 CFR 770.20. Under 40 CFR 770.20(a)(1), EPA proposes to clarify the time period in which panels must be tested after their production. Based on feedback from CARB and industry, the clarifying language states that all panels must be tested in an unfinished condition prior to the application of a topcoat or finish and must occur not later than 30 calendar days after the samples were produced. This clarification was needed based on confusion between regulated entities as to when the 30-day window began. This language fully aligns with 40 CFR 770.20(c)(3) as well as CARB section 93120.12 Appendix 3(d)(1) under the ATCM rule.

d. Equivalency Determinations

Under 40 CFR 770.20(d)(1)(iii), equivalence determination corrections are included to address previous omissions. During the last voluntary consensus update in 2018 which revised the formaldehyde standards for composite wood products regulations, the acceptable intermediate and upper determinations were not included. Under 770.20(d)(1)(iii), the ASTM D6007–14 method (incorporated by reference, see 40 CFR 770.99) is considered equivalent to the ASTM E1333–14 method (incorporated by reference, see 40 CFR 770.99) if the following condition is met: $\bar{X} + 0.88S \leq C$. While a lower value of 0.026 was included, the intermediate and upper values were inadvertently omitted. This proposed update includes an intermediate value of 0.038 and an upper value of 0.052. These proposed changes correct an omission and fully align with CARB requirements under section 93120.9(a)(2)(B)(5) of the ATCM rule.

e. Clarify Language for NAF and ULEF Based Exemptions

Under 40 CFR 770.17(c)(2) and 770.18(d)(2), EPA is proposing to clarify data requirements for emission standards submitted by TPCs. Under these sections, EPA proposes to add language that clarifies the requirements for testing data for no-added formaldehyde-based resins (NAF) and ultra-low-emitting formaldehyde resins (ULEF). The clarification states that for NAF based exemptions ninety percent of the three months of routine quality control testing data and the results of the one primary or secondary method test must be shown to be no higher than 0.04 ppm. For ULEF based exemptions, the clarification states that ninety percent of six months of routine quality control testing data and the results of two quarterly primary or secondary method tests must be shown to be no higher than a ULEF-target value of 0.04 ppm. This language would fully align with CARB quality control data under ATCM (Ref. 3) to create better consistency.

3. Remote Inspections

During the COVID–19 global pandemic, some TPCs have been unable to travel to a composite wood product manufacturing panel producing facility to conduct the required on-site inspections and sample collections in-person. In response, EPA provided its regulatory interpretation that TPCs and panel producers can conduct these activities remotely (see *https://www.epa.gov/coronavirus/event-unsafe-conditions-geographic-area-would-prevent-third-party-certifier-tpc* for additional information). These remote inspections are designed to allow inspectors flexibility to comply with TSCA Title VI regulations and regional emergency declarations, without jeopardizing the inspector's health and wellbeing. The standard practice for a TPC providing certification services for composite wood panel producers remains that a TPC conducts in-person on-site inspections, which should resume as soon as possible when the unsafe conditions end.

EPA is proposing to amend 40 CFR 770.7 and 770.15(c) by adding an alternative to in-person, on-site inspections and sample collection for quarterly testing that would allow TPCs to perform these activities remotely via video teleconference when it is otherwise temporarily impossible to do so on-site and in person because of unsafe conditions caused by natural disasters, health crises, or political unrest. In addition to carrying out initial and quarterly inspections remotely via video teleconference, the proposed rule would allow TPCs to work with the panel producer's quality control manager at the time of the remote inspection to select, package, sign, and ship the TPC panels/samples for the quarterly test according to 40 CFR 770.20(c). Under the proposed rule, when submitting the annual report required under 40 CFR 770.7(c)(4)(viii)(A), TPCs would also be required to identify each occurrence of an inspection that was performed remotely during each quarter and certify that a government entity identified the existence of unsafe conditions such as the on-going COVID–19 pandemic or other unsafe conditions such as natural disasters, outbreaks, political unrest, and epidemics at the time of each remote inspection.

4. Third Party Certification Process

Under 40 CFR 770.7(a)(5)(i)(A), (c)(1)(iii), (c)(2)(v), and (c)(4)(i)(F), section 6.2.2 under ISO/IEC 17065:2012(E) has been added. The addition of section 6.2.2 under ISO/IEC 17065:2012(E) would allow TPCs to utilize external evaluation resources, such as contracting out inspections to a third party, in order to complete the certification process. The requirements for the certification process under section 6.2.2 are the same as section 6.2.1 under ISO/IEC 17065:2012(E) which involves an internal certification process conducted by the TPC. Adding section 6.2.2 would give TPCs flexibility to choose to contract out inspections to a third party to satisfy the requirements in 40 CFR 770.7 to conduct inspections of composite wood products.

C. Rationale for Proposed Changes

1. Voluntary Consensus Standards Update

EPA is proposing to update the incorporation by reference of certain voluntary consensus standards in 40 CFR 770.99 that have been updated, superseded, or withdrawn by the issuing organizations. These new standards are needed to reflect the most recent editions of those standards issued by the relevant standards organizations.

2. Technical Correction(s) for Regulatory Consistency

a. Submission of Petitions Seeking the Initiation of a Rulemaking for Additional Exemptions for Laminated Products From the Definition of the Term ''Hardwood Plywood''

This proposed amendment is intended to update the address and protect any CBI materials which may be submitted.

b. Timing of Panel Testing After Production

This proposed amendment is intended to reduce confusion between regulated entities as to when the 30-day window is to begin. The proposed language changes reflect conversations between CARB and EPA, and fully aligns with 40 CFR 770.20(c)(3) as well as CARB section 93120.12 Appendix 3(d)(1) under the ATCM rule.

c. Equivalency Determinations

This proposed amendment is intended to address a previous omission during the last rulemaking which occurred in 2018. These proposed changes correct an omission and fully align with CARB requirements under section 93120.9(a)(2)(B)(5) of the ATCM rule.

d. Emission Standards

This proposed amendment is intended to address industry confusion about the exact timing and nature of the emission standards under 40 CFR 770.17(c)(2) and 770.18(d)(2) for NAF and ULEF based exemptions. The proposed amendment includes additional language that clarifies the requirements for such an exemption and fully aligns with CARB quality control data under the ATCM.

3. Remote Inspections

This proposed amendment is intended to codify an Agency regulatory interpretation which was provided during the start of the COVID–19 global pandemic in early 2020 in order for inspectors to fulfill their obligations under TSCA Title VI regulations, while also remaining safe from infection (see *https://www.epa.gov/coronavirus/event-unsafe-conditions-geographic-area-would-prevent-third-party-certifier-tpc* for additional information).

4. Third-Party Certification Process

This proposed amendment is intended to increase flexibility for TPCs seeking to utilize external evaluation resources, such as contracting out inspections to a third party in order to complete the certification process. Because the requirements for the certification process under section 6.2.2 are the same as section 6.2.1 under ISO/IEC 17065:2012(E), which involves an internal certification process conducted by the TPC, EPA believes that such a proposed change should be made.

III. Request for Comments

When necessary, EPA intends to reflect any future changes to voluntary consensus standards incorporated by reference in 40 CFR 770.99 through additional notice-and-comment rulemaking. EPA is seeking public comment on all aspects of this proposed rule including comments on whether there are other standards that should be incorporated by reference or whether there are standards that should be removed from the regulations entirely. No susceptible population analysis was conducted for this proposed rulemaking given the routine nature of updating certain standards for this proposed rule. However, EPA is seeking public comment on ways the third-party certification process can be improved, either through the certification process directly or ways in which susceptible populations can be protected. Additionally, EPA is seeking public comment on the remote inspection process during unsafe conditions such as the on-going COVID–19 pandemic or other unsafe conditions such as natural disasters, outbreaks, political unrest, and epidemics. EPA is soliciting comment on alternative approaches that EPA should consider in place of reporting the occurrence of each remote inspection in the annual report. For example, EPA seeks comments on whether EPA should instead amend 40 CFR 770.7(c)(4)(vii) record requirements to include a self-certification statement that a government entity identified the existence of unsafe conditions in the area of a composite wood product manufacturing panel producer that would prevent the required quarterly or initial on-site inspections from being conducted in person in accordance with 40 CFR 770.7(c)(4)(i)(G) and that a given on-site inspection in such a scenario was conducted remotely. Finally, EPA is seeking comment on any of the proposed technical corrections to better align with CARB. EPA encourages all interested persons to submit comments on the issues identified in this proposed rule and to identify any other relevant issues as well. EPA requests that commenters making specific recommendations include supporting documentation where appropriate to facilitate the Agency's reasoned consideration of those recommendations.

IV. References

The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Formaldehyde Emission Standards for Composite Wood Products. Final Rule. **Federal Register**. 81 FR 89674, December 12, 2016 (FRL–9949–90).
2. EPA. Voluntary Consensus Standards Update; Formaldehyde Emission Standards for Composite Wood Products. Final Rule. **Federal Register**. 83 FR 5340, February 7, 2018 (FRL–9972–68).
3. California Environmental Protection Agency Air Resources Board. Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. Final Regulation Order. April 2008.
4. EPA. Technical Issues; Formaldehyde Emission Standards for Composite Wood Products. Final Rule. **Federal Register**. 84 FR 43517, August 21, 2019 (FRL–9994–47).
5. American National Standards Institute (ANSI)/Hardwood Plywood and Veneer Association (HPVA). American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2020.
6. American Society for Testing and Materials (ASTM). ASTM D5055–19e1, Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists.
7. ASTM. ASTM D5456–21e1, Evaluation of Structural Composite Lumber Products.
8. British Standards Institute (BSI). BS EN ISO 12460–3:2020, Wood-based Panels—Determination of Formaldehyde Release—Part 3: Gas Analysis Method.
9. International Organization for Standardization (ISO). ISO 12460–3:2020, Wood-based Panels—Determination of Formaldehyde Release—Part 3: Gas Analysis Method.
10. Japanese Industrial Standards (JIS). JIS A 1460:2021, Determination of the Emission of Formaldehyde from Building Boards—Desiccator Method.
11. National Institute of Standards and Technology (NIST). PS 1–19, Structural Plywood.
12. NIST. PS 2–18, Performance Standard for Wood-Based Structural-Use Panels.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders*.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action under Executive Order 12866 (58 FR 51735, October 4, 1993) and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Burden is defined in 5 CFR 1320.3(b). This action does not create any new reporting or recordkeeping obligations. OMB previously approved the information collection activities contained in the existing regulations and assigned OMB control number 2070–0185 (EPA ICR No. 2446.03).

C. Regulatory Flexibility Act (RFA)

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern is any significant adverse economic impact on small entities, and the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the proposed rule would update incorporation by reference of voluntary consensus standards in 40 CFR part 770 by adopting the most current versions of those standards. The updated versions of the standards are substantially similar to the previous versions. EPA expects that many small entities are already complying with the updated versions of the proposed standards listed Unit II.B. This action would relieve these entities of the burden of having to also demonstrate compliance with outdated versions of these standards. This action also provides an amendment to the equivalence and correlation requirements at 40 CFR 770.20 that would reduce testing burdens without compromising the integrity of the data collected by panel producers and third-party certifiers to demonstrate compliance with the emission standards in the final rule. This action will reduce burden and allow greater flexibility for inspections of composite wood product producing mills. Additionally, this action provides clarifying language under 40 CFR 770.17 and 40 CFR 770.18 that would conform to current CARB language therefore easing the burden for regulated stakeholders in interpreting formaldehyde regulations. Finally, this action provides an amendment under ISO/IEC 17065:2012(E), section 6.2.2 which allows TPCs greater flexibility in conducting inspections in order to satisfy the requirements in 40 CFR 770.7. EPA believes this added flexibility will reduce burdens for TPCs

during the inspection of composite wood products. These actions will relieve or have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It 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.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, E.O. 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks that the Agency has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action involves voluntary standards under NTTAA section 12(d), 15 U.S.C. 272 note. EPA is proposing to adopt the use of ANSI/HPVA HP–1–2020, ASTM D5055–19e1, ASTM D5456–21e1, BS EN ISO 12460–3:2020, ISO 12460–3:2020, JIS A 1460:2021, NIST PS 1–19, and NIST PS–2–18. Additional information about these standards, including how to access them, is provided in section II.B.1 of **SUPPLEMENTARY INFORMATION**.

The following standard have already been approved for the sections in which they appear, and no change is proposed: ANSI A208.1–2016, ISO/IEC 17065:2012(E), ISO/IEC 17020:2012(E), ASTM D6007–14, and ASTM E1333–14 20(d).

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. As addressed in Unit II.A., this action would not materially alter the final rule as published and would update existing voluntary consensus standards incorporated by reference in the final rule and proposes other technical amendments.

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood.

Dated: March 17, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons set forth in the preamble, EPA proposes to amend 40 CFR chapter I as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

■ 1. The authority citation for part 770 continues to read as follows:

Authority: 15 U.S.C. 2697(d).

■ 2. In § 770.1, revise paragraphs (c)(3) through (5) and (8) to read as follows:

§ 770.1 Scope and applicability.

* * * * *

(c) * * *

(3) Structural plywood, as specified in PS 1–19, Structural Plywood (incorporated by reference, see § 770.99).

(4) Structural panels, as specified in PS 2–18, Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99).

(5) Structural composite lumber, as specified in ASTM D5456–21e1, Standard Specification for Evaluation of Structural Composite Lumber Products (incorporated by reference, see § 770.99).

* * * * *

(8) Prefabricated wood I-joists, as specified in ASTM D5055–19e1, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists (incorporated by reference, see § 770.99).

* * * * *

■ 3. In § 770.3, the definitions for ''Hardwood plywood'' and ''Particleboard'' are revised to read as follows:

§ 770.3 Definitions.

* * * * *

Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP–1–2020 (incorporated by reference, see § 770.99)) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, a hardboard core, a veneer core, or any other special core or special back material. Hardwood plywood does not include military-specified plywood, curved plywood, or any plywood specified in PS 1–19, Structural Plywood (incorporated by reference, see § 770.99), or PS 2–18, Performance standard for Wood-Based Structural-Use Panels (incorporated by reference, see § 770.99). In addition, hardwood plywood includes laminated products except as provided at § 770.4.

* * * * *

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1–2016 (incorporated by reference, see § 770.99)). Particleboard does not include any product specified

in PS 2–18 (incorporated by reference, see § 770.99).

* * * * *

■ 4. In § 770.4 revise paragraph (b)(2) to read as follows:

§ 770.4 Exemption from the hardwood plywood definition for certain laminated products.

* * * * *

(b) * * *

(2) Each petition should provide all available and relevant information, including studies conducted and formaldehyde emissions data. Submit petitions to: TSCA Confidential Business Information Center (7407M), WJC East; Room 6428; Attn: TSCA Title VI Program, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0001.

* * * * *

■ 5. Amend § 770.7 by:

■ a. Revising paragraphs (a)(5)(i)(A), (c)(1)(iii), (c)(2)(v), and (c)(4)(i)(F);

■ b. Adding paragraph (c)(4)(i)(G); and

■ c. Revising the introductory text of paragraph (c)(4)(viii)(A) and paragraph (c)(4)(viii)(A)(3).

The revisions and addition read as follows:

§ 770.7 Third-party certification.

(a) * * *

(5) * * *

(i) * * *

(A) An on-site assessment by the EPA TSCA Title VI Product AB to determine whether the TPC meets the requirements of ISO/IEC 17065:2012(E), is in conformance with ISO/IEC 17020:2012(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 and section 6.2.2 (incorporated by reference, see § 770.99) and the EPA TSCA Title VI TPC requirements under this part. In performing the on-site assessment, the EPA TSCA Title VI Product AB must:

* * * * *

(c) * * *

(1) * * *

(iii) Have the ability to conduct inspections of composite wood products and properly train and supervise inspectors to inspect composite wood products in conformance with ISO/IEC 17020:2012(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 and section 6.2.2 (incorporated by reference, see § 770.99);

* * * * *

(2) * * *

(v) An affirmation of the TPC's ability to conduct inspections of composite wood products and properly train and supervise inspectors to inspect composite wood products in conformance with ISO/IEC 17020:2012(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 and section 6.2.2 (incorporated by reference, see § 770.99);

* * * * *

(4) * * *

(i) * * *

(F) Inspect each panel producer, its products, and its records at least quarterly in conformance with ISO/IEC 17020:2012(E) as required under ISO/IEC 17065:2012(E) section 6.2.1 and section 6.2.2 (incorporated by reference, see § 770.99).

(G) In the event a government entity has identified the existence of unsafe conditions (*e.g.,* natural disasters, outbreaks, political unrest, epidemics, and pandemics) in the area of a composite wood product manufacturing panel producer that would prevent the required quarterly inspections from being conducted in person on-site, a TPC may opt to perform a remote quarterly inspection in lieu of the in person on-site inspection. Such a remote inspection may occur only during the period of the unsafe conditions. For such a remote inspection during the period of the unsafe conditions, the TPC must conduct a remote quarterly inspection via live remote technology (*e.g.,* video/teleconference) operating as directed by the TPC to satisfy the requirements of paragraph (c)(4)(i)(F) of this section, and work with the panel producer quality control manager at that time to select, package, sign, and ship the TPC panels/samples for the quarterly test according to § 770.20(c). TPCs and panel producers must remain in close communication with each other to ensure any changes or developments that might affect the panel producer or product type certification are managed according to the TSCA Title VI regulations. The standard practice for a TPC providing certification services for composite wood panel producers remains that a TPC conducts in person quarterly inspections and sample collection, packaging, signature, and shipping for quality control testing.

* * * * *

(viii) * * *

(A) The following information for each panel producer making composite wood products certified by the EPA TSCA Title VI TPC:

* * * * *

(3) Dates of quarterly inspections; for any inspection(s) conducted remotely in accordance with paragraph (c)(4)(i)(G) of this section, the TPC must certify that a government entity identified the existence of unsafe conditions at the time of the inspection(s);

* * * * *

■ 6. In § 770.15 revise paragraph (c)(1)(viii) to read as follows:

§ 770.15 Composite wood product certification.

* * * * *

(c) * * *

(1) * * *

(viii) Results of an initial, on-site inspection by the TPC of the panel producer. In the event a government entity has identified the existence of unsafe conditions as outlined in § 770.7(c)(4)(i)(G) and in order to conduct the required initial, on-site inspection associated with new certification activities, the TPC may conduct a virtual inspection via on-site video/teleconference technology (operating as directed by the TPC) and that aligns with the standard operating procedure the TPC would normally employ during an in person inspection to satisfy the requirements of this paragraph (c)(1)(viii).

* * * * *

■ 7. In § 770.17 revise paragraph (c)(2) to read as follows:

§ 770.17 No-added formaldehyde-based resins.

* * * * *

(c) * * *

(2) Ninety percent of the three months of routine quality control testing data and the results of the one primary or secondary method test (required under paragraphs (a)(3) and (4) of this section) must be shown to be no higher than 0.04 ppm.

* * * * *

■ 8. In § 770.18 revise paragraph (d)(2) to read as follows:

§ 770.18 Ultra low-emitting formaldehyde resins.

* * * * *

(d) * * *

(2) Ninety percent of six months of routine quality control testing data and the results of two quarterly primary or secondary method tests (required under paragraphs (a)(3) and ((4) of this section) must be shown to be no higher than a ULEF-target value of 0.04 ppm.

* * * * *

■ 9. In § 770.20 revise paragraphs (a)(1), (b)(1)(iii) and (vii), and (d)(1)(iii) to read as follows:

§ 770.20 Testing requirements.

(a) * * *

(1) All panels must be tested in an unfinished condition, prior to the application of a finishing or topcoat, as soon as possible after their production,

but no later than 30 calendar days after the samples were produced.

* * * * *

(b) * * *

(1) * * *

(iii) BS EN ISO 12460–3:2020 (Gas Analysis Method) (incorporated by reference, see § 770.99) or ISO 12460–3:2020 (Gas Analysis Method) (incorporated by reference, see § 770.99).

* * * * *

(vii) JIS A 1460:2021 (24-hr Desiccator Method) (incorporated by reference, see § 770.99).

* * * * *

(d) * * *

(1) * * *

(iii) *Equivalence determination.* The ASTM D6007–14 method (incorporated by reference, see § 770.99) is considered equivalent to the ASTM E1333–14 method (incorporated by reference, see § 770.99) if the following condition is met: $|\overline{X}| + 0.88S \leq C$.

Where C is equal to: 0.026 for the lower range; 0.038 for the intermediate range; and 0.052 for the upper range.

* * * * *

■ 10. Revise § 770.99 to read as follows:

§ 770.99 Incorporation by reference.

Certain material is incorporated by reference into this [chapter/subchapter/part/subpart] with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency (EPA) must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the EPA and at the National Archives and Records Administration (NARA). Contact EPA at: OPPT Docket in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For information on the availability of this material at NARA, email: *fr.inspection@nara.gov*, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the following source(s):

(a) *APA.* APA—The Engineered Wood Association, 7011 S 19th Street, Tacoma, WA 98466–5333; (253) 565–6600; *www.apawood.org.*

(1) ANSI A190.1–2017, Standard for Wood Products—Structural Glued Laminated Timber, Approved January 24, 2017; IBR approved for § 770.1(c).

(2) [Reserved]

(b) *ASTM.* ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959; (877) 909–ASTM; *www.astm.org.*

(1) ASTM D5055–19e1, Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists, Approved January 2020; IBR approved for § 770.1(c).

(2) ASTM D5456–21e1, Standard Specification for Evaluation of Structural Composite Lumber Products, Approved June 2021; IBR approved for § 770.1(c).

(3) ASTM D5582–14, Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator, Approved August 1, 2014; IBR approved for § 770.20(b).

(4) ASTM D6007–14, Standard Test Method for Determining Formaldehyde Concentrations in Air from Wood Products Using a Small-Scale Chamber, Approved October 1, 2014; IBR approved for §§ 770.3; 770.7(a) through (c); 770.15(c); 770.17(a); 770.18(a); 770.20(b) through (d).

(5) ASTM E1333–14, Standard Test Method for Determining Formaldehyde Concentrations in Air and Emission Rates from Wood Products Using a Large Chamber, Approved October 1, 2014; IBR approved for §§ 770.3; 770.7(a) through (c); 770.10(b); 770.15(c); 770.17(a); 770.18(a); 770.20(c) and (d).

(c) *BSI.* British Standards Institute, 12950 Worldgate Dr., Suite 800, Herndon, VA 20170; (800) 862–4977; *www.bsigroup.com/.*

(1) BS EN ISO 12460–3:2020, Wood-based panels.—Determination of formaldehyde release—Part 3: Gas analysis method, October 2020; IBR approved for § 770.20(b).

(2) BS EN ISO 12460–5:2015 E, Wood based panels.—Determination of formaldehyde release—Part 5: Extraction method (called the perforator method), December 2015; IBR approved for § 770.20(b).

(d) *CPA.* Composite Panel Association, 19465 Deerfield Avenue, Suite 306, Leesburg, Virginia 20176; (703) 724–1128; *www.compositepanel.org.*

(1) ANSI A135.4–2012, Basic Hardboard, Approved June 8, 2012; IBR approved for § 770.3.

(2) ANSI A135.5–2012, Prefinished Hardboard Paneling, Approved March 29, 2012; IBR approved for § 770.3.

(3) ANSI A135.6–2012, Engineered Wood Siding, Approved June 5, 2012; IBR approved for § 770.3.

(4) ANSI A135.7–2012, Engineered Wood Trim, Approved July 17, 2012; IBR approved for § 770.3.

(5) ANSI A208.1–2016, Particleboard, Approved May 12, 2016; IBR approved for § 770.3.

(6) ANSI A208.2–2016, Medium Density Fiberboard (MDF) for Interior Applications, Approved May 12, 2016; IBR approved for § 770.3.

(e) *Georgia Pacific.* Georgia-Pacific Chemicals LLC, 133 Peachtree Street, Atlanta, GA 30303; (877) 377–2737; *www.gp-dmc.com/default.aspx.*

(1) The Dynamic Microchamber computer integrated formaldehyde test system, User Manual, revised March 2007 (DMC 2007 User's Manual); IBR approved for § 770.20(b).

(2) The GP Dynamic Microchamber Computer-integrated formaldehyde test system, User Manual, copyright 2012 (DMC 2012 GP User's Manual); IBR approved for § 770.20(b).

(f) *HPVA.* Decorative Hardwoods Association (formerly known as Hardwood Plywood and Veneer Association (HPVA), 42777 Trade West Dr., Sterling, VA 20166; (703) 435–2900; *www.decorativehardwoods.org.*

(1) ANSI/HPVA HP–1–2020, American National Standard for Hardwood and Decorative Plywood, Approved August 17, 2020; IBR approved for § 770.3.

(2) [Reserved]

(g) *ISO.* International Organization for Standardization, 1, ch. de la Voie-Creuse, CP 56, CH–1211, Geneve 20, Switzerland; +41–22–749–01–11; *www.iso.org.*

(1) ISO 12460–3:2020, Wood-based panels.—Determination of formaldehyde release—Part 3: Gas analysis method, October 2020; IBR approved for § 770.20(b).

(2) ISO/IEC 17011:2017(E) Conformity assessments—requirements for accreditation bodies accrediting conformity assessments bodies (Second Edition), November 2017; IBR approved for §§ 770.3; 770.7(a) and (b).

(3) ISO/IEC 17020:2012(E), Conformity assessment—Requirements for the operation of various bodies performing inspection, Second edition, 2012–03–01; IBR approved for §§ 770.3; 770.7(a) through (c).

(4) ISO/IEC 17025:2017(E) General requirements for the competence of testing and calibration laboratories (Third Edition), November 2017; IBR approved for §§ 7703.3; 770.7(a) through (c).

(5) ISO/IEC 17065:2012(E), Conformity assessment—Requirements

for bodies certifying products, processes and services, First edition, 2012–09–15; IBR approved for §§ 770.3; 770.7(a) and (c).

(h) *Japanese Standards Association.* Japanese Industrial Standards, 1–24, Akasaka 4, Minatoku, Tokyo 107–8440, Japan; +81–3–3583–8000; *www.jsa.or.jp/.*

(1) JIS A 1460:2021, Determination of the emission of formaldehyde from building boards—Desiccator method, First English edition, February 2021; IBR approved for § 770.20(b).

(2) [Reserved]

(i) *NIST.* National Institute of Standards and Technology, Public Inquiries Unit, NIST, 100 Bureau Dr., Stop 1070, Gaithersburg, MD 20899–1070; (301) 975–NIST or (800) 553–6847; *www.nist.gov.*

(1) PS 1–19, Structural Plywood, December 1, 2019; IBR approved for §§ 770.1(c); 770.3.

(2) PS 2–18, Performance Standard for Wood-Based Structural-Use Panels, March 2019; IBR approved for §§ 770.1(c); 770.3.

Note 1 to paragraph (i): To purchase paper copies from NIST, call (301) 975–NIST for an order number. To purchase paper copies from GPO (with a stock number), mail: U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197–9000; call: (866) 512–1800 or (DC Area only: (202) 512–1800); fax (202) 512–2104.

[FR Doc. 2022–06149 Filed 3–28–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 87, No. 60

Tuesday, March 29, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Partnership for Peace Fund Advisory Board; Notice of Meeting

AGENCY: Agency for International Development.

ACTION: Request for public comment and notice of public meeting.

SUMMARY: The United States Agency for International Development (USAID) announce a public meeting and request public comment for the inaugural meeting of the Partnership for Peace Fund (PPF) Advisory Board to (1) review best practices for people-to-people peacebuilding activities; (2) discuss partnership-types and methods of outreach; (3) discuss inaugural recommendations of board members on potential programming priorities; and (4) address administrative matters.

DATES:

1. Written comments and information are requested on or before April 8, 2022, at 5:00 p.m. EDT.
2. The public meeting will take place on Wednesday, April 13, 2022, from 8:00 a.m. to 10:30 a.m. EDT via the BlueJeans platform (*https://primetime.bluejeans.com/a2m/live-event/xcdwydbg*).
3. The meeting does not require pre-registration.

ADDRESSES: You may submit comments regarding the work of the Partnership for Peace Advisory Board by email to *MEPPA@usaid.gov.* Include ''Public Comment, PPF Advisory Board Meeting, April 13'' in the subject line. All public comments and questions will be included in the official record of the meeting and posted publicly on the USAID website.

Please email *MEPPA@usaid.gov* to request reasonable accommodations for the public meeting. Include ''Request for Reasonable Accommodation, PPF Advisory Board Meeting, April 13'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Daniel McDonald, 202–712–4938, *meppa@usaid.gov*.

SUPPLEMENTARY INFORMATION: In December 2020, Congress passed the Nita M. Lowey Middle East Partnership for Peace Act, or MEPPA, with bipartisan support. The Act directs USAID and the U.S. International Development Finance Corporation, in coordination with the Department of State, to program $250 million over five years to build the foundation for peaceful coexistence between Israelis and Palestinians through a new Partnerships for Peace Fund, managed by USAID, and a Joint Investment Initiative, managed by the DFC.

The Act serves as a recognition that economic, social, and political connections between Israelis and Palestinians is the best way to foster mutual understanding and provide the strongest basis for a sustainable, two-state solution. USAID's Middle East Bureau has been been working with Congress, interagency colleagues, and partners in Israel and the Palestinian territories to implement the Act. The Act also calls for the establishment of a board to advise USAID on the strategic direction of the Partnership for Peace Fund.

Composed of up to 15 members, the PPF Advisory Board includes development experts, private sector leaders and faith-based leaders who are appointed by members of Congress and the USAID Administrator. As stated in its charter, the Board's role is to:

1. To consult with, provide information to and advise USAID, and other U.S. Government agencies, as appropriate, on matters and issues relating to the People-to-People Partnership for Peace Fund, including on:

- The efficacy of United States and international support for grassroots, people-to-people efforts aimed at fostering tolerance, countering extremist propaganda and incitement in the State of Israel, the West Bank, and Gaza;
- strengthening engagement between Palestinians and Israelis, including through people-to-people peace-building programs to increase the bonds of friendship and understanding; and
- investing in cooperation that develops the Palestinian economy and results in joint economic ventures;

2. To make recommendations on the types of projects USAID should seek to further the purposes of the People-to-People Partnership for Peace Fund;
3. To make recommendations on partnerships with foreign governments and international organizations to leverage the impact of People-to-People Partnership for Peace Fund; and
4. To inform USAID's required reporting to the appropriate Congressional committees.

Advisory Board Members as of March 23, 2022:

- Chair: The Honorable George R. Salem
- The Honorable Elliott Abrams
- Rabbi Angela Buchdahl
- Rabbi Michael M. Cohen
- Sander Gerber
- Ambassador Mark Green (ret.)
- Hiba Husseini
- Heather Johnston
- Harley Lippman
- The Honorable Nita M. Lowey
- Dina Powell McCormick
- Jen Stewart
- The Honorable Robert Wexler

PPF Advisory Board meetings are held twice a year and are public. More information about how USAID is implementing MEPPA to increase people-to-people partnerships between Israelis and Palestinians is available at: *https://www.usaid.gov/west-bank-and-gaza/meppa*.

The purpose of this meeting is for the Advisory Board to gain a better understanding of the unique challenges of peace building in the Israeli/Palestinian context.

During this meeting, the Board will (1) review best practices for people-to-people peacebuilding activities; (2) discuss partnership-types and methods of outreach; (3) discuss inaugural recommendations of board members on potential programming priorities; and (4) address administrative matters.

Request for Public Comment

To inform the direction and advice of the Board, USAID invites written comments from the public on areas for focus and strategies for people-to-people peacebuilding under the PPF.

Written comments and information are requested on or before Friday, April 8, 2022, at 5:00 p.m. EDT. Include ''Public Comment, PPF Advisory Board Meeting, April 13'' in the subject line. Please submit comments and information as a Word or PDF

attachment to your email. You are encouraged to submit written comments even if you plan to attend the public meeting. All public comments and questions will be included in the official record of the meeting and posted publicly on the USAID website.

Public Meeting

A public meeting will take place April 13, 2022, from 8:00 a.m. to 10:30 a.m. EDT. This meeting is free and open to the public. Persons wishing to attend the meeting should use the following link: *https://primetime.bluejeans.com/a2m/live-event/xcdwydbg.*

American Sign Language interpretation will be provided during the public meeting. Requests for reasonable accommodations should be directed to Daniel McDonald at *MEPPA@usaid.gov.* Please include ''Request for Reasonable Accommodation, PPF Advisory Board Meeting, April 13'' in the subject line.

Megan Doherty,

USAID Designated Federal Officer for the PPF Advisory Board, Bureau for the Middle East, U.S. Agency for International Development.

[FR Doc. 2022–06519 Filed 3–28–22; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request; Reinstatement of a Previously Approved Information Collection

March 24, 2022.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by April 28, 2022. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Export Certificate Request Forms.

OMB Control Number: 0581–0283.

Summary of Collection: The dairy grading program is a voluntary fee program authorized under the Agricultural Marketing Act (AMA) of 1946 (U.S.C. 1621–1627). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58. Importing countries require certification methods and sources of raw ingredients for dairy products. USDA, AMS, Dairy Grading Branch is the designated unit for dairy products in the United States. Exporters must request export certificates from USDA.

Need and Use of the Information: Importing countries are requiring certification as to production methods and sources of raw ingredients for dairy products. Information will be gathered using DA–228 ''Request for Applicant Number,'' DA–253 European Union Health Certificate Request,'' and the Sanitary Certificate Request. To provide the required information on dairy export sanitary certificates AMS must collect the information from the exporter. The information required on the sanitary certificates varies from country to country requiring specific forms for each country. Such information includes: Identity of the importer and exporter, to describe consignments specifics, and identify border entry at the country of destination. The information gathered using these forms is only used to create the export sanitary certificate.

Description of Respondents: Business or other for-profit.

Number of Respondents: 275.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10,854.

Agricultural Marketing Service

Title: Establishment of a Dairy Donation Program.

OMB Control Number: 0581–0327.

Summary of Collection: The Consolidated Appropriations Act of 2021 mandated establishment of a Dairy Donation Program to reimburse EDOs for milk used to make eligible dairy products donated to non-profit groups for distribution to recipient individuals and families. Under the program, EDOs account to a Federal milk marketing order (FMMO) by filling a report reflecting the eligible dairy products manufactured. Entities not already filing FMMO report will be required to submit a Report of Receipts and Utilization. All partnerships must submit a Dairy Donation and Distribution Plan and Eligible Distributor Certification Form describing the process the partnership would use to process, transport, store, and distribute eligible product to an eligible distributor. Once approved, the EDO can file a Reimbursement Claim Form to receive reimbursement for the donated eligible dairy products.

Need and Use of the Information: Respondents will be required to submit a Dairy Donation and Distribution Plan (Plan) to become eligible for program participation. The EDO completes the Plan, which requests its entity name, address, and contact information, along with a description of its donation process and types of products to be donated to ensure it meets eligibility requirements. Accompanying the Plan, the EDO submits its W–9, which contains the banking and tax information necessary for AMS to set up direct deposit for reimbursement claims. Submitting this information with the Plan will facilitate quicker reimbursement payments once a Reimbursement Claim Form is submitted because the needed accounts will already be established. Section 1147.102 of the rule details requirements for Plan submissions to AMS for eligible partnerships to participate in the program. Information collected in the Plan is fundamental to ensuring the integrity of the DDP. The Plan only needs to be submitted once.

Description of Respondents: Individuals and Households.

Number of Respondents: 615.

Frequency of Responses: On occassion: Annually.

Total Burden Hours: 2,790.

Agricultural Marketing Service

Title: Seafood Processors Pandemic Response and Safety Block Grant Program (SPRS).

OMB Control Number: 0581–0329.

Summary of Collection: The information collection requirements in this request are needed for the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS) to administer a block grant program, entitled the Seafood Processors Pandemic Response and Safety (SPRS) Block Grants Program, under its Transportation and Marketing Program's Grants Division and in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) (2 CFR part 200).

SPRS is authorized and funded by the Consolidated Appropriations Act, 2021 in response to the ongoing COVID–19 pandemic to respond to coronavirus, including for measures to protect workers in seafood processing facilities and processing vessels. SPRS is a non-competitive block grant program that supports seafood processors and processing vessels (as defined in section 3.2) in improving workplace safety measures, market pivots, retrofitting facilities, transportation, worker housing, and medical costs associated with disruptions from COVID–19. Costs associated with these activities continue to accrue for the seafood processing sector. These funds will help address past and present protective measures to keep the seafood processing sector stable and safe from disruptions from COVID–19.

Need and Use of the Information: The information collected is needed to certify that grant participants are complying with terms and conditions of the agreement, including the requirements outlined in the Uniform Guidance, and the data collected is the minimum information necessary to effectively carry out the program requirements, support program integrity, and ensure eligible applicants can access the program. The information collection requirements in this request are essential to carry out the intent of section 751 of the CAA, to provide the respondents the type of service they request, and for AMS to administer this program.

Description of Respondents: State, Local, and Tribal Government.

Number of Respondents: 25.

Frequency of Responses: On occassion: Annually.

Total Burden Hours: 1,025.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–06565 Filed 3–28–22; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 23, 2022.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding these information collections are best assured of having their full effect if received by April 28, 2022. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service (NASS)

Title: Feral Swine Survey—Substantive Change.

OMB Control Number: 0535–0256.

Summary of Collection: General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204 which specifies that ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain . . . by the collection of statistics . . .''. The primary objective of the National Agricultural Statistics Service (NASS) is to provide data users with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. To accomplish this objective, NASS relies on the use of diverse surveys that show changes within the farming industry over time.

The National Agricultural Statistics Service is seeking approval to change a survey that will collect data related to the number of feral swine in the US and the amount and type of damages caused by them. In the previous collection that was conducted in 2021 the primary focus was on the amount of damage that was caused to selected livestock in the target states.

The focus for the 2022 survey will involve 11 states (Alabama, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, and Texas), to measure the damage to corn, soybeans, wheat, rice, peanuts, and sorghum crops that is associated with the presence of feral swine. These States were chosen because they had high feral swine densities and a significant presence of the target crops. The revised questionnaire can be viewed in the Reginfo system mentioned above.

The changes to these surveys will decrease burden hours by 3,216 for a new total of 6,435 hours for this information collection request.

Need and Use of the Information: These changes will allow for data to be analyzed and published on the amount and type of damages to selected crops caused by feral swine.

Description of Respondents: Farms and Ranches.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 6,435.

Levi Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–06499 Filed 3–28–22; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0006]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Horse Protection Regulations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request; correction.

SUMMARY: The Animal and Plant Health Inspection Service (APHIS) is correcting a notice that was published in the **Federal Register** on March 8, 2022. The notice announced APHIS' intention to request a revision to and extension of approval of an information collection associated with the Horse Protection Program and enforcement of the Horse Protection Act. We provided an invalid telephone number for one of the contacts listed under **FOR FURTHER INFORMATION CONTACT**. This notice provides the correct telephone number.

DATES: This correction is applicable on March 29, 2022.

FOR FURTHER INFORMATION CONTACT:

Correction

In FR Doc. 2022–04791, appearing on page 12927 in the **Federal Register** of March 8, 2022, the following correction is made:

FOR FURTHER INFORMATION CONTACT: For information on the Horse Protection Act Regulations, contact Dr. Lance Bassage, Director, National Policy Staff, Animal Care, APHIS 4700 River Road Unit 84, Riverdale, MD 20737; (301) 851–3748. For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov*.

Done in Washington, DC, this 23rd day of March 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–06489 Filed 3–28–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): 2022/2023 Income Eligibility Guidelines

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (''Department'') announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

DATES: Applicable date July 1, 2022.

FOR FURTHER INFORMATION CONTACT: Allison Post, Acting Chief, Policy Branch, Supplemental Food Programs Division, FNS, USDA, 1320 Braddock Place, Alexandria, Virginia 22314, 703–457–7708.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29100, June 24, 1983, and 49 FR 22675, May 31, 1984).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(d)(2)(A)), requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income-eligible for the WIC Program if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted. Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2022 was published by the Department of Health and Human Services (HHS) at 87 FR 3315, January 12, 2022. The guidelines published by HHS are referred to as the ''poverty guidelines.''

Program Regulations at 7 CFR 246.7(d)(1) specify that State agencies may prescribe income guidelines either equaling the income guidelines established under Section 9 of the Richard B. Russell National School Lunch Act for reduced-price school meals, or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

Currently, the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period of July 1, 2022, through June 30, 2023. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, *i.e.,* earlier in the year, but in no case may implementation take place later than July 1, 2022. State agencies that do not coordinate implementation with the revised Medicaid guidelines must

implement the WIC income eligibility guidelines on or before July 1, 2022.

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2022 to June 30, 2023]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	$13,590	$1,133	$567	$523	$262	$25,142	$2,096	$1,048	$967	$484
2	18,310	1,526	763	705	353	33,874	2,823	1,412	1,303	652
3	23,030	1,920	960	886	443	42,606	3,551	1,776	1,639	820
4	27,750	2,313	1,157	1,068	534	51,338	4,279	2,140	1,975	988
5	32,470	2,706	1,353	1,249	625	60,070	5,006	2,503	2,311	1,156
6	37,190	3,100	1,550	1,431	716	68,802	5,734	2,867	2,647	1,324
7	41,910	3,493	1,747	1,612	806	77,534	6,462	3,231	2,983	1,492
8	46,630	3,886	1,943	1,794	897	86,266	7,189	3,595	3,318	1,659
Each add'l family member add	+4,720	+394	+197	+182	+91	+8,732	+728	+364	+336	+168
Alaska										
1	16,990	1,416	708	654	327	31,432	2,620	1,310	1,209	605
2	22,890	1,908	954	881	441	42,347	3,529	1,765	1,629	815
3	28,790	2,400	1,200	1,108	554	53,262	4,439	2,220	2,049	1,025
4	34,690	2,891	1,446	1,335	668	64,177	5,349	2,675	2,469	1,235
5	40,590	3,383	1,692	1,562	781	75,092	6,258	3,129	2,889	1,445
6	46,490	3,875	1,938	1,789	895	86,007	7,168	3,584	3,308	1,654
7	52,390	4,366	2,183	2,015	1,008	96,922	8,077	4,039	3,728	1,864
8	58,290	4,858	2,429	2,242	1,121	107,837	8,987	4,494	4,148	2,074
Each add'l family member add	+5,900	+492	+246	+227	+114	+10,915	+910	+455	+420	+210
Hawaii										
1	15,630	1,303	652	602	301	28,916	2,410	1,205	1,113	557
2	21,060	1,755	878	810	405	38,961	3,247	1,624	1,499	750
3	26,490	2,208	1,104	1,019	510	49,007	4,084	2,042	1,885	943
4	31,920	2,660	1,330	1,228	614	59,052	4,921	2,461	2,272	1,136
5	37,350	3,113	1,557	1,437	719	69,098	5,759	2,880	2,658	1,329
6	42,780	3,565	1,783	1,646	823	79,143	6,596	3,298	3,044	1,522
7	48,210	4,018	2,009	1,855	928	89,189	7,433	3,717	3,431	1,716
8	53,640	4,470	2,235	2,064	1,032	99,234	8,270	4,135	3,817	1,909
Each add'l family member add	+5,430	+453	+227	+209	+105	+10,046	+838	+419	+387	+194

INCOME ELIGIBILITY GUIDELINES

[Effective from July 1, 2022 to June 30, 2023—household size larger than 8]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
9	$51,350	$4,280	$2,140	$1,975	$988	$94,998	$7,917	$3,959	$3,654	$1,827
10	56,070	4,673	2,337	2,157	1,079	103,730	8,645	4,323	3,990	1,995
11	60,790	5,066	2,533	2,339	1,170	112,462	9,372	4,686	4,326	2,163
12	65,510	5,460	2,730	2,520	1,260	121,194	10,100	5,050	4,662	2,331
13	70,230	5,853	2,927	2,702	1,351	129,926	10,828	5,414	4,998	2,499
14	74,950	6,246	3,123	2,883	1,442	138,658	11,555	5,778	5,333	2,667
15	79,670	6,640	3,320	3,065	1,533	147,390	12,283	6,142	5,669	2,835
16	84,390	7,033	3,517	3,246	1,623	156,122	13,011	6,506	6,005	3,003
Each add'l family member add	+4,720	+394	+197	+182	+91	+8,732	+728	+364	+336	+168
Alaska										
9	64,190	5,350	2,675	2,469	1,235	118,752	9,896	4,948	4,568	2,284
10	70,090	5,841	2,921	2,696	1,348	129,667	10,806	5,403	4,988	2,494
11	75,990	6,333	3,167	2,923	1,462	140,582	11,716	5,858	5,407	2,704
12	81,890	6,825	3,413	3,150	1,575	151,497	12,625	6,313	5,827	2,914
13	87,790	7,316	3,658	3,377	1,689	162,412	13,535	6,768	6,247	3,124
14	93,690	7,808	3,904	3,604	1,802	173,327	14,444	7,222	6,667	3,334
15	99,590	8,300	4,150	3,831	1,916	184,242	15,354	7,677	7,087	3,544
16	105,490	8,791	4,396	4,058	2,029	195,157	16,264	8,132	7,507	3,754
Each add'l family member add	+5,900	+492	+246	+227	+114	+10,915	+910	+455	+420	+210
Hawaii										
9	59,070	4,923	2,462	2,272	1,136	109,280	9,107	4,554	4,204	2,102
10	64,500	5,375	2,688	2,481	1,241	119,325	9,944	4,972	4,590	2,295
11	69,930	5,828	2,914	2,690	1,345	129,371	10,781	5,391	4,976	2,488
12	75,360	6,280	3,140	2,899	1,450	139,416	11,618	5,809	5,363	2,682

INCOME ELIGIBILITY GUIDELINES—Continued

[Effective from July 1, 2022 to June 30, 2023—household size larger than 8]

Household size	Federal poverty guidelines—100%					Reduced price meals—185%				
	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly	Annual	Monthly	Twice-monthly	Bi-weekly	Weekly
13	80,790	6,733	3,367	3,108	1,554	149,462	12,456	6,228	5,749	2,875
14	86,220	7,185	3,593	3,317	1,659	159,507	13,293	6,647	6,135	3,068
15	91,650	7,638	3,819	3,525	1,763	169,553	14,130	7,065	6,522	3,261
16	97,080	8,090	4,045	3,734	1,867	179,598	14,967	7,484	6,908	3,454
Each add'l family member add	+5,430	+453	+227	+209	+105	+10,046	+838	+419	+387	+194

The table of this Notice contains the income limits by household size for the 48 contiguous States, the District of Columbia, and all United States Territories, including Guam. Separate tables for Alaska and Hawaii have been included for the convenience of the State agencies because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States.

Authority: 42 U.S.C. 1786.

Cynthia Long,

Administrator, Food and Nutrition Service, USDA.

[FR Doc. 2022–06541 Filed 3–28–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2022–0002]

Notice of Intent To Prepare an Environmental Impact Statement for the Cove-East Fork Virgin River Watershed Plan, Kane County, Utah

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Natural Resources Conservation Service (NRCS) Utah State Office announces its intent to prepare an EIS for the Cove-East Fork Virgin River Watershed Plan EIS Project located within the East Fork Virgin River Watershed in Kane County, Utah. The EIS process will examine alternative solutions to provide adequate irrigation water in Kane and Washington counties during summer months, local water-based recreation, and green energy opportunities. This EIS will also serve as the necessary environmental documentation for development of a new Black Knoll borrow pit and potential expansion of the existing Bald Knoll borrow pit. Both pits are located on Bureau of Land Management (BLM) administered public lands and require BLM authorization. The BLM will be a cooperating agency in the development of this EIS. NRCS is requesting comments to identify significant issues, potential alternatives, information, and analyses relevant to the Proposed Action from all interested individuals, Federal and State agencies, and Tribes.

DATES: We will consider comments that we receive by April 28, 2022. Comments received later will be considered to the extent possible.

ADDRESSES: We invite you to submit comments in response to this notice. You may submit your comments through one of the methods below:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for docket ID NRCS–2022–0002. Follow the online instructions for submitting comments; or
- *Hand Delivery or Mail:* Brian Parker, Biologist, Southwest Assistant Regional Manager, 1745 South Alma School Rd. Suite 220, Mesa, Arizona 85044. Please specify the docket ID NRCS–2022–0002.

All comments received will be posted and made publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Norm Evenstad, Assistant State Conservationist—Water Resources; telephone: (801) 524–4569; email: *norm.evenstad@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Purpose and Need

The primary purpose for watershed planning and preparation of this EIS is to increase and maintain a reliable supply of water for local agricultural use and existing storage needs, increase water conservation, and improve water delivery efficiency in the Upper Virgin Watershed in Kane County, Utah, and for existing and future water demands in Washington County, Utah. Watershed planning is authorized under Public Law 83–566, the Watershed Protection and Flood Prevention Act of 1954, as amended, and Public Law 78–534, the Flood Control Act of 1944.

This action is needed because agriculture users in the Upper Virgin Watershed routinely experience water shortages during late summer months when East Fork Virgin River flows are depleted. Existing irrigation facilities have limited capabilities to divert water from the river, and there is currently no capacity for storage during non-use and high-flow periods. As a result, adequate water is not available to local users; therefore, the purpose of the action is to provide enhanced conservation and beneficial use of water by increasing water availability through collection and storage during non-use periods to provide adequate flows during the irrigation season.

Currently, a lack of irrigation water near the communities of Mt. Carmel, Orderville, and Glendale has resulted in a limitation of the amount of alfalfa and other crops that can be grown. In particularly dry years, the number of alfalfa cuttings has been reduced, resulting in a loss of production. Lands currently used for agricultural purposes in Washington County have also experienced a reduction in crop production.

Three other objectives are included as part of the proposed action. The existing Glendale hydroelectric plant does not meet the needs of the community, and the Orderville plant only generates power during the fall, winter, and early spring months. The project proposes a new Glendale facility and would make water available during the summer months at the Orderville site that could help meet energy needs. Secondly, the project plans to enhance existing irrigation systems to promote water conservation. Finally, project development would offer additional water-based recreation opportunities in the area, and water-based recreation activities are in high demand in Kane County.

Preliminary Proposed Action and Alternatives

The East Fork Virgin River watershed focused planning area is approximately

153 square miles. Two action alternatives and the no action alternative will be evaluated in the Draft EIS. The NRCS would provide technical and financial assistance for the proposed project through the NRCS Watershed Protection and Flood Prevention Program, and NRCS would also design and implement a selected alternative. The alternatives we intend to carry forward in the analysis are below:

1. *No Action Alternative.* Taking no action would consist of activities carried out if no federal action or funding were provided. The new Glendale facility would not be built, and no new irrigation facilities would be developed to provide additional water supply during the summer months. No improvements to the Mt. Carmel irrigation system would be made. The existing structures would continue to operate in their current condition and would not meet the purpose and need to increase and maintain additional water supply, as described above.

2. *Action Alternative 1—Construction of Cove Reservoir (Proposed Action).* Construction of a new reservoir (Cove Reservoir) within the East Fork Virgin River Watershed, plus additional irrigation system improvements in the Mt. Carmel, Orderville, and Glendale area.

For the Cove Reservoir, two sizes would be considered as sub-alternatives, a 6,055-acre-foot reservoir and a 4,000-acre-foot reservoir would be analyzed to increase water conservation. The irrigation improvements would convert the ditched system at Mt. Carmel to a pressurized system. A pressurized system would reduce water loss during transportation, conserving additional water and increasing the efficiency of the Mt. Carmel system. The currently inoperable Glendale hydroelectric power plant would be relocated and upgraded to produce twice its current power, and a new pipeline would be constructed to access the new plant.

3. *Action Alternative 2—Alternate reservoir site.* An alternate reservoir site with recreation facilities within the East Fork Virgin River Watershed, plus additional irrigation system improvements in the Mt. Carmel, Orderville, and Glendale area. The same irrigation improvements as in Action Alternative 1 are proposed. The alternative reservoir would have a capacity of around 6,000 acre-feet, with a maximum capacity of 6,750 acre-feet per the Zion National Park agreement. The reservoir would be located within the watershed area at another suitable location based on geological and environmental suitability.

Also, both action alternatives would include one new borrow pit at Black Knoll and expansion of the existing borrow pit at Bald Knoll. Both pits are located on Bureau of Land Management (BLM)-administered public lands. The BLM will need to provide approval following completion of the environmental analysis before any material can be removed from these pits.

Summary of Expected Impacts

An NRCS evaluation of this federally assisted action indicates that proposed alternatives may have significant local, regional, or national impacts on the environment. Potential impacts include wetland and flood plain alteration due to the construction of the reservoir. Potential realignment of roads and/or removal of structures could occur, depending on the reservoir location. Long-term beneficial impacts would occur with additional water supply provided to Kane County and Washington County, plus additional recreational opportunities at the reservoir. The proposed action would reduce on-going water shortages experienced by Kane County agriculture users during the summer months.

Anticipated Permits and Authorizations

The following permits and other authorizations are anticipated to be required:

- *CWA Section 404 permit.* Implementation of the proposed federal action would require a Clean Water Act (CWA) Section 404 permit from the U.S. Army Corps of Engineers. Permitting with the U.S. Army Corps of Engineers regarding potential wetland impacts is ongoing and will be finalized prior to final design and construction.
- *CWA Section 401 permit.* The project would also require water quality certification under Section 401 of the CWA and permitting under Section 402 of the CWA (National Pollutant Discharge Elimination System Permit).
- *Dam safety and floodplain permit.* Local dam safety and floodplain permits will be required.
- *NHPA Section 106 consultation.* Consultation with Tribal Nations and interested parties will be conducted as required by the National Historic Preservation Act of 1966 (as amended) (16 U.S.C. 470f).
- *Wild and Scenic Rivers Act Section 7 Consultation.* Consultation with the National Park Service regarding impacts to Virgin River outstandingly remarkable values downstream of the proposed project.

Schedule of Decision-Making Process

A Draft EIS will be prepared and circulated for review and comment by agencies and the public for at least 45 days per 40 CFR 1503.1, 1502.20, 1506.11, and 1502.17, and 7 CFR 650.13. The Draft EIS is anticipated to be published in the **Federal Register** approximately 10 months after publication of this NOI. A Final EIS is anticipated to be published within 8 months of completion of the public comment period for the DEIS.

There will be two decisions made and one or two Record(s) of Decision:

- *NRCS Decision.* The NRCS will decide whether to implement one of the action alternatives or the No Action Alternative. The Record of Decision will be completed after the required 30-day waiting period. The decision maker and responsible federal official for the NRCS is Emily Fife, Utah State Conservationist.
- *BLM Decision.* The BLM will decide to authorize the usage of one or more borrow pits to provide material for construction of the earthen dam for either action alternative.

Public Scoping Process

NRCS invites all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the EIS, including the project's purpose and need, alternatives proposed, new alternatives that should be considered, specific areas of study, data to be obtained or included in the analysis, and evaluation methodology. A virtual scoping meeting presenting the project and develop the scope of the EIS was held online via Zoom on October 20, 2021, from 6:00–7:30 p.m. MDT. Scoping meeting presentation materials, including a video recording of the meeting, is available on the project website, along with project background information at *https://bit.ly/3AX7Pg4.*

This meeting involved a project presentation followed by a group question and answer period. Project team members were available for discussion of individual questions. Scoping provides the ability for the public to provide input on the kinds of issues that should be addressed, what alternatives should be considered, impacts and additional research that should be considered, and any actions that could be related to the project. Comments received, including the names and addresses of those who comment, will be part of the public record.

Identification of Potential Alternatives, Information, and Analyses

NRCS invites agencies and individuals who have special expertise, legal jurisdiction, or interest in the Cove-East Fork Virgin River Watershed in Kane County, Utah to provide comments concerning the scope of the analysis and identification of relevant information and studies. All interested parties are invited to provide input related to the identification of potential alternatives, information, and analyses relevant to the Proposed Action in writing or during the public scoping meeting.

Authorities

This document is published pursuant to the National Environmental Policy Act (NEPA) regulations regarding publication of a notice of intent to issue an environmental impact statement (40 CFR 1501.9(d)). This EIS will be prepared to evaluate potential environmental impacts as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality regulations (40 CFR parts 1500–1508); and NRCS regulations that implement NEPA in 7 CFR part 650. Watershed planning is authorized under the Watershed Protection and Flood Prevention Act of 1954, as amended, (Pub. L. 83–566) and the Flood Control Act of 1944 (Pub. L. 78–534). Also, the title and number of the federal assistance program in the Catalog of Federal Domestic Assistance to which this Notice of Funding Availability applies is 10.904 Watershed Protection and Flood Prevention.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and TTY) or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Emily Fife,

Utah State Conservationist, Natural Resources Conservation Service.

[FR Doc. 2022–06579 Filed 3–28–22; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Illinois Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 11:00 p.m. CT on Wednesday, April 27, 2022. The purpose of the meeting is to continue planning for upcoming web hearings examining equal access to post-secondary education and the efficiency of civil rights protections to ensure access for protected groups.

DATES: The meeting will take place on Wednesday, April 27, 2022, from 1:00 p.m.–2:30 p.m. CT.

Link To Join (Audio/Visual): https://tinyurl.com/2uapfchb.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2763 183 6495.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *afortes@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome

II. Debrief of March 22, 2022, Web Hearing

III. Planning for Upcoming Web Hearings

IV. Public Comment

V. Adjournment

Dated: March 23, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–06530 Filed 3–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of web briefing.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Illinois Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a web briefing on Tuesday, May 31, 2022, at 12:00 p.m. CT to hear testimony from speakers regarding equal access to post-secondary education and the efficiency of civil rights protections to ensure access for protected groups.

DATES: The meeting will take place via Webex on Tuesday, May 31, 2022, from 12:00 p.m.–2:00 p.m. CT.

Online Registration (Audio/Visual): https://tinyurl.com/2p8s8k4j.

Telephone (Audio Only): Dial (800) 360–9505 USA Toll Free; Access Code: 2764 068 4070.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found at the web link above. To request additional accommodations, please email *afortes@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the phone number above.

Agenda

I. Welcome
II. Presentations & Q&A
III. Public Comment
IV. Committee Business & Announcements
V. Adjournment

Dated: March 23, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–06531 Filed 3–28–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Puerto Rico Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that an inaugural meeting of the Puerto Rico Advisory Committee to the Commission will convene by virtual web conference on Wednesday, April 20, 2022, at 1:00 p.m. (ET). The purpose is to for the committee to meet as a newly appointed committee.

DATES: April 20, 2022, Wednesday, at 1:00 p.m. (AT):

- To join by web conference, use WebEx link: *https://tinyurl.com/2p843uce*; password, if needed: USCCR–PR.
- To join by phone only, dial 1–800–360–9505; Access code: 2762 113 0392#.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov.* All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Wednesday, April 20, 2022; 1:00 p.m. (AT)

1. Welcome & Roll Call
2. Chair's Comments
3. Introductions
4. Committee Discussion
5. Next Steps
6. Public Comment
7. Other Business
8. Adjourn

Dated: March 23, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–06529 Filed 3–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Workforce System Metrics

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 31, 2022.

ADDRESSES: Interested persons are invited to submit written comments via email to Leopold Spohngellert, Policy Fellow, U.S. Department of Commerce, at *lspohngellert@doc.gov* or *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Leopold Spohngellert, Policy Fellow, U.S. Department of Commerce, (917) 902–2482 or at *lspohngellert@doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be driven locally, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, workforce development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov.*

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for a new information collection for recipients of awards under the EDA American Rescue Plan Act (ARPA) Good Jobs Challenge. This is aligned with ensuring that Federal workforce investments are evidence-based and data-driven, and accountable to participants and the public. Award recipients will be required to submit identified program metrics and information for three key award stakeholders: (1) System Lead Entity/Backbone Organization, defined as the lead entity of a regional workforce training system or sectoral partnership; (2) Training Providers, defined as entities providing relevant training and learning in a regional workforce training system; and (3) Participants, defined as individuals directly trained and placed into jobs via a regional workforce training system. System Lead Entities/Backbone Organizations will also coordinate with relevant employers to understand program performance from the employers' perspective. All process, output, and outcome metrics are associated with the following objectives:

- *System Lead Entity/Backbone Organizations:* (1) Establish, strengthen, or expand sectoral partnerships or regional workforce training systems; (2) Target underserved populations and areas to participate in the skills training program to reduce systemic inequities and barriers to employment and enhance diversity, equity, and inclusion in industry, including by securing and offering wrap-around services; (3) support employers in filling demand for good-paying jobs, and (4) Leverage federal and non-federal funds to expand reach and support sustainability.
- *Training Providers:* Provide skills training to unemployed, underemployed, or incumbent workers with opportunity for increased wages through targeted upskilling to place them into quality jobs and provide employers with skilled workers.
- *Participants:* Position for employment and wage growth.

AEDA will require all ARPA Good Jobs Challenge award recipients and stakeholders to submit this data at predetermined intervals (System Lead Entities/Backbone Organizations, semiannually; Training Providers, quarterly; and Participants, once at the beginning of their training) to determine results and sustainability of the original grant award throughout the period of performance.

EDA is particularly interested in public comment on how the proposed data collection will support the assessment of job quality, including in ways that rely on pairing this information administrative data for analysis and other ways to minimize burden, or if alternative information should be considered.

II. Method of Collection

Data will be collected electronically.

III. Data

OMB Control Number: New information collection.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Recipients of ARPA Good Jobs Challenge awards, which may include a(n): District Organization; Indian Tribe or a consortium of Indian Tribes; State, county, city, or other political subdivision of a State, including a special purpose unit of a state or local government engaged in economic or infrastructure development activities or a consortium of political subdivisions; Institution of Higher Education or a consortium of institutions of higher education; or Public or private non-profit organization or association, including labor unions, acting in cooperation with officials of a political subdivision of a State. Additionally, training providers and participants in regional workforce training systems will be affected.

Preliminary Estimated Number of Respondents: System Lead Entities/Backbone Organization: 50 respondents, responding semiannually; Training Providers: 200 respondents, responding quarterly; and Participants: 10,000 respondents, responding once. As the Good Jobs Challenge is a new program, EDA anticipates that these estimates will be further refined based on data determined post-award.

Estimated Time per Response: System Lead Entity/Backbone Organization: 1.5 hours; Training Providers: 5 minutes per Participant; Participants: 10 minutes.

Estimated Total Annual Burden Hours: 5,150 hours.

Type of respondent (annual)	Number of respondents	Hours per response	Number of responses per year	Total estimated time (hours)
System Lead Entities/Backbone Organizations	50*	1.5 hours	2 (Semiannual)	150
Training Providers	200 (serving 10,000 participants)*.	5 minutes per participant	4 (Quarterly)	3,333
Participants	10,000*	10 minutes	1 (One-time)	1,666
Total	10,250*			5,150

*The number of responses should be considered estimates given the Good Jobs Challenge intended impact. Given investment alignment and program priorities are founded on equity, there could be lower number of stakeholders participating given their efforts to work with individuals most underserved.

Estimated Total Annual Cost to Public: $303,953 (cost assumes application of U.S. Bureau of Labor Statistics third quarter 2021 mean hourly employer costs for employee compensation for professional and related occupations of $59.02).

Respondent's Obligation: Mandatory for System Lead Entities/Backbone Organizations and Training Providers.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

V. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–06599 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–141]

Certain Walk-Behind Snow Throwers and Parts Thereof From the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of certain walk-behind snow throwers and parts thereof (snow throwers) from the People's Republic of China (China) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2020, through December 31, 2020.

DATES: Applicable March 29, 2022.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5848 or (202) 482–4243, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2021, Commerce published its *Preliminary Determination* of sales at LTFV of snow throwers from China, in which we also postponed this final determination until 135 days after the date of publication of the preliminary determination, pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended (the Act).[1] A summary of the events that occurred since Commerce published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum.[2]

The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are snow throwers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

There have been no scope comments since the *Preliminary Determination.* As a result, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

[1] *See Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 86 FR 61135 (November 5, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Affirmative Antidumping Duty Determination in the Less-Than-Fair-Value Investigation of Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by interested parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties and responded to by Commerce in the Issues and Decision Memorandum is attached to this notice as Appendix II.

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[3]

Changes Since the Preliminary Determination

Based on our analysis of the comments received and additional information obtained since our *Preliminary Determination,* we made certain changes to the margin calculations for Zhejiang Zhouli Industrial Co., Ltd. (Zhejiang Zhouli). For a discussion of these changes, *see* the Issues and Decision Memorandum.

Separate Rate Companies

No party commented on our preliminary separate rate determinations with respect to the mandatory respondents and the non-individually examined companies; thus, we find no basis to reconsider our preliminary determinations with respect to separate rate status, and we have continued to grant these companies separate rates in this final determination.

China-Wide Entity Rate and the Use of Adverse Facts Available

Commerce continues to find that the use of facts available is warranted in determining the rate for the China-wide entity, pursuant to sections 776(a)(1) and (a)(2)(A)–(C) of the Act. As discussed in the Issues and Decision Memorandum, Commerce finds that the use of adverse facts available (AFA) is warranted with respect to the China-wide entity because the China-wide entity failed to cooperate by not acting to the best of its ability to comply with our requests for information and, accordingly, we applied adverse inferences in selecting from the facts available, pursuant to section 776(b) of the Act and 19 CFR 351.308(a).

For the final determination, as AFA, we are assigning the China-wide entity a dumping margin of 223.07 percent, which represents highest individual dumping margin calculated for Zhejiang Zhouli.[4] Because this rate is not secondary information, but rather is based on information obtained in the course of the investigation, Commerce need not corroborate this rate pursuant to section 776(c) of the Act.[5]

Combination Rates

Consistent with the *Preliminary Determination,* Commerce calculated exporter/producer combination rates for the respondents that are eligible for a separate rate in this investigation. Policy Bulletin 05.1 describes this practice.[6]

Final Determination

The estimated weighted-average dumping margins are as follows:

Exporter	Producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offsets) (percent)
Zhejiang Zhouli Industrial Co., Ltd	Zhejiang Zhouli Industrial Co., Ltd	163.27	142.19
Ningbo Scojet Import & Export Trade Co., Ltd	Ninghai Yiyi Garden Tools Co., Ltd	163.27	142.19
Sumec Hardware and Tools Co., Ltd	Zhejiang KC Mechanical & Electrical Co., Ltd	163.27	142.19
Zhejiang Amerisun Technology Co., Ltd	Zhejiang Dobest Power Tools Co., Ltd	163.27	142.19
Zhejiang KC Mechanical & Electrical Co., Ltd	Zhejiang KC Mechanical & Electrical Co., Ltd	163.27	142.19
China-Wide Entity		223.07	201.99

Disclosure

We intend to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement, or, if there is no public announcement in the **Federal Register**, within five days of the date of the publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we intend to instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all appropriate entries of snow throwers from China, as described in Appendix I to this notice, which were entered, or withdrawn from warehouse, for consumption on or after November 5, 2021, the date of publication of the *Preliminary Determination* of this investigation in the **Federal Register**.

Furthermore, pursuant to section 735(c)(1)(B)(ii) of the Act, upon the publication of this notice, Commerce intends to instruct CBP to require a cash deposit equal to the weighted-average amount by which the normal value exceeds U.S. price as follows: (1) The cash deposit rate for the exporter/producer combinations listed in the table above will be the rate identified in the table; (2) for all combinations of

[3] *See* Commerce's Letter, ''Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Questionnaire in Lieu of Verification,'' dated November 23, 2021; *see also* Zhejiang Zhouli's Letters, ''Certain Walk-Behind Snow Throwers from the People's Republic China: Submission of Minor Corrections Before Verification,'' dated November 30, 2021; and ''Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic China: Submission of Zhejiang Zhouli's Response in Lieu of Verification,'' dated November 30, 2021.

[4] *See* Memorandum, ''Antidumping Duty Investigation of Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Analysis Memorandum for the Final Determination: Zhejiang Zhouli Industrial Co., Ltd.,'' dated concurrently with this notice, at Attachment 3, page 243.

[5] *See Preliminary Determination* PDM at 18 (explaining that because Commerce is applying a calculated margin to the China-wide entity, it is not using secondary information as the basis of any margins. As a consequence, it is not necessary to conduct a corroboration analysis for this determination).

[6] *See* Enforcement and Compliance's Policy Bulletin No. 05.1, regarding, ''Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,'' (April 5, 2005) (Policy Bulletin 05.1), available on Commerce's website at *http://enforcement.trade.gov/policy/bull05-1.pdf.*

Chinese exporters/producers of subject merchandise that have not received their own separate rate above, the cash deposit rate will be the cash deposit rate established for the China-wide entity; and (3) for all non-Chinese exporters of subject merchandise which have not received their own separate rate above, the cash deposit rate will be the cash deposit rate applicable to the Chinese exporter/producer combination that supplied that non-Chinese exporter. These suspension of liquidation instructions will remain in effect until further notice.

To determine the cash deposit rate, Commerce normally adjusts the estimated weighted-average dumping margin by the amount of domestic subsidy pass-through and export subsidies determined in a companion countervailing duty (CVD) proceeding when CVD provisional measures are in effect. Accordingly, where Commerce makes an affirmative determination for domestic subsidy pass-through or export subsidies, Commerce offsets the calculated estimated weighted-average dumping margin by the appropriate rates. Commerce continues to find that Zhejiang Zhouli, and all non-individually-examined companies found eligible for a separate rate qualify for a double-remedy adjustment.[7] Further, we have continued to adjust the cash deposit rates for Zhejiang Zhouli, all non-individually-examined separate rate companies, and the China-wide entity for export subsidies in the companion CVD investigation by the appropriate export subsidy rates as indicated in the above chart. However, suspension of liquidation according to provisional measures in the companion CVD case has been discontinued effective January 8, 2022; therefore, we are not instructing CBP to collect cash deposits based upon the adjusted estimated weighted-average dumping margin for those export subsidies and double remedy adjustment at this time.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we will notify the International Trade Commission (ITC) of the final affirmative determination of sales at LTFV. Because the final determination in this proceeding is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of snow throwers from China no later than 45 days after our final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated, and all cash deposits will be refunded. If the ITC determines that material injury or threat of material injury does exist, Commerce will issue an antidumping duty order directing CBP to assess, upon further instruction by Commerce, antidumping duties on all imports of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.210(c).

Dated: March 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of gas-powered, walk-behind snow throwers (also known as snow blowers), which are snow moving machines that are powered by internal combustion engines and primarily pedestrian-controlled. The scope of the investigation covers certain snow throwers (also known as snow blowers), whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to snow throwing. Subject merchandise also includes finished and unfinished snow throwers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope snow throwers.

Walk-behind snow throwers subject to the scope of this investigation are powered by internal combustion engines which are typically spark ignition, single or multiple cylinder, and air-cooled with power take off shafts.

For the purposes of this investigation, an unfinished and/or unassembled snow thrower means at a minimum, a subassembly comprised of an engine, auger housing (*i.e.,* intake frame), and an auger (or ''auger paddle'') packaged or imported together. An intake frame is the portion of the snow thrower—typically of aluminum or steel—that houses and protects an operator from a rotating auger and is the intake point for the snow. Importation of the subassembly whether or not accompanied by, or attached to, additional components including, but not limited to, handle(s), impeller(s), chute(s), track tread(s), or wheel(s) constitutes an unfinished snow thrower for purposes of this investigation. The inclusion in a third country of any components other than the snow thrower sub-assembly does not remove the snow thrower from the scope. A snow thrower is within the scope of this investigation regardless of the origin of its engine.

Specifically excluded is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 225cc and 999cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 12623 (March 4, 2021) and *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination,* 86 FR 12619 (March 4, 2021).

Also specifically excluded is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and Up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The snow throwers subject to this investigation are typically entered under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8430.20.0060. Certain parts of snow throwers subject to this investigation may also enter under HTSUS 8431.49.9095. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. China-Wide Rate
VI. Changes Since the Preliminary Determination
VII. Discussion of the Issues

[7] *See Preliminary Determination* PDM at 26.

Comment 1: China's Designation as a Non-Market Economy
Comment 2: Selection of the Primary Surrogate Country
Comment 3: Selection of Surrogate Financial Statements
Comment 4: The Calculation of Surrogate Financial Ratios
Comment 5: Selection of Surrogate Values for Gasoline Engines
Comment 6: Selection of Surrogate Values for Tires and Wheel Hubs
Comment 7: Zhejiang Zhouli's By-Product Offset
VIII. Recommendation

[FR Doc. 2022–06557 Filed 3–28–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–142]

Certain Walk-Behind Snow Throwers and Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain walk-behind snow throwers and parts thereof (snow throwers) from the People's Republic of China (China). The period of investigation is January 1, 2020, through December 31, 2020.

DATES: Applicable March 29, 2022.

FOR FURTHER INFORMATION CONTACT: Alex Cipolla or Joy Zhang, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4956 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2021, Commerce published the *Preliminary Determination* in the **Federal Register**.[1] A summary of the events that occurred since Commerce published the *Preliminary Determination* may be found in the Issues and Decision Memorandum.[2] The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* A list of topics discussed in the Issues and Decision Memorandum is included at Appendix II. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are snow throwers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

There have been no scope comments since the *Preliminary Determination.* As a result, Commerce has made no changes to the scope of this investigation since the *Preliminary Determination.*

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation and the issues raised in the case and rebuttal briefs by parties in this investigation are discussed in the Issues and Decision Memorandum. A list of the issues raised by parties, and to which we responded in the Issue and Decision Memorandum, is attached to this notice at Appendix II.

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[3] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce is relying on facts otherwise available, including adverse facts available (AFA), pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of AFA, *see* the *Preliminary Determination* and the section ''Use of Facts Otherwise Available and Adverse Inferences'' in the accompanying Issues and Decision Memorandum.[4]

Verification

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation. However, we took additional steps in lieu of an on-site verification to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act.[5]

Changes Since the Preliminary Determination

Based on our review and analysis of the comments received from parties, as well as additional information collected subsequent to the *Preliminary Determination,* we made certain changes to Zhejiang Zhouli Industrial Co., Ltd. (Zhejiang Zhouli)'s subsidy rate calculations, the rate for non-cooperating respondents, and the all-others rate. For a discussion of these changes, *see* the Issues and Decision Memorandum.

All-Others Rate

In accordance with section 705(c)(5)(A) of the Act, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act.

Pursuant to section 705(c)(5)(A)(ii) of the Act, if the individual estimated countervailable subsidy rates established for all exporters and producers individually examined are zero, *de minimis* or determined based entirely on facts otherwise available, Commerce may use ''any reasonable method'' to establish the estimated subsidy rate for all other producers or exporters. All three companies selected

[1] *See Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination,* 86 FR 50696 (September 10, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[4] *See* Preliminary Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences;'' *see also* Issues and Decision Memorandum at ''Use of Facts Otherwise Available and Adverse Inferences.''

[5] *See* Commerce's Letter, ''Certain Walk-Behind Snow Throwers and Parts Thereof from the People's Republic of China: Zhejiang Zhouli Industrial Co. Ltd.: In Lieu of Verification Questionnaire,'' dated October 11, 2021.

as mandatory respondents[6] in this investigation are receiving individual estimated subsidy rates based entirely on facts available under section 776 of the Act. Consequently, pursuant to section 705(c)(5)(A)(ii) of the Act, we established the all-others rate by applying the countervailable subsidy rate assigned to the three mandatory respondents.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Zhejiang Zhouli Industrial Co	203.06
All Others	203.06
Changzhou Globe Tools Co., Ltd[7]	203.06
Nanjing Chervon Industry Co., Ltd[8]	203.06
Ningbo Daye Garden Machinery Co., Ltd[9]	203.06
Ningbo Joyo Garden Tools Co., Ltd[10]	203.06
Ningbo Scojet Import & Export Trading[11]	203.06
TIYA International Co., Ltd	203.06
Weima Agricultural Machinery Co., Ltd	203.06
Zhejiang Yat Electrical Appliance Co	203.06

Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in accordance with 19 CFR 351.224(b).

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from China that were entered, or withdrawn from warehouse, for consumption, effective September 10, 2021, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, effective January 9, 2022, we instructed CBP to discontinue the suspension of liquidation of all entries on or after January 9, 2022, but to continue the suspension of liquidation of all entries between September 10, 2021, and January 8, 2022.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a CVD order, and continue to require a cash deposit of estimated countervailing duties for such entries of subject merchandise in the amounts indicated above, in accordance with section 706(a) of the Act. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of snow throwers from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of snow throwers from China no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

Notification Regarding Administrative Protective Orders

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: March 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation consists of gas-powered, walk-behind snow throwers (also known as snow blowers), which are snow moving machines that are powered by internal combustion engines and primarily pedestrian-controlled. The scope of the investigation covers certain snow throwers (also known as snow blowers), whether self-propelled or non-self-propelled, whether finished or unfinished, whether assembled or unassembled, and whether containing any additional features that provide for functions in addition to snow throwing. Subject merchandise also includes finished and unfinished snow throwers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope snow throwers.

Walk-behind snow throwers subject to the scope of this investigation are powered by internal combustion engines which are typically spark ignition, single or multiple cylinder, and air-cooled with power take off shafts.

For the purposes of this investigation, an unfinished and/or unassembled snow thrower means at a minimum, a subassembly comprised of an engine, auger housing (*i.e.,* intake frame), and an auger (or ''auger paddle'') packaged or imported together. An intake frame is the portion of the snow thrower—typically of aluminum or steel that houses and protects an operator from a

[6] The mandatory respondents in this investigation are TIYA International (TIYA), Ningbo Scojet Import & Export Co., Ltd. (Ningbo Scojet), and Zhejiang Zhouli. Commerce originally selected TIYA as a mandatory respondent. On May 28, 2021, TIYA notified Commerce that it did not intend to participate as a mandatory respondent. Commerce then selected Ningbo Scojet as a mandatory respondent. However, Ningbo Scojet did not respond to our initial questionnaire.

[7] *See* Preliminary Decision Memorandum at section ''Application of AFA: Non-Responsive Companies.''

[8] *Id.; see also* Issues and Decision Memorandum at Comment 6.

[9] *See* Preliminary Decision Memorandum at section ''Application of AFA: Non-Responsive Companies.''

[10] *Id.*

[11] *Id.*

rotating auger and is the intake point for the snow. Importation of the subassembly whether or not accompanied by, or attached to, additional components including, but not limited to, handle(s), impeller(s), chute(s), track tread(s), or wheel(s) constitutes an unfinished snow thrower for purposes of this investigation. The inclusion in a third country of any components other than the snow thrower sub-assembly does not remove the snow thrower from the scope. A snow thrower is within the scope of this investigation regardless of the origin of its engine.

Specifically excluded is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 225cc and 999cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof, from the People's Republic of China: Amended Final Antidumping Duty Determination and Antidumping Duty Order,* 86 FR 12623 (March 4, 2021) and *Certain Vertical Shaft Engines Between 225cc and 999cc, and Parts Thereof from the People's Republic of China: Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination,* 86 FR 12619 (March 4, 2021).

Also specifically excluded is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and Up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The snow throwers subject to this investigation are typically entered under Harmonized Tariff Schedule of the United States (HTSUS) subheading 8430.20.0060. Certain parts of snow throwers subject to this investigation may also enter under HTSUS 8431.49.9095. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise under investigation is dispositive.

Appendix II

List of Topics Discussed in the Final Decision Memorandum

I. Summary
II. Background
III. Scope of the Investigation
IV. Use of Facts Otherwise Available and Adverse Inferences
V. Analysis of Comments
  Comment 1: Whether Commerce Should Accept Zhejiang Zhouli's Response
  Comment 2: Export Buyer's Credit Program
  Comment 3: Whether Commerce Should Continue To Apply Adverse Facts Available to the Provision of Electricity for Less Than Adequate Remuneration
  Comment 4: Countervailability of Other Subsidies
  Comment 5: Currency Undervaluation
  Comment 6: Nanjing Chervon Industry Co., Ltd.'s Request
VI. Recommendation

Appendix: AFA Rate Calculation

[FR Doc. 2022–06558 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–843]

Certain Lined Paper Products From India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that Navneet Education Ltd. (Navneet), a producer/exporter subject to this administrative review, made sales of certain lined paper products from India at less than normal value during the period of review (POR) September 1, 2019, through August 31, 2020. In addition, Commerce determines that Goldenpalm Manufacturers PVT Limited (Goldenpalm) had no shipments during the POR.

DATES: Applicable March 29, 2022.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On October 1, 2021, Commerce published the *Preliminary Results* of this administrative review.[1] On January 26, 2022, Commerce extended these final results by an additional 60 days.[2] The current deadline for these final results is March 30, 2022. Commerce conducted this administrative review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order

The products covered by this order are certain lined paper products from India. For a full description of the scope, *see* the Issues and Decision Memorandum.

Final Determination of No Shipments

In the *Preliminary Results,* we preliminarily found that Goldenpalm had no shipments of subject merchandise during the POR. Following the publication of the *Preliminary Results,* we received no comments from interested parties regarding Goldenpalm, nor has any party submitted record evidence which would call our preliminary determination of no shipments into question. Therefore, for the final results, we continue to find that Goldenpalm had no shipments of subject merchandise during the POR. Accordingly, consistent with Commerce's practice, we intend to instruct U.S. Customs and Border Protection (CBP) to liquidate any existing entries of merchandise produced by Goldenpalm, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.[4]

Application of Adverse Facts Available

For these final results, we continue to find that Magic International Pvt. Ltd. and Marisa International withheld information requested by Commerce, failed to provide the requested information in a timely manner, and significantly impeded the proceeding, warranting a determination on the basis of the facts available under section 776(a) of the Act. Therefore, we continue to find that Magic International Pvt. Ltd. and Marisa International have not acted to the best of their abilities and the application of adverse facts available, pursuant to sections 776(a) and (b) of the Act, is warranted.

Rates for Non-Selected Companies

For the rate for non-selected respondents in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation. Under section

[1] *See Certain Lined Paper Products from India: Preliminary Results of Antidumping Duty Administrative Review; Rescission of Administrative Review, in Part; and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 54426 (October 1, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for Final Results,'' dated January 26, 2022.

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Order on Certain Lined Paper Products from India; 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 26922, 26923 (May 13, 2010), unchanged in *Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review,* 75 FR 56989 (September 17, 2010).

735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted-average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.'' In this segment of the proceeding, we calculated a margin for Navneet, the sole mandatory respondent, that was not zero, *de minimis,* or based on facts available. Accordingly, Commerce is assigning Navneet's rate to companies not selected for individual examination, which are listed below.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties, we made changes to the margin analysis in the *Preliminary Results* regarding Navneet's U.S. date of sale variable, product form variable, and level of trade variable in the margin program.[5]

Final Results of the Review

As a result of this review, Commerce determines that the following weighted-average dumping margins exist for the period September 1, 2019, through August 31, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Navneet Education Ltd	20.22
Magic International Pvt. Ltd	215.93
Marisa International	215.93
Companies Not Selected for Individual Review	
Lodha Offset Limited	20.22
Pioneer Stationery Pvt. Ltd	20.22
SGM Paper Products	20.22

[5] *See* Issues and Decision Memorandum at Comments 3, 4 and 5.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after publication of these final results in the **Federal Register**, in accordance with section 751(a) of the Act and 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), for Navneet, we calculated importer-specific *ad valorem* assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the weighted-average dumping margin calculated for Navneet. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[6]

For Goldenpalm, which we determined had no shipments during the POR, we will instruct CBP to liquidate any suspended entries associated with Goldenpalm pursuant to the reseller policy.[7]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[6] *See* section 751(a)(2)(C) of the Act.

[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of certain lined paper products from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the most recently established rate for the manufacturer or exporter in a completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the most recently established rate for the manufacturer of the merchandise in a completed segment of the proceeding; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the LTFV investigation.[8]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping and/or countervailing duties has occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of

[8] *See Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia,* 71 FR 56949 (September 28, 2006).

their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: March 21, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Analysis of Comments
  Comment 1: Whether Commerce Should Revise Programming Code Regarding Costs of Products Sold Only in Third Countries
  Comment 2: Whether Commerce Should Allocate Certain Navneet Trust Expenses to Navneet
  Comment 3: Whether Commerce Should Revise the Product Form Variable in the Home Market Program
  Comment 4: Whether Commerce Should Revise the Level of Trade for U.S. Sales in the Margin Program
  Comment 5: Whether Commerce Should Revise the U.S. Sale Date in the Margin Program
V. Recommendation

[FR Doc. 2022–06520 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Usability Data Collections

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on December 7, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Institute of Standards and Technology (NIST), Commerce.

Title: NIST Generic Clearance for Usability Data Collections.

OMB Control Number 0693–0043.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 150,000.

Average Hours per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire may be 15 minutes or 2 hours to participate in an empirical study.

Burden Hours: 100,000.

Needs and Uses: NIST will conduct information collections to evaluate the usability and utility of NIST research for measurement and standardization work. These data collections efforts may include, but may not be limited to electronic methodologies, empirical studies, video and audio collections, interview, and questionnaires.

Affected Public: Individual or households; State, Local or Tribal Government; Federal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0693–0043.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–06590 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB914]

Endangered and Threatened Species; Initiation of 5-Year Review for the North Pacific Right Whale (Eubalaena japonica)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of initiation of 5-year review; request for information.

SUMMARY: NMFS announces its intent to conduct a 5-year review of the endangered North Pacific right whale (*Eubalaena japonica*). NMFS is required by the Endangered Species Act (ESA) to conduct 5-year reviews to ensure that listing classifications of species are accurate. The 5-year review must be based on the best scientific and commercial data available at the time of the review. We request submission of any such information on the North Pacific right whale, particularly information on its status, threats, and recovery that has become available since the previous 5-year review was issued in December 2017.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than May 31, 2022. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit your information, identified by docket number NOAA–NMFS–2022–0038, by either of the following methods:

- *Federal e-Rulemaking Portal:* Go to *www.regulations.gov.* In the Search box, enter the above docket number for this notice. Then, click on the Search icon. On the resulting web page, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written information to Jon Kurland, Assistant Regional Administrator for Protected Resources, Alaska Region NMFS, Attn: Records Office. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: NMFS may not consider comments or other information if sent by any other method, to any other address or individual, or received after the comment period ends. All comments and information received are a part of the public record and NMFS will post the comments for public viewing on *www.regulations.gov*

without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jenna Malek, NMFS Alaska Region, *jenna.malek@noaa.gov,* (907) 271–1332.

SUPPLEMENTARY INFORMATION: Section 4(c)(2)(A) of the ESA requires that the Secretary, through NMFS, conduct a review of listed species at least once every 5 years (16 U.S.C. 1533(c)(2)(A)). The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing species currently under active review. Based on such reviews, we determine whether a listed species should be delisted, or be reclassified from endangered to threatened or from threatened to endangered (16 U.S.C. 1533(c)(2)(B)). As described by the regulations in 50 CFR 424.11(e), the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available: (1) The species is extinct; (2) the species does not meet the definition of an endangered species or a threatened species; or (3) the listed entity does not meet the statutory definition of a species. Any change in Federal classification would require a separate rulemaking process.

The northern right whale (*Eubalaena glacialis*) was listed as endangered under the Endangered Species Preservation Act on December 2, 1970 (35 FR 18319). In March 2008, NMFS reclassified the northern right whale as two separate endangered species, the North Atlantic right whale (*Eubalaena glacialis*) and the North Pacific right whale (*Eubalaena japonica*) (73 FR 12024; March 6, 2008). Background information on the North Pacific right whale is available on the NMFS website at: *https://www.fisheries.noaa.gov/species/north-pacific-right-whale.*

Determining if a Species Is Threatened or Endangered

Section 4(a)(1) of the ESA requires that we determine whether a species is endangered or threatened based on one or more of the five following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Section 4(b) also requires that our determination be made on the basis of the best scientific and commercial data available after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any State or foreign nation to protect such species.

Public Solicitation of New Relevant Information

To ensure that the 5-year review is complete and based on the best scientific and commercial data available, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the listed North Pacific right whale. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, suitability, and important features for conservation; (3) status and trends of threats; (4) conservation measures that have been implemented that benefit the species, including monitoring data demonstrating effectiveness of such measures; (5) need for additional conservation measures; and (6) other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes and improved analytical methods for evaluating extinction risk.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: March 24, 2022.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–06587 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB917]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Social Science Planning Committee (SSPC), Archipelagic Plan Team (APT), and Fishery Data Collection and Research Committee—Technical Committee for the Data Collection Subpanel (FDCRC–TC–DCSP) meetings to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The meetings will be held between April 14 and April 28, 2022. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held by web conference via Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at *www.wpcouncil.org.* For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The SSPC meeting will be held between 1 p.m. and 4:30 p.m. on April 14, 2022. The APT meeting will be held between 1 p.m. and 5 p.m. on April 19–21, 2022. The FDCRC–TC–DCSP meeting will be held between 1 p.m. and 5 p.m. on April 27–28, 2022. All times listed are Hawaii Standard Time. Public comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meeting will run as late as necessary to complete scheduled business.

Agenda for the SSPC Meeting

Thursday, April 14, 2022, 1 p.m. to 4:30 p.m.

1. Welcome and introductions
2. Approval of agenda
3. Annual Stock Assessment and Fishery Evaluation (SAFE) Reports
   A. Socioeconomic module user survey
   B. Socioeconomic modules 2021 report updates
   C. Fisher Observations
4. Equity and environmental justice in fishery management
5. Social Science Strategic Plan update
6. Review of SSPC research plan and priorities
7. Project updates
8. Public comment
9. Discussion and recommendations
10. Other business

Agenda for the Archipelagic Plan Team Meeting

Tuesday, April 19, 2022, 1 p.m. to 5 p.m.

1. Welcome and introductions

2. Approval of draft agenda
3. Report on previous APT recommendations and Council actions
4. 2021 Annual SAFE Report
A. Fishery performance
1. Archipelagic fisheries modules
a. American Samoa
1. Bottomfish fishery
2. Ecosystem component fisheries
3. Fisherman's observations
b. Guam
1. Bottomfish fishery
2. Ecosystem component fisheries
3. Fisherman's observations
c. Commonwealth of Northern Mariana Islands (CNMI)
1. Bottomfish fishery
2. Ecosystem component fisheries
3. Fisherman's observations
d. Hawaii
1. Bottomfish fishery
2. Crustacean fishery
3. Precious coral fishery
4. Ecosystem component fisheries
5. Fisherman's observations
2. APT Discussion on improving bycatch reporting
3. Building the Annual SAFE non-commercial fisheries module
a. Territorial non-commercial module
b. Hawaii non-commercial module
4. Discussions
5. Public comment

Wednesday, April 20, 2022, 1 p.m. to 5 p.m.

B. Ecosystem considerations
1. Protected species section
2. Climate, ecosystems and biological section
a. Environmental & climate variables
b. Life history and length-derived variables
c. Biomass estimates for coral reef Ecosystem Components
3. Habitat section—Essential Fish Habitat (EFH) modeling
4. Socioeconomics section
5. Marine planning section
6. Discussions
7. Public Comment
C. Administrative reports
1. Number of federal permits and catch reports
2. Regulatory actions in 2021
3. Discussions
4. Public comment

Thursday, April 21, 2022, 1 p.m. to 5 p.m.

5. APT action items
A. Aquaculture management framework alternatives (Action Item)
B. Alternatives for Northwest Hawaiian Islands fishing regulations (Action Item)
6. Status report on the multifaceted approach to Territorial data collection
7. Main Hawaiian Islands Uku EFH modeling
A. Tier 1 static modeling approach
B. Tier 2 dynamic modeling approach
8. APT discussion on Forage Fish Conservation Act of 2021
9. Discussions
10. Public comment
11. APT recommendations
12. Other Business

Agenda for the Fishery Data Collection and Research Committee—Technical Committee Meeting

Wednesday, April 27, 2022, 1 p.m. to 5 p.m.

1. Welcome and introductions
2. Approval of draft agenda
3. Report on previous Technical Committee recommendations and Council actions
4. Report on the individual jurisdiction data collection improvement work
A. American Samoa
B. Guam
C. CNMI
D. Hawaii
1. Commercial fishery
2. Non-commercial fishery
5. Report on the electronic reporting initiatives
A. Catchit Logit implementation
B. Sellit Logit database migration
C. Mandatory license and reporting regulations
6. Discussions
7. Public comment

Thursday, April 28, 2022, 1 p.m. to 5 p.m.

8. Revisiting and renewing data sharing agreements
9. Review and updates to the Marine Recreational Information Program (MRIP) Regional Implementation Plan
A. American Samoa
B. Guam
C. CNMI
D. Hawaii
10. Consolidation of the new tasks for the MRIP Regional Implementation Plan
11. Discussions
12. Other business
13. Public comment
14. FDCRC–TC–DCSP Recommendations

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: March 24, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–06555 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB913]

Western Pacific Fishery Management Council (Council); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Western Pacific Stock Assessment Review (WPSAR) Steering Committee will convene a public meeting to discuss and approve the 5-year calendar for stock assessments, and to address any other concerns related to the WPSAR process.

DATES: The Steering Committee will meet from 1 p.m. to 3 p.m. on April 13, 2022.

ADDRESSES: The meetings will be held by web conference. Audio and visual portions of the web conference can be accessed at: *https://wprfmc.webex.com/wprfmc/j.php?MTID=m2c2914733846c6790ffb9cffdb1b9462*. Web conference access information will also be posted on the Council's website at *www.wpcouncil.org*. For assistance with the web conference connection, contact the Council office at (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Marlowe Sabater; phone: (808) 522–8143, or email: *marlowe.sabater@noaa.gov.*

SUPPLEMENTARY INFORMATION: The WPSAR Steering Committee consists of the Council's Executive Director, the Director of the NMFS Pacific Islands Fisheries Science Center, and the Regional Administrator of the NMFS Pacific Islands Regional Office. You may read more about WPSAR at *https://www.pifsc.noaa.gov/peer_reviews/wpsar/index.php.*

The public will have an opportunity to comment during the meeting. The agenda order may change. The meeting will run as late as necessary to complete scheduled business.

Meeting Agenda

1. Introductions
2. Update on Science Policies

3. NMFS Stock Assessment Prioritization
4. NMFS Policy Directive 01–101–10
5. Essential Fish Habitat Model Tier 1 Review
6. Discuss and update 5-year stock assessment review schedule and review levels, including any changes to the scheduling of reviews for stock assessments already on the calendar, and any new additions to the schedule
7. Review the upcoming schedule and nominate additional products for review by the Center for Independent Experts, if necessary.
8. Other business
9. Public comment

Special Accommodations

The meeting is physically accessible to people with disabilities. Make direct requests for sign language interpretation or other auxiliary aids to Marlowe Sabater at (808) 522–8143 or *marlowe.sabater@noaa.gov,* at least 5 days prior to the meeting date.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: March 24, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–06554 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Permit and Reporting Requirements for Non-Commercial Fishing in the Rose Atoll, Marianas Trench, and Pacific Remote Islands Marine National Monuments (MANM)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 31, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0664 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Walter Ikehara, Fishery Information Specialist, NMFS Pacific Islands Regional Office, (808) 725–5175, *walter.ikehara@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This is a request for extension of an approved information collection.

NMFS manages non-commercial fishing activities in the Rose Atoll, Marianas Trench, and Pacific Remote Islands Marine National Monuments. Regulations at 50 CFR part 665 require the owner and operator of a vessel used to non-commercially fish for, take, retain, or possess any management unit species in these monuments to hold a valid permit issued by NMFS.

Regulations also require the owner and operator of a vessel that is chartered to fish recreationally for, take, retain, or possess, any management unit species in these monuments to hold a valid permit issued by NMFS. The fishing vessel must be registered to the permit. The charter business must be established legally in the permit area where it will operate. Charter vessel clients are not required to have a permit.

The permit application collects basic information about the permit applicant, type of operation, vessel, and permit area. NMFS uses this information to confirm the identity of the applicant and determine permit eligibility. The information is important for understanding the nature of the fishery and its participants. It also aids in the enforcement of fishing regulations within the monuments.

Regulations also require the vessel operator to report a complete record of catch, effort, and other data on a NMFS log sheet. The vessel operator must record all requested information on the log sheet within 24 hours of the completion of each fishing day. The vessel operator also must sign, date, and submit the form to NMFS within 30 days of the end of each fishing trip. NMFS uses the information provided in the log sheets to monitor fishing activities, evaluate, and assess the status of fish stocks, and determine whether changes in management are needed to sustain the productivity of the fishery and conserve marine resources.

II. Method of Collection

Information is collected on paper forms.

III. Data

OMB Control Number: 0648–0664.

Form Number(s): None.

Type of Review: Regular submission, extension of a currently approved information collection.

Affected Public: Individuals or households, businesses, or other for-profit organizations.

Estimated Number of Respondents: 25.

Estimated Time per Response: 15 minutes per permit application, 20 minutes per log sheet.

Estimated Total Annual Burden Hours: 31.

Estimated Total Annual Cost to Public: $1,033.

Respondent's Obligation: Mandatory.

Legal Authority: 50 CFR 665.

IV. Request for Comments

We are soliciting public comments to permit the Department to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this information collection request. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying

information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–06598 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2022–0001]

Expanded Collaborative Search Pilot Program—New Combined Petition Option for Participation

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO), in partnership with the Japan Patent Office (JPO) and the Korean Intellectual Property Office (KIPO), have collaborated on a new petition option for participation in the Expanded Collaborative Search Pilot (CSP) program. The new petition option, which has several enhancements compared to the current petition form and process, permits an applicant to file a combined petition in one of the partner intellectual property (IP) offices rather than separate petitions in both partner IP offices. Enhancements include a more user-friendly layout, addition of multilingual text, and a foundation for data collection that both satisfies the petition requirements and streamlines the process for partaking in the Expanded CSP program.

DATES: The combined petition option and the related process will take effect on March 29, 2022. Each IP office will continue to grant no more than 400 requests per year per partner office for the duration of the pilot, which is currently set to expire on October 31, 2022.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding any specific application participating in the pilot may be directed to Jessica Patterson, Senior Advisor and Director, International Worksharing, Planning, and Implementation; Office of International Patent Cooperation; at 571–272–8828 or *Jessica.Patterson@uspto.gov.* Any inquiry regarding this pilot program and the petition process can be emailed to *csp@uspto.gov.* Inquiries concerning this notice may be directed to Michael Arguello; Management and Program Analyst; International Worksharing, Planning, and Implementation; Office of International Patent Cooperation; at 571–270–7876 or *Michael.Arguello@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The USPTO continually looks for ways to improve its worksharing pilot programs, including the Expanded CSP program. The Expanded CSP program provides applicants who cross-file with the USPTO and the JPO or the KIPO with search results from each office early in the examination process. It is designed to accelerate examination and provide the applicant with more comprehensive prior art by combining the search expertise of the USPTO and the JPO or the KIPO examiners before issuing a first office action. For additional details of this program, *see* Expanded Collaborative Search Pilot Program Extension, 86 FR 8183 (February 4, 2021) (Expanded CSP extension notice). Feedback from applicants based in the United States, Korea, and Japan has cited the petition process as an area for improvement, specifically the requirement to petition each office separately. As a result, the USPTO collaborated with its partner IP offices, the JPO and the KIPO, to develop combined petition forms (PTO/437–JP for the USPTO/JPO pilot program and PTO/437–KR for the USPTO/KIPO pilot program). Submitting a completed combined petition form to either the USPTO or the partner IP office (JPO or KIPO) will result in receipt of the form at both offices in the corresponding pilot and placement in the application files of both counterpart applications.

The current petition option and process, in which an applicant files a petition or a request separately with each partner IP office (original petition option), remains available. Under the original petition option, an applicant must submit petition form PTO/SB/437 to the USPTO to request CSP participation for the U.S. application and a separate submission to the partner IP office in the desired pilot to request CSP participation for a counterpart application.

II. Overview of the Combined Petition Option

Applicants need only submit one combined petition form to the USPTO or the partner IP office (JPO or KIPO). There are separate agreements between the USPTO and the JPO and the USPTO and the KIPO. Therefore, to request participation in the corresponding pilot between the USPTO and the JPO using this combined petition option, applicants must file the combined petition form PTO/437–JP with either the USPTO or the JPO. Likewise, to request participation in the corresponding pilot between the USPTO and the KIPO using this combined petition option, applicants must file the combined petition form PTO/437–KR with either the USPTO or the KIPO. However, if an application in a pilot program corresponds to more than one counterpart application in a partner IP office, the combined petition option cannot be used. In this situation, an applicant must use the original petition option to request participation in the Expanded CSP program.

Under the combined petition option, use of the proper combined petition form will assist applicants in complying with the pilot program's requirements, and will assist the USPTO in quickly identifying participating applications and the partner IP office. The combined petition forms for the USPTO/JPO pilot and the USPTO/KIPO pilot are multilingual. Both combined petition forms provide links to the requirements (with exceptions noted in section VI below) and conditions for entry into the respective pilot program for each partner IP office. As each office's conditions for entry may differ, applicants should review the requirements of the relevant partner IP offices to ensure compliance.

Forms PTO/437–JP and PTO/437–KR are available at *www.uspto.gov/CollaborativeSearch.* The forms will also be available as Portable Document Format (PDF) fillable forms in EFS-Web and Patent Center and on the USPTO website at *www.uspto.gov/patents/apply/forms/forms-patent-applications-filed-or-after-september-16-2012.* The Office of Management and Budget (OMB) has reviewed and approved the collection of information involved in this pilot program, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), as part of a collection identified by OMB control number 0651–0079. Collection 0651–0079 is available at OMB's Information Collection Review website, *www.reginfo.gov/public/do/PRAMain.* No fee for the combined petition to make special under 37 CFR 1.102 is required for participation in the Expanded CSP program.

III. Filing a Combined Petition Form

If opting to use a combined petition form, applicants must file a completed combined petition form (PTO/437–JP or

PTO/437–KR) for each pilot the applicant wishes to utilize.

Combined petition form PTO/437–JP must either be directly filed in the U.S. application or directly with the JPO for the USPTO/JPO pilot program, and combined petition form PTO/437–KR must either be directly filed in the U.S. application or directly with the KIPO for the USPTO/KIPO pilot program. If the combined petition form is directly filed in the U.S. application, the applicant must file it using either EFS-Web or Patent Center. If the applicant directly files the combined petition form with the partner IP office, the combined petition form must be accompanied by supporting documents (*e.g.,* an English translation of the claims from the counterpart application; a machine translation of the claims is acceptable). The corresponding partner IP office will then transmit the combined petition form and supporting documents to the USPTO. The applicant should not file the combined petition form directly with both the USPTO and the corresponding partner IP office.

Based on the agreements between the USPTO and the partner IP offices, if the applicant directly files the combined petition form with the USPTO, then the USPTO must transmit the completed form and any accompanying supporting documents, along with the date of receipt, to the corresponding partner IP office. Additionally, if the applicant files the combined petition form directly with the JPO or the KIPO, then the office that received the filing must transmit the form and the accompanying supporting documents, along with its date of receipt, to the USPTO. The USPTO will place the combined petition form and the accompanying supporting documents in the file of the U.S. application. Incomplete combined petition forms will not be forwarded to the corresponding partner IP office and will be dismissed in accordance with the respective Memorandums of Cooperation between partner IP offices.

Under the combined petition option, the IP partner offices have agreed to transmit the combined petition form to the corresponding partner IP office within 15 days of receipt from the applicant. This reduces the risk of the counterpart application being acted upon by an examiner in the partner IP office before that application enters the pilot program, which would result in both applications being denied entry into the Expanded CSP program. The request for participation in the Expanded CSP program must be granted by both the IP office in which the request is directly filed and the partner IP office for both applications prior to any examination in either office.

To the extent that the combined petition form forwarded to the USPTO from the partner IP office does not comply with the requirements of 37 CFR 1.4(d)(2) and (d)(3), and 1.6(a), these requirements are waived for certain elements. Specifically, with respect to 37 CFR 1.4(d)(2), a forwarded combined petition form containing an S-signature will not be required to be filed by facsimile transmission, via the USPTO's electronic filing system (*i.e.,* EFS-Web or Patent Center), or on paper. With respect to 37 CFR 1.4(d)(3), a forwarded combined petition form containing a graphic representation of a handwritten signature or an S-signature will not be required to be filed via the USPTO's electronic filing system. With respect to 37 CFR 1.6(a), a forwarded combined petition form will be accorded a receipt date even though it was not received at the USPTO by mail, filed via the USPTO's electronic filing system, or hand-delivered to the USPTO. The U.S. receipt date of the combined petition form will either be the actual date that the combined petition form is received at the USPTO via the USPTO's electronic filing system or the date the combined petition form is transmitted to the USPTO from the partner IP office, which may not be the same as the receipt date in the partner IP office.

IV. Requirements for Participation in the Expanded CSP

To be accepted into the Expanded CSP program, applicants who use the combined petition option must meet all the requirements of the program that are set forth in section III of the Expanded CSP extension notice, except with the following modifications.

Under the combined petition option, the combined petition form PTO/437–JP or PTO/437–KR must be used instead of form PTO/SB/437, and the combined petition form, as discussed above, must be submitted to either the USPTO or the partner IP office (the JPO or the KIPO). Separate petitions are not required to be filed in both the USPTO and the partner IP office. The combined petition form PTO/437–JP or PTO/437–KR also includes an express written consent under 35 U.S.C. 122(c) for the USPTO to receive the combined petition form (if filed directly with the corresponding partner IP office) and to accept and consider prior art references and comments from the designated partner IP office during the examination of the U.S. application. The combined petition form also includes written authorization for the USPTO to forward the form (if filed directly with the USPTO) to the corresponding partner IP office and to provide to the designated IP partner office, before a first office action on the merits, access to the participating U.S. application's bibliographic data and search results, in accordance with 35 U.S.C. 122(a) and 37 CFR 1.14(c). No other consents are required.

V. Treatment of a Combined Petition Form

The combined petition form filed directly or indirectly in the U.S. application will be treated in the manner set forth in section IV of the Expanded CSP extension notice.

VI. Requirement for Restriction

The requirement for restriction set forth in section V of the Expanded CSP extension notice remains the same for the combined petition option.

VII. First Action on the Merits

Under the Expanded CSP program, the USPTO examiner will consider all exchanged search results. However, search results that are not received by the USPTO within four months from the date the USPTO granted the petition may not be included in the first action on the merits (FAOM). The examiner will prepare and issue an Office action and notify the applicant if any designated partner IP office did not provide search results prior to the issuance of the Office action. Once an FAOM issues, the application will no longer be treated as special under the Expanded CSP program.

The USPTO will continue to cooperate with applicants, IP stakeholders, and partner IP offices to improve the CSP process. More information on the CSP is available at *www.uspto.gov/CollaborativeSearch.*

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–06602 Filed 3–28–22; 8:45 am]

BILLING CODE 3510–16–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0003]

Notice and Request for Comment Regarding Fees Imposed by Providers of Consumer Financial Products or Services

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice; request for public comment; extension of comment period.

SUMMARY: On January 26, 2022, the Consumer Financial Protection Bureau (Bureau or CFPB) requested comment from the public related to fees that are not subject to competitive processes that ensure fair pricing. The request for comment was published in the **Federal Register** on February 2, 2022, in a document titled, ''Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services.'' The Bureau has determined that extension of the comment period until April 11, 2022, is appropriate.

DATES: The end of the comment period for the document titled, ''Request for Information Regarding Fees Imposed by Providers of Consumer Financial Products or Services,'' published on February 2, 2022 (87 FR 5801), is extended from March 31, 2022, until April 11, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2022–0003, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: CFPB_FederalRegisterComments@cfpb.gov.* Include Docket No. CFPB–2022–0003 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake—Fee Assessment, Consumer Financial Protection Bureau, 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the CFPB discourages the submission of comments by hand delivery, mail, or courier.

Instructions: The CFPB encourages the early submission of comments. All submissions should include document title and docket number. Because paper mail in the Washington, DC area and at the CFPB is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, once the CFPB's headquarters reopens, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. At that time, you can make an appointment to inspect the documents by telephoning 202–435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Brian Shearer, Senior Advisor; Grace Bouwer, Advisor, Public Engagement, Director's Front Office, Office of the Director at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION: On January 26, 2022, the Bureau issued a Request for Information regarding fees that are not subject to competitive processes that ensure fair pricing.[1] The information will help the CFPB and policymakers in exercising their enforcement, supervision, regulatory and other authorities to create a fairer, more transparent, and competitive consumer financial marketplace. As of mid-March, the CFPB has received more than 1,400 comments to the RFI, indicating a high level of public interest in this topic. Allowing an additional comment period will provide additional opportunity for the public to prepare comments related to this inquiry. Therefore, the Bureau is extending the comment period for this request until April 11, 2022.

Dani Zylberberg,

Counsel and Federal Register Liaison, Consumer Financial Protection Bureau.

[FR Doc. 2022–06581 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–AM–P

[1] *See* 87 FR 5801 (Feb. 2, 2022).

COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

Privacy Act of 1974; System of Records

AGENCY: Council of the Inspectors General on Integrity and Efficiency (CIGIE).

ACTION: Notice of a new system of records.

SUMMARY: CIGIE proposes to establish a system of records that is subject to the Privacy Act of 1974. CIGIE proposes this system of records to more efficiently track records in furtherance of its statutory mandate to maintain one or more academies for the professional training of auditors, inspectors, evaluators, and other personnel of the various offices of Inspector General per the Inspector General Act of 1978, as amended.

DATES: This proposal will be effective without further notice on April 28, 2022 unless comments are received that would result in a contrary determination.

ADDRESSES: Submit comments identified by ''CIGIE–7'' by any of the following methods:

1. *Mail:* Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. ATTN: Atticus Reaser/CIGIE–7, Notice of New System of Records.
2. *Email: comments@cigie.gov.*

FOR FURTHER INFORMATION CONTACT: Atticus Reaser, General Counsel, Council of the Inspectors General on Integrity and Efficiency, (202) 292–2600 or *comments@cigie.gov.*

SUPPLEMENTARY INFORMATION: In 2008, Congress established CIGIE as an independent entity within the executive branch in order to address integrity, economy, and effectiveness issues that transcend individual Government agencies; and increase the professionalism and effectiveness of personnel by developing policies, standards, and approaches to aid in the establishment of a well-trained and highly skilled workforce in the offices of the Inspector General. CIGIE's membership is comprised of all Inspectors General whose offices are established under the Inspector General Act of 1978, as amended, 5 U.S.C. app (IG Act), as well as the Controller of the Office of Federal Financial Management, a designated official of the Federal Bureau of Investigation (FBI), the Director of the Office of Government Ethics, the Special Counsel of the Office of Special Counsel, the Deputy Director of the Office of Personnel Management, the Deputy Director for Management of the Office of Management and Budget (OMB), and the Inspectors General of the Office of the Director of National Intelligence, Central Intelligence Agency, Library of Congress, Capitol Police, Government Publishing Office, Government Accountability Office, and the Architect of the Capitol. The Deputy Director for Management of OMB serves as the Executive Chairperson of CIGIE.

The new system of records described in this notice, the Training Institute and Education Records System (CIGIE–7), will enable CIGIE to more efficiently track training records associated with those who seek, receive, or provide training through CIGIE. In accordance with 5 U.S.C. 552a(r), CIGIE has provided a report of this new system of

records to the OMB and to Congress. The new system of records reads as follows:

SYSTEM NAME AND NUMBER:

Training Institute and Education Records System (TIERS)—CIGIE–7.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The location of paper records contained within the TIERS is at one or both of the following locations: (1) The headquarters of the Council of the Inspectors General on Integrity and Efficiency (CIGIE), currently located at 1717 H Street NW, Suite 825, Washington, DC 20006; or (2) The CIGIE Inspector General Criminal Investigator Academy, Federal Law Enforcement Training Center (FLETC), currently located at 384 Marana Circle, Glynco, GA 31524. Records maintained in electronic form are principally located in contractor-hosted data centers in the United States. Contact the System Manager identified below for additional information.

SYSTEM MANAGER(S):

Executive Director of the Training Institute, CIGIE, 1717 H Street NW, Suite 825, Washington, DC 20006, (202) 292–2600, *cigie.information@cigie.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 11 of the Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act); 5 U.S.C. 301; 44 U.S.C. 3101.

PURPOSE(S) OF THE SYSTEM:

To carry out CIGIE's responsibilities to maintain one or more academies for the professional training of auditors, inspectors, evaluators, and other personnel of the various offices of Inspector General under the IG Act.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on current, former, and prospective students who enroll in a training course offered by CIGIE or training that is offered by another entity when such enrollment is facilitated by CIGIE, including, but not limited to, FLETC enrollment and enrollment in accredited courses at public and private colleges, universities, and other entities providing educational and training services. Such students include individuals from: Federal Government agencies; member entities of CIGIE; state, local, and tribal governments; and the private sector. This system also contains records on current, former, and prospective instructors and others who facilitate CIGIE training and training coordinated by CIGIE.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system maintains records that contribute to the operation of one or more CIGIE academies for the professional training of auditors, inspectors, evaluators, and other personnel of the various offices of Inspector General. Such records may contain identifying information including but not necessarily limited to: Name; date of birth; Social Security number and/or a unique student identification number; email address, telephone number, and/or other contact information; and position title. Records in the system may also include other information associated with such identifying information, including but necessarily limited to: Course name and number; grade earned or other indicator of level of performance demonstrated; continuing professional education credits earned; CIGIE academy providing the training; event date(s); agency affiliation; supervisor name and contact information; agency billing information; survey questions and responses to survey questions; help requests; and CIGIE resource utilization information.

RECORD SOURCE CATEGORIES:

Federal Government agencies; member entities of CIGIE; individuals providing information about themselves; state, local, and tribal governments; and private sector entities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or portions of the records or information contained in this system may specifically be disclosed outside of CIGIE as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To a Member of Congress in response to an inquiry from that Member made at the request of the individual. In such cases, however, the Member's right to a record is no greater than that of the individual.

B. If the disclosure of certain records to the Department of Justice (DOJ) is relevant and necessary to litigation, CIGIE may disclose those records to the DOJ. CIGIE may make such a disclosure if one of the following parties is involved in the litigation or has an interest in the litigation:

1. CIGIE or any component thereof; or
2. Any employee or former employee of CIGIE in his or her official capacity; or
3. Any employee or former employee of CIGIE in his or her individual capacity when the DOJ has agreed to represent the employee; or
4. The United States, if CIGIE determines that litigation is likely to affect CIGIE or any of its components.

C. If disclosure of certain records to a court, adjudicative body before which CIGIE is authorized to appear, individual or entity designated by CIGIE or otherwise empowered to resolve disputes, counsel or other representative, party, or potential witness is relevant and necessary to litigation, CIGIE may disclose those records to the court, adjudicative body, individual or entity, counsel or other representative, party, or potential witness. CIGIE may make such a disclosure if one of the following parties is involved in the litigation or has an interest in the litigation:

1. CIGIE or any component thereof; or
2. Any employee or former employee of CIGIE in his or her official capacity; or
3. Any employee or former employee of CIGIE in his or her individual capacity when the DOJ has agreed to represent the employee; or
4. The United States, if CIGIE determines that litigation is likely to affect CIGIE or any of its components.

D. To the appropriate Federal, state, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

E. To officials and employees of any Federal Government or CIGIE member entity to the extent the record contains information that is relevant to that entity's decision concerning the hiring, appointment, or retention of an employee; issuance of a security clearance; execution of a security or suitability investigation; or classification of a job.

F. To the National Archives and Records Administration (NARA) pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

G. To contractors, grantees, consultants, volunteers, or other individuals performing or working on a contract, interagency agreement, service, grant, cooperative agreement, job, or other activity for CIGIE and who have a need to access the information in the performance of their duties or activities for CIGIE.

H. To appropriate agencies, entities, and persons when: CIGIE suspects or

has confirmed that there has been a breach of the system of records; CIGIE has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, CIGIE (including its information systems, programs, and operations), the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with CIGIE's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

I. To another Federal agency or Federal entity, when: CIGIE determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in responding to a suspected or confirmed breach; or preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

J. To Federal agencies and independent certified public accounting firms that have a need for the information in order to audit the financial statements of CIGIE.

K. To an organization or an individual in the public or private sector if there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy, or to the extent the information is relevant to the protection or life or property.

L. To officials of CIGIE, as well as CIGIE members and their employees, who have need of the information in the performance of their duties.

M. To the Office of Personnel Management (OPM) in accordance with OPM's responsibility for evaluation and oversight of Federal personnel management.

N. To appropriate agencies, entities, and persons, to the extent necessary to respond to or refer correspondence.

O. To entities providing educational or training related services including, but not limited to, FLETC, other Federal entities, and accredited public and private colleges and universities, to the extent necessary to enroll students in courses at such entities and to facilitate instruction led by CIGIE provided instructors at such entities.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name or other programmatic identifier assigned to the individuals on whom the records are maintained.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information is retained and disposed of in accordance with the General Records Schedule and/or the CIGIE records schedule applicable to the record and/or otherwise required by the Federal Records Act and implementing regulations.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Paper records are located in locked file storage areas or in specified areas to which only authorized personnel have access. Electronic records are protected from unauthorized access through password identification procedures, limited access, firewalls, and other system-based protection methods.

RECORD ACCESS PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing to the System Manager listed above. CIGIE has published a rule, entitled ''Privacy Act Regulations,'' to establish its procedures relating to access, maintenance, disclosure, and amendment of records which are in a CIGIE system of records per the Privacy Act, promulgated at 5 CFR part 9801 (*https://www.ecfr.gov/cgi-bin/text-idx?SID=c3344b4e456f682fe915c0e982f8ce94&mc=true&tpl=/ecfrbrowse/Title05/5cfr9801_main_02.tpl*).

CONTESTING RECORD PROCEDURES:

See ''Records Access Procedures'' above.

NOTIFICATION PROCEDURES:

See ''Records Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

N/A.

Dated: March 24, 2022.

Allison C. Lerner,

Chairperson of the Council of the Inspectors General on Integrity and Efficiency.

[FR Doc. 2022–06610 Filed 3–28–22; 8:45 am]

BILLING CODE 6820–C9–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force, Board of Visitors of the U.S. Air Force Academy.

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Board of Visitors (BoV) of the U.S. Air Force Academy (USAFA) will take place.

DATES: Open to the public Wednesday April 13, 2022 from 8:00 a.m. to 5:00 p.m. (Mountain Time).

ADDRESSES: The meeting will occur at the United States Air Force Academy, Colorado Springs, CO as well as virtually. Members of the public will only be allowed to attend the meeting virtually. The link for the virtual meeting can be found at: *https://www.usafa.edu/about/bov/* and will be active approximately thirty minutes before the start of the meeting.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Robert Schabron, Executive Secretary, *robert.schabron@us.af.mil,* (703) 614–4751, 1040 Air Force Pentagon, Washington, DC 20330–1040 or Mr. Anthony R. McDonald, Designated Federal Officer (DFO), *anthony.mcdonald@us.af.mil,* (703) 614–4751, 1660 Air Force Pentagon, Washington, DC 20330–1660. Website: *https://www.usafa.edu/about/bov/.* Site contains information on the Board of Visitors, the link to the virtual meeting, and meeting agenda.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to review morale and discipline, social climate, athletics, diversity, curriculum and other matters relating to the U.S. Air Force Academy. The meeting will address topics across the Academy including updates from the Academy Superintendent, Commandant, Dean, and Athletics Department. Furthermore, there will be presentations on the Air Force Academy's Budget; Sexual Assault Prevention program; IT Infrastructure; Aviation Training Programs; and Specialty Selection Process.

Written Statements: Any member of the public wishing to provide input to the Board of Visitors of the U.S. Air Force Academy should submit a written statement in accordance with 41 CFR 102–3.105(j) and 102–3.140 and 10(a)(3) of the FACA. The public or interested organizations may submit written

comments or statements to the BoV about its mission and/or the topics to be addressed in the open sessions of this public meeting. Written comments or statements should be submitted to the BoV Executive Secretary, Lt Col Robert Schabron, via electronic mail, at the email address listed in the **FOR FURTHER INFORMATION CONTACT** section in the following formats: Adobe Acrobat or Microsoft Word. The comment or statement must include the author's name, title affiliation, address, and daytime telephone number. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the BoV Executive Secretary at least five (5) business days (April 6, 2022) prior to the meeting so they may be made available to the BoV Chairman for consideration prior to the meeting. Written comments or statements received after this date (April 6, 202) may not be provided to the BoV until its next meeting. Please note that because the BoV operates under the provisions of the FACA, as amended, all written comments will be treated as public documents and will be made available for public inspection.

Adriane Paris,

Air Force Federal Register Liaison Officer.

[FR Doc. 2022–06568 Filed 3–28–22; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Prepare an Environmental Impact Statement for T–7a Recapitalization at Columbus Air Force Base, Mississippi

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Department of the Air Force (DAF) is issuing this Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) to assess the potential social, economic, and environmental impacts associated with T–7A Recapitalization at Columbus Air Force Base (AFB), Mississippi. The EIS will analyze the potential impacts from introduction of T–7A aircraft and flight operations at Columbus AFB and associated airspace; introduction of nighttime (between 10 p.m. and 7 a.m.) T–7A flight operations; changes to the number of personnel and dependents in the Columbus AFB region; and construction and upgrade of support and maintenance facilities.

DATES: A public scoping period of 30 days will take place starting from the date of this NOI publication in the **Federal Register**. Comments will be accepted at any time during the environmental impact analysis process; however, to ensure DAF has sufficient time to consider public scoping comments during preparation of the Draft EIS, please submit comments within the 30-day scoping period. The Draft EIS is anticipated in late 2022. The Final EIS and a decision on which alternative to implement is expected in mid-2023.

ADDRESSES: For EIS inquiries or requests for printed or digital copies of scoping materials please contact Mr. Nolan Swick by phone: (210) 925–3392. The project website (*https://columbus.t-7anepadocuments.com/*) provides additional information on the EIS and can be used to submit scoping comments. Scoping comments may also be submitted via email to *nolan.swick@us.af.mil* or via postal mail to Mr. Nolan Swick, AFCEC/CZN; Attn: Columbus AFB T–7A Recapitalization EIS; Headquarters AETC Public Affairs; 100 H East Street, Suite 4; Randolph AFB, TX 78150. Please submit inquiries or requests for printed or digital copies of the scoping materials via the email or postal address above. For printed material requests, the standard U.S. Postal Service shipping timeline will apply. Please consider the environment before requesting printed material.

SUPPLEMENTARY INFORMATION: The DAF intends to prepare an EIS that will evaluate the potential impacts from its proposal to recapitalize the T–38C Talon flight training program at Columbus AFB with T–7A Red Hawk aircraft. The proposal supports the Secretary of the Air Force's strategic basing decisions to recapitalize existing T–38C pilot training installations, and Columbus AFB would be the second installation to be environmentally analyzed for possible recapitalization. The purpose of this proposal is to continue the T–7A recapitalization program by recapitalizing Columbus AFB to prepare pilots to operate the more technologically advanced T–7A aircraft. Recapitalization is needed because the current training practices with the older T–38C aircraft fail to prepare pilots for the technological advancements of fourth and fifth generation aircraft.

Recapitalization entails introduction of T–7A aircraft and flight operations at Columbus AFB to replace all T–38C aircraft assigned to the installation; introduction of nighttime (between 10 p.m. and 7 a.m.) flight operations; changes to the number of personnel and dependents in the Columbus AFB region; and construction and upgrade of support and maintenance facilities. DAF is considering the Proposed Action, Alternative 1, Alternative 2, and the No Action Alternative. For the Proposed Action, Columbus AFB would receive 61 T–7A aircraft and perform sufficient operations for sustaining pilot training while simultaneously phasing out the T–38C aircraft and phasing in the T–7A aircraft. Alternative 1 also would result in 61 T–7A aircraft being delivered to Columbus AFB; however, T–7A operations would be performed at an intensity approximately 25 percent greater than the Proposed Action to cover a potential scenario in which DAF requires a surge or increase in pilot training operations above current plan. For Alternative 2, Columbus AFB would receive 77 T–7A aircraft to cover a potential scenario in which another military installation is unable to accept delivery of all their T–7A aircraft and some of those aircraft need to be reassigned to Columbus AFB. T–7A operations for Alternative 2 would be performed at an intensity identical to Alternative 1. The No Action Alternative would not implement T–7A recapitalization at Columbus AFB.

DAF anticipates potential for the following notable environmental impacts from the Proposed Action and action alternatives: 1. Increased air emissions, particularly nitrogen oxides. 2. Increased noise from aircraft operations because the T–7A is inherently louder than the T–38C and the addition of nighttime operations may be bothersome to some residents. Increased noise could have a disproportionate impact on certain populations and impact off-installation land use compatibility. 3. Increased potential for bird/wildlife aircraft strike hazards. 4. Construction may have a minor impact on downstream water quality. The EIS will model air emissions, noise levels, and the number of sleep and school disturbance events and compare to current conditions. DAF will also consult with appropriate resource agencies and Native American tribes to determine the potential for significant impacts. Consultation will be incorporated into the preparation of the EIS and will include, but not be limited to, consultation under Section 7 of the Endangered Species Act and consultation under Section 106 of the National Historic Preservation Act. Additional analysis will be provided in the Draft EIS.

Scoping and Agency Coordination: To effectively define the full range of issues to be evaluated in the EIS, DAF is

soliciting comments from interested local, state, and federal elected officials and agencies, Tribes, as well as interested members of the public and others. Comments are requested on potential alternatives and impacts, and identification of any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. Concurrent with the publication of this NOI, public scoping notices will be announced locally. In accordance with DAF guidance, in-person public scoping meetings will not be held. Public scoping is being accomplished remotely, in accordance with the 2020 version of 40 Code of Federal Regulations part 1506.6, via the project website at *https://columbus.t-7anepadocuments.com/*. The website provides posters, a presentation, an informational brochure, other meeting materials, and the capability for the public to provide public scoping comments. Scoping materials are also available in print at the Columbus-Lowndes Public Library (314 7th Street North, Columbus, Mississippi).

Adriane Paris,

Air Force Federal Register Liaison Officer.

[FR Doc. 2022–06575 Filed 3–28–22; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket No. DARS–2022–0008]

Acquisition of Items for Which Federal Prison Industries Has a Significant Market Share

AGENCY: DARS, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: DoD is publishing the updated annual list of product categories for which the Federal Prison Industries' share of the DoD market is greater than five percent.

DATES: April 15, 2022.

FOR FURTHER INFORMATION CONTACT: Mario Thompson, 808–590–0652.

SUPPLEMENTARY INFORMATION: On November 19, 2009, a final rule was published in the **Federal Register** at 74 FR 59914, which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6 to implement section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602–70.

The Principal Director, Defense Pricing and Contracting (DPC), issued a memorandum dated March 16, 2022, that provided the current list of product categories for which FPI's share of the DoD market is greater than five percent based on fiscal year 2021 data from the Federal Procurement Data System. The product categories to be competed effective April 15, 2022, are the following:

- 7125 (Cabinets, Lockers, Bins, and Shelving)
- 8105 (Bags and Sacks)
- 8405 (Outerwear, Men's)
- 8415 (Clothing, Special Purpose)
- 8420 (Underwear and Nightwear, Men's)

The DPC memorandum with the current list of product categories for which FPI has a significant market share is posted at *https://www.acq.osd.mil/asda/dpc/cp/policy/other-policy-areas.html#fpi*.

The statute, as implemented, also requires DoD to—

(1) Include FPI in the solicitation process for these items. A timely offer from FPI must be considered and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to conduct acquisitions, in accordance with FAR subpart 8.6, for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable in terms of price, quality, or time of delivery; and

(3) Modify the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–06199 Filed 3–28–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Publication of Housing Price Inflation Adjustment

AGENCY: The Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: Notice of housing price inflation adjustment.

SUMMARY: The DoD is announcing the 2021 rent threshold under the Servicemembers Civil Relief Act. Applying the inflation adjustment for 2021, the maximum monthly rental amount as of January 1, 2022, will be $4,214.28.

DATES: These housing price inflation adjustments are effective January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Lt Col Patrick Schwomeyer, Office of the Under Secretary of Defense for Personnel and Readiness, (703) 692–8170.

SUPPLEMENTARY INFORMATION: The Servicemembers Civil Relief Act, as codified at 50 U.S.C. App. 3951, prohibits a landlord from evicting a Service member (or the Service member's family) from a residence during a period of military service, except by court order. The law as originally passed by Congress applied to dwellings with monthly rents of $2,400 or less. The law requires the DoD to adjust this amount annually to reflect inflation and to publish the new amount in the **Federal Register**. Applying the inflation adjustment for 2021, the maximum monthly rental amount for 50 U.S.C. App. 3951(a)(1)(A)(ii) as of January 1, 2022, will be $4,214.28.

Dated: March 22, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 2022–06578 Filed 3–28–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Alaska Native and Native Hawaiian-Serving Institutions Program, Part A

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal

year (FY) 2022 for the Alaska Native and Native Hawaiian-Serving Institutions (ANNH) Program, Part A, Assistance Listing Numbers 84.031N (Alaska Native) and 84.031W (Native Hawaiian). This notice relates to the approved information collection under OMB control number 1840–0810.

DATES:

Applications Available: March 29, 2022.

Deadline for Transmittal of Applications: May 31, 2022.

Deadline for Intergovernmental Review: July 27, 2022.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021, (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phaseout of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

FOR FURTHER INFORMATION CONTACT: Robyn Wood, U.S. Department of Education, 400 Maryland Avenue SW, Room 2B203, Washington, DC 20202–4260. Telephone: (202) 453–7744. Email: *Robyn.Wood@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The ANNH Program provides grants to eligible institutions of higher education (IHEs) to enable them to improve and expand their capacity to serve Alaska Native and Native Hawaiian students. Institutions may use these grants to plan, develop, or implement activities that strengthen the institution.

Background: The ANNH Program is critical to the Department's efforts to improve college completion for Alaska Native and Native Hawaiian students, who have been traditionally underrepresented in postsecondary education. Through the absolute priority in this competition, we give particular attention to projects that promote student success by providing student support services based on moderate evidence. This may include, but is not limited to, academic tutoring and counseling programs. We encourage IHEs to develop and/or enhance existing internal student support systems and/or train personnel in strategies and systems of support that provide wraparound services to students and promote retention to ensure that students receive academic and wraparound support.

Priority: This notice contains one absolute priority. The absolute priority is from section 317(c)(2)(H) of the Higher Education Act of 1965, as amended (HEA), and 34 CFR 75.226(d).

Absolute Priority: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Supporting Student Success by Providing Academic Tutoring and Counseling Programs, and Student Support Services; Moderate Evidence.

Projects that—

(a) Provide academic tutoring and counseling programs, and student support services; and

(b) Are supported by evidence that meets the conditions in the definition of ''moderate evidence.''

Note: Applicants responding to this absolute priority must identify on the Evidence Form in the application package no more than two studies that underpin the primary practice or strategy they intend to carry out based on the activities outlined in the applicant's response to the absolute priority. The Department will review the research cited by the applicant to determine if it meets the requirements for moderate evidence, as well as whether it is sufficiently aligned with the programs and services proposed under paragraph (a) of the priority. In assessing the relevance of the research cited to support the proposed project activity, the Secretary will consider: (1) The overlap in populations or settings between the cited research and the proposed project, (2) the relevance of a key finding(s) in the cited research to the intended outcomes of the proposed project, (3) the similarity between the project component in the cited research and that of the proposed project, and (4) the portion of the requested funds that will be dedicated to the identified evidence-based activities. For those activities included in their absolute priority, applicants can cite WWC intervention reports, WWC practice guides, or individual studies, both those already listed in the Department's WWC Database of Individual Studies [1] and those that have not yet been reviewed by the WWC. It is also important to note that studies listed in the WWC Database of Individual Studies do not necessarily satisfy the criteria needed to meet the moderate evidence standard. Therefore, applicants should themselves ascertain the suitability of the study for the evidence priority. Applicants may use the WWC Database of Individual Studies to find and cite studies designated as either Tier I (strong evidence) or Tier II studies (moderate evidence). (See footnote 1.) Applicants citing WWC practice guides should pay careful attention to the specific recommendations that meet moderate evidence standard.

Definitions: For FY 2022 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply. These definitions are from 34 CFR 77.1.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Logic model (also referred to as theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Note: In developing logic models, applicants may want to use resources, such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp,* to help design their logic models. Other sources include: *https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that

[1] Institute of Education Sciences. (n.d.). WWC: Reviews of Individual Studies. WWC | Reviews of Individual Studies. Retrieved February 24, 2022, from *https://ies.ed.gov/ncee/wwc/ReviewedStudies#/OnlyStudiesWithPositiveEffects:true%7CSetNumber:1%7CEssaRatingId:.*

overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks, or otherwise assessed by the Department using version 4.1 of the WWC Handbooks, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1, 3.0, 4.0, or 4.1 of the WWC Handbooks; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy the requirement in this paragraph (iii)(D).

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

What Works Clearinghouse Handbooks (WWC Handbooks) means the standards and procedures set forth in the WWC Standards Handbook, Versions 4.0 or 4.1, and WWC Procedures Handbook, Versions 4.0 or 4.1, or in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (all incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the WWC Handbooks documentation.

Program Authority: 20 U.S.C. 1059d (title III, part A, of the HEA).

Note: In 2008, the HEA was amended by the Higher Education Opportunity Act of 2008 (HEOA), Public Law 110–315. Please note that the regulations for ANNH in 34 CFR part 607 have not been updated to reflect these statutory changes. The statute supersedes all other regulations.

Note: Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in the Federal civil rights laws.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 607.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and Cooperative Arrangement Development Grants will be awarded in FY 2022.

Note: A cooperative arrangement is an arrangement to carry out allowable grant activities between an institution eligible to receive a grant under this part and another eligible or ineligible IHE, under which the resources of the cooperating institutions are combined and shared to better achieve the purposes of this part and avoid costly duplication of effort.

Estimated Available Funds: $10,408,792.

Individual Development Grants:

Estimated Range of Awards: $775,000–$825,000 per year.

Estimated Average Size of Awards: $800,000 per year.

Maximum Award: We will not make an award exceeding $825,000 for a single budget period of 12 months.

Estimated Number of Awards: 6.

Cooperative Arrangement Development Grants:

Estimated Range of Awards: $850,000–$900,000 per year.

Estimated Average Size of Awards: $875,000 per year.

Maximum Award: We will not make an award exceeding $900,000 for a single budget period of 12 months.

Estimated Number of Awards: 6.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. a. *Eligible Applicants:*

This program is authorized by title III, part A, of the HEA. At the time of submission of their applications, applicants must certify that an Alaska Native-serving institution has an enrollment of undergraduate students that are at least 20 percent Alaska Native students or that a Native Hawaiian-serving institution has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students. An assurance form, which is included in the application materials for this competition, must be signed by an official for the applicant and submitted with this application.

To qualify as an eligible institution under the ANNH Program, an institution must—

(i) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(ii) Be legally authorized by the State in which it is located to be a junior or community college or to provide an educational program for which it awards a bachelor's degree;

(iii) Demonstrate that it (1) has an enrollment of needy students as described in 34 CFR 607.3; and (2) has low average education and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 607.4.

Note: The notice announcing the FY 2022 process for designation of eligible institutions, and inviting applications for waiver of eligibility requirements, was published in the **Federal Register** on December 16, 2021 (86 FR 71470). The Department extended the deadline for applications in a notice published in the **Federal Register** on February 7, 2022 (87 FR 6855). Only institutions

that the Department determines are eligible, or which are granted a waiver under the process described in that notice, may apply for a grant in this program.

b. *Relationship Between the Title III, Part A Programs and the Developing Hispanic-Serving Institutions (HSI) Program:*

A grantee under the HSI Program, which is authorized under title V of the HEA, may not receive a grant under any HEA, title III, part A program. The title III, part A programs are the Strengthening Institutions Program, the Tribally Controlled Colleges and Universities Program, the Alaska Native and Native Hawaiian-Serving Institutions Program, the Asian American and Native American Pacific Islander-Serving Institutions Program, and the Native American-Serving Nontribal Institutions Program. Furthermore, a current HSI program grantee may not give up its HSI grant in order to be eligible to receive a grant under ANNH or any title III, part A program as described in 34 CFR 607.2(g)(1).

An eligible HSI that is not a current grantee under the HSI program may apply for a FY 2022 grant under all title III, part A programs for which it is eligible, as well as receive consideration for a grant under the HSI program. However, a successful applicant may receive only one grant as described in 34 CFR 607.2(g)(1).

An eligible IHE that submits applications for an Individual Development Grant and a Cooperative Arrangement Development Grant in this competition may be awarded both in the same fiscal year. However, we will not award a second Cooperative Arrangement Development Grant to an otherwise eligible IHE for an award year for which the IHE already has a Cooperative Arrangement Development Grant award under the ANNH Program. A grantee with an Individual Development Grant or a Cooperative Arrangement Development Grant may be a subgrantee in one or more Cooperative Arrangement Development Grants. The lead institution in a Cooperative Arrangement Development Grant must be an eligible institution. Partners or subgrantees are not required to be eligible institutions.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds (34 CFR 607.30 (b)).

3. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979, which contain requirements and information on how to submit an application.* Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 607.10(c). We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative to no more than 50 pages for Individual Development Grants and to no more than 65 pages for Cooperative Arrangement Development Grants. When addressing the absolute priority, we recommend that you limit your response to no more than an additional five pages total. Please include a separate heading when responding to the absolute priority. We also recommend that you use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract and the bibliography. However, the recommended page limit does apply to all of the application narrative.

Note: The Budget Information-Non-Construction Programs Form (ED 524) Sections A–C are not the same as the narrative response to the Budget section of the selection criteria.

V. Application Review Information

1. *Selection Criteria:* The following selection criteria for this competition are from 34 CFR 607.22(a) through (g) and 34 CFR 75.210. Applicants should address each of the following selection criteria separately for each proposed activity. We will award up to 100 points to an application under the selection criteria. The maximum score for each criterion is noted in parentheses.

(a) *Quality of the applicant's comprehensive development plan.* (20 points). The extent to which—

(1) The strengths, weaknesses, and significant problems of the institution's academic programs, institutional management, and fiscal stability are clearly and comprehensively analyzed and result from a process that involved major constituencies of the institution;

(2) The goals for the institution's academic programs, institutional management, and fiscal stability are realistic and based on comprehensive analysis;

(3) The objectives stated in the plan are measurable, related to institutional goals, and, if achieved, will contribute to the growth and self-sufficiency of the institution; and

(4) The plan clearly and comprehensively describes the methods and resources the institution will use to institutionalize practice and improvements developed under the proposed project, including, in particular, how operational costs for personnel, maintenance, and upgrades of equipment will be paid with institutional resources.

(b) *Quality of activity objectives.* (15 points). The extent to which the objectives for each activity are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved and to the goals of the comprehensive development plan.

(c) *Quality of the project design.* (10 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project demonstrates a rationale (as defined in this notice).

(d) *Quality of implementation strategy.* (18 points). The extent to which—

(1) The implementation strategy for each activity is comprehensive;

(2) The rationale for the implementation strategy for each activity is clearly described and is supported by the results of relevant studies or projects; and

(3) The timetable for each activity is realistic and likely to be attained.

(e) *Quality of key personnel.* (8 points). The extent to which—

(1) The past experience and training of key professional personnel are directly related to the stated activity objectives; and

(2) The time commitment of key personnel is realistic.

(f) *Quality of project management plan.* (10 points). The extent to which—

(1) Procedures for managing the project are likely to ensure efficient and effective project implementation; and

(2) The project coordinator and activity directors have sufficient authority to conduct the project effectively, including access to the president or chief executive officer.

(g) *Quality of evaluation plan.* (12 points). The extent to which—

(1) The data elements and the data collection procedures are clearly described and appropriate to measure the attainment of activity objectives and to measure the success of the project in achieving the goals of the comprehensive development plan; and

(2) The data analysis procedures are clearly described and are likely to produce formative and summative results on attaining activity objectives and measuring the success of the project on achieving the goals of the comprehensive development plan.

(3) The extent to which the methods of evaluation will, if well implemented, produce evidence about the project's effectiveness that would meet the What Works Clearinghouse standards with or without reservations as described in the What Works Clearinghouse Handbook (as defined in 34 CFR 77.1(c)).

(h) *Budget.* (7 points). The extent to which the proposed costs are necessary and reasonable in relation to the project's objectives and scope.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

A panel of three non-Federal reviewers will review and score each application in accordance with the selection criteria. A rank order funding slate will be made from this review. Awards will be made in rank order according to the average score received from the peer review.

In tie-breaking situations for development grants, 34 CFR 607.23(b) requires that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable type institutions that offer similar instruction. We award one additional point to an application from an IHE that has expenditures for library materials per FTE enrolled student that are less than the average expenditure for library materials per FTE enrolled student at similar type institutions. We also add one additional point to an application from an IHE that proposes to carry out one or more of the following activities—

(1) Faculty development;

(2) Funds and administrative management;

(3) Development and improvement of academic programs;

(4) Acquisition of equipment for use in strengthening

management and academic programs;

(5) Joint use of facilities; and

(6) Student services.

For the purpose of these funding considerations, we use 2019–2020 data.

If a tie remains after applying the tie-breaker mechanism above, priority will be given to applicants that have the lowest endowment values per FTE enrolled student.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with:

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115–232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

5. *Performance Measures:* The Secretary has established the following key performance measures established for the purpose of Department reporting under 34 CFR 75.110.

(a) The percentage change, over the five-year period, of the number of full-time degree-seeking undergraduates enrolled at Alaska Native and Native Hawaiian-Serving Institutions (*Note:* This is a long-term measure, which will be used to periodically gauge performance);

(b) The percentage of first-time, full-time degree-seeking undergraduate students at four-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(c) The percentage of first-time, full-time degree-seeking undergraduate students at two-year Alaska Native and Native Hawaiian-Serving Institutions who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Alaska Native and Native Hawaiian-Serving Institution;

(d) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year Alaska Native and Native Hawaiian-Serving Institutions who graduate within six years of enrollment; and

(e) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year Alaska Native and Native Hawaiian-Serving Institutions who graduate within three years of enrollment.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced feature at this site, you can limit your

search to documents published by the Department.

Michelle Asha Cooper,

Deputy Assistant Secretary for Higher Education Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 2022–06566 Filed 3–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0159]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; EDFacts Data Collection School Years 2022–23, 2023–24, and 2024–25 (With 2021–22 Continuation)

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carrie Clarady, (202) 245–6347.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: EDFacts Data Collection School Years 2022–23, 2023–24, and 2024–25 (With 2021–22 Continuation).

OMB Control Number: 1850–0925.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 61.

Total Estimated Number of Annual Burden Hours: 216,880.

Abstract: EDFacts is a U.S. Department of Education (ED) initiative, conducted by the National Center for Education Statistics (NCES), to collect, analyze, report on, and promote the use of high-quality, pre-kindergarten through grade 12 (pre-K–12) performance data. By centralizing data provided by state education agencies about state level data, local education agencies, and schools, NCES uses the EDFacts data to report on students, schools, staff, services, and education outcomes at the state, district, and school levels. The centralized approach provides ED users with the ability to efficiently analyze and report on submitted data and has reduced the reporting burden for state and local data producers through the use of streamlined data collection, analysis, and reporting tools. EDFacts collects information on behalf of ED grant and program offices for approximately 170 data groups for all 50 states, Washington DC, Puerto Rico, and seven outlying areas and freely associated states (American Samoa, Federated States of Micronesia, Guam, Marshall Islands, Commonwealth of the Northern Mariana Islands, Republic of Palau, and the U.S. Virgin Islands), the Department of Defense Education Activity (DoDEA), and the Bureau of Indian Education (BIE). This request is to collect EDFacts data for the 2022–23, 2023–24, and 2024–25 school years. This collection package will be available for public comment during two open periods, a 60 day and a 30 day, after which revisions will be made accordingly. As part of the public comment period review, ED requests that SEAs and other stakeholders respond to the directed questions found in Attachment D and D–1. Due to overlap in the timing of data collection activities between consecutive years of the EDFacts collection, we are carrying over in this submission the approved SY 2021–22 data collection, which is scheduled to end in February 2023.

Dated: March 24, 2022.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–06553 Filed 3–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0002]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Education Stabilization Fund-Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Gloria Tanner, (202) 453–5596.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Education Stabilization Fund- Elementary and Secondary School Emergency Relief Fund (ESSER I/ESSER II/ARP ESSER Fund) Recipient Data Collection Form.

OMB Control Number: 1810–0749.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 14,652.

Total Estimated Number of Annual Burden Hours: 2,051,943.

Abstract: Under the current unprecedented national health emergency, the legislative and executive branches of government have come together to offer relief to those individuals and industries affected by the COVID–19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) authorized on March 27, 2020, and expanded through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP) Act. The ESSER Fund awards grants to SEAs and for the purpose of providing local educational agencies (LEAs), including charter schools that are LEAs, as well as Outlying Areas, with emergency relief funds to address the impact that Novel Coronavirus Disease 2019 (COVID–19) has had, and continues to have, on elementary and secondary schools across the Nation.

This information collection requests a revision for a three-year approval of the form which includes the addition of three items recently approved through the emergency collection, as well as technical changes to clarify reporting pertaining to ESSER services supporting extended instructional time and early childhood programs. Please refer to Attachments A–1 and A–2, which include the changes to the form; Attachment B, which addresses response to 60-day public comments, and Attachment C, which outlines the technical changes.

Dated: March 24, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–06588 Filed 3–28–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Designing Equitable, Sustainable, and Effective Revolving Loan Fund Programs

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its request for information (RFI) regarding promising, innovative, and best practices for designing revolving loan funds (RLFs). The purpose of the RFI is to collect stakeholder feedback to inform DOE's program guidance for States developing RLFs with funding made available through the Infrastructure Investment and Jobs Act, ''Energy efficiency revolving loan fund capitalization grant program.''

DATES: Responses to the RFI must be received by no later than 11:59 p.m. EST on May 6th, 2022.

ADDRESSES: Interested parties are to submit comments electronically to *EERevolvingLoanFund@ee.doe.gov.* Include ''Designing Equitable, Sustainable, and Effective Revolving Loan Fund Programs RFI Response'' in the subject line of the email. Responses must be provided as attachments to an email. Responses must be provided as a Microsoft Word (.docx) attachment to the email, and no more than 5 pages in length, 12-point font, 1-inch margins. If possible, copy and paste the RFI sections as a template for your responses. It is recommended that attachments with file sizes exceeding 25MB be compressed (*i.e.,* zipped) to ensure message delivery. Only electronic responses will be accepted. The complete RFI document is located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to *EERevolvingLoanFund@ee.doe.gov* or to Julie Howe at 720–356–1628 or *julie.howe@ee.doe.gov.* Further instruction can be found in the RFI document posted on EERE Exchange at *https://eere-exchange.energy.gov/.*

SUPPLEMENTARY INFORMATION: The Department of Energy's (DOE) Weatherization and Intergovernmental Programs Office, in coordination with DOE's Building Technologies Office, seeks input on promising, innovative, and best practices for designing revolving loan funds (RLFs) from private lenders, investors, labor groups, community development organizations, environmental justice organizations, disadvantaged communities, States, local governments, and other energy system stakeholders. Pursuant to the implementation of section 40502 of the Infrastructure Investment and Jobs Act, Public Law 117–58, DOE is seeking to create program guidance that will assist States, as well as potentially other entities,[1] in designing, managing, and improving RLFs. (42 U.S.C. 18792)

Responses from this request for information (RFI) will be used to inform DOE's program support documentation to help States in creating, augmenting, or refining their RLFs to drive successful and equitable outcomes. This documentation may also be used to support States in drafting their applications to DOE or their own program design documentation.

Specific questions can be found in the RFI available at: *https://eere-exchange.energy.gov/.* This is solely a request for information and not a Funding Opportunity Announcement. DOE is not accepting applications at this time.

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the

[1] Under DOE's State Energy Program regulations, a ''State'' is defined as ''a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.'' 40 CFR 420.2.

information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Signing Authority: This document of the Department of Energy was signed on March 23, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 24, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–06584 Filed 3–28–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–9–000]

Commission Information Collection Activities (Ferc–912); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–912 (PURPA Section 210(m) Notification Requirements Applicable to Cogeneration and Small Power Production Facilities).

DATES: Comments on the collection of information are due May 31, 2022.

ADDRESSES: Send written comments on FERC–912 (IC22–9–000) to the Commission. You may submit copies of your comments by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only Addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–912, PURPA Section 210(m) Notification Requirements Applicable to Cogeneration and Small Power Production Facilities.

OMB Control No.: 1902–0237.

Type of Request: Three-year extension of the FERC–912 information collection requirements with no changes to the current reporting requirements.

Abstract: On 8/8/2005, the Energy Policy Act of 2005 (EPAct 2005) [1] was signed into law. Section 1253(a) of EPAct 2005 amends Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by adding subsection ''(m),'' that provides, based on a specified showing, for the termination and subsequent reinstatement of an electric utility's obligation to purchase from, and sell energy and capacity to, qualifying facilities (QFs). In 2019 the Commission revised its regulations in 18 CFR 292.309–292.313 in Docket No. RM19–15–000 to account for industry changes. These industry changes include: The decrease in reliance on oil and natural gas, the increase of natural gas supply due to access of shale reserves, and the decreasing costs of renewable energy sources. Due to the modifications in the rulemaking, the Commission revised its information collection requirements. The Commission now collects the following information on FERC Form 912:

- § 292.310: An electric utility's application for the *termination of its obligation* to purchase energy from a QF,
- § 292.311: An affected entity or person's application to the Commission for an order *reinstating the electric utility's obligation* to purchase energy from a QF,
- § 292.312: An electric utility's application for the *termination of its obligation* to sell energy and capacity to QFs, and
- § 292.313: An affected entity or person's application to the Commission for an order *reinstating the electric utility's obligation* to sell energy and capacity to QFs.[2]

Type of Respondents: Electric utilities.

Estimate of Annual Burden: [3] The Commission estimates the total Public Reporting Burden and cost for this information collection as follows:

[1] Public Law 109–58, 119 Stat. 594 (2005).

[2] 18 CFR 292.311 and 292.313.

[3] Burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

FERC–912 (IC22–9–000): COGENERATION AND SMALL POWER PRODUCTION, PURPA SECTION 210(m) REGULATIONS FOR TERMINATION OR REINSTATEMENT OF OBLIGATION TO PURCHASE OR SELL

	Number of respondents (1)	Number of responses per respondent (2)	Total number of responses (1) × (2) = (3)	Average burden hours and average cost per response ($)[4] (4)	Total annual burden hours and total annual cost ($) (3) × (4) = (5)	Cost per respondent ($) (5) ÷ (1) = (6)
Termination of obligation to purchase	10	1.5	15	12, $1,044	180, $15,660	$1,566
Reinstatement of obligations to purchase	0	0	0	0, $0	0, $0	0
Termination of obligation to sell	2	1	2	8, $696	16, $1,392	696
Reinstatement of obligation to sell	0	0	0	0, $0	0, $0	0
Total					196 hours, $17,052	2,262

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: March 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06573 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

[4] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $87.00 per Hour = Average Cost per Response. The hourly cost figure comes from the FERC average salary ($180,702/year). Commission staff believes the 2021 FERC average salary to be a representative wage for industry respondents.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP22–710–000.

Applicants: Midwestern Gas Transmission Company.

Description: § 4(d) Rate Filing: Negotiated Rate PAL Remove Twin Eagle RP3067 to be effective 4/22/2022.

Filed Date: 3/22/22.

Accession Number: 20220322–5009.

Comment Date: 5 p.m. ET 4/4/22.

Docket Numbers: RP22–711–000.

Applicants: Viking Gas Transmission Company.

Description: § 4(d) Rate Filing: Negotiated Rate PAL Remove World Fuel Services Feb 2022 to be effective 4/22/2022.

Filed Date: 3/22/22.

Accession Number: 20220322–5017.

Comment Date: 5 p.m. ET 4/4/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 22, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06502 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1418–000]

Trailstone Renewables, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Trailstone Renewables, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 11, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this

time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 22, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06501 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–24–000.
Applicants: GridLiance High Plains LLC.
Description: Response to December 10, 2021 Deficiency Letter of GridLiance High Plains LLC.
Filed Date: 3/9/22.
Accession Number: 20220309–5041.
Comment Date: 5 p.m. ET 3/30/22.

Docket Numbers: EC22–48–000.
Applicants: Imperial Valley Solar 2, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Imperial Valley Solar 2, LLC.
Filed Date: 3/22/22.
Accession Number: 20220322–5043.
Comment Date: 5 p.m. ET 4/12/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–70–000.
Applicants: Ledyard Windpower, LLC.
Description: Notice of Self Certification of Exempt Wholesale Generator Status of Ledyard Windpower, LLC.
Filed Date: 3/21/22.
Accession Number: 20220321–5198.
Comment Date: 5 p.m. ET 4/11/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1339–003.
Applicants: California Ridge Wind Energy LLC.
Description: Compliance filing: Compliance Filing Under Docket ER21–1339 to be effective 6/1/2021.
Filed Date: 3/22/22.
Accession Number: 20220322–5053.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER21–1365–002.
Applicants: Fowler Ridge IV Wind Farm LLC.
Description: Compliance filing: Compliance Filing Under Docket ER21–1365 to be effective 3/13/2021.
Filed Date: 3/22/22.
Accession Number: 20220322–5054.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–210–001.
Applicants: ENGIE 2020 ProjectCo-NH1 LLC.
Description: Refund Report: Refund Report to be effective N/A.
Filed Date: 3/22/22.
Accession Number: 20220322–5048.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1208–000; ER21–1294–000; ER22–671–000.
Applicants: SunZia Transmission, LLC, Pattern Energy Group LP, SunZia Transmission, LLC, SunZia Transmission, LLC.
Description: Supplement to SunZia Transmission, LLC Request for Negotiated Rate Authority and Filing of a Post-Selection Open Solicitation Report.
Filed Date: 3/21/22.
Accession Number: 20220321–5205.
Comment Date: 5 p.m. ET 3/31/22.

Docket Numbers: ER22–1400–000.
Applicants: Jersey Central Power & Light Company, Pennsylvania Electric Company.
Description: Jersey Central Power & Light and Pennsylvania Electric Company Submit a Notice of Cancellation of the Wheeling and Supplemental Power Agreement with Borough of Butler.
Filed Date: 3/15/22.
Accession Number: 20220315–5303.
Comment Date: 5 p.m. ET 4/5/22.

Docket Numbers: ER22–1415–000.
Applicants: Appalachian Power Company.
Description: § 205(d) Rate Filing: MBR AEP Operating Companies Market Based Rates Tariff to be effective 12/31/9998.
Filed Date: 3/21/22.
Accession Number: 20220321–5147.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: ER22–1415–001.
Applicants: Appalachian Power Company.
Description: Tariff Amendment: MBR AEP Operating Companies Market Based Rates Tariff to be effective 12/31/9998.
Filed Date: 3/22/22.
Accession Number: 20220322–5049.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1416–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Athos Power Plant LA Exec (Q1405) TOT849 SA280 to be effective 3/23/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5003.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1417–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc., submits the Forward Capacity Auction Results Filing for the Sixteenth Forward Capacity Auction.
Filed Date: 3/21/22.
Accession Number: 20220321–5185.
Comment Date: 5 p.m. ET 5/5/22.

Docket Numbers: ER22–1418–000.
Applicants: Trailstone Renewables, LLC.
Description: Baseline eTariff Filing: Baseline new to be effective 3/23/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5028.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1419–000.
Applicants: Jersey Central Power & Light Company, Pennsylvania Electric Company.
Description: Jersey Central Power & Light and Pennsylvania Electric Company Submit A Notice of Cancellation of the Wheeling and Supplemental Power Agreement among JCPL, Penelec and the Borough of Seaside Heights, New Jersey, dated September 15, 1993.
Filed Date: 3/21/22.
Accession Number: 20220321–5200.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: ER22–1420–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: OATT & OA revisions to clarify rules for participation of Hybrid Resources to be effective 6/1/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5047.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1420–001.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Amendment to revisions for participation of Hybrid Resources in ER22–1420 to be effective 12/31/9998.
Filed Date: 3/22/22.
Accession Number: 20220322–5058.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1421–000.
Applicants: Northern States Power Company, a Minnesota corporation.

Description: § 205(d) Rate Filing: 2022–03–22 NSP–CHAK–West Creek–FSA–707–0.0.0 to be effective 3/23/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5063.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1422–000.
Applicants: Midcontinent Independent System Operator, Inc., MidAmerican Energy Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–03–22_MidAmerican Depreciation Rates to be effective 6/1/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5075.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1423–000.
Applicants: Appalachian Power Company.
Description: § 205(d) Rate Filing: OATT—Kentucky Power Removal to be effective 12/31/9998.
Filed Date: 3/22/22.
Accession Number: 20220322–5080.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1424–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Request for Limited Auth—MBR to be effective 5/22/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5108.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1425–000.
Applicants: Northern Indiana Public Service Company LLC.
Description: § 205(d) Rate Filing: Supplement to WVPA IA to Remove Delivery Point to be effective 5/31/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5121.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1426–000.
Applicants: Appalachian Power Company.
Description: Tariff Amendment: APCO-Cancellation of Tariffs 204,301,305 to be effective 5/22/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5138.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1427–000.
Applicants: Northern Indiana Public Service Company LLC.
Description: § 205(d) Rate Filing: Supplement to WVPA IA to Remove Delivery Point to be effective 3/31/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5139.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1428–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of WMPA SA No. 6273; Queue AG2–422 to be effective 4/18/2022.
Filed Date: 3/22/22.
Accession Number: 20220322–5158.
Comment Date: 5 p.m. ET 4/12/22.

Docket Numbers: ER22–1429–000.
Applicants: Appalachian Power Company.
Description: § 205(d) Rate Filing: RS 34—AEP East Transmission Agreement to be effective 12/31/9998.
Filed Date: 3/22/22.
Accession Number: 20220322–5163.
Comment Date: 5 p.m. ET 4/12/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 22, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06500 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2444–040]

Northern States Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Request for a temporary amendment of reservoir elevation requirement.
b. *Project No.:* 2444–040.
c. *Date Filed:* March 9, 2022.
d. *Applicant:* Northern States Power Company.
e. *Name of Project:* White River Hydroelectric Project.
f. *Location:* The project is located on the White River in Ashland County, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Mr. Matthew Miller, 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, WI 54702, (715) 737–1353.
i. *FERC Contact:* Mr. Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov*.
j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/doc-sfiling/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include docket number P–2444–040.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The applicant requests a temporary amendment of its minimum reservoir elevation requirement to allow for gate inspections and repairs. The applicant states it would draw down the reservoir to approximately 8 feet below the normal elevation to allow for work on its spillway gates. The applicant expects the drawdown to last 4 to 6 weeks, but requests the Commission allow it to

perform the drawdown anytime between July 1 and October 31, 2022 to allow for weather and other contingences.

l. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Motions to Intervene, or Protests:* Anyone may submit comments, a motion to intervene, or a protest in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, motions to intervene, or protests must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''MOTION TO INTERVENE'', or ''PROTEST'' as applicable; (2) set forth in the heading the name of the applicant and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06510 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–47–000.
Applicants: Berkshire Hathaway Inc.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Berkshire Hathaway Inc.
Filed Date: 3/21/22.
Accession Number: 20220321–5202.
Comment Date: 5 p.m. ET 4/11/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–71–000.
Applicants: Powell River Energy Inc.
Description: Powell River Energy Inc. submit Notice of Self-Certification Exempt Wholesale Generator Status.
Filed Date: 3/23/22.
Accession Number: 20220323–5048.
Comment Date: 5 p.m. ET 4/13/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1368–001; ER17–1669–001; ER18–1237–000; ER19–318–001.
Applicants: Cleco Power LLC, Cleco Power LLC, Cleco Power LLC, Cleco Power LLC.
Description: Midcontinent Independent System Operator, Inc. submits Compliance Refund Report Associated with Teche 3 System Support Resource Agreements.
Filed Date: 3/18/22.
Accession Number: 20220318–5194.
Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER17–2515–007.
Applicants: Chambers Cogeneration, Limited Partnership.
Description: Compliance filing: Response to Deficiency Letter to be effective N/A.
Filed Date: 3/23/22.
Accession Number: 20220323–5144.
Comment Date: 5 p.m. ET 4/13/22.

Docket Numbers: ER22–59–000.
Applicants: Navajo Tribal Utility Authority.
Description: Amendment to October 6, 2021 Petition for Limited Waiver of Navajo Tribal Utility Authority.
Filed Date: 3/4/22.
Accession Number: 20220304–5296.
Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1205–000.
Applicants: Evergy Kansas Central, Inc.
Description: Formal Challenge of Kansas Transmission Customers to March 7, 2022 Annual Informational Filing by Evergy Kansas Central, Inc.
Filed Date: 3/22/22.
Accession Number: 20220322–5196.
Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: ER22–1412–000.
Applicants: Liberty County Solar Project, LLC.
Description: Request for Limited Tariff Waiver, et al. of Liberty County Solar Project, LLC.
Filed Date: 3/21/22.
Accession Number: 20220321–5136.
Comment Date: 5 p.m. ET 4/11/22.

Docket Numbers: ER22–1430–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: EDF Renewables Development (Lightyear Solar) LGIA Filing to be effective 3/9/2022.
Filed Date: 3/23/22.
Accession Number: 20220323–5090.
Comment Date: 5 p.m. ET 4/13/22.

Docket Numbers: ER22–1431–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2022–03–23 Reliability Demand Response Resource (RDRR) Enhancements to be effective 12/31/9998.
Filed Date: 3/23/22.
Accession Number: 20220323–5091.
Comment Date: 5 p.m. ET 4/13/22.

Docket Numbers: ER22–1432–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: OATT—Time Zone Synchronization to be effective 5/23/2022.
Filed Date: 3/23/22.
Accession Number: 20220323–5104.
Comment Date: 5 p.m. ET 4/13/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings

can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 23, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06567 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD21–15–000]

Joint Federal-State Task Force on Electric Transmission; Notice Announcing Meeting and Inviting Agenda Topics

On June 17, 2021, the Commission established a Joint Federal-State Task Force on Electric Transmission (Task Force) to formally explore transmission-related topics outlined in the Commission's order.[1] The Commission stated that the Task Force will convene for multiple formal meetings annually, which will be open to the public for listening and observing and on the record.[2] The Task Force has convened for two public meetings: On November 10, 2021, in Louisville, Kentucky;[3] and on February 16, 2022, in Washington, DC.[4] The third public meeting of the Task Force will be held virtually on May 6, 2022, from approximately 10:00 a.m. to 4:00 p.m. Eastern time. Commissioners may attend and participate in this meeting.

The meeting will be open to the public for listening and observing and on the record. There is no fee for attendance and registration is not required. The public may attend via Webcast.[5] This conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, 202–347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

As explained in the Establishing Order, the Commission will issue agendas for each meeting of the Task Force, after consulting with all Task Force members and considering suggestions from state commissions.[6] The Establishing Order set forth a broad array of transmission-related topics that the Task Force has the authority to examine with a focus on topics related to planning and paying for transmission, including transmission to facilitate generator interconnection, that provides benefits from a federal and state perspective.[7]

Discussion at the May 6, 2022 meeting will be focused on examining barriers to the efficient, expeditious, and reliable interconnection of new resources through the FERC-jurisdictional interconnection processes, including the allowance of participant funding for interconnection-related network upgrades in regional transmission organizations and independent system operators. All interested persons, including all state commissioners, are hereby invited to file comments in this docket suggesting agenda items relating to this topic by April 12, 2022. The Task Force members will consider the suggested agenda items in developing the agenda for the May 6, 2022 public meeting. The Commission will issue the agenda no later than April 22, 2022, for the meeting to be held on May 6, 2022.

Comments may be filed electronically via the internet.[8] Instructions are available on the Commission's website, *https://www.ferc.gov/ferc-online/overview*. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, submissions sent via the U.S. Postal Service must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Federal Energy Regulatory Commission, Office of the Secretary, 12225 Wilkins Avenue, Rockville, Maryland 20852.

More information about the Task Force, including frequently asked questions, is available here: *https://www.ferc.gov/TFSOET*. For more information about this meeting, please contact: Gretchen Kershaw, 202–502–8213, *gretchen.kershaw@ferc.gov*; or Jennifer Murphy, 202–898–1350, *jmurphy@naruc.org*. For information related to logistics, please contact Benjamin Williams, 202–502–8506, *benjamin.williams@ferc.gov*; or Rob Thormeyer, 202–502–8694, *robert.thormeyer@ferc.gov*.

Dated: March 22, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06509 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–517–001]

Golden Pass Terminal, LLC; Notice of Availability of the Environmental Assessment for the Proposed Golden Pass LNG Export Variance Request No. 15 Variance Amendment

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Golden Pass LNG Export Variance Request No. 15 Amendment (Amendment), proposed by Golden Pass LNG Terminal LLC (GPLNG) in the above referenced docket.

GPLNG is requesting authority to increase the peak workforce in the Amendment, up to 7,700 workers per day. GPLNG is also requesting the authority to increase traffic volumes to accommodate the additional workforce, and a 7-day-per-week, 24-hour-per-day construction schedule for certain activities during the remaining construction period at the terminal site in Jefferson County, Texas. GPLNG anticipates completing the Golden Pass LNG Export Project in 2025.

The EA assesses the potential environmental effects of the proposed construction modification of the Amendment in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Amendment, with appropriate mitigating measures, would not constitute a major federal action

[1] *Joint Fed.-State Task Force on Elec. Transmission,* 175 FERC ¶ 61,224 (2021) (Establishing Order).

[2] *Id.* P 4.

[3] *See Joint Fed.-State Task Force on Elec. Transmission,* 176 FERC ¶ 61,131, at P 6 (2021); *Joint Fed.-State Task Force on Elec. Transmission,* Notice, Docket No. AD21–15–000 (issued Oct. 27, 2021).

[4] *See Joint Fed.-State Task Force on Elec. Transmission,* Supplemental Notice, Docket No. AD21–15–000 (issued Feb. 15, 2022); *Joint Fed.-State Task Force on Elec. Transmission,* Notice, Docket No. AD21–15–000 (issued Feb. 2, 2022); *Joint Fed.-State Task Force on Elec. Transmission,* Notice, Docket No. AD21–15–000 (issued Dec. 14, 2021).

[5] A link to the Webcast will be available on the day of the event at *https://www.ferc.gov/TFSOET.*

[6] Establishing Order, 175 FERC ¶ 61,224 at PP 4, 7.

[7] *Id.* P 6.

[8] *See* 18 CFR 385.2001(a)(1)(iii) (2021).

significantly affecting the quality of the human environment.

The EA incorporates by reference the Commission staff's July 2016 Final Environmental Impact Statement issued in Docket No. CP14–517–000 and CP14–518–000 for the Golden Pass LNG Export Project and the Commission's findings and conclusions in its December 21, 2016 Order. The EA addresses the potential environmental effects of the Amendment on socioeconomics, environmental justice, visual resources, air quality, climate change, and noise.

The Commission mailed a copy of the Notice of Availability for this EA to federal, state, and local government representatives and agencies; Native American tribes; potentially affected landowners; and other interested individuals and groups. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP14–517). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The EA is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of issues raised in this proceeding. Any person wishing to comment on the EA may do so. Your comments should focus on the EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this Amendment, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on April 21, 2022.

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address using the U.S. Postal Service. Be sure to reference the project docket number (CP14–517–001) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent through carriers other than the U.S. Postal Service must be sent to 12225 Wilkins Avenue, Rockville, Maryland 20852 for processing.

Filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered. Only intervenors have the right to seek rehearing or judicial review of the Commission's decision. At this point in this proceeding, the timeframe for filing timely intervention requests has expired. Any person seeking to become a party to the proceeding must file a motion to intervene out-of-time pursuant to Rule 214(b)(3) and (d) of the Commission's Rules of Practice and Procedures (18 CFR 385.214(b)(3) and (d)) and show good cause why the time limitation should be waived. Motions to intervene are more fully described at *https://www.ferc.gov/ferc-online/ferc-online/how-guides.*

Additional information about the Golden Pass LNG Export Variance Request No. 15 Amendment is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using eLibrary. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription, which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: March 23, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06572 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1385–000]

BHER Market Operations, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BHER Market Operations, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 12, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 23, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06569 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–712–000.

Applicants: Cheyenne Connector, LLC.

Description: Compliance filing: CC 2022–03–22 Annual L&U Report to be effective N/A.

Filed Date: 3/22/22.

Accession Number: 20220322–5051.

Comment Date: 5 p.m. ET 4/4/22.

Docket Numbers: RP22–713–000.

Applicants: Spire STL Pipeline LLC.

Description: § 4(d) Rate Filing: Spire STL NRA Filing to be effective 4/1/2022.

Filed Date: 3/22/22.

Accession Number: 20220322–5095.

Comment Date: 5 p.m. ET 4/4/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 23, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06570 Filed 3–28–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9577–01–OW]

Meeting of the National Drinking Water Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Ground Water and Drinking Water is announcing a virtual meeting of the National Drinking Water Advisory Council (NDWAC or Council) as authorized under the Safe Drinking Water Act (SDWA). The purpose of the meeting is for EPA to update the Council on Safe Drinking Water Act programs and to consult with NDWAC as required by SDWA on a proposed National Primary Drinking Water Regulation (NPDWR) for per- and polyfluoroalkyl substances (PFAS), including perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS). Additional details including other topics for discussion will be provided in the meeting agenda, which will be posted on EPA's NDWAC website. See the **SUPPLEMENTARY INFORMATION** section of this announcement for more information.

DATES: The meeting will be held on April 19, 2022, from 10:30 a.m. to 5:30 p.m., eastern time.

ADDRESSES: This will be a virtual meeting. There will be no in-person gathering for this meeting. For more information about attending, providing oral statements, and accessibility for the meeting, as well as sending written comments, see the **SUPPLEMENTARY INFORMATION** section of this announcement.

FOR FURTHER INFORMATION CONTACT: Elizabeth Corr, NDWAC Designated Federal Officer, Office of Ground Water and Drinking Water (Mail Code 4601), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–3798; email address: *corr.elizabeth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Attending the Meeting: The meeting will be open to the general public. The meeting agenda and information on how to register for and attend the meeting online will be provided on EPA's website at: *https://www.epa.gov/ndwac* prior to the meeting.

Oral Statements: EPA will allocate one hour for the public to present oral comments during the meeting. Oral statements will be limited to three minutes per person during the public comment period. It is preferred that only one person present a statement on behalf of a group or organization. Persons interested in presenting an oral statement should send an email to *NDWAC@epa.gov* by noon, eastern time, on April 12, 2022.

Written Statements: Any person who wishes to file a written statement can do so before or after the Council meeting. Send written statements by email to *NDWAC@epa.gov* or see the **FOR FURTHER INFORMATION CONTACT** section if sending statements by mail. Written statements received by noon, eastern time, on April 12, 2022, will be distributed to all members of the Council prior to the meeting. Statements received after that time will become part of the permanent file for the meeting and will be forwarded to the Council members after conclusion of the meeting. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the NDWAC website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, or to request accommodations for a disability, please contact Elizabeth Corr by email at

corr.elizabeth@epa.gov, or by phone at (202) 564–3798, preferably at least 10 days prior to the meeting to allow as much time as possible to process your request.

National Drinking Water Advisory Council: NDWAC was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974, Public Law 93–523, 42 U.S.C. 300j–5, and is operated in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. NDWAC was established to advise, consult with, and make recommendations to the EPA Administrator on matters relating to activities, functions, policies, and regulations under SDWA. General information concerning NDWAC is available at: *https://www.epa.gov/ndwac.*

Jennifer L. McLain,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2022–06576 Filed 3–28–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1223; FR ID 78823]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of November 16, 2021 (86 FR 56713), concerning a request for comments for the information collection Payment Instructions from the Eligible Entity Seeking Reimbursement from the TV Broadcaster Relocation Fund. The document omitted the dates, addresses and for further information sections from this notice.

Correction

In the **Federal Register** of November 16, 2021, in FR Document 2021–24912, on page 63381, in the first column, correct the **DATES**, **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** caption to read as follows:

DATES: Written PRA comments should be submitted on or before May 31, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–06603 Filed 3–28–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 13, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jeffrey Anderson, Minneapolis, Minnesota; Ronald Buholzer and Susan Buholzer, as co-trustees of the Ronald and Susan Buholzer Trust, Joshua Lincicum, Braytn Meythaler, and Merik Meythaler, all of Monroe, Wisconsin; Gregory Kranhenbuhl, as trustee of the Gregory K. Kranhenbuhl Survivors Trust, both of Newton, Wisconsin; Myron Meythaler and Linda Meythaler, as co-trustees of the Myron A. Meythaler and Linda L. Meythaler Revocable Trust, Connie Lincicum, Barry Meythaler, and Summer Stietz, all of South Wayne, Wisconsin; Brandi House, Verona, Wisconsin; Jason Lincicum, Lodi, Wisconsin; Jeremy Lincicum, Mt. Horeb, Wisconsin; and Robin Schubert, Warren, Illinois;* as a group acting in concert to retain voting shares of Woodford Bancshares, Inc., and thereby indirectly retain voting shares of Woodford State Bank, both of Monroe, Wisconsin.

Additionally, Jeffrey Anderson Family Trust, Jeffrey Anderson, as trustee, both of Minneapolis, Minnesota; to acquire voting shares of Woodford Bancshares, Inc., and thereby indirectly acquire voting shares of Woodford State Bank.

2. *Robert K. Ginther, as trustee of the Merlin E. Zitzner Trust fbo Jenele R. Zitzner, Merlin E. Zitzner, Jenele R. Zitzner, Alexander M. E. Zitzner, and Tara Zitzner, all of Baraboo, Wisconsin;* as a group acting in concert, to retain voting shares of The Baraboo Bancorporation, Inc., and thereby indirectly retain voting shares of Baraboo State Bank, both of Baraboo, Wisconsin.

Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Andrew R. Stull, Kearney, Nebraska, and Jody L. Weitzel, Dacono, Colorado;* to join the Stull Family Group, a group acting in concert, to acquire voting shares of Farmers State Bancshares, Inc., and thereby indirectly acquire voting shares of Nebraska Bank, both of Dodge, Nebraska.

Board of Governors of the Federal Reserve System, March 24, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–06586 Filed 3–28–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 28, 2022.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204. Comments can also be sent electronically to *BOS.SRC.Applications.Comments@bos.frb.org:*

1. *1854 Bancorp, Cambridge, Massachusetts;* to acquire Patriot Community Bank, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, March 24, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–06585 Filed 3–28–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Postpartum Home Blood Pressure Monitoring, Postpartum Treatment of Hypertensive Disorders of Pregnancy, and Peripartum Magnesium Sulfate Regimens for Preeclampsia With Severe Features

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Postpartum Home Blood Pressure Monitoring, Postpartum Treatment of Hypertensive Disorders of Pregnancy, and Peripartum Magnesium Sulfate Regimens for Preeclampsia With Severe Features,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before April 28, 2022.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Postpartum Home Blood Pressure Monitoring, Postpartum Treatment of Hypertensive Disorders of Pregnancy, and Peripartum Magnesium Sulfate Regimens for Preeclampsia With Severe Features.* AHRQ is conducting this systematic review pursuant to Section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Postpartum Home Blood Pressure Monitoring, Postpartum Treatment of Hypertensive Disorders of Pregnancy, and Peripartum Magnesium Sulfate Regimens for Preeclampsia With Severe Features,* including those that describe adverse events. The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/hypertensive-disorders-pregnancy/protocol.*

This is to notify the public that the EPC Program would find the following information on *Postpartum Home Blood Pressure Monitoring, Postpartum Treatment of Hypertensive Disorders of Pregnancy, and Peripartum Magnesium Sulfate Regimens for Preeclampsia With Severe Features* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: Study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the *ClinicalTrials.gov* trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Key Questions (KQ)

KQ 1: What are the effectiveness, comparative effectiveness, and harms of home blood pressure monitoring/telemonitoring in postpartum individuals?

KQ 2: What are the effectiveness, comparative effectiveness, and harms of pharmacological treatments for hypertensive disorders of pregnancy in postpartum individuals?

KQ 3: What are the comparative effectiveness and harms of alternative magnesium sulfate ($MgSO_4$) treatment regimens to treat preeclampsia with severe features during the peripartum period?

3.a. Are there harms associated with the concomitant use of particular antihypertensive medications during treatment with $MgSO_4$?

For all Key Questions, how do the findings vary by race, ethnicity, HDP subgroup, maternal age, parity, singleton/multiple pregnancies, mode of delivery, co-occurring conditions (*e.g.,* obesity), and social determinants of health (*e.g.,* postpartum insurance coverage, English proficiency, income, educational attainment)?

Contextual Question (CQ)

CQ 1: How are race, ethnicity, and social determinants of health related to disparities associated with incidence of HDP, detection, access to care, management, followup care, and clinical outcomes in individuals with postpartum hypertensive disorders of pregnancy?

Study Eligibility Criteria

Key Question 1 (Home BP Monitoring)

Population

- Postpartum individuals (with or without a prior HDP diagnosis)

Modifiers/Subgroups of Interest

- Subgroups defined by ACOG HDP classification (some of which may arise *de novo* in the postpartum period)
  - chronic HTN
  - gestational HTN
  - preeclampsia (may be superimposed on chronic HTN)
  - preeclampsia with severe features (as defined by study authors)
  - *de novo* HTN postpartum
- Subgroups defined by BP diagnostic threshold(s)
- Race, ethnicity
- Maternal age, parity, singleton/multiple pregnancy, delivery (*e.g.,* cesarean versus vaginal delivery, preterm versus term)
- Co-occurring disorders (*e.g.,* obesity, diabetes)
- Subgroups defined by potential indicators of social determinants of health (*e.g.,* insurance coverage, English proficiency, income, educational attainment)
- Access to technology (*e.g.,* broadband internet, smartphone)

Interventions and Intervention Components

- Postpartum home BP monitoring interventions
  - Electronic, digital monitors, any
  - With or without web-based connectivity and communication
  - With or without education or training in use of monitor
  - With or without validation of accuracy of patient's monitor
- *Exclude: Ambulatory BP monitoring (e.g.,24- or 48-hour continuous monitoring)*
- *Exclude: Monitors with manual inflation and auscultation*
- *Exclude: BP monitoring only by third parties, such as home health aides, visiting nurses*
- *Exclude: Very limited use of monitoring (e.g., single reading or single day)*
- *Exclude: Use of device only in laboratory or clinic setting*

Comparators

- No home BP monitoring (*e.g.,* usual care with clinic-only BP monitoring)
- Alternative non-clinic-based BP monitoring approaches (*e.g.,* kiosks, pharmacy-based BP monitoring, home health aide visits)
- Alternative education modalities about self-monitoring BP (*e.g.,* demonstration of correct use, confirmation of appropriate cuff size)
- Alternative home BP monitor characteristics (*e.g.,* direct transmission of results, prompts for communication of symptoms)
- Alternative home BP monitoring regimen (*e.g.,* BP measurement frequency, duration)
- Alternative instructions for when to communicate results immediately (*e.g.,* different BP threshold alerts)
- Alternative mode of communicating results (*e.g.,* during clinic visit, automatic web-based, via text/email/portal/phone)
- Alternative clinician feedback processes
- No use of validation of accuracy of patient's monitor

Outcomes (prioritized outcomes have an asterisk and are in bold font)

- Blood pressure
  - **Ascertainment of elevated BP or new onset HDP** *
    - Time to clinical recognition of elevated BP
  - **Treatment** *
    - Initiation or discontinuation of antihypertensive medications
    - Increase or decrease in dose (or number) of antihypertensive medications
    - BP control (*e.g.,* BP normalization)
  - Documentation of BP after discharge
  - Recognition of white coat HTN
- Severe maternal outcomes
  - **Maternal mortality, including pregnancy-related mortality** *
  - **Severe maternal morbidity** * (*e.g.,* **stroke** *, eclampsia, pulmonary edema)
- Patient reported outcomes
  - Patient reported experience measures (PREMs) for example
    - **Satisfaction with postpartum care** *
    - Ease of access to care
    - Quality of communication
    - Support to manage HTN
    - Patient Reported Experience Measure of Obstetric racism (PREM–OB Scale)
  - Patient reported outcome measures (PROMs), for example
    - **Global Quality of life** *, *e.g.,* SF–36
    - Psychosocial distress
    - **Anxiety** *, *e.g.,* State-Trait Anxiety Inventory (STAI)
    - **Depression** *, *e.g.,* Edinburgh Postnatal Depression Score (EPDS)
- Healthcare utilization
  - **Length of postpartum hospital stay** *
  - **Unplanned obstetrical triage area or clinic visits** *
  - **Emergency department visits** *
  - **Re-hospitalization after discharge** *
- **Reduction of health disparities** * (increase in disparities included under *Harms*)
- Other Harms
  - **Generation or exacerbation of health disparities** *
  - Anxiety associated with use of monitoring technology

Study Design

- Comparative studies (comparisons of different interventions or regimens)
  - Randomized controlled trials (N ≥10 per group)
  - Nonrandomized comparative studies (prospective or retrospective) that use statistical techniques (*e.g.,* regression adjustment, propensity score matching, inverse probability weighting) to reduce bias due to confounding)
- Any publication language (unless cannot be translated)
- *Exclude*
  - Single group (noncomparative) studies

- Case-control studies
- Claims database analyses
- Feasibility studies
- Device validation studies (not including validation of patients' monitors in the clinic)
- Qualitative studies
- Conference abstracts prior to 2020 (without subsequent, eligible peer-reviewed publication)

Timing

- Intervention: Day of birth through 1 year postpartum
  - Self-monitoring may start antenatal, in hospital, or postpartum, but must continue postpartum
- Outcomes: Any (postpartum)

Setting

- Outpatient postpartum management (although training and initiation may start in hospital or at clinic)
- Any publication date
- Any country

Key Question 2 (Treatment of HDP)

Population

- Postpartum individuals with diagnosed HDP (whether diagnosed antenatal, peripartum, or postpartum)

Modifiers/Subgroups of Interest

- Subgroups defined by ACOG HDP classification (these may arise *de novo* in the postpartum period)
  - chronic HTN
  - gestational HTN
  - preeclampsia (may be superimposed on chronic HTN)
  - preeclampsia with severe features (as defined by study authors)
  - *de novo* HTN postpartum
- Subgroups defined by BP thresholds/categories
- Race, ethnicity
- Maternal age, parity, singleton/multiple pregnancy, mode of delivery (*e.g.,* cesarean versus vaginal delivery, preterm versus term)
- Co-occurring disorders (*e.g.,* obesity, diabetes)
- Subgroups defined by potential indicators of social determinants of health (*e.g.,* insurance coverage, English proficiency, income, educational attainment)
- Use of home monitoring

Interventions

- Pharmacological treatments for HTN or HDP administered postpartum
  - Antihypertensive medications (single or combination therapies)
  - Loop diuretics (alone or in combination with antihypertensive medications)
- *Exclude:*
  - *Medication not available for use in the U.S.*
  - *Nonpharmacological treatments (e.g., uterine curettage)*
  - *Corticosteroids (e.g., for HELLP)*
  - *Interventions to prevent preeclampsia (e.g., low-dose aspirin)*
  - *Treatments not used to treat HDP (e.g., NSAIDs)*
  - *Behavioral modification (e.g., diet, exercise)*
  - *Non-medical interventions (e.g., traditional medicine, complementary and alternative medicine, meditation, mindfulness)*

Comparators

- Alternative specific treatments (*e.g.,* alternative antihypertensive medication(s) or combinations of medications, alternative diuretic)
- Alternative treatment regimen (*e.g.,* alternative dose, duration of treatment)
- Alternative blood pressure targets
- No treatment (or placebo)
- *Exclude: Excluded interventions*

Outcomes (prioritized outcomes have an asterisk and are in bold font)

- Intermediate outcomes
  - **Blood pressure control** *
  - Measures of end-organ function
    - Cardiovascular measures (*e.g.,* echocardiographic measurements of diastolic function and hypertrophy)
    - Kidney function (*e.g.,* estimated glomerular filtration rate)
- Severe maternal outcomes
  - **Maternal mortality, including pregnancy-related mortality** *
  - **Severe maternal morbidity** * (*e.g.,* **stroke** *, eclampsia, pulmonary edema)
- Patient reported outcomes
  - Patient reported experience measures (PREMs), for example
    - **Satisfaction with postpartum care** *
    - Ease of access to care
    - Quality of communication
    - Support to manage HTN
  - Patient reported outcome measures (PROMs), for example
    - **Global Quality of life** *, *e.g.,* SF–36
    - Maternal-neonatal bonding, *e.g.,* Postpartum Bonding Questionnaire
    - Psychosocial distress
- **Anxiety** *, *e.g.,* State-Trait Anxiety Inventory (STAI)
- **Depression** *, *e.g.,* Edinburgh Postnatal Depression Score (EPDS)
- Healthcare utilization
  - **Length of postpartum hospital stay** *
  - **Unplanned obstetrical triage area or clinic visits** *
  - **Emergency department visits** *
  - **Re-hospitalization after discharge** *
- Infant health outcomes
  - **Breastfeeding outcomes (e.g., initiation, success, duration)** *
- **Reduction of health disparities** * (increase in disparities included under *Harms*)
- Harms
  - **Severe adverse events** * (*e.g.,* electrolyte abnormalities, severe hypotension)
  - **Infant morbidities** * (*e.g.,* hypotension, other symptoms attributed to medication exposure via breast milk)
  - **Generation or exacerbation of health disparities** *
  - Adverse interactions with other medications

Study Design

- Comparative studies (comparisons of different interventions or regimens)
  - Randomized controlled trials (N ≥10 per group)
  - Nonrandomized comparative studies (prospective or retrospective) that use statistical techniques (*e.g.,* regression adjustment, propensity score matching, inverse probability weighting) to reduce bias due to confounding
- Any publication language (unless cannot be translated)
- *Exclude*
  - Single group (noncomparative) studies
  - Case-control studies
  - Claims database analyses
  - Feasibility studies
  - Qualitative studies
  - Conference abstracts prior to 2020 (without subsequent, eligible peer-reviewed publication)

Timing

- Intervention: Day of birth up to 1 year postpartum
  - Intervention may start antenatal, in hospital, or postpartum, but must continue postpartum
- Outcomes: Any (postpartum)

Setting

- Outpatient, non-acute management (treatment may start inpatient)
- Any publication date
- Any country

Key Question 3 ($MgSO_4$ for Preeclampsia With Severe Features)

Population

- Individuals who have preeclampsia with severe features (as defined by study authors) during the peripartum period (prior to and/or after delivery)
- *Exclude: Pregnant patients who are treated with $MgSO_4$ with the goal of suppressing premature labor, for fetal neuroprotection, or for other reasons*

Modifiers/Subgroups of Interest

- Race, ethnicity
- Maternal age, parity, singleton/multiple pregnancy, mode of delivery (*e.g.,* cesarean versus vaginal delivery, preterm versus term)
- Co-occurring disorders (*e.g.,* obesity, diabetes)
- Subgroups defined by potential indicators of social determinants of health (*e.g.,* insurance coverage, English proficiency, income, educational attainment)
- Timing of $MgSO_4$ administration or onset of preeclampsia with severe features with respect to delivery
  - Antepartum
  - Intrapartum
  - Postpartum
- Individuals with reduced kidney function

Interventions

- Peripartum $MgSO_4$ administration
  - Any dose, route (except oral), timing, duration of treatment, concomitant treatment, or regimen
- *Exclude:* Oral magnesium supplementation

Comparators

- Alternative $MgSO_4$ regimens
  - Different criteria for initiation of treatment
  - Different criteria for stopping (or continuing) treatment
  - Different criteria for altering dosing during treatment
  - Different loading dose
  - Different planned total dose
  - Different route
  - Different planned duration of treatment
  - Tailored interventions based on pharmacokinetic monitoring (*i.e.,* based on serum Mg levels)
  - Combined treatment with antihypertensive medications (including regimens with alternative antihypertensive medications)
  - Other variations in regimens
- *Exclude:* No $MgSO_4$ treatment (either placebo, no treatment, or non-$MgSO_4$ comparators)
  - Except retain RCTs with placebo, no treatment, or non-$MgSO_4$ comparators and NRCSs comparing $MgSO_4$ with no $MgSO_4$ for postpartum preeclampsia with severe features These may be included in network meta-analyses to indirectly compare alternative $MgSO_4$ regimens.

Outcomes (prioritized outcomes have an asterisk and are in bold font)

- Severe maternal health outcomes
  - **Maternal mortality, including pregnancy-related mortality** *
  - **Severe maternal morbidity** * (*e.g.,* **eclampsia** *, stroke)
- Newborn/child outcomes
  - **Infant morbidities** * (*e.g.,* respiratory depression, Apgar score)
  - **Breastfeeding outcomes** * (*e.g.,* initiation, success, duration)
  - Fetal/neonatal mortality
  - Cognitive function
- Healthcare utilization and functional status
  - Length of postpartum hospital stay
  - Time to ambulation
- Patient reported outcomes
  - Patient reported experience measures (PREMs), for example
    - **Satisfaction with care** *
    - Quality of communication
    - Support to manage preeclampsia treatment
  - Patient reported outcome measures (PROMs), for example
    - **Global Quality of life** *, *e.g.,* SF–36
    - **Specific to postpartum population***, *e.g.,* Mother-Generated Index, Functional Status After Childbirth scales
    - Psychosocial distress
- **Anxiety** *, *e.g.,* State-Trait Anxiety Inventory (STAI)
- **Depression** *, *e.g.,* Edinburgh Postnatal Depression Score (EPDS)
- **Stress** *, *e.g.,* Impact of Event Scale
- **Maternal-neonatal bonding** *, *e.g.,* Postpartum Bonding Questionnaire
- **Reduction of health disparities** * (increase in disparities included under *Harms*)
- Maternal harms/adverse events
  - **Magnesium-related toxicity** * (respiratory depression, loss of reflexes, reduced urine output, need for calcium infusion) *
  - **Other clinically important adverse events*** (*e.g.,* hypotension, neuromuscular blockade)
  - **Adverse drug interactions** * (*e.g.,* with antihypertensive medications)
  - **Generation or exacerbation of health disparities** *
  - Other serious (*e.g.,* severe flushing)

Study Design

- Comparative studies (comparisons of different interventions)
  - Randomized controlled trials N ≥10 per group
    - Comparisons between $MgSO_4$ and placebo/no treatment or non-$MgSO_4$ treatments must be randomized (for potential network meta-analyses)
  - Nonrandomized comparative studies (prospective or retrospective) that use statistical techniques (*e.g.,* regression adjustment, propensity score matching, inverse probability weighting) to reduce bias due to confounding
- Any publication language (unless cannot be translated)
- *Exclude*
  - Single group (noncomparative) studies
  - Case-control studies
  - Claims database analyses
  - Feasibility studies
  - Qualitative studies
  - Conference abstracts prior to 2020 (without subsequent, eligible peer-reviewed publication)

Timing

- Intervention: Peripartum (antenatal, during delivery hospitalization, postpartum)
- Outcomes: Any

Setting

- Inpatient management
- Any publication date
- Any country

Dated: March 23, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–06532 Filed 3–28–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Thursday, May 12, 2022, from 10:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Jaime Zimmerman, Designated Management Official, at the Agency for Healthcare Research and Quality, 5600 Fishers Lane, Mail Stop 06E37A, Rockville, Maryland 20857, (301) 427–1456. For press-related information, please contact Bruce Seeman at (301) 427–1998 or *Bruce.Seeman@AHRQ.hhs.gov.*

Closed captioning will be provided during the meeting. If another reasonable accommodation for a disability is needed, please contact the

Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than Monday, May 2, 2022. The agenda, roster, and minutes will be available from Ms. Heather Phelps, Committee Management Officer, Agency for Healthcare Research and Quality, 5600 Fishers Lane, Rockville, Maryland 20857. Ms. Phelps' phone number is (301) 427–1128.

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app., this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality (the Council). The Council is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director of AHRQ on matters related to AHRQ's conduct of its mission including providing guidance on (A) priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships. The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Thursday, May 12, 2022, the Council meeting will convene at 10:00 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The meeting will begin with an introduction of NAC members, an update on AHRQ activities, and a discussion about new opportunities with AHRQ's new Director. The agenda will also include discussions about AHRQ and the Patient-Centered Outcomes Research (PCOR) Trust Fund and AHRQ's role in conducting and supporting health services research, analysis and evaluations focused on understanding the effects of healthcare financing policies. The meeting will adjourn at 3:00 p.m. The meeting is open to the public. For information regarding how to access the meeting as well as other meeting details, including information on how to make a public comment, please go to *https://www.ahrq.gov/news/events/nac/*. The final agenda will be available on the AHRQ website no later than Thursday, May 5, 2022.

Dated: March 23, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–06527 Filed 3–28–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of five AHRQ subcommittee meetings.

SUMMARY: The subcommittees listed below are part of AHRQ's Health Services Research Initial Review Group Committee. Grant applications are to be reviewed and discussed at these meetings. Each subcommittee meeting will be closed to the public.

DATES: See below for dates of meetings:

1. *Healthcare Research Training (HCRT)*
   Dates: May 19–20, 23, 2022
   July 15, 2022
2. *Healthcare Effectiveness and Outcomes Research (HEOR)*
   Date: June 8–9, 2022
3. *Healthcare Information Technology Research (HITR)*
   Date: June 9–10, 2022
4. *Healthcare Safety and Quality Improvement Research (HSQR)*
   Date: June 15–16, 2022
5. *Health System and Value Research (HSVR)*
   Date: June 16–17, 2022

ADDRESSES: Agency for Healthcare Research and Quality (Virtual Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: (To obtain a roster of members, agenda or minutes of the non-confidential portions of the meetings.)

Jenny Griffith, Committee Management Officer, Office of Extramural Research Education and Priority Populations, Agency for Healthcare Research and Quality (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 427–1557.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), AHRQ announces meetings of the above-listed scientific peer review groups, which are subcommittees of AHRQ's Health Services Research Initial Review Group Committee. The subcommittee meetings will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2 section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: March 23, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–06525 Filed 3–28–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10398 #74 and #76]

Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance related to the ''generic'' clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are ''usually voluntary, low-burden, and uncontroversial collections,'' do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and

CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit comments regarding our burden estimates or any other aspect of this collection of information, including: The necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 12, 2022.

ADDRESSES: When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: CMS–10398 (#____)/OMB control number: 0938–1148, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may access CMS' website at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Following is a summary of the use and burden associated with the subject information collection(s). More detailed information can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

Generic Information Collections

1. *Title of Information Collection:* Coverage of Routine Patient Cost for Items & Services in Qualifying Clinical Trials; *Type of Information Collection Request:* Revised; *Use:* Section 210 of the Consolidated Appropriations Act of 2021 amended section 1905(a) of the Social Security Act (the Act) to add a new mandatory benefit at 1905(a)(30). The new benefit mandates coverage of routine patient services and costs furnished in connection with participation by Medicaid beneficiaries in qualifying clinical trials. Routine costs for services provided in connection with participation in a qualifying clinical trial generally include any item or service provided to the individual under the qualifying clinical trial, including any item or service provided to prevent, diagnose, monitor, or treat complications resulting from participation in the qualified clinical trial, to the extent that the provision of such items or services to the individual would otherwise be covered under the state plan or waiver.

We propose that States and territories review the preprints completed for a Medicaid beneficiary to receive coverage of routine patient services and costs furnished in connection with participation in qualifying clinical trials. Completion of the preprint pages verifies in the Medicaid state plan that the mandatory clinical trials benefit is being furnished by a state. Completion of the preprint verifies that the requirements of a federally sponsored clinical trial is appropriate for the Medicaid beneficiary. *Form Number:* CMS–10398 (#74) (OMB control number: 0938–1148); *Frequency:* Once and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 66; *Total Annual Hours:* 61. (For policy questions regarding this collection contact Myla Adams at 410–786–8107.)

2. *Title of Information Collection:* Expressions of interest in the Improving Maternal Health by Reducing Low-Risk Cesarean Delivery Affinity Group; *Type of Information Collection Request:* New collection of information request; *Use:* State Medicaid and CHIP agencies are given the opportunity to submit the attached Expression of Interest Form regarding participation in the Improving Maternal Health by Reducing Low-Risk Cesarean Delivery Affinity Group. Information requested will be used to see if each state meets the criteria for participation in the Affinity Group. Criteria for affinity group participation include:

- Well-articulated goals for improving low-risk cesarean delivery rates,
- An understanding of the state's challenges and opportunities related to low-risk cesarean deliveries,
- Access to low-risk cesarean delivery data, including the ability to report the Core Set measure Low-Risk Cesarean Delivery (LRCD–CH),
- Identification of a well-rounded state team willing to work about 10 to 15 hours each month (depending on role, project, and team size) on the state quality improvement (QI) project, and
- Commitment to action, with support from Medicaid and/or CHIP leadership.

Once participating in the Affinity Group, a states will meet monthly virtually for workshops and one-on-one state coaching calls, learning from QI advisors, subject matter experts, and peers in order to test, implement, and assess their data-driven QI change idea.

Form Number: CMS–10398 (#76) (OMB control number: 0938–1148); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 20; *Total Annual Responses:* 20; *Total Annual Hours: 140.* (For policy questions regarding this collection contact Kristen Zycherman at 410–786–6974.)

Dated: March 24, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–06593 Filed 3–28–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10433 and CMS–276]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow

a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Continuation of Data Collection to Support QHP Certification and other Financial Management and Exchange Operations; *Use:* As directed by the rule Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310) (Exchange rule), each Exchange is responsible for the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain necessary minimum certification standards, such as network adequacy, inclusion of Essential Community Providers (ECPs), and non-discrimination. The Exchange is responsible for ensuring that QHPs meet these minimum certification standards as described in the Exchange rule under 45 CFR 155 and 156, based on the Patient Protection and Affordable Care Act (PPACA), as well as other standards determined by the Exchange. Issuers can offer individual and small group market plans outside of the Exchanges that are not QHPs. *Form Number:* CMS–10433 (OMB control number: 0938–1187); *Frequency:* Annually; *Affected Public:* Private sector, State, Local, or Tribal Governments, Business or other for-profits; *Number of Respondents:* 2,925; *Number of Responses:* 2,925; *Total Annual Hours:* 71,660. (For questions regarding this collection contact Nikolas Berkobien at (301) 492–4400.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Use:* This Cost Report outlines the provisions for implementing Section 1876 (h) and Section 1833 (a)(1)(A) of the Social Security Act. Organizations contracting with the Secretary under Section 1876 and Section 1833 of the Social Security Act provide health services on a prepayment basis to enrolled members and are required to submit adequate cost and statistical data, based on financial records, in order to be reimbursed on reasonable cost basis by CMS. These organizations include Health Maintenance Organizations (HMOs) and Competitive Medical Plans (CMPs) under Section 1876, in addition to, Health Care Prepayment Plans (HCPPs) under Section 1833. These entities may be collectively referred to as Managed Care Organizations (MCOs). The cost and statistical data is submitted to CMS within the cost report, Form CMS 276 (OMB No.0938–0165). CMS is responsible for the receipt and processing of Form CMS 276. Form CMS 276, provided by CMS as excel worksheets, covers the prescribed format for the cost reports.

The cost report worksheets are designed to be of sufficient flexibility to take into account the diversity of operations, yet provide the necessary cost and statistical information to enable CMS to determine the proper amount of payment to the Plan. Cost-based MCOs must submit through HPMS an annual Budget Forecast, semi-annual interim, and final cost report to CMS, all of which are included in this collection. Additionally, HMOs/CMPs are required to submit fourth quarter interim reports annually to CMS; however, the required submission of 4th quarter interim reports is waived until further notice by CMS. Please note that HCPPs are not required to submit fourth quarter interim reports. *Form Number:* CMS–276 (OMB control number: 0938–0165); *Frequency:* Quarterly; *Affected Public:* Private Sector *Number of Respondents:* 17; *Number of Responses:* 51; *Total Annual Hours:* 1,612. (For questions regarding this collection contact Frank Cisar at 410–786–7553).

Dated: March 24, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–06591 Filed 3–28–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Gabriella Miller Kids First.

Date: May 6, 2022.

Time: 11:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Room 3185, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Room 3185, Bethesda, MD 20892, (301) 402–8837, *barbara.thomas@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 23, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–06494 Filed 3–28–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7062–N–04]

Privacy Act of 1974; System of Records

AGENCY: Office of Assistant Secretary for Administration, Privacy Office, HUD.

ACTION: Notice of a rescindment of a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD) is issuing a public notice of its intent to rescind the Director to Chief Technology Officer: Digital Identity and Access Management System (DIAMS).

DATES: *Effective date:* October 10, 2021—[**Federal Register**: Privacy Act of 1974; Notice of an Updated System of Records].

ADDRESSES: You may submit comments, identified by docket number HUD–2014–23117 by one of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: (202) 619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer, The Executive Secretariat, 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ladonne White, Chief Privacy Officer, The Privacy Office, 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: DIAMS does not directly collect PII. The information DIAMS uses is covered under the government-wide SORN GSA/GOVT–7 and therefore does not require a separate SORN.

SYSTEM NAME AND NUMBER:

Digital Identity and Access Management System (DIAMS)—OCIO/QN.01.

HISTORY:

77 FR 41996, (July 17, 2012).

Ladonne White,

Departmental Privacy Officer.

[FR Doc. 2022–06544 Filed 3–28–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6223–D–01]

Delegation and Redelegation of Authority for the Office of the Inspector General

AGENCY: Office of the Inspector General, HUD.

ACTION: Notice of delegation and redelegation of authority.

SUMMARY: This notice updates the delegation of authority of the Office of Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act to the Deputy Inspector General, the Assistant Inspectors General, and the Counsel to the Inspector General. This notice also redelegates to the above-mentioned officials and Deputy Assistant Inspectors General, Special Agents in Charge, Audit Directors, Assistant Audit Directors, and Directors within the Office of Evaluation the authority of the Inspector General to cause the seal of the Department to be affixed to certain documents and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department. This notice also delegates the authority to the Deputy Inspector General, the Assistant Inspector General for Investigation, the Deputy Assistant Inspectors General for Investigation, the Special Agents in Charge, and the Counsel to the Inspector General to request information.

DATES: March 22, 2022.

FOR FURTHER INFORMATION CONTACT: Maura Malone, Counsel to the Inspector General, Office of the Inspector General, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone (202) 708–1613. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This notice supersedes the delegation of authority published October 4, 2010. 75 FR 61166.

Section 6(a)(4) of the Inspector General Act of 1978 (5 U.S.C. app.) authorizes the Inspector General to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act. This notice delegates this authority to issue subpoenas from the Inspector General to the Deputy Inspector General, the Assistant Inspectors General, and the Counsel to the Inspector General.

This notice also redelegates to the above-mentioned officials the authority delegated to the Inspector General by the Secretary of HUD in the Delegation of Authority published on July 15, 2003, 68 FR 41840, which delegated to various officials, including the Inspector General, the authority to cause the seal of the Department to be affixed to certain documents and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department.

Section 552a(b)(7) authorizes the Inspector General to request information protected by the Privacy Act for a civil or criminal law enforcement activity. This notice delegates to the Deputy

Inspector General, the Assistant Inspector General for Investigations, the Deputy Assistant Inspectors General for Investigations, the Special Agents in Charge, and the Counsel to the Inspector General the authority to request information under 5 U.S.C. 552a(b)(7).

The Inspector General has not limited her authority to issue subpoenas or to affix the Departmental seal and certify copies of records, or to request information under 5 U.S.C. 552a by this delegation or redelegation. Also, this delegation and redelegation of authority prohibits further delegation or redelegation.

Accordingly, the Inspector General delegates and redelegates as follows:

Section A. Authority Delegated and Redelegated

The HUD Inspector General delegates to the Deputy Inspector General, the Assistant Inspectors General, and the Counsel to the Inspector General, who re-delegates and retains authority to the Deputy Counsel, the authority to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of the functions assigned by the Inspector General Act pursuant to Section 6(a)(4) of the Inspector General Act of 1978.

Additionally, the Inspector General redelegates to the Deputy Inspector General, the Assistant Inspectors General, the Deputy Assistant Inspectors General, the Special Agents in Charge, the Audit Directors, the Assistant Audit Directors, and the Directors within the Office of Evaluation, and the Counsel to the Inspector General the authority under the delegation of authority published July 15, 2003, 68 FR 41840, to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm or other document is a true copy of that in the files of the Department.

Additionally, the Inspector General delegates to the Deputy Inspector General, the Assistant Inspector General for Investigations, the Deputy Assistant Inspectors General for Investigations, the Special Agents in Charge, and the Counsel to the Inspector General the authority to request information under 5 U.S.C. 552a(b)(7).

Section B. No Further Delegation or Redelegation

The authority delegated and redelegated in Section A above may not be further delegated or redelegated.

Section C. Delegation of Authority Superseded

This delegation supersedes the previous delegation of authority published in the **Federal Register** October 4, 2010. 75 FR 61166.

Authority: Section 6(a)(4), Inspector General Act of 1978 (5 U.S.C. App.); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Delegation of Authority, July 15, 2003, 68 FR 41840; 5 U.S.C. 552a.

Valeria Oliver Davis,

Inspector General.

[FR Doc. 2022–06490 Filed 3–28–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7062–N–03]

Privacy Act of 1974; System of Records

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of a rescindment of a system of record.

SUMMARY: HUD staff and lenders use the Single Family Neighborhood Watch Early Warning (SFNW) system to monitor default and claim rates on Fair Housing Administration (FHA) insured loans originated, underwritten, and serviced by FHA approved mortgagees. Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Housing and Urban Development (HUD) is issuing a public notice of its intent to rescind the Deputy Assistant Secretary for Single Family Housing, Office of Lender Activities and Program Compliance, Privacy Act system of record, HUD/HS–16: Single Family Neighborhood Watch Early Warning System'' (SFNW), after further evaluation determined the system does not qualify as a Privacy Act System of Record.

DATES: This System of Records rescindment is effective upon publication. The specific date for when this system ceased to be a Privacy Act System of Records is 07/30/2021.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal e-Rulemaking Portal: http://www.regulations.gov. Follow the instructions provided on that site to submit comments electronically.

Fax: 202–619–8365.

Email: www.privacy@hud.gov.

Mail: Attention: Privacy Office; LaDonne White, Chief Privacy Officer, The Executive Secretariat, 451 Seventh Street SW, Room 10139; Washington, DC 20410–0001.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov.* including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ladonne White, Chief Privacy Officer, The Privacy Office, 451 Seventh Street SW, Room 10139, Washington, DC 20410–0001; telephone number 202–708–3054 (this is not a toll-free number). Individuals who are hearing- or speech-impaired may access this telephone number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Single Family Neighborhood Watch Early Warning System was evaluated and identified for rescindment from the Single Family Housing, Office of Lender Activities and Program Compliance Privacy Act systems of records inventory. The Single Family Neighborhood Watch Early Warning System (Neighborhood Watch) is used to monitor default and claim rates on FHA insured loans originated, underwritten and serviced by FHA that is reported to FHA by its mortgage servicers. The system provides a critical component for FHA's risk management strategy by allowing for in depth analysis to be performed on lending institution performance based on trends in the number of defaults and claims over time, among geographic areas, and across product types. Neighborhood Watch also allows for analysis to be carried out on the nature of the delinquencies that are reported to FHA by its servicers, the period of the mortgage lifecycle in which those delinquencies took place and the success rate of loss mitigation actions in bringing mortgagors current on their loans. Both of these capabilities better position FHA to manage current and future risk to its insurance funds by providing the means for evaluating the causes for delinquencies. This information assists lenders improve their origination, underwriting, and

servicing practices, and helps prevent unnecessary foreclosures and insurance claims. The SORN retrieval practice was evaluated, and it was determined that records within the system are not retrieved by an individual's personal unique identifier that qualifies for as SORN under the Privacy Act. The Department's FHA Case Number and other retrieval practices mentioned in the existing SORN does not constitute a retrieval for purpose of the Privacy Act. Records that are used for reviewing the default and claim rates of mortgages originated, underwritten, and serviced by FHA-approved lending institutions will continue to be maintained by SFNW.

SYSTEM NAME AND NUMBER:

HUD/HS–16: Single Family Neighborhood Watch Early Warning System'' (SFNW).

HISTORY:

HUD/HS–16: Single Family Neighborhood Watch Early Warning System (December 19, 2003).

Ladonne White,

Departmental Privacy Officer.

[FR Doc. 2022–06545 Filed 3–28–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IRTM–2022–N006; FF10T90000 212 FXGO1664101EST0; OMB Control Number 1018–New]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; U.S. Fish and Wildlife Service ArcGIS Online (AGOL) Platform

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing a new information collection in use without an Office of Management and Budget (OMB) control number.

DATES: Interested persons are invited to submit comments on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–AGOL'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On September 30, 2021, we published in the **Federal Register** (86 FR 54230) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on November 29, 2021. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *https://www.regulations.gov* (Docket FWS–HQ–IRTM–2021–0110) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The Service collects and maintains necessary geospatial data to meet our mission in accordance with the following authorities:

- Federal Funding Accountability and Transparency Act of 2006, as amended (31 U.S.C. 6101);
- Geospatial Data Act of 2018 (43 U.S.C. chapter 46, 2801–2811);
- National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113);
- Open, Public, Electronic, and Necessary (OPEN) Government Data Act (44 U.S.C. 3506(b)(6));
- Title II of the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. 115–435);
- OMB Circular A–16, ''Coordination of Geographic Information and Related Spatial Data Activities'';
- OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards

and in Conformity Assessment Activities''; and

• OMB Circular A–130, ''Managing Information as a Strategic Resource.''

Geospatial data identify and depict geographic locations, boundaries, and characteristics of features on the surface of the earth. Geospatial data includes geographic coordinates (*e.g.,* latitude and longitude) to identify the location of earth's features, and data associated to geographic locations (*e.g.,* land survey data and land cover type data). The Service's organizational ArcGIS online program (AGOL), accessed at *https://fws.maps.arcgis.com,* is an easy place to share data with the public and partners, as well as internally among Service staff. It can also be used to build and deploy mobile-enabled online maps, applications, and services for geographic information systems (GIS) users and non-GIS users alike. Sensitive data is restricted from public access via an internal-facing intranet version of AGOL. Moreover, because the system contains only controlled unclassified information (CUI) that would be designated as low impact under the Federal Information Security Act (FISMA; 2002), no personally identifiable information (PII) is allowed within the system.

The AGOL platform enables the Service to effectively manage geospatial data resources and technology to successfully deliver geospatial services in support of the Service's mission. Data collected through AGOL enables improved visualization, analysis, interoperability, modeling, sharing, and decision support. The benefits include increased accuracy, increased productivity, and more efficient information management and application support.

In addition to collecting name and contact information, additional comments about the submission, and photographs (optional), we collect the following types of data from our partners through AGOL to improve our online maps, web-mapping applications, and story maps (data collected is specific to a particular project; we will not collect all data types below with each submission):

• Road crossing data, to include data such as location data, global positioning system (GPS) coordinates, stream name and stream flow, road name, structure type and quantity, road surface type and condition, issues present at crossing, and name and contact.

• Stream crossing data, to include data such as location/description, GPS coordinates, crossing type, structures/barriers, inlet/outlet information, and stream flow type and condition.

• Conservation project data, to include data such as project title and description, partner names and contact information, start and end dates for project, whether project is new or updated, cost of project, relevant website information, geographical location of project, project species data, project strategy (*e.g.,* protect habitat, reduce human conflicts, climate change, etc.), and links to project reports.

• Reporting locations and/or status of Service assets (such as trails, roads, gates, etc.), invasive species, dead animals, trash on public lands, and possible hazards.

• Observations of wildlife occurrences, including location, species, observer, counts, and other physical characteristics of interest.

• Vegetation monitoring data, which would include the condition of the resource, abundance, lifeform, and more.

We use the information collected from our partners to support critical geospatial services for Service programs/functions, such as:

Endangered Species and Fisheries & Habitat Conservation

• Monitoring the extent and status of wetlands for management, research, policy development, education, and planning through the National Wetlands Inventory (*https://www.fws.gov/wetlands/*).

• Performing natural resources damage assessments (NRDAs), including evaluating exposure of trust species to toxic spills.

• Proposing, designating, and informing the public about critical habitat for threatened and endangered (T&E) species, delivering official species lists, and undertaking consultations under section 7 of the Endangered Species Act.

• Providing information about sensitive resources (T&E species, Refuges, critical habitat) within the vicinity of a proposed project.

• Conducting large-scale, multidisciplinary, multi-species analysis for habitat conservation and landscape conservation planning and restoration.

• Improving fish passage and modeling the effects of barrier removal.

Migratory Bird Conservation

• Conducting bird surveys: Survey design, navigation GPS files for airplane pilots, and spatially referenced survey data.

• Assessing habitat conditions and monitoring habitat improvement projects in joint ventures.

• Conducting research on relationships between bird abundance/productivity and habitat quantity and quality, and migration movement patterns.

National Wildlife Refuge System

• Developing alternatives for comprehensive conservation plans and supporting National Wildlife Refuge System (System) operational activities, including asset management, law enforcement, water resources, and fire management.

• Mapping realty transactions and land status of Service properties and proposed expansions.

• Analyzing strategic growth and land acquisition planning opportunities for the System.

• Conducting biological surveys and managing data, including inventory and monitoring, invasive species control, and habitat management plans.

• Managing Service infrastructure and assets.

• Planning, responding, and mitigating impacts from natural disasters such as wildfire, hurricanes, disease outbreaks, and more.

• Producing visitor service materials (maps, brochures) for public use and engagement of System lands.

Landscape Conservation Cooperatives

• Evaluating, planning, and implementing strategic habitat conservation and adaptive management at the landscape level.

• Performing biological planning, conservation design and delivery, monitoring, and research for climate change and other stressors at the landscape level.

Title of Collection: U.S. Fish and Wildlife Service ArcGIS Online (AGOL) Platform.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Existing collection in use without an OMB control number.

Respondents/Affected Public: Private sector; State, local, and Tribal governments; and/or foreign governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
AGOL Online Submissions:					
Private Sector	150	5	750	5 min	63
Government	150	5	750	5 min	63
Totals	*300*		*1,500*		*126*

* Rounded.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–06571 Filed 3–28–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–OSA–2021–0113; FF09S00000–XXX–FXSC42050900000–4205 and FF09W25000–212–FXGO166409WSFR0; OMB Control Numbers 1018–New and 1018–0100]

Agency Information Collection Activities; Proposed Changes to U.S. Fish and Wildlife Service Administration of Grants To Implement the American Rescue Plan Act of 2021

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), will seek Office of Management and Budget (OMB) approval of an emergency clearance of a new information collection and a revision to an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 31, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) by one of the following methods (please reference Docket No. FWS–HQ–OSA–2021–0113 in the subject line of your comment):

- *Internet (preferred): http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–OSA–2021–0113.
- *Email: Info_Coll@fws.gov.*
- *U.S. mail:* Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W); Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA; 44 U.S.C. 3501 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 5 CFR 1320, all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: In response to the American Rescue Plan Act (ARPA; Pub. L. 117–2, March 11, 2021), the Service will seek OMB approval of an emergency clearance of a one-time high-level survey of States, Federally recognized Tribes, and territorial governments and an associated revision to an existing information collection (OMB Control No. 1018–0100), as described below:

Emergency Clearance of a One-Time Survey

The Service intends to seek emergency clearance of a new information collection to conduct a one-time survey of States, Federally recognized Tribes, and territorial governments under ARPA. The purpose of this one-time survey is to provide a snapshot of agencies' current capacity to conduct surveillance for and manage wildlife diseases. This high-level survey will assess key components of a

program and it is not intended to assess all aspects of a program, nor compare among programs.

The information to be requested from State, Tribal, and territorial governments includes the following:

- Name of agency/organization;
- Business email address of respondent; and
- Conditions of wildlife disease program, to include whether the agency has:
  - An approved wildlife health management plan;
  - A dedicated wildlife health professional within their jurisdiction;
  - Access to diagnostic services;
  - The ability to respond to wildlife disease outbreaks;
  - Established networks, memorandums of agreements, and/or working relationships with core partners; and
  - A mechanism for communication of diagnostic results within and outside their jurisdiction.

This one-time survey is a companion information collection to a new financial assistance program, the Zoonotic Disease Initiative (ZDI), to be added to our existing information collection OMB Control No. 1018–0100. This new financial assistance program will begin in 2022, and the survey will inform program creation and evaluation for the ZDI. Members of the public may obtain copies of the draft survey by submitting a request to the Service Information Collection Clearance Officer, using one of the methods identified in the **ADDRESSES** section of this notice.

Title of Collection: High-Level Survey to Assess Current Capacity to Manage Wildlife Diseases by State, Tribal, and Territorial Governments Under the American Rescue Plan Act of 2021.

OMB Control Number: 1018–New.

Form Number: None.

Type of Review: Emergency clearance of a new collection of information.

Respondents/Affected Public: State, Tribal, and territorial governments.

Total Estimated Number of Annual Respondents: 630 (50 States, 6 territories, and 574 Tribes).

Average Number of Responses per Respondent: 1.

Total Estimated Number of Annual Responses: 630.

Estimated Average Completion Time per Response: 20 minutes.

Total Estimated Number of Annual Burden Hours: 210 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Revision of OMB Control No. 1018–0100

We issue financial assistance through grants and cooperative agreement awards to individuals; commercial organizations; institutions of higher education; nonprofit organizations; foreign entities; and State, local, and Tribal governments. The Service administers a wide variety of financial assistance programs, authorized by Congress to address the Service's mission, as listed in the System for Award Management (SAM) Assistance Listings, previously referred to as the Catalog of Federal Domestic Assistance. SAM provides public descriptions of assistance listings of Federal programs, projects, services, and activities that provide assistance or benefits to the American public. It contains financial and non-financial assistance programs administered by departments and establishments of the Federal government. The Assistance Listings are assigned unique numbers and provide information on program types, the specific type of assistance for each program, and the applicable financial assistance authorities for each program. See the Service's active Assistance Listings on SAM, at *https://sam.gov/,* for additional detailed information.

The Service currently manages the following types of assistance programs:

- Formula Grants
- Project Grants
- Project Grants (Discretionary)
- Cooperative Agreements (Discretionary Grants)
- Direct Payments with Unrestricted Use
- Use of Property, Facilities, and Equipment

Some assistance programs are mandatory and award funds to eligible recipients according to a formula prescribed in law or regulation. Other programs are discretionary and award funds based on competitive selection and merit review processes. Mandatory award recipients must give us specific, detailed project information during the application process so that we may ensure that projects are eligible for the mandatory funding, are substantial in character and design, and comply with all applicable Federal laws. Applicants to discretionary programs must give us information as dictated by the program requirements and as requested in the program's public notice of funding opportunity, including that information that addresses ranking criteria. All recipients must submit financial and performance reports that contain information necessary for us to track costs and accomplishments. The recipients' reports must adhere to schedules and rules in 2 CFR part 200, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' and the award terms and conditions. Part 200 prescribes the information that Federal agencies must collect, and also the information the financial assistance applicants and recipients must provide in order to receive benefits under Federal financial assistance programs. The regulations in part 200 support this information collection.

The Service provides technical and financial assistance to other Federal agencies, States, local governments, Federally recognized Tribes, nongovernmental organizations, citizen groups, and private landowners for the conservation and management of fish and wildlife resources. The process begins with the submission of an application. The respective program reviews and prioritizes proposed projects based on their respective project selection criteria. Pending availability of funding, applicants submit their application documents to the Service through the Federal *Grants.gov* website or through the Department's grants management system (currently the U.S. Department of Health and Human Services' GrantSolutions), when solicited by the Service through a Funding Opportunity.

As part of this collection of information, the Service collects the following types of information requiring approval under the PRA:

A. Application Package: We use the information provided in applications to: (1) Determine eligibility under the authorizing legislation and applicable program regulations; (2) determine allowability of major cost items under the Cost Principles at 2 CFR 200; (3) select those projects that will provide the highest return on the Federal investment; and (4) assist in compliance with laws, as applicable, such as the National Environmental Policy Act, the National Historic Preservation Act, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The full application package (submitted by the applicant) generally includes the following:

- Required Federal financial assistance application forms (SF–424 suite of forms, as applicable to specified project).
- Project Narrative—generally includes items such as:
  - Statement of need,
  - Project goals and objectives,
  - Methods used and timetable,
  - Description of key personnel qualifications,

○ Description of stakeholders or other relevant organizations/individuals involved and level of involvement,

○ Project monitoring and evaluation plan, and/or

○ Other pertinent project specific information.

• Pertinent project budget-related information—generally includes items such as:

○ Budget justification,

○ Detail on costs requiring prior approval,

○ Indirect cost statement,

○ Federally funded equipment list, and/or

○ Certifications and disclosures.

B. Amendments: Recipients must provide written explanation and submit prior approval requests for budget or project plan revisions, due date extensions for required reports, or other changes to approved award terms and conditions. The information provided by the recipient is used by the Service to determine the eligibility and allowability of activities and to comply with the requirements of 2 CFR 200.

C. Reporting Requirements: Reporting requirements associated with financial assistance awards generally include the following types of reports:

• Federal Financial Reports (using the required SF–425),

• Performance Reports, and

• Real Property Status Reports, when applicable (using the required SF–429 forms series).

D. Recordkeeping Requirements: In accordance with 2 CFR 200.334, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of 3 years after the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity (in the case of a subrecipient) (unless an exemption as described in 2 CFR 200.334 applies that requires retention of records longer than 3 years).

Wildlife Tracking and Reporting Actions for the Conservation of Species (TRACS)

The Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.,* except 777e–1) provide authority for Federal assistance to the States for management and restoration of fish and wildlife. These Acts and the regulations at 50 CFR 80, subpart D, require that States, territories, and the District of Columbia annually certify their hunting and fishing license sales. The Wildlife and Sport Fish Restoration (WSFR) program began using TRACS to collect State license data and certifications electronically in Federal fiscal year 2021.

We collect the required data via FWS Form 3–154 (State Fish and Wildlife Agency Hunting and Sport Fishing License Certification). Respondents are the States, the Commonwealths of Puerto Rico and the Northern Mariana Islands, the District of Columbia, and the territories of Guam, the U.S. Virgin Islands, and American Samoa (States). As required by 50 CFR 80, States complete FWS Form 3–154 on an annual basis, in the format that the Director specifies for certifying the number of hunting and fishing license holders and supporting data on total licenses sold and costs to license holders.

The Service uses the reported data to support the certification and run the formulas in the Federal Aid in Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777 *et seq.,* except 777e–1 and g–1) for apportioning Wildlife Restoration and Sport Fish Restoration program funds among the States. The Service also consolidates and publishes this data for the public on the WSFR internet site at *http://wsfrprograms.fws.gov/.*

Foreign Aid Transparency and Accountability Act Compliance

We administer the enhanced results-oriented accountability requirements in the Foreign Aid Transparency and Accountability Act (Pub. L. 114–191); OMB Guidance Memorandum M–18–04, ''Monitoring and Evaluation Guidelines for Federal Departments and Agencies that Administer United States Foreign Assistance'' (January 11, 2018); and OMB revisions to 2 CFR part 200, published August 13, 2020 (85 FR 49506).

Proposed Revision to OMB Control No. 1018–0100

We are establishing two new financial assistance programs with funding authorized by ARPA (Section 6003), as described below:

The Zoonotic Disease Initiative will provide financial assistance funding to establish and enhance the capacity of State, Tribal, and territorial fish and wildlife agencies to effectively address health issues involving, and minimize the negative impacts of health issues affecting, free-ranging terrestrial, avian, and aquatic wildlife, through surveillance, management, and research. The goal is to protect the public against zoonotic disease outbreaks. We submitted the program's implementation plan to the Office of Management and Budget (OMB) for review per OMB Guidance Memorandum M–21–24, ''Promoting Public Trust in the Federal Government and Effective Policy Implementation through Interagency Review and Coordination of the American Rescue Plan Act'' (April 26, 2021).

The *MENTOR-Bat program* will provide financial assistance funding to support applied conservation projects and development of a global network of committed individuals in foreign countries working to reduce harmful interactions between bats and humans and address disease outbreaks before they become pandemics. We will submit the program's implementation plan to the OMB for review per OMB memorandum M–21–24.

We anticipate an estimated burden increase of 276 annual responses and 7,593 annual burden hours associated with this proposed revision in response to the addition of the two new financial assistance programs. Once OMB's review of the program implementation plans is complete, we will submit requests to establish new Assistance Listings for these programs in the Annual Publication of Assistance Listings to the General Services Administration (GSA). Both programs will apply the uniform requirements in title 2 of the CFR, including 2 CFR 25, 170, 175, 180, 182, and 200 (including Uniform Audit), and the Department of the Interior's implementation regulations at 2 CFR 1400–1402.

Title of Collection: Administrative Procedures for U.S. Fish and Wildlife Service Financial Assistance Programs.

OMB Control Number: 1018–0100.

Form Number: FWS Form 3–154.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Individuals; commercial organizations; institutions of higher education; nonprofit organizations; foreign entities; and State, local, and Tribal governments.

Total Estimated Number of Annual Respondents: 14,962.

Total Estimated Number of Annual Responses: 16,300.

Estimated Completion Time per Response: Varies from 3 hours to 100 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 399,263.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–06589 Filed 3–28–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22LB00TZ80100; OMB Control Number 1028–0079]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; North American Breeding Bird Survey

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Geological Survey (USGS) is proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments by mail to the U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–1028–0079 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this Information Collection Request (ICR), contact David Ziolkowski by email at *dziolkowski@usgs.gov* or by telephone at 301–497–5753. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.* Individuals who are hearing- or speech-impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on January 20, 2022 (FR 87, Number 13, Pages 3115–3116). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents supply the U.S. Geological Survey with bird count data for more than 600 North American bird species. These data and the analyzed relative abundance and population trend estimates derived from them will be made available via the internet and through special publications, which are used by Government agencies, industry, education programs, and the general public. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR part 2), and in accordance with ''Data and information to be made available to the public or for limited inspection'' (30 CFR 250.197). Responses are voluntary. No questions of a 'sensitive' nature are asked.

Title of Collection: North American Breeding Bird Survey.

OMB Control Number: 1028–0079.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Respondents: 1,650.

Total Estimated Number of Annual Responses: 2,600.

Estimated Completion Time per Response: 11 hours on average.

Total Estimated Number of Annual Burden Hours: 28,600.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: $152,100. (Mileage costs average $56 per response; based on an approximate 100-mile round trip made for data collection per response and using the U.S. GSA 2021 privately owned vehicle mileage reimbursement rate of $58.50 per mile.)

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Thomas O'Connell,

Center Director, Eastern Ecological Science Center, U.S. Geological Survey.

[FR Doc. 2022–06542 Filed 3–28–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORM00000–L12200000.DF0000–223. HAG22–0012]

Notice of Public Meetings for the Western Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Western Oregon Resource Advisory Council (RAC) will meet as follows.

DATES: The RAC will meet virtually on May 12, 2022, and host a field tour on May 13, 2022. The May 12 virtual meeting will begin at 9 a.m. and adjourn at approximately 12 p.m. The field tour will commence at 9 a.m. and conclude at approximately 4 p.m. The meeting and field tour are open to the public.

ADDRESSES: The May 12 meeting will be held virtually over the Zoom platform. Participants must register at least 1 week in advance of the meeting. The link to register for the RAC Zoom meetings is: *https://blm.zoomgov.com/webinar/register/WN_xEuoC8JvTT-Pxaq-H4uzCg.*

The RAC will take a field tour of the Anderson Butte area on May 13. The RAC will gather at 9 a.m. at the BLM Medford District Office, 3040 Biddle Road, Medford, Oregon, and arrive at Upper Table Rocks at 9:45 a.m., then proceed to Anderson Butte, returning to the BLM Medford District Office at approximately 4 p.m.

The public may submit written comments to the RAC by emailing the RAC coordinator, Kyle Sullivan, at *ksullivan@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Kyle Sullivan, Public Affairs Specialist, Medford District, 3040 Biddle Road, Medford, OR 97504; phone: (541) 618–2340; email: *ksullivan@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 7–1–1 to contact Mr. Sullivan during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Western Oregon RAC advises the Secretary of the Interior, through the BLM, on a variety of public-land issues across public lands in Western Oregon, including the Coos Bay, Medford, Northwest Oregon, and Roseburg Districts and part of the Lakeview District. On May 12, the RAC will follow up on the recreation fee proposal in the Coos Bay District and discuss the process and next steps for reviewing Secure Rural School Title II funding projects. Title II funds support restoration projects that may not otherwise have been completed, such as the improved maintenance of existing infrastructure, enhancement of forest ecosystems, and restoration of land health and water quality. In turn, these projects create additional employment opportunities in western Oregon communities and foster collaborative relationships between those who use public lands and those who manage them. On May 13, the RAC will visit Upper Table Rocks and the Anderson Butte Area to review Title II projects related to recreation improvements, youth employment, hazardous fuels reduction, and illegal dumping.

Members of the public are welcome to attend the field tour and must provide their own transportation and meals. Individuals who plan to attend must RSVP to the BLM Medford District Office at least 2 weeks in advance of the field tour (see **FOR FURTHER INFORMATION CONTACT**). Please indicate whether you need special assistance, such as sign language interpretation or other reasonable accommodations. The field tour will follow current Centers for Disease Control and Prevention COVID–19 guidance regarding social distancing and mask wearing.

The meetings are open to the public, and a public comment period will be held on May 12, 2022, at 11:30 a.m. Depending on the number of persons wishing to comment and the time available, time allotted for individual oral comments may be limited. The public may submit written comments to the RAC by emailing the RAC coordinator (see **ADDRESSES**).

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Previous minutes, membership information, and upcoming agendas are available at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/western-oregon-rac.* Detailed minutes for the RAC meetings are also maintained in the Medford District Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting.

(Authority: 43 CFR 1784.4–2)

Elizabeth R. Burghard,

Medford District Manager, (Designated Federal Officer).

[FR Doc. 2022–06582 Filed 3–28–22; 8:45 am]

BILLING CODE 4310–JB–P

NATIONAL INDIAN GAMING COMMISSION

Renewals of Information Collections and Request for New Collection Under the Paperwork Reduction Act

AGENCY: National Indian Gaming Commission.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Indian Gaming Commission (NIGC or Commission) is seeking comments on the renewal of information collections for the following activities: (i) Indian gaming management contract-related submissions, as authorized by Office of Management and Budget (OMB) Control Number 3141–0004 (expires on June 30, 2022); (ii) Indian gaming fee payments-related submissions, as authorized by OMB Control Number 3141–0007 (expires on June 30, 2022); (iii) minimum internal control standards for class II gaming submission and recordkeeping requirements, as authorized by OMB Control Number 3141–0009 (expires on June 30, 2022); (iv) facility license-related submission and recordkeeping requirements, as authorized by OMB Control Number 3141–0012 (expires on June 30, 2022); and (v) minimum technical standards for class II gaming systems and equipment submission and recordkeeping requirements, as authorized by OMB Control Number 3141–0014 (expires on June 30, 2022).

DATES: Submit comments on or before May 31, 2022.

ADDRESSES: Comments can be mailed, faxed, or emailed to the attention of: Tim Osumi, National Indian Gaming Commission, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240. Comments may be faxed to (202) 632–7066 and may be sent electronically to *info@nigc.gov*, subject: PRA renewals.

FOR FURTHER INFORMATION CONTACT: Tim Osumi at (202) 264–0676; fax (202) 632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Request for Comments

You are invited to comment on these collections concerning: (i) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) the accuracy of the agency's estimates of the burdens (including the hours and cost) of the proposed collections of information, including the validity of the methodologies and assumptions used; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; (iv) ways to minimize the burdens of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB control number.

It is the Commission's policy to make all comments available to the public for review at its headquarters, located at 90 K Street NE, Suite 200, Washington, DC 20002. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask in your comment that the Commission withhold your personal identifying information from public review, the Commission cannot guarantee that it will be able to do so.

II. Data

Title: Management Contract Provisions.

OMB Control Number: 3141–0004.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100–497, 25 U.S.C. 2701, *et seq.,* established the National Indian Gaming Commission (NIGC or Commission) and laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires the NIGC Chairman to review and approve all management contracts for the operation and management of class II and/or class III gaming activities, and to conduct background investigations of persons with direct or indirect financial interests in, and management responsibility for, management contracts. 25 U.S.C. 2710, 2711. The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated parts 533, 535, and 537 of title 25, Code of Federal Regulations, to implement these statutory requirements.

Section 533.2 requires a tribe or management contractor to submit a management contract for review within 60 days of execution, and to submit all of the items specified in § 533.3. Section 535.1 requires a tribe to submit an amendment to a management contract within 30 days of execution, and to submit all of the items specified in § 535.1(c). Section 535.2 requires a tribe or a management contractor, upon execution, to submit the assignment by a management contractor of its rights under a previously approved management contract. Section 537.1 requires a management contractor to submit all of the items specified in § 537.1(b),(c) in order for the Commission to conduct background investigations on: Each person with management responsibility for a management contract; each person who is a director of a corporation that is a party to a management contract; the ten persons who have the greatest direct or indirect financial interest in a management contract; any entity with a financial interest in a management contract; and any other person with a direct or indirect financial interest in a management contract, as otherwise designated by the Commission. This collection is mandatory, and the benefit to the respondents is the approval of Indian gaming management contracts, and any amendments thereto.

Respondents: Tribal governing bodies and management contractors.

Estimated Number of Respondents: 29.

Estimated Annual Responses: 40 (submissions of contracts, contract amendments, contract assignments, and background investigation material).

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 1.0 burden hours to 16.0 burden hours for one item.

Frequency of Response: Usually no more than once per year.

Estimated Total Annual Burden Hours on Respondents: 397.

Estimated Total Non-hour Cost Burden: $19,396.

Title: Fees.

OMB Control Number: 3141–0007.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires Indian tribes that conduct a class II and/or class III gaming activity to pay annual fees to the Commission on the basis of the assessable gross revenues of each gaming operation using rates established by the Commission. 25 U.S.C. 2717. The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 514 of title 25, Code of Federal Regulations, to implement these statutory requirements.

Section 514.6 requires a tribe to submit, along with its fee payments, quarterly fee statements (worksheets) showing its assessable gross revenues for the previous fiscal year in order to support the computation of fees paid by each gaming operation. Section 514.7 requires a tribe to submit a notice within 30 days after a gaming operation changes its fiscal year. Section 514.15 allows a tribe to submit fingerprint cards to the Commission for processing by the Federal Bureau of Investigation (FBI), along with a fee to cover the NIGC's and FBI's cost to process the fingerprint cards on behalf of the tribes. Part of this collection is mandatory and the other part is voluntary. The required submission of the fee worksheets allows the Commission to both set and adjust fee rates, and to support the computation of fees paid by each gaming operation. In addition, the voluntary submission of fingerprint cards allows a tribe to conduct statutorily mandated background investigations on applicants for key employee and primary management official positions.

Respondents: Indian gaming operations.

Estimated Number of Respondents: 698.

Estimated Annual Responses: 60,772.

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 0.5 burden hours to 2.3 burden hours for one item.

Frequency of Response: Quarterly (for fee worksheets); varies (for fingerprint cards and fiscal year change notices).

Estimated Total Annual Burden on Respondents: 33,885.

Estimated Total Non-hour Cost Burden: $1,649,004.

Title: Minimum Internal Control Standards for Class II Gaming.

OMB Control Number: 3141–0009.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to adequately shield Indian gaming from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Commission is also authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 543 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming on a continuing basis.

Section 543.3 requires a tribal gaming regulatory authority (TGRA) to submit to the Commission a notice requesting an extension to the deadline (by an additional six months) to achieve compliance with the requirements of the new tier after a gaming operation has moved from one tier to another. Section 543.5 requires a TGRA to submit a detailed report after the TGRA has approved an alternate standard to any of the NIGC's minimum internal control standards, and the report must contain all of the items specified in § 543.5(a)(2). Section 543.23(c) requires a tribe to maintain internal audit reports and to make such reports available to the Commission upon request. Section 543.23(d) requires a tribe to submit two copies of the agreed-upon procedures (AUP) report within 120 days of the gaming operation's fiscal year end. This collection is mandatory and allows the NIGC to confirm tribal compliance with the minimum internal control standards in the AUP reports.

Respondents: Tribal governing bodies.

Estimated Number of Respondents: 398.

Estimated Annual Responses: 842.

Estimated Time per Response: Depending on the tier level of the gaming facility, the range of time can vary from 1.0 burden hour to 10.0 burden hours for one AUP audit report.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 1,199.

Estimated Total Non-hour Cost Burden: $3,296,800.

Title: Facility License Notifications and Submissions.

OMB Control Number: 3141–0012.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act requires Indian tribes that conduct class II and/or class III gaming to issue ''a separate license . . . for each place, facility, or location on Indian lands at which class II [and class III] gaming is conducted,'' 25 U.S.C. 2710(b)(1), (d)(1), and to ensure that ''the construction and maintenance of the gaming facilities, and the operation of that gaming is conducted in a manner which adequately protects the environment and public health and safety.'' 25 U.S.C. 2710(b)(2)(E). The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 559 of title 25, Code of Federal Regulations, to implement these requirements.

Section 559.2 requires a tribe to submit a notice (that a facility license is under consideration for issuance) at least 120 days before opening any new facility on Indian lands where class II and/or class III gaming will occur, with the notice containing all of the items specified in § 559.2(b). Section 559.3 requires a tribe to submit a copy of each newly issued or renewed facility license within 30 days of issuance. Section 559.4 requires a tribe to submit an attestation certifying that by issuing the facility license, the tribe has determined that the construction, maintenance, and operation of that gaming facility is conducted in a manner that adequately protects the environment and the public health and safety. Section 559.5 requires a tribe to submit a notice within 30 days if a facility license is terminated or expires or if a gaming operation closes or reopens. Section 559.6 requires a tribe to maintain and provide applicable and available Indian lands or environmental and public health and safety documentation, if requested by the NIGC. This collection is mandatory and enables the Commission to perform its statutory duty by ensuring that tribal gaming facilities on Indian lands are properly licensed by the tribes.

Respondents: Indian tribal gaming operations.

Estimated Number of Respondents: 462.

Estimated Annual Responses: 500.

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 1.0 burden hours to 3.0 burden hours for one item.

Frequency of Response: Varies.

Estimated Total Annual Hourly Burden to Respondents: 966.

Estimated Total Non-hour Cost Burden: $0.

Title: Minimum Technical Standards for Class II Gaming Systems and Equipment.

OMB Control Number: 3141–0014.

Brief Description of Collection: The Indian Gaming Regulatory Act (IGRA or the Act), 25 U.S.C. 2701, *et seq.,* laid out a comprehensive framework for the regulation of gaming on Indian lands. Amongst other actions necessary to carry out the Commission's statutory duties, the Act directs the Commission to monitor class II gaming conducted on Indian lands on a continuing basis in order to adequately shield Indian gaming from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players. 25 U.S.C. 2702(2), 2706(b)(1). The Act allows Indian tribes to use ''electronic, computer, or other technologic aids'' to conduct class II gaming activities. 25 U.S.C. 2703(7)(A). The Commission is authorized to ''promulgate such regulations and guidelines as it deems appropriate to implement'' IGRA. 25 U.S.C. 2706(b)(10). The Commission has promulgated part 547 of title 25, Code of Federal Regulations, to aid it in monitoring class II gaming facilities that are using electronic, computer, or other technologic aids to conduct class II gaming.

Section 547.5(a)(2) requires that, for any grandfathered class II gaming system made available for use at any tribal gaming operation, the tribal gaming regulatory authority (TGRA): Must retain copies of the gaming system's testing laboratory report, the TGRA's compliance certificate, and the TGRA's approval of its use; and must maintain records identifying these grandfathered class II gaming systems and their components. Section 547.5(b)(2) requires that, for any class II gaming system generally, the TGRA must retain a copy of the system's testing laboratory report, and maintain records identifying the system and its components. As long as a class II gaming system is available to the public for play, section 547.5(c)(3) requires a TGRA to maintain records of any modification to such gaming system and

a copy of its testing laboratory report. Section 547.5(d)(3) requires a TGRA to maintain records of approved emergency hardware and software modifications to a class II gaming system (and a copy of the testing laboratory report) so long as the gaming system remains available to the public for play, and must make the records available to the Commission upon request. Section 547.5(f) requires a TGRA to maintain records of its following determinations: (i) Regarding a testing laboratory's (that is owned or operated or affiliated with a tribe) independence from the manufacturer and gaming operator for whom it is providing the testing, evaluating, and reporting functions; (ii) regarding a testing laboratory's suitability determination based upon standards no less stringent than those set out in 25 CFR 533.6(b)(1)(ii) through (v) and based upon no less information than that required by 25 CFR 537.1; and/or (iii) the TGRA's acceptance of a testing laboratory's suitability determination made by any other gaming regulatory authority in the United States. The TGRA must maintain said records for a minimum of three years and must make the records available to the Commission upon request. Section 547.17 requires a TGRA to submit a detailed report for each enumerated standard for which the TGRA approves an alternate standard, and the report must include: (i) An explanation of how the alternate standard achieves a level of security and integrity sufficient to accomplish the purpose of the standard it is to replace; and (ii) the alternate standard as approved and the record on which the approval is based. This collection is mandatory and allows the NIGC to confirm tribal compliance with NIGC regulations on ''electronic, computer, or other technologic aids'' to conduct class II gaming activities.

Respondents: Tribal governing bodies.

Estimated Number of Respondents: 431.

Estimated Annual Responses: 431.

Estimated Time per Response: Depending on the type of submission, the range of time can vary from 6 burden hours to 33.5 burden hours for one item.

Frequency of Response: Annually.

Estimated Total Annual Hourly Burden to Respondents: 7,666.

Estimated Total Non-hour Cost Burden: $0.

Dated: March 24, 2022.

Christinia Thomas,

Deputy Chief of Staff.

[FR Doc. 2022–06616 Filed 3–28–22; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0007; EEEE500000 223E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0002]

Agency Information Collection Activities; Oil and Gas Production Measurement Surface Commingling, and Security

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 31, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0007 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0002 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR 250, subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security, are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our

regulations. BSEE uses the information collected under subpart L to ensure that the volumes of hydrocarbons produced are measured accurately, and royalties are paid on the proper volumes. Specifically, BSEE needs the information to:

Liquid Hydrocarbon Measurement

• Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;

• Ascertain if all removals of oil and condensate from the lease are reported;

• Obtain rates of production measured at royalty meters, which can be examined during field inspections;

Gas Measurement

• Ensure that the sales location is secure and production cannot be removed without the volumes being recorded;

Surface Commingling

• Review gas volume statements and compare them with the Oil and Gas Operations Reports to verify accuracy.

Miscellaneous & Recordkeeping

• Review proving reports to verify that data on run tickets are calculated and reported accurately.

Title of Collection: 30 CFR 250, subpart L, Oil and Gas Production Measurement Surface Commingling, and Security.

OMB Control Number: 1014–0002.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 60 Oil and Gas Drilling and Production Operators in the OCS. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 104,291.

Estimated Completion Time per Response: Varies from 15 minutes to 35 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 38,986.

Respondent's Obligation: Responses are mandatory, while others are required to obtain or retain benefits, or are voluntary.

Frequency of Collection: Submissions are generally on occasion and monthly.

Total Estimated Annual Nonhour Burden Cost: $219,765.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2022–06538 Filed 3–28–22; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0008; EEEE500000 223E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0006]

Agency Information Collection Activities; Sulfur Operations

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 31, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

• Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0008 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.

• Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The regulations at 30 CFR 250, subpart P, concern sulfur operations on the OCS and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations. Currently, there are no active sulfur lease operations on the OCS. Therefore, this ICR and its relevant hours represent one potential respondent.

BSEE uses the information collected under subpart P to:

- Ascertain that a discovered sulfur deposit can be classified as capable of production in paying quantities.
- ensure accurate and complete measurement of production to determine the amount of sulfur royalty payments due the United States; and that the sale locations are secure, production has been measured accurately, and appropriate follow-up actions are initiated.
- ensure the adequacy and safety of firefighting systems; the drilling unit is fit for the intended purpose; and the adequacy of casing for anticipated conditions.
- review drilling, well-completion, well-workover diagrams and procedures, as well as production operation procedures to ensure the safety of the proposed sulfur drilling, well-completion, well-workover and proposed production operations.
- monitor environmental data during sulfur operations in offshore areas where such data are not already available to provide a valuable source of information to evaluate the performance of drilling rigs under various weather and ocean conditions. This information is necessary to make reasonable determinations regarding safety of operations and environmental protection.

Title of Collection: 30 CFR 250, Subpart P, Sulfur Operations.

OMB Control Number: 1014–0006.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 60 Oil and Gas Drilling and Production Operators in the OCS. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 510.

Estimated Completion Time per Response: Varies from 30 minutes to 12 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 897.

Respondent's Obligation: Responses are mandatory and are required to obtain/retain benefits.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: There are no non-hour cost burdens associated with this collection.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2022–06540 Filed 3–28–22; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2022–0006; EEEE500000 223E1700D2 ET1SF0000.EAQ000 OMB Control Number 1014–0001]

Agency Information Collection Activities; Oil and Gas Well-Workover Operations

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Bureau of Safety and Environmental Enforcement (BSEE) proposes to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 31, 2022.

ADDRESSES: Send your comments on this information collection request (ICR) by either of the following methods listed below:

- Electronically go to *http://www.regulations.gov.* In the Search box, enter BSEE–2022–0006 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *kye.mason@bsee.gov,* fax (703) 787–1546, or mail or hand-carry comments to the Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations and Standards Branch; ATTN: Nicole Mason; 45600 Woodland Road, Sterling, VA 20166. Please reference OMB Control Number 1014–0001 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Nicole Mason by email at *kye.mason@bsee.gov* or by telephone at (703) 787–1607. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct, or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological

collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This authority and responsibility are among those delegated to BSEE. The regulations at 30 CFR 250, subpart F, Oil and Gas Well-Workover Operations are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations. BSEE uses the information collected (see A.12 for the actual information collected by BSEE) to analyze and evaluate planned well-workover operations to ensure that these operations result in personnel safety and protection of the environment. BSEE will use this evaluation in making decisions to approve, disapprove, or to require modification to the proposed well-workover operations. Specifically, BSEE uses the information collected to:

- Review log entries of crew meetings to verify that safety procedures have been properly reviewed.
- review well-workover procedures relating to hydrogen sulfide (H2S) to ensure the safety of the crew in the event of encountering H2S.
- review well-workover diagrams and procedures to ensure the safety of well-workover operations.
- verify that the crown block safety device is operating and can be expected to function and avoid accidents.
- verify that the BOPE is in compliance with the latest WCR and API Standard 53.
- assure that the well-workover operations are conducted on well casing that is structurally competent.

Title of Collection: 30 CFR 250, Subpart F, Oil and Gas Well-Workover Operations.

OMB Control Number: 1014–0001.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal OCS oil, gas, and sulfur lessees and/or operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 60 Oil and Gas Drilling and Production Operators in the OCS. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 1,933.

Estimated Completion Time per Response: Varies from 1 hours to 6.5 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 5,284.

Respondent's Obligation: Responses are mandatory or are to retain/maintain benefits.

Frequency of Collection: Submissions are generally on occasion.

Total Estimated Annual Nonhour Burden Cost: We have identified no non-hour cost burdens associated with this collection of information.

An agency may not conduct, or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kirk Malstrom,

Chief, Regulations and Standards Branch.

[FR Doc. 2022–06539 Filed 3–28–22; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1224]

Certain Digital Video-Capable Devices and Components Thereof; Notice of a Commission Determination Finding No Violation of Section 337; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined to affirm in part, on modified grounds, reverse in part, and take no position in part on a final initial determination (''ID'') of the presiding administrative law judge (''ALJ'') finding no violation of section 337. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the present investigation on October 22, 2020, based on a complaint and supplement thereto filed by Koninklijke Philips N.V. of Eindhoven, Netherlands and Philips North America LLC of Cambridge, Massachusetts (collectively, ''Philips''). 85 FR 67373–74 (Oct. 22, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation, sale for importation, and sale in the United States after importation of certain digital video-capable devices and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,436,809 (''the '809 patent''); 9,590,977 (''the '977 patent''); 10,091,186 (''the '186 patent''); and 10,298,564 (''the '564 patent''). *Id.* at 67373. The complaint further alleged that an industry in the United States exists or is in the process of being established, as required by section 337. *Id.* The notice of investigation named the following respondents: Dell Technologies Inc. of Round Rock, Texas and Dell Inc. of Round Rock, Texas (together ''Dell''); Hisense Co. Ltd. of Qingdao, China, Hisense Visual Technology Co., Ltd. of Qingdao, China, Hisense Electronics Manufacturing Company of America Corporation of Suwanee, Georgia, Hisense USA Corporation of Suwanee, Georgia, Hisense Import & Export Co. Ltd. of Qingdao, China, Hisense International Co., Ltd. of Qingdao, China, Hisense International (HK) Co., Ltd. of Sheung Wan, Hong Kong (SAR), and Hisense International (Hong Kong) America Investment Co., Ltd. of Sheung Wan, Hong Kong (SAR) (together, ''Hisense''); HP, Inc. of Palo Alto, California (''HP''); Lenovo Group Ltd. of Quarry Bay, Hong Kong (SAR) and Lenovo (United States), Inc. of Morrisville, North Carolina (together, ''Lenovo''); LG Electronics, Inc. of

Seoul, Republic of Korea and LG Electronics USA, Inc. of Englewood Cliffs, New Jersey (together ''LG''); TCL Industries Holdings Co., Ltd., of Guangdong, China, TCL Electronics Holdings Ltd. of Hong Kong Science Park, Hong Kong (SAR), TCL King Electrical Appliances (Huizhou) Co. Ltd. of Huizhou, China, TTE Technology, Inc. of Corona, California, TCL Moka International Ltd. of Sha Tin, Hong Kong, TCL Moka Manufacturing S.A. de C.V. of Tijuana, Mexico, TCL Smart Device (Vietnam) Company Ltd. of Binh Duong, Vietnam (together ''TCL''); MediaTek Inc. of Hsinchu, Taiwan and MediaTek USA Inc. of San Jose, California (together ''MediaTek''); Realtek Semiconductor Corp. of Hsinchu, Taiwan (''Realtek''); and Intel Corporation of Santa Clara, California (''Intel''). *Id.* at 67374. The Office of Unfair Import Investigations (''OUII'') is participating in the investigation. *Id.*

During the course of the investigation, Philips moved to terminate the investigation as to various claims, patents, and respondents, including LG and MediaTek. *See* Order No. 19, *unreviewed by* Comm'n Notice (Apr. 15, 2021), Order No. 21, *unreviewed by* Comm'n Notice (May 12, 2021), Order No. 26, *unreviewed by* Comm'n Notice (Jun 21, 2021), Order 32, *unreviewed by* Comm'n Notice (July 26, 2021), Order No. 40, *unreviewed by* Comm'n Notice (Aug. 2, 2021), and Order No. 46, *unreviewed by* Comm'n Notice (Aug. 10, 2021). The Respondents remaining in the investigation are Dell, Hisense, HP, Lenovo, TCL, Realtek, and Intel (together, ''the Respondents''). The remaining asserted patent claims are: claims 1, 9, 11, 12, and 14 of the '186 patent; and claims 1, 18, 19, 21, and 25 of the '564 patent.

On October 21, 2021, the ALJ issued the subject ID. On November 2, 2021, Philips and OUII each filed petitions for review. Also, on November 2, 2021, Respondents Intel, HP, Dell, and Lenovo filed a contingent petition for review, and Respondents HP, Realtek, Dell, Lenovo, Hisense, and TCL filed a separate contingent petition for review. On November 10, 2021, Philips, OUII, and the Respondents each filed replies.

On December 20, 2021, the Commission determined to review the ID in part. Specifically, the Commission determined to review the ID's findings on claim construction, infringement, validity, and domestic industry for both of the '186 and '564 patents. Comm'n Notice of Review (Dec. 20, 2021). The Commission asked for briefing on certain issues under review and on remedy, bonding, and the public interest. The parties filed their initial responses on January 7, 2022 and their replies on January 14, 2022.

Having examined the record of this investigation, including the ID, the petitions for review, responses, and other submissions from the parties and the public, the Commission has determined that no violation of section 337 has occurred. Specifically, the Commission finds that the asserted claims of the '186 and '564 patents are not infringed and the domestic industry products do not practice the claims of the '186 and '564 patents. The Commission also takes no position on various issues, as set forth in the accompanying Opinion, including on the economic prong of the domestic industry requirement, anticipation, obviousness, and whether the written description requirement is met for the claim terms ''predetermined time'' and ''certificate.'' The Commission's determinations are explained more fully in the accompanying Opinion. All findings in the ID under review that are consistent with the Commission's determinations as set forth in the accompanying Opinion are affirmed.

The Commission vote for this determination took place on March 23, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 23, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06528 Filed 3–28–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0052]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; ATF's Office of Strategic Management Environmental Assessment Outreach

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for an additional 30 days until April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and, if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with change, of a currently approved collection.

(2) *The Title of the Form/Collection:* ATF's Office of Strategic Management Environmental Assessment Outreach.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: None.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Not-for-profit institutions, Federal Government, State, Local, or Tribal Government.

Abstract: ATF's Office of Strategic Management Environmental Assessment Outreach is distributed to Bureau of Alcohol, Tobacco, Firearms, and Explosives stakeholders to solicit feedback about the agency's internal strengths, weaknesses, and external opportunities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 1,500 respondents will respond to this collection once annually, and it will take each respondent 18 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 450 hours, which is equal to 1,500 (total respondents) * 1 (# of response per respondent) * .3 (18 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: March 23, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–06523 Filed 3–28–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines)

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that the agency receives on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Nora Hernandez by telephone at 202–693–8633, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines. The diesel particulate matter (DPM) regulation established a permissible exposure limit to total carbon, which is a surrogate for measuring a miner's exposure to DPM. These regulations include several other requirements for the protection of miners' health. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 10, 2021 (86 FR 70538).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Agency: DOL–MSHA.

Title of Collection: Health Standards for Diesel Particulate Matter Exposure (Underground Metal and Nonmetal Mines).

OMB Control Number: 1219–0135.

Affected Public: Businesses or other for-profits.

Total Estimated Number of Respondents: 194.

Total Estimated Number of Responses: 54,696.

Total Estimated Annual Time Burden: 11,218 hours.

Total Estimated Annual Other Costs Burden: $421,942.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Nora Hernandez,

Departmental Clearance Officer.

[FR Doc. 2022–06547 Filed 3–28–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0016]

Marine Terminals and Longshoring Standards; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the standards on Marine Terminals and Longshoring.

DATES: Comments must be submitted (postmarked, sent, or received) by May 31, 2022.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the

Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2012–0016) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The following summary gives a brief description of who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to reduce employee injuries and fatalities associated with cargo lifting gear, transfer of vehicular cargo, manual cargo handling, and exposure to hazardous atmospheres.

The Marine Terminals and Longshoring standards contain several collections of information which are used by employers to ensure that employees are properly informed about the safety and health hazards associated with marine terminals and longshoring operations. OSHA uses the records developed in response to the collection of information requirements to find out if the employer is complying adequately with the provisions of the standards.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend approval of the information collection requirements contained in the standards on Marine Terminals (29 CFR part 1917) and Longshoring (29 CFR part 1918). The agency is requesting an adjustment decrease in the current burden hour estimate from 57,797 hours to 55,025 hours, a difference of 2,772 hours. The adjustment in burden is due to a change in the number of establishments engaged in longshoring and port and harbor operations, which decreased from 916 to 830 establishments for longshoring operations and increased from 332 to 350 establishments for port and harbor operations.

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of currently approved collections.

Title: Marine Terminals (29 CFR part 1917) and Longshoring (29 CFR part 1918).

OMB Number: 1218–0196.

Affected Public: Business or other for-profits; Not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 1,180.

Frequency of Response: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 55,025.

Estimated Cost(Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0016). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Due to security, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index,

some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on March 22, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–06550 Filed 3–28–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding this information collection are best assured of having their full effect if received by April 28, 2022.

FOR FURTHER INFORMATION CONTACT: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street NW, Room 10235, Washington, DC 20503, and Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

Copies of the submission(s) may be obtained by calling 703–292–7556.

SUPPLEMENTARY INFORMATION: NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section.

Title of Collection: Antarctic emergency response plan and environmental protection information.

OMB Approval Number: 3145–0180.

Abstract: The NSF, pursuant to the Antarctic Conservation Act of 1978 (16 U.S.C. 2401 *et seq.*) (''ACA'') regulates certain non-governmental activities in Antarctica. The ACA was amended in 1996 by the Antarctic Science, Tourism, and Conservation Act. On September 7, 2001, NSF published a final rule in the **Federal Register** (66 FR 46739) implementing certain of these statutory amendments. The rule requires non-governmental Antarctic expeditions using non-U.S. flagged vessels to ensure that the vessel owner has an emergency response plan. The rule also requires persons organizing a non-governmental expedition to provide expedition members with information on their environmental protection obligations under the Antarctic Conservation Act.

Expected Respondents. Respondents may include non-profit organizations and small and large businesses. The majority of respondents are anticipated to be U.S. tour operators, currently estimated to number eighteen.

Burden on the Public. The Foundation estimates that a one-time paperwork and recordkeeping burden of 40 hours or less, at a cost of $500 to $1400 per respondent, will result from the emergency response plan requirement contained in the rule. Presently, all respondents have been providing expedition members with a copy of the Guidance for Visitors to the Antarctic (prepared and adopted at the Eighteenth Antarctic Treaty Consultative Meeting as Recommendation XVIII–1). Because this Antarctic Treaty System document satisfies the environmental protection information requirements of the rule, no additional burden shall result from the environmental information requirements in the proposed rule.

Dated: March 23, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–06526 Filed 3–28–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 9:30 a.m., Tuesday, April 19, 2022.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTERS TO BE CONSIDERED:

67731 Highway Investigative Report: Bus roadway departure and rollover crash in Pala Mesa, California, February 22, 2020.

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 590–8384 or by email at *bingc@ntsb.gov.*

Media Information Contact: Eric Weiss by email at *eric.weiss@ntsb.gov* or at (202) 314–6100.

This meeting will take place virtually. The public may view it through a live or archived webcast by accessing a link under ''Webcast of Events'' on the NTSB home page at *www.ntsb.gov.*

There may be changes to this event due to the evolving situation concerning the novel coronavirus (COVID–19). Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: March 25, 2022.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2022–06667 Filed 3–25–22; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Week of March 28, 2022.

PLACE: Via Teleconference.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Week of March 28, 2022

Thursday, March 31, 2022

3:00 p.m. Affirmation Session (Public Meeting) (Tentative). Final Rule—Controlled Unclassified Information (RIN 3150–AK30; NRC–2019–0060) (Tentative) (Contact: Wesley Held: 301–287–3591).

ADDITIONAL INFORMATION: By a vote of 3–0 on March 24 and 25, 2022, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and 10 CFR 9.107 that this item be affirmed with less than one week notice to the public. The item will be affirmed in the meeting being held on March 31, 2022. The public is invited to attend the Commission's meeting live; via teleconference. Details for joining the teleconference in listen only mode at *https://www.nrc.gov/pmns/mtg*.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov*. The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov*.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 25, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–06684 Filed 3–25–22; 11:15 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. N2022–1; Order No. 6124]

Service Standard Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a recently-filed Postal Service request for an advisory opinion on the service standards for Retail Ground and Parcel Select Ground. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Notices of intervention are due:* April 4, 2022; *Live WebEx Technical Conference:* March 31, 2022, at 11:00 a.m., Eastern Daylight Time, Virtual.

ADDRESSES: Submit notices of intervention electronically via the Commission's Filing Online system at *http://www.prc.gov.* Persons interested in intervening who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT**: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Pre-Filing Issues
III. The Request
IV. Initial Administrative Actions
V. Ordering Paragraphs

I. Introduction

On March 21, 2022, the Postal Service filed a request for an advisory opinion from the Commission regarding planned changes to the service standards for Retail Ground (RG) and Parcel Select Ground (PSG).[1] RG ''is an economical ground shipping solution for retail (single-piece) customers for packages, thick envelopes, and tubes weighing less than 70 pounds and up to 130 inches combined length and girth that are not required to be sent as First-Class Mail.'' [2] PSG is similar to RG but targeted at large- and medium-sized commercial shippers. Request at 2; Notice at 1 n.2. The Postal Service proposes to upgrade the service standards for RG and PSG from the current 2- to 8-day standard to a 2- to 5-day standard. Request at 2.

The intended effective date of the Postal Service's planned changes is no earlier than 90 days after the filing of the Request. *Id.* at 5. The Request was filed pursuant to 39 U.S.C. 3661 and 39 CFR part 3020. Before issuing its advisory opinion, the Commission shall accord an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). This order provides information on the Postal Service's planned changes, explains and establishes the process for the on-the-record hearing, and lays out the procedural schedule to be followed in this case.

II. Pre-Filing Issues

On March 23, 2021, the Postal Service published a 10-year strategic plan announcing potential changes intended to achieve financial stability and service excellence.[3] In furtherance of this plan, on March 4, 2022, the Postal Service filed a notice of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for RG and PSG. Notice at 1.

On March 8, 2022, the Commission issued Order No. 6115, which established Docket No. N2022–1 to consider the Postal Service's proposed changes, notified the public concerning the Postal Service's pre-filing conference, and appointed a Public Representative.[4] Due to the COVID–19 pandemic, the Postal Service held its pre-filing conference virtually on March

[1] United States Postal Service's Request for an Advisory Opinion on Changes in the Nature of Postal Services, March 21, 2022 (Request).

[2] *Id.* at 2; *see also* Notice of Pre-Filing Conference, March 4, 2022, at 1 n.1 (Notice).

[3] *See* United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, at 3, available at *https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf* (Postal Service's Strategic Plan). Further information related to the Postal Service's Strategic Plan is available at *https://about.usps.com/what/strategic-plans/delivering-for-america/*.

[4] Notice and Order Concerning the Postal Service's Pre-Filing Conference, March 8, 2022 (Order No. 6115).

15, 2022, from 1:00 p.m. to 2:00 p.m. Eastern Daylight Time (EDT). *See* Request at 8. The Postal Service certifies that it has made a good faith effort to address concerns of interested persons about the Postal Service's proposal raised at the pre-filing conference. *See id.*

III. The Request

A. The Postal Service's Planned Changes

Currently, for end-to-end package service within the contiguous United States, RG and PSG have a service standard ranging from 2 to 8 days. *Id.* at 3. The Postal Service plans to upgrade that service standard to correspond with the 2- to 5-day service standard for First-Class Package Service (FCPS) considered by the Commission in Docket No. N2021–2. *Id.* at 2, 3. The Postal Service asserts that the proposed change would simplify the operational scheme for processing and transporting RG and PSG package volume within the contiguous United States by combining it with FCPS volume. *Id.* at 3. Table 1 below compares the current to the new service standards.

Table 1
Comparison of Current Standards with Proposed Standards

Service Standard	Current Rules (Contiguous US)	Planned Rules (Contiguous US)
2-day	If Origin and Destination Processing and Distribution Center (PDC) are the same facility, then Service Standard is 2 days.	Intra-SCF and Origin to Destination pairs where total transit time is up to 8-hrs* (~372 miles) from Origin to Destination ADC to Destination SCF.
3-day	If Origin and Destination Processing and Distribution Center (PDC) are not the same facility, then the package is routed through a Network Distribution Center (NDC) and an Auxiliary Service Facility (ASF), if needed. If Origin and Destination NDC are the same, and there is no ASF required, then Service Standard is 3 days.	Where the total transit time is greater than 8-hrs and up to 32-hrs* (~1,488 miles) from Origin PDC to Destination ADC to Destination SCF.
4-day	If Origin and Destination NDC are the same, and there is an ASF required, then Service Standard is 4 days.	Where the total transit time is greater than 32-hrs and up to 50-hrs* (~2,325 miles) from Origin PDC to Destination ADC to Destination SCF.
5-day	If Origin and Destination NDC are not the same, determine the travel days between NDC facilities. If an ASF is not required, and the travel time between NDC facilities is 1 day or less, then the Service Standard is 5 days.	Where the total transit time is greater than 50-hrs from Origin PDC to Destination ADC to Destination SCF.
6-8-day	If Origin and Destination NDC are not the same, determine the travel days between NDC facilities within Service Standard Directory (SSD). If ASF is not required, then the Service Standard = travel time of 2 or more + 4. If ASF is required, then the Service Standard = travel time of 2 or more + 5.	N/A

Source: *Id.* at 3.

The Postal Service asserts that the proposed service standards ''are predicated on the planned change to the FCPS service standards and the concomitant improvement and optimization of the Postal Service's package processing and surface transportation network and depends on consolidation with FCPS domestic surface volumes.'' [5]

However, the Postal Service notes that certain packages are not included in the planned service standards, including RG and PSG packages sent to or from domestic locations outside the contiguous United States, packages containing hazardous materials, and live animals shipped by RG. *Id.* at 4–5.

B. The Postal Service's Position

The Postal Service states that its fundamental rationale for the proposed changes is to enhance service to customers sending larger packages. *Id.* at 6. It asserts that by consolidating RG and PSG volume with FCPS volume, it can offer faster service for packages that exceed the weight and size limitations of FCPS. *Id.* The Postal Service submits that the proposed changes will result in further improvement and rationalization of its portfolio of package products. *Id.* It notes that the market for faster, economical ground shipping products has seen significant growth recently and is expected to continue to grow. *Id.* at 7.

Additionally, the Postal Service contends that shifting RG and PSG volume to follow FCPS volume would

[5] *Id.* at 4. The Postal Service states that the change to FCPS has not yet been implemented but would be implemented before or at the same time as the RG and PSG service standard changes proposed in this docket. Notice at 2 n.4.

enable the further optimization of its package processing and surface transportation networks in three ways. *Id.* First, it asserts that the added volume would fill existing unused capacity, maximizing surface transportation utility and value. *Id.* Second, the Postal Service states that, by eliminating the current interim processing stops, it can reduce the overall processing burden while improving speed and reliability by reducing touch points. *Id.* Third, it asserts that by combining multiple sorts, the proposed change would improve volume and capacity in surface lanes. *Id.*

Moreover, the Postal Service asserts that the proposed changes will continue to achieve the broader policies of title 39, United States Code. *See id.* at 7–8. The Postal Service discusses how the proposed changes would continue to satisfy the universal service provisions appearing in 39 U.S.C. 101, 403, and 3661(a) under the proposed service standards. *See id.* The Postal Service also asserts that the proposed changes would not impair compliance with the policies of 39 U.S.C. 3633, which govern the financial performance of competitive products. *See id.* at 8. The Postal Service further asserts that the proposed changes will not cause any undue or unreasonable discrimination against any users of the mail. *See id.*

C. The Postal Service's Direct Case

The Postal Service is required to file its direct case along with the Request. *See* 39 CFR 3020.114. The Postal Service's direct case includes all of the prepared evidence and testimony upon which the Postal Service proposes to rely on in order to establish that its proposal accords with and conforms to the policies of title 39, United States Code. *See id.* The Postal Service provides the direct testimony of three witnesses and identifies a fourth individual to serve as its institutional witness and provide information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses.

Table 2
Postal Service Witnesses

Witness	Topic(s)	Designation
1. **Steven E. Jarboe**	• Description of the RG and PSG products • Market conditions • The need for improving service • The customer base • Anticipated impacts of the proposed service standard changes to the subject market and to customers	USPS-T-1
2. **Kevin P. Bray**	• The overall impact of the proposed service standard changes on the Postal Service's financial situation • The changes with regard to operational flow and transportation method	USPS-T-2
3. **Dr. A. Thomas Bozzo**	• Methodology used to estimate potential annual cost impact from the proposed service standards • Estimated change in cost	USPS-T-3
4. **Sharon Owens**	• Institutional witness capable of providing information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses	None filed

Source: Request at 8-10.

Additionally, the Postal Service filed five library references, one of which is available to the public and four of which are designated as non-public material.

Table 3
Postal Service Library References

Designation	Title	Sponsoring Witness
• **USPS-LR-N2022-1-1**	Cost Information	A. Thomas Bozzo
• **USPS-LR-N2022-1-NP1**	Market Analysis	Steven E. Jarboe
• **USPS-LR-N2022-1-NP2**	Commercial Shipper Survey	Steven E. Jarboe
• **USPS-LR-N2022-1-NP3**	Mail Processing and Transportation Cost Information	A. Thomas Bozzo
• **USPS-LR-N2022-1-NP4**	Service Standard Impact Analysis	Kevin P. Bray

Note: The Postal Service filed the four non-public library references under seal (shaded in the above table), asserting that they consist of a number of different types of commercially sensitive information, including market research developed by external firms on behalf of the Postal Service; data that reveal cost, volume, and modes of transportation for competitive products; and detailed cost information regarding mail processing and purchased transportation. *See* Notice of United States Postal Service of Filing of Library References and Application for Non-Public Treatment, March 21, 2022, Application of the United States Postal Service for Non-Public Treatment at 1, 3-7.

Source: Notice of United States Postal Service of Filing of Library References and Application for Non-Public Treatment, March 21, 2022.

IV. Initial Administrative Actions

A. General Procedures

The procedural rules in 39 CFR part 3020 apply to Docket No. N2022–1. Before issuing its advisory opinion, the Commission shall accord an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). The Commission will sit *en banc* for Docket No. N2022–1. *See* 39 CFR 3020.122(b). Due to the COVID–19 pandemic, the Commission is conducting all business, including any hearing or public meeting for Docket No. N2022–1 virtually and not in person.

B. Scope

Docket No. N2022–1 is limited in scope to the specific changes proposed by the Postal Service in its Request. *See* 39 CFR 3020.102(b). To the extent that participants raise alternative proposals and present reasons why those alternatives may be superior to the Postal Service's proposal, the Commission would interpret such discussion as critiquing the specific changes proposed by the Postal Service in its Request.[6] However, the Commission would not evaluate or opine on the merits of such alternative proposals in its advisory opinion. *See* Order No. 2080 at 18. Pursuant to its discretion, the Commission may undertake evaluation of alternatives or other issues raised by participants in separate proceedings (such as special studies or public inquires). *See* 39 CFR 3020.102(b). Moreover, any interested person may petition the Commission to initiate a separate proceeding (such as a rulemaking or public inquiry) at any time. *See* 39 CFR 3010.201(b) (initiation of notice and comment proceedings).

C. Designation of Presiding Officer

Pursuant to 39 CFR 3010.106 and 3020.122(b), the Commission appoints Chairman Michael Kubayanda to serve as presiding officer in Docket No. N2022–1, effective immediately. In addition to the authority delegated to the presiding officer under 39 CFR 3010.106(c), the Commission expands the presiding officer's authority to allow him to propound formal discovery requests upon any party, at his discretion. The numerical limitation on interrogatories appearing in 39 CFR 3020.117(a) shall not apply to the presiding officer. The Commission also authorizes Chairman Kubayanda to rule on procedural issues such as motions for late acceptance and discovery-related matters such as motions to be excused from answering discovery requests. Chairman Kubayanda shall have authority to issue any ruling in this docket not otherwise specifically reserved to the Commission by 39 CFR 3020 and 3010.106.

D. Procedural Schedule

The Commission establishes a procedural schedule, which appears below the signature of this order. *See* 39 CFR 3010.151, 3020.110; *see also* 39 CFR part 3020 Appendix A. These dates may be changed only if good cause is shown, if the Commission later determines that the Request is incomplete, if the Commission determines that the Postal Service has significantly modified the Request, or for other reasons as determined by the Commission. *See* 39 CFR 3020.110(b) and (c).

E. How To Access Material Filed in This Proceeding

1. Using the Commission's Website

The public portions of the Postal Service's filing are available for review on the Commission's website (*http://www.prc.gov*). The Postal Service's electronic filing of the Request and prepared direct evidence effectively serves the persons who participated in the pre-filing conference. *See* 39 CFR 3020.104. Other material filed in this proceeding will be available for review on the Commission's website, unless the

[6] *See* Docket No. RM2012–4, Order Adopting Amended Rules of Procedure for Nature of Service Proceedings Under 39 U.S.C. 3661, May 20, 2014, at 18 (Order No. 2080).

information contained therein is subject to an application for non-public treatment.

2. Using Methods Other Than the Commission's Website

The Postal Service must serve hard copies of its Request and prepared direct evidence ''only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission's website.'' 39 CFR 3020.104. If you demonstrate that you are unable to effectively use the Commission's Filing Online system or are unable to access the internet, then the Secretary of the Commission will serve material filed in Docket No. N2022–1 upon you via First-Class Mail. *See* 39 CFR 3010.127(b) and (c). You may request physical service by mailing a document demonstrating your need to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. Service may be delayed due to the impact of the COVID–19 pandemic. Pursuant to 39 CFR 3010.127(c), the Secretary shall maintain a service list identifying no more than two individuals designated for physical service of documents for each party intervening in this proceeding. Accordingly, each party must ensure that its listing is accurate and should promptly notify the Secretary of any errors or changes. *See* 39 CFR 3010.127(c).

3. Non-Public Material

The Commission's rules on how to file and access non-public material appear in 39 CFR part 3011. Each individual seeking non-public access must familiarize themselves with these provisions, including the rules governing eligibility for access; non-dissemination, use, and care of the non-public material; sanctions for violations of protective conditions; and how to terminate or amend access.[7] Any person seeking access to non-public material must file a motion with the Commission containing the information required by 39 CFR 3011.301(b)(1)–(4). Each motion must attach a description of the protective conditions and a certification to comply with protective conditions executed by each person or entity (and each individual working on behalf of the person or entity) seeking access. 39 CFR 3011.301(b)(5)–(6). To facilitate compliance with 39 CFR 3011.301(b)(5)–(6), a template Protective Conditions Statement and Certification to Comply with Protective Conditions appears below the signature of this order as Attachment 2, for completion and attachment to a motion for access. *See* 39 CFR part 3011 Subpart C, Appendix A. Persons seeking access to non-public material are advised that actual notice provided to the Postal Service pursuant to 39 CFR 3011.301(b)(4) will expedite resolution of the motion, particularly if the motion for access is uncontested by the Postal Service.

Non-public information must be redacted from filings submitted through the Commission's website; instead, non-public information must be filed under seal as required by 39 CFR part 3011 subpart B.

F. How To File Material in This Proceeding

1. Using the Commission's Filing Online System

Except as provided in 39 CFR 3010.120(a), all material filed with the Commission shall be submitted in electronic format using the Filing Online system, which is available over the internet through the Commission's website. The Commission's website accepts filings during the Commission's regular business hours, which are from 8:00 a.m. through 4:30 p.m. EDT, except for Saturdays, Sundays, and Federal holidays. A guide to using the Filing Online system, including how to create an account, is available at *https://www.prc.gov/how-to-participate*. If you have questions about how to use the Filing Online system, please contact the dockets clerk by email at *dockets@prc.gov* or telephone at (202) 789–6847. Please be advised that the dockets clerk can only answer procedural questions but may not provide legal advice or recommendations.

2. Using Methods Other Than the Commission's Filing Online System

Material may be filed using a method other than the Commission's website only if at least one of the following exceptions applies:

- The material cannot reasonably be converted to electronic format,
- The material contains non-public information (*see* 39 CFR part 3011),
- The filer is unable to effectively use the Commission's Filing Online system and the document is 10 pages or fewer, or
- The Secretary has approved an exception to the requirements to use the Commission's Filing Online system based on a showing of good cause. 39 CFR 3010.120(a).

Material subject to these exceptions may be filed by mail to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. Due to the agency's virtual status, posting mailed materials to the Commission's website may be delayed. Accordingly, before mailing materials, it is strongly recommended that individuals contact the dockets clerk by email at *dockets@prc.gov* or telephone at (202) 789–6847.

G. Technical Conference

1. Date and Purpose

A technical conference will be held live via WebEx on March 31, 2022, at 11:00 a.m. EDT.[8] The technical conference is an informal, off-the-record opportunity to clarify technical issues as well as to identify and request information relevant to evaluating the Postal Service's proposed changes. *See* 39 CFR 3020.115(c). The technical conference will be limited to information publicly available in the Request. Any non-public information, including information in non-public library references attached to the Request, should not be raised at the technical conference. At the technical conference, the Postal Service will make available for questioning its three witnesses whose direct testimony was filed along with the Request and a fourth individual to serve as its institutional witness, who will provide information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses. *See* Request at 10; *see also* 39 CFR 3020.113(b)(6)–(7), 3020.115(b). The names and topics to which these four individuals are prepared to address are summarized above in Section III.C., Table 1, *infra.*

2. How To Livestream the Technical Conference

The technical conference will be broadcast to the public via livestream, which will allow the public to view and listen to the technical conference, as it is occurring and after. To view and listen to the livestream, on or after 11:00 a.m. EDT on March 31, 2022, an individual must click on the internet link that will be identified on the Commission's YouTube Channel, which

[7] *See* 39 CFR 3011.300, 3011.302–304.

[8] On March 23, 2022, the Commission filed an errata to Order No. 6124 correcting the date of the technical conference to March 31, 2022. *See* Notice of Errata, March 23, 2022 (Notice of Errata), Attachment at 1. The errata also instructs technical conference registrants to resubmit their registration request if they have not yet received a response from the Commission, due to a technical issue on March 23, 2022 that prevented the Commission from receiving some registration requests. Notice of Errata at 1–2.

is available at *https://www.youtube.com/channel/UCbHvK-S8CJFT5yNQe4MkTiQ.* Individuals do not have to register in advance to access the livestream. Please note that the livestream is a broadcast; therefore, there is a brief delay (several seconds) between the technical conference being captured on camera and being displayed to viewers of the livestream. Additionally, please note that clicking on the livestream link will not allow an individual the opportunity to question the Postal Service's four witnesses. Details on how to participate in the live WebEx (and have the opportunity to question the Postal Service's four witnesses) follow.

3. How To Participate in the Technical Conference

To participate in this live technical conference and have the opportunity to ask questions of the Postal Service's four witnesses, an individual need not formally intervene in this docket, but must register in advance as follows. Each individual seeking to participate in the live WebEx using an individual device (*e.g.,* a desktop computer, laptop, tablet, or smart phone) must register by sending an email to *N2022-1registration@prc.gov*, with the subject line ''Registration'' by March 28, 2022. In order to facilitate orderly public participation, this email shall provide the following information:

- Your first and last name;
- your email address (to receive the WebEx link);
- the name(s) of the Postal Service's witness(es) you would like to question and/or the topic(s) of your question(s); and
- your affiliation (if you are participating in your capacity as an employee, officer, or member of an entity such as a corporation, association, or government agency).

The *N2022-1registration@prc.gov* email address is established solely for the exchange of information relating to the logistics of registering for, and participating in, the technical conference.[9] No information related to the substance of the Postal Service's Request shall be communicated, nor shall any information provided by participants apart from the list identified above be reviewed or considered. Only documents filed with the Commission's docket system will be considered by the Commission. Before the technical conference, the Commission will email each identified individual a WebEx link, an explanation of how to connect to the technical conference, and information regarding the schedule and procedures to be followed.

4. Availability of Materials and Recording

To facilitate discussion of the matters to be explored at the technical conference, the Postal Service shall, if necessary, file with the Commission any materials not already filed in Docket No. N2022–1 (such as PowerPoint presentations or Excel spreadsheets) that the Postal Service expects to present at the technical conference by March 29, 2022. Doing so will foster an orderly discussion of the matters under consideration and facilitate the ability of individuals to access these materials should technical issues arise for any participants during the live WebEx. If feasible, the recording will be available on the Commission's YouTube Channel at *https://www.youtube.com/channel/UCbHvK-S8CJFT5yNQe4MkTiQ.*

Participants in the WebEx, by participating, consent to such recording and posting. Information obtained during the technical conference or as a result of the technical conference is not part of the decisional record, unless admitted under the standards of 39 CFR 3010.322. *See* 39 CFR 3020.115(e).

H. How To Intervene (Become a Party to This Proceeding)

To become a party to this proceeding, a person or entity must file a notice of intervention by April 4, 2022.[10] This filing must clearly and concisely state: The nature and extent of the intervenor's interest in the issues (including the postal services used), the intervenor's position on the proposed changes in services (to the extent known), whether or not the intervenor requests a hearing, and whether or not the intervenor intends to actively participate in the hearing. *See* 39 CFR 3010.142(b). Page one of this filing shall contain the name and full mailing address of no more than two persons who are to receive service, when necessary, of any documents relating to this proceeding. *See id.* A party may participate in discovery; file testimony and evidence; conduct written examination of witnesses; conduct limited oral cross-examination; file briefs, motions, and objections; and present argument before the Commission or the presiding officer. *See id.* sections 3010.142(a); 3020.122(e). An opposition to a notice of intervention is due within 3 days after the notice of intervention is filed. *See id.* section 3010.142(d)(2).

I. Discovery

1. Generally Applicable Discovery Procedures

Discovery requests may be propounded upon filing a notice of intervention. Discovery that is reasonably calculated to lead to the admissible evidence is allowed. *See* 39 CFR 3020.116(a). Each party must familiarize themselves with the Commission's rules appearing in 39 CFR part 3020, including the rules for discovery in N-dockets generally and specific to interrogatories, requests for the production of documents, and requests for admissions.[11] No party may propound more than a total of 25 interrogatories (including both initial and follow-up interrogatories) without prior approval by the Commission or presiding officer.[12]

Each answer to a discovery request is due within 7 days after the discovery request is filed.[13] Any motion seeking to be excused from answering any discovery request is due within 3 days after the discovery request is filed. *See* 39 CFR 3020.105(b)(1). Any response to such motion is due within 2 days after the motion is filed. *See id.* section 3020.105(b)(2). The Commission expects parties to make judicious use of discovery, objections, and motions practice, and encourages parties to make every effort to confer to resolve disputes informally before bringing disputes to the Commission to resolve.

2. Discovery Deadlines for the Postal Service's Direct Case

All discovery requests regarding the Postal Service's direct case must be filed by April 18, 2022. All discovery answers by the Postal Service must be filed by April 25, 2022. The parties are urged to initiate discovery promptly, rather than to defer filing requests and answers to the end of the period established by the Commission.

J. Rebuttal Case Deadlines

A rebuttal case is any evidence and testimony offered to disprove or contradict the evidence and testimony submitted by the Postal Service. A rebuttal case does not include cross-

[9] Please refer to the Commission's privacy policy which is available at *https://www.prc.gov/privacy.*

[10] Neither the Public Representative nor the Postal Service must file a notice of intervention; both are automatically deemed parties to this proceeding. *See* 39 CFR 3010.142(a).

[11] *See* 39 CFR 3020.116–3020.119.

[12] *See* 39 CFR 3020.117(a); Order No. 2080 at 42; *see also* Docket No. N2021–1, Order Affirming Presiding Officer's Ruling No. N2021–1/9, May 26, 2021, at 9 (Order No. 5901).

[13] *See* 39 CFR 3020.117(b)(4), 3020.118(b)(1), 3020.119(b)(1). Filing an opposition to a notice of intervention shall not delay this deadline. *See* 39 CFR 3010.142(d)(3).

examination of the Postal Service's witnesses or argument submitted via a brief or statement of position. Any party that intends to file a rebuttal case must file a notice confirming its intent to do so by April 27, 2022. Any rebuttal case, consisting of any testimony and all materials in support of the case, must be filed by May 2, 2022.

K. Surrebuttal Case Deadlines

A surrebuttal case is any evidence and testimony offered to disprove or contradict the evidence and testimony submitted by the rebutting party. A surrebuttal case does not include cross-examination of the rebutting party's witnesses or argument submitted via a brief or statement of position. Any party that intends to file a surrebuttal case must obtain the Commission's prior approval and must bear the burden of demonstrating exceptional circumstances that would warrant granting the motion. *See* 39 CFR 3020.121(b). Any motion for leave to file a surrebuttal case is due May 4, 2022. Any response to such motion is due May 6, 2022. Any surrebuttal case, consisting of any testimony and all materials in support of the case, must be filed by May 9, 2022.

L. Hearing Dates

The Commission expects that this case will require no more than one or two business days for hearing, but reserves three business days out of an abundance of caution and consistent with the pro forma schedule set forth in appendix A of 39 CFR part 3020. If no party files a notice of intent to file a rebuttal case by April 27, 2022, then the hearing of the Postal Service's direct case shall begin May 2, 2022, with additional days reserved on May 3, 2022, and May 4, 2022. If any party files a notice of intent to file a rebuttal case by April 27, 2022 but no surrebuttal testimony will be presented, then the hearing of the Postal Service's direct case shall begin May 9, 2022, with additional days reserved on May 10, 2022, and May 11, 2022. If any party files a notice of intent to file a rebuttal case by April 27, 2022, and the Commission approves the presentation of surrebuttal testimony, then the hearing of the Postal Service's direct case shall begin May 16, 2022, and the hearing of the surrebuttal case shall end May 18, 2022.[14]

M. Presentation of Evidence and Testimony

Evidence and testimony shall be in writing and may be accompanied by a trial brief or legal memoranda. *Id.* section 3020.122(e)(1). Whenever possible and particularly for factual or statistical evidence, written cross-examination will be used in lieu of oral cross-examination. *Id.* section 3020.122(e)(2).

Oral cross-examination will be allowed to clarify written cross-examination and/or to test assumptions, conclusions, or other opinion evidence. *Id.* section 3020.122(e)(3). Assuming that no rebuttal case is filed, any party that intends to conduct oral cross-examination shall file a notice of intent to do so by April 25, 2022.[15] The notice must include an estimate of the amount of time requested for each witness.

In lieu of submitting hard copy documents to the Commission as contemplated by 39 CFR 3020.122(e)(2), each party shall file a single document titled ''Notice of Designations'' containing a list for each witness that identifies the materials to be designated (without the responses). The filing party shall arrange its list for each witness in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory. For example:

Designations for Witness One
ABC/USPS–T1–1
ABC/USPS–T1–3
DEF/USPS–T1–1
GHI/USPS–T1–3
JKL/USPS–T1–2
Designations for Witness Two
DEF/USPS–T2–4
GHI/USPS–T2–2

Assuming that no rebuttal case is filed, each party shall file its Notice of Designations by April 26, 2022.

Assuming that no rebuttal case is filed, on April 29, 2022, the Postal Service shall file a ''Notice of Designated Materials'' identifying any corrections to the testimony or designated materials for each witness sponsored by the Postal Service. Attached to that notice shall be a single Adobe PDF file that contains, in order: The witness's testimony (with any corrections highlighted); identification of any library references sponsored by the witness; and the witness's designated written responses in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory (with any corrections to the responses highlighted).

N. Presentation of Argument

1. General Procedures

Any person that has intervened in Docket No. N2022–1 (and thereby formally became a party to this proceeding) may submit written argument by filing a brief or a statement of position; they also may request to present oral argument at the hearing. *See* 39 CFR 3020.123; *see also* 39 CFR 3010.142(a). Any person that has not intervened in Docket No. N2022–1 may submit written argument by filing a statement of position. *See* 39 CFR 3020.123(g); *see also* 39 CFR 3010.142(a).

2. Presentation of Written Argument

A brief is a written document that addresses relevant legal and evidentiary issues for the Commission to consider and must adhere to the requirements of 39 CFR 3020.123(a)–(f). A statement of position is a less formal version of a brief that describes the filer's position on the Request and the information on the existing record in support of that position. *See* 39 CFR 3020.123(g).

a. Briefing Deadlines

Assuming that no rebuttal case is filed, initial briefs are due May 11, 2022, and reply briefs are due May 18, 2022. If any party files a notice confirming its intent to file a rebuttal case by April 27, 2022, then the briefing schedule may be revised.

b. Deadline for Statement of Position

Any interested person, including anyone that has not filed a notice of intervention and become a party to this proceeding, may file a statement of position. *See* 39 CFR 3020.123(g); *see also* 39 CFR 3010.142(a). A statement of position is limited to the existing record and may not include any new evidentiary material. *See* 39 CFR 3020.123(g). Filings styled as a brief or comments, conforming with the content and timing requirements, shall be deemed statements of positions. Any statement of position is due May 11, 2022.

3. Request To Present Oral Argument

Oral argument has not historically been part of N-cases; the Commission would only grant a request to present oral argument upon an appropriate showing of need by the presenting party. *See* Order No. 2080 at 53. Assuming that no rebuttal case is filed,

[14] The pro forma schedule set forth in appendix A of 39 CFR part 3020 contemplates this hearing scheduled for days 54–56, which would be Saturday May 14, 2022 through Monday May 16, 2022. In accordance with 39 CFR 3020.103, these dates are adjusted to Monday May 16, 2022 through Wednesday May 18, 2022.

[15] Consistent with the necessary adjustments made in Docket Nos. N2021–1 and N2021–2 to conduct a virtual hearing, the Commission adjusts the timeframe contemplated by 39 CFR 3020.122(e)(3) and instead sets this deadline as 7 days before the beginning of the virtual hearing (assuming that no rebuttal case is filed).

any party may file a request to present oral argument by April 25, 2022.

O. The Commission's Advisory Opinion

Unless there is a determination of good cause for extension, the Commission shall issue its advisory opinion within 90 days of the filing of the Request. *See* 39 CFR 3020.102(a). Therefore, absent a determination of good cause for extension, the Commission shall issue its advisory opinion in this proceeding by June 21, 2022.[16] ''The opinion shall be in writing and shall include a certification by each Commissioner agreeing with the opinion that in his [or her] judgment the opinion conforms to the policies established under [title 39, United States Code].'' 39 U.S.C. 3661(c). The advisory opinion shall address the specific changes proposed by the Postal Service in the nature of postal services. *See* 39 CFR 3020.102(b).

P. Public Representative

Pursuant to 39 U.S.C. 3661(c), Joseph K. Press shall continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding. *See* Order No. 6115 at 3, 4.

V. Ordering Paragraphs

It is ordered:

1. The procedural schedule for this proceeding is set forth below the signature of this order.

2. Pursuant to 39 CFR 3010.106 and 3020.122(b), the Commission appoints Chairman Michael Kubayanda to serve as presiding officer in Docket No. N2022–1, effective immediately.

3. Chairman Kubayanda is authorized to propound formal discovery requests upon any party, at his discretion. The numerical limitation on interrogatories appearing in 39 CFR 3020.117(a) shall not apply to the Presiding Officer.

4. Chairman Kubayanda is authorized to rule on procedural issues such as motions for late acceptance and discovery-related matters such as motions to be excused from answering discovery requests.

5. Chairman Kubayanda is authorized to make other rulings in this Docket not otherwise specifically reserved to the Commission according to 39 CFR 3020 and 3010.106.

6. Pursuant to 39 U.S.C. 3661(c), Joseph K. Press shall continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

7. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

PROCEDURAL SCHEDULE FOR DOCKET NO. N2022–1

[Established by the Commission, March 23, 2022]

Technical Conference Dates:	
Deadline to Email *N2022-1registration@prc.gov* to Register to Participate in the Live Technical Conference via WebEx.	March 28, 2022.
Filing of the Postal Service's Materials for the Technical Conference	March 29, 2022.
Technical Conference (live via WebEx)	March 31, 2022, at 11:00 a.m. Eastern Daylight Time.
Intervention Deadline:	
Filing of Notice of Intervention	April 4, 2022.
Discovery Deadlines for the Postal Service's Direct Case:	
Filing of Discovery Requests	April 18, 2022.
Filing of the Postal Service's Answers to Discovery	April 25, 2022.
Deadlines in Preparation for Hearing (assuming no rebuttal case):	
Filing of Notice Confirming Intent to Oral Conduct Cross-Examination	April 25, 2022.
Filing of Request to Present Oral Argument	April 25, 2022.
Filing of Notice of Designations	April 26, 2022.
Filing of Notices of Designated Materials	April 29, 2022.
Rebuttal Case Deadlines (if applicable):	
Filing of Notice Confirming Intent to File a Rebuttal Case	April 27, 2022.
Filing of Rebuttal Case	May 2, 2022.
Surrebuttal Case Deadlines (if applicable):	
Filing of Motion for Leave to File Surrebuttal Case	May 4, 2022.
Filing of Response to Motion for Leave to File Surrebuttal Case	May 6, 2022.
Filing of Surrebuttal Case (if authorized)	May 9, 2022.
Hearing Dates:	
Hearings (with no Rebuttal Case)	May 2 to 4, 2022.
Hearings (with Rebuttal Case, but no authorized Surrebuttal Case)	May 9 to 11, 2022.
Hearings (with Rebuttal Case and authorized Surrebuttal Case)	May 16 to 18, 2022.
Briefing Deadlines:	
Filing of Initial Briefs (with no Rebuttal Case)	May 11, 2022.
Filing of Reply Briefs (with no Rebuttal Case)	May 18, 2022.
Statement of Position Deadline:	
Filing of Statement of Position (with no Rebuttal Case)	May 11, 2022.
Advisory Opinion Deadline:	
Filing of Advisory Opinion (absent determination of good cause for extension)	June 21, 2022.

[16] Based upon the pro forma schedule set forth in appendix A of 39 CFR part 3020, the advisory opinion should be issued on day 90, which would be Sunday June 19, 2022 and the following day, Monday June 20, 2022 is an observed Federal holiday. Thus, this date is adjusted to Tuesday June 21, 2022, in accordance with 39 CFR 3020.103.

[FR Doc. 2022–06524 Filed 3–28–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–47 and CP2022–52]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 31, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–47 and CP2022–52; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 4 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 23, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* March 31, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–06574 Filed 3–28–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 31, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: March 24, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–06625 Filed 3–25–22; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested members of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

Copies: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Small Business Administration (SBA) Forms 856 and 856A are used by SBA examiners as part of their examination of licensed small business investment companies (SBICs). This information collection obtains representations from an SBIC's management regarding certain obligations, transactions and relationships of the SBIC and helps SBA to evaluate the SBIC's financial condition and compliance with applicable laws and regulations.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control Number: 3245–0118.

Title: Disclosures Statement Leveraged Licensees; Disclosure Statement Non-leveraged Licensees.

Description of Respondents: SBA Examiners.

Form Numbers: SBA Forms 856 & 856A.

Estimated Annual Responses: 598.

Estimated Annual Hour Burden: 276.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2022–06506 Filed 3–28–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 11686]

Bureau of Political-Military Affairs, Directorate of Defense Trade Controls: Notifications to the Congress of Proposed Commercial Export Licenses

ACTION: Notice.

SUMMARY: The Directorate of Defense Trade Controls and the Department of State give notice that the attached Notifications of Proposed Commercial Export Licenses were submitted to the Congress on the dates indicated.

DATES: The dates of notification to Congress are as shown on each of the 14 letters.

FOR FURTHER INFORMATION CONTACT: Ms. Paula C. Harrison, Directorate of Defense Trade Controls (DDTC), Department of State at (202) 663–3310; or access the DDTC website at *https://www.pmddtc.state.gov/ddtc public* and select ''Contact DDTC,'' then scroll down to ''Contact the DDTC Response Team'' and select ''Email.'' Please add this subject line to your message, ''ATTN: Congressional Notification of Licenses.''

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act (*22 U.S.C. 2776*) requires that notifications to the Congress pursuant to sections 36(c) and 36(d) be published in the **Federal Register** in a timely manner. The following comprise recent such notifications and are published to give notice to the public.

October 27, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, we are transmitting certification of a proposed license for the export of firearms abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export to Qatar of 5.56mm automatic rifles.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Acting Assistant Secretary, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–014.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5.56mm automatic rifles to Thailand.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–004.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data, and defense services to the UK in support of the sale and post-sales support of C–17 Globemaster III transport aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military,

economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–017.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Netherlands and Italy to support repair and overhaul, training, base activation, and general operational support of the F–135 propulsion system.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–024.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Canada to support the manufacture of Canadian C6 machine guns and the marketing and sales of Canadian C6 machine guns, C7A2 rifles, C8A3 carbines, .300 Blackout and .308 caliber automatic rifles, carbines, and grenade launchers and components.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–028.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of firearms, parts, and components abroad controlled under Category I of the U.S. Munitions List in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of M134 7.62mm machineguns and associated spare parts to India.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–030.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Thailand to support the sale, delivery, operation, and maintenance for S–70i helicopters.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–038.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Japan to support the integration, installation, operation, training, testing, maintenance, and repair of the MK15 Phalanx Close-In Weapon System and SeaRAM Weapon System.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–039.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(d) of the Arms Export Control Act, please find enclosed a certification of a proposed license for the export of defense articles, including technical data and defense services, for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the UK to support the production and delivery of M53A1, M50, and M51 respirators under the Joint Service General Purpose Mask and M53A1 program, and M69 under the Joint Service Aircrew Mask program, and FM50 and AM69 mask systems.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–040.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Japan for the manufacture, modification, test, assembly, delivery, maintenance (including overhaul) and support operations of the S–70A (UH–60JA) and S–70A–12 (UH–60J) helicopters.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–043.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to the Republic of Korea to support the F–15K Slam Eagle aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–046.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services to India to assist in the design, development, and manufacture of soft recoil mechanisms for integration into the Hawkeye Howitzer, Light, Modular, 105mm and 155mm prototypes, soft recoil mortar weapons system prototypes, soft recoil towed anti-tank cannon and turret mounted tank cannon weapons systems prototypes.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–061.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) of the Arms Export Control Act, please find enclosed a certification of a proposed license amendment for the export of defense articles, including technical data and defense services, in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services, and defense articles to the Netherlands and the UK for the

manufacture of Avionics Input/Output Modules for the F–16 Modular Mission Computer.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 21–062.

December 28, 2021

The Honorable Nancy Pelosi, *Speaker of the House of Representatives.*

Dear Madam Speaker:

Pursuant to Section 36(c) and (d) of the Arms Export Control Act, please find enclosed a certification of a proposed amendment for the manufacture of significant military equipment abroad and the export of defense articles, including technical data and defense services, in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense articles, including technical data and defense services, to Republic of Korea for the manufacture of FA–50, T–50, and TA–50 Light Attack Aircraft.

The U.S. government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the U.S. firm concerned.

Sincerely,

Naz Durakoglu,

Senior Bureau Official, Bureau of Legislative Affairs.

Enclosure: Transmittal No. DDTC 20–080.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, U.S. Department of State.

[FR Doc. 2022–06505 Filed 3–28–22; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 33 (Sub-No. 338X)]

Union Pacific Railroad Company—Abandonment Exemption—in Salt Lake County, Utah

Union Pacific Railroad Company (UP) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 0.5-mile portion of a rail line known as the SLC Passenger Line, from milepost 743.7 to milepost 744.2 in Salt Lake City, Salt Lake County, Utah (the Line). The Line traverses U.S. Postal Service Zip Code 84101.

UP certifies that: (1) No local or overhead traffic has moved over the Line for at least two years; (2) no traffic would need to be rerouted; (3) no formal complaint filed by a user of rail service on the Line (or by state or local government on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] this exemption will be effective on April 28, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 8, 2022.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2022.

All pleadings, referring to Docket No. AB 33 (Sub-No. 338X), should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on UP's representative, Whitney C. Larkin, General Attorney, Union Pacific Railroad Company, 1400 Douglas Street/MS 1580, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void ab initio.

UP has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by April 1, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental or historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by UP's filing of a notice of consummation by March 29, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

Decided: March 24, 2022.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–06592 Filed 3–28–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0862]

COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season

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

ACTION: Extension of limited, conditional waiver of the minimum slot usage requirement for international operations only.

SUMMARY: The FAA has determined to extend through October 29, 2022, the Coronavirus (COVID–19)-related limited, conditional waiver of the minimum slot usage requirement at John F. Kennedy International Airport (JFK), New York LaGuardia Airport (LGA), and Ronald Reagan Washington National Airport (DCA) that the FAA has already made available through March 26, 2022, for international operations only. Similarly, the FAA has determined to extend through October 29, 2022, its COVID–19-related limited, conditional policy for prioritizing flights canceled at designated International Air Transport Association (IATA) Level 2 airports in the United States, for purposes of establishing a carrier's operational baseline in the next corresponding season, for international operations only. These IATA Level 2 airports include Chicago O'Hare International Airport (ORD), Newark Liberty International Airport (EWR), Los Angeles International Airport (LAX), and San Francisco International Airport (SFO). This relief is limited to slots and approved operating times used by any carrier for international operations only, through October 29, 2022, and will be subject to the same terms and conditions, that the FAA has already applied to the relief that remains available through March 26, 2022.

DATES: The relief announced in this notice is available for the Summer 2022 scheduling season, which runs from March 27, 2022, through October 29, 2022. Compliance with the rolling four-week return condition on the relief announced in this notice is required beginning on April 4, 2022. Compliance with all other conditions remains in effect without change from prior seasons.

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SUPPLEMENTARY INFORMATION:

Background

On March 16, 2020, the FAA granted a limited waiver of the minimum slot usage requirements [1] to carriers operating at all slot-controlled airports in the United States (DCA, JFK, and LGA) [2] and related relief to carriers operating at designated IATA Level 2 airports in the United States (EWR, LAX, ORD, SFO) due to the extraordinary impacts on the demand for air travel resulting from the COVID–19 pandemic.[3] Since the initial slot usage waiver and related relief was provided, the FAA has taken action to extend the relief provided on four occasions subject to certain substantive changes, including the addition of conditions, as the COVID–19 situation continued to evolve.[4] The most recent limited, conditional extension of COVID–19-related relief was issued by the FAA on October 18, 2021, and is due to expire on March 27, 2022.[5]

The FAA issued a notice on February 25, 2022, inviting comment on its proposal to extend through October 29, 2022, the COVID–19-related limited, conditional waiver of the minimum slot usage requirement at United States (U.S.) slot controlled and IATA Level 2 airports that the FAA has already made available through March 26, 2022, for international operations only.[6] In its proposal the FAA explained it would generally evaluate any request for relief from U.S. carriers for the Summer 2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules. The FAA further explained that domestic carriers seeking relief for a particular operation under the waiver will need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates FAA's proposal to demonstrate intent to use a slot or approved operating time for an international destination. The notice explained that international operations eligible for a waiver at U.S. slot-controlled and IATA Level 2 airports under FAA's proposal would be subject

[1] The FAA has authority for developing ''plans and policy for the use of the navigable airspace'' and for assigning ''by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace.'' 49 U.S.C. 40103(b)(1). The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at JFK and LGA. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

[2] Although DCA and LGA are not designated as IATA Level 3 slot-controlled airports given that these airports primarily serve domestic destinations, the FAA limits operations at these airports via rules at DCA and an Order at LGA that are equivalent to IATA Level 3. *See* FN 1. The FAA reiterates that the relief provided in the March 16, 2020, notice (85 FR 15018); the April 17, 2020, notice (85 FR 21500); the October 7, 2020, notice (85 FR 63335); the January 14, 2021, Summer 2021 FAA Policy Statement (Docket No. FAA–2020–0862–0302); and, the October 20, 2021, notice (86 FR 58134), extends to all allocated slots, including slots allocated by exemption.

[3] Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 15018 (Mar. 16, 2020).

[4] Orders Limiting Operations at John F. Kennedy International Airport and New York LaGuardia Airport; High Density Traffic Airports Rule at Ronald Reagan Washington National Airport, 85 FR 21500 (Apr. 17, 2020); COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2020/2021 Scheduling Season, 85 FR 63335 (Oct. 7, 2020); FAA Policy Statement: Limited, Conditional Extension of COVID–19 Related Relief for the Summer 2021 Scheduling Season (Docket No. FAA–2020–0862–0302); and COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021).

[5] COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021).

[6] COVID–19 Related Relief Concerning International Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season, 89 FR 11805 (Mar. 2, 2022).

to all of the same conditions and policies already in effect.

Current COVID–19 Situation

Since FAA's notice published October 20, 2021, granting a limited, conditional extension of COVID–19-related relief for international operations only at slot-controlled airports and IATA Level 2 airports in the United States, COVID–19 has continued to cause disruption globally, and the timeline for recovery from this global pandemic remains uncertain. The World Health Organization (WHO) reports COVID–19 cases in more than 200 countries, areas, and territories worldwide.[7] For the week ending March 20, 2022, the WHO reported over 12 million new COVID–19 cases and just under 33,000 new deaths, bringing the cumulative total to more than 468 million confirmed COVID–19 cases and over 6 million deaths globally since the start of the COVID–19 pandemic.[8]

The WHO reports that it is monitoring multiple variants globally; currently, the WHO has classified two variants as ''circulating variants of concern'' and recently put out a statement regarding the Omicron sublineage BA.2.[9] The Centers for Disease Control and Prevention (CDC) is monitoring all variants of COVID–19 in the United States.[10] The CDC has listed the Omicron and Delta variants as variants of concern.[11] The CDC reports that all Food and Drug Administration (FDA)-approved or authorized vaccines reduce the risk of severe illness, hospitalization, and death from COVID–19.[12]

Currently, three COVID–19 vaccines have been authorized for emergency use or approved by the FDA.[13] As of March 23, 2022, 65.4 percent of Americans are fully vaccinated, and 76.8 percent of Americans have received at least one dose.[14] Due to substantial efforts to increase vaccination rates across the globe, the United States moved away from a country-by-country restriction previously applied during the COVID–19 pandemic and adopted an air travel policy that relies primarily on vaccination to advance the safe resumption of international air travel to the United States.[15] When the FAA extended COVID–19-related relief for international operations only by notice published October 20, 2021, the number of confirmed new cases of COVID–19 in the U.S. for the week of October 18, 2021, based on WHO data, was 509,330.[16] On December 1, 2021, the first case attributable to the Omicron variant was identified in the United States.[17] For the week of March 14, 2022, which is the most recent week for which data is available, the WHO reports 219,164 confirmed new cases in the United States.[18]

Standard Applicable to This Waiver Proceeding

The FAA reiterates the standards applicable to petitions for waivers of the minimum slot usage requirements in effect at DCA, JFK, and LGA, as discussed in FAA's initial decision granting relief due to COVID–19 impacts.[19] At JFK and LGA, each slot must be used at least 80 percent of the time.[20] Slots not meeting the minimum usage requirements will be withdrawn. The FAA may waive the 80 percent usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding air carrier and which affects carrier operations for a period of five consecutive days or more.[21]

At DCA, any slot not used at least 80 percent of the time over a two-month period also will be recalled by the FAA.[22] The FAA may waive this minimum usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot-holding carrier and which exists for a period of nine or more days.[23]

When making decisions concerning historical rights to allocated slots, including whether to grant a waiver of the usage requirement, the FAA seeks to ensure the efficient use of valuable aviation infrastructure while maximizing the benefits to airport users and the traveling public. This minimum usage requirement is expected to accommodate routine cancelations under all but the most unusual circumstances. Carriers proceed at risk if, at any time prior to a final decision, they make decisions in anticipation of the FAA granting a slot usage waiver.

Summary of Comments and Information Submitted

The FAA received comments from 11 stakeholders and other persons on the proposal including IATA, Airlines for America (A4A), Airports Council International-North America (ACI–NA), Exhaustless Inc. (Exhaustless), United Airlines (United), six foreign carriers or holding companies (Aer Lingus, British Airways, Etihad Airways, Iberia Airlines, ITA Airways, and Lufthansa Group). Nine commenters including A4A, IATA, and all commenting U.S. and foreign carriers, support FAA's proposal though some commenters have requested certain modifications.

Commenters Who Support FAA's Proposal

Aer Lingus, British Airways, Etihad Airways, Iberia Airlines, and ITA Airways, commented supporting FAA's proposal. Aer Lingus states that the proposed relief ''is a wholly sensible and appropriate approach to mitigate against the current risks and to copper fasten U.S. global connectivity into the future.'' British Airways comments in support of FAA's proposal stating ''BA [British Airways] believes that the extension of slot relief into Summer 2022 is wholly appropriate and essential for preserving established international aviation networks, which in turn are

[7] *https://covid19.who.int/table.*

[8] COVID–19 weekly epidemiological update, March 22, 2022, available at: *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports. See also https://covid19.who.int/* for WHO COVID–19 Dashboard with the most current number of cases reported.

[9] *https://www.who.int/en/activities/tracking-SARS-CoV-2-variants/. See also https://www.who.int/news/item/22-02-2022-statement-on-omicron-sublineage-ba.2.*

[10] Center for Disease Control (CDC), What You Need To Know About Variants, available at: *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html.*

[11] *Id.*

[12] *Id. See also https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/.*

[13] *https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines.*

[14] CDC, COVID–19 Vaccinations in the United States, updated March 23, 2022, available at: *https://covid.cdc.gov/covid-data-tracker/#vaccinations.*

[15] *Id. See also https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/25/a-proclamation-on-advancing-the-safe-resumption-of-global-travel-during-the-covid-19-pandemic/.*

[16] COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021). *See also https://covid19.who.int/region/amro/country/us.*

[17] *https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-omicron-variant.html.*

[18] *https://covid19.who.int/region/amro/country/us.*

[19] *See* 85 FR 15018 (Mar. 16, 2020).

[20] Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 47065 at 58255 (Sep. 18, 2020).

[21] At JFK, historical rights to operating authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season. *See* JFK Order, 85 FR at 58260. At LGA, any operating authorization not used at least 80 percent of the time over a two-month period will be withdrawn by the FAA. *See* LGA Order, 85 FR at 58257.

[22] *See* 14 CFR 93.227(a).

[23] *See* 14 CFR 93.227(j).

vital for keeping trade routes open in support of the wider economies and assisting the global recovery from the pandemic.'' Etihad Airways comments that it ''is in full support of the proposal in light of the uncertain recovery of demand and potential further restrictions impacting mainly its eastbound markets (GCC countries, Indian subcontinent, South-and Northeast Asia).'' Iberia Airlines comments stating that it strongly supports the proposed extension and ''appreciate[s] that the FAA is aware of the unpredictable environment and that the recovery from this global pandemic remains slow.'' ITA Airways comments generally in support of the FAA's proposal stating ''We strongly support the proposed extension of a conditional waiver of the minimum slot usage requirement for international slots only for S22''.

Commenters Who Support FAA's Proposal With Requested Modifications

A4A, IATA, Lufthansa Group, and United support FAA's proposal but made additional requests for flexibility on the slot return requirements outlined in the FAA's proposal. A4A supports FAA's proposal stating that it provides ''operational certainty'', ''simplicity'', and ''fairness and equity''. A4A asserts that, ''[i]nternational air travel for the remainder of 2022 is expected to improve over 2021 levels, but a full recovery is not expected before 2024 at the very earliest'' and that ''FAA should extend the Waiver for Level 2 and 3 airports, given the pandemic's continued direct impact on U.S. carriers' international operations.'' In support of this claim A4A provides that ''[f]or the first two months of 2022, A4A member passenger traffic for Trans-Atlantic, Trans-Pacific and transborder U.S.-Canada operations have tracked at 59%, 13% and 26%, respectively, of 2019 levels. While we [A4A] anticipate improved demand as global travel restrictions ease, as we look forward, these markets remain weak.'' A4A requests the FAA incorporate flexibility into the slot return rules stating ''FAA should permit a ten-day slot return notice requirement for the first two weeks after a final notice is issued and thereafter revert to a four-week slot return notice requirement.'' In addition, A4A requests the FAA maintain a reciprocity requirement, and that ''a lack of reciprocity would impair connectivity, distort competition, and alter passenger demand in the future, thereby directly impacting more than just U.S. carrier service at these airports; it would exacerbate uncertainty and reduce flexibility.'' IATA comments, ''[w]hile forward looking trends are improving, future bookings for international travel remain significantly lower than pre-COVID levels. For this reason, it is wholly sensible to provide flexibility in the form of an international slot waiver, considering the season starts in one month.'' Further, IATA states that ''airlines need certainty that there remains a level of flexibility and assurances that impacted routes can be sustainably rebuilt in line with the recovery of demand throughout the season.'' IATA request the FAA ''amend the slot return period to initially seven days after publication in the **Federal Register**, and the subsequently as a rolling 4-week return region.'' United comments that it ''adopts and incorporates by reference the comments filed by Airlines for America (''A4A''). United ''commends FAA for recognizing the continuing and extraordinary adverse effects of the COVID19 pandemic and for proposing a limited, conditional waiver applying to international operations for slot use at Level 3 airports and for schedule cancellation at Level 2 airports.'' United requests the FAA ''amend the date of which carriers are to make the first slot return for the Summer 2022 season from the published February 28, 2022 date to a date 7 days after final publication of the final notice.'' Lufthansa Group comments in support of FAA's proposal stating ''the unexpected emergence and spread of the Delta and then Omicron variants during the last 6 months, requires the industry and government to be ready and able to react with significant flexibility, especially in the international setting.'' Similarly, Lufthansa group recommend the FAA ''amend the slot return period to initially 7 days after final publication in the **Federal Register**, and then subsequently on a rolling 4-week basis.''

Commenters Who Oppose the FAA's Proposal

ACI–NA and Exhaustless oppose FAA's proposal to continue COVID–19-related relief for international operations only. ACI–NA submits that ''with the alleviation of regulatory restrictions to travel, airports cannot accept a situation where extending the waiver for international operations would weaken the reinstatement of much-needed connectivity and damage the competitive landscape at airports.'' ACI–NA observes that ''the practical effect of extending slot relief is precisely to reserve capacity for historic holders of landing privileges at constrained airports, thereby distorting the shape and trajectory of air travel recovery at these airports. ACI–NA believes that absent these waivers, airlines serving constrained airports would be encouraged to make different, demand-responsive decisions regarding deployment of their capacity.'' Further, ACI–NA suggests that ''continuation of these waivers could lead to a ''chilling effect'' which discourages new service at constrained airports due to a lack of long-term certainty, thereby punishing the airlines most interested in deploying their capacity to respond to the needs of the traveling public.''

Exhaustless opposes FAA's proposal, contending that it would ''block the free market economy'' and argues that ''the DOT/FAA must consider the Exhaustless' airspace reservation market and explain why it has proposed an administrative allocation—that excludes passengers—over Exhaustless' competitive and coordinated market for airspace reservations.''

Discussion of Comments Regarding Flexibility in the Slot Return Policy

The FAA is persuaded by commenters that have requested the FAA modify the initial February 28, 2022, slot return deadline due to compliance issues attributable to the timing of FAA's final waiver decision. Due to the timing of this final notice, the FAA will require compliance with the 4-week advance slot return condition for operations scheduled from May 2, 2022 (instead of from March 27, 2022) through the duration of the Summer 2022 season. Accordingly, carriers must begin notifying FAA of Summer returns by April 4, 2022 (instead of February 28, 2022). The FAA believes this change is reasonable because it would be impracticable for carriers to meet the proposed return deadline given the timing of the FAA's final waiver policy.

Discussion of Comments Regarding Reciprocity

The FAA received comments requesting that the FAA maintain the reciprocity requirement. As stated in FAA's proposal and discussed later in this notice, FAA expects that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to the foreign carrier. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

Discussion of Additional Issues Raised in Comments

FAA received a comment requesting the FAA discontinue COVID-related relief for international operations due to the practical effects of relief weakening the reinstatement of connectivity, damaging the competitive landscape at airports, chilling the introduction of new services, and distorting the air travel recovery at airports. Based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of travel restrictions, and the disparity between demand for domestic air travel and demand for international air travel, extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes extending the limited, conditional slot usage waiver, for international operations only, through the Summer 2022 season provides carriers with the flexibility to operate in the unpredictable international market and supports the long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States. The FAA notes that no U.S. carrier or foreign carrier commented in opposition of the FAA's proposed extension of COVID-related relief. Further, to the extent that some commenters question FAA's authority to manage slots and facilitate schedules or seek to supersede this proceeding entirely by encouraging the federal government to establish broader aviation industry recovery policies and/or change the regulatory policy landscape for managing slots and schedule facilitation in the United States, such comments are deemed to be outside the scope of this proceeding.

Decision

In consideration of the foregoing information, petitions received in advance of the proposal, the comments that the FAA has received, and the evolving and highly unpredictable situation globally with respect to ongoing impacts from COVID–19, the FAA has determined to extend, for international operations only, the current limited, conditional relief that the FAA has already made available through March 26, 2022, through the end of the Summer 2022 season on October 29, 2022.[24] This relief is limited to slots and approved operating times used by carriers for international operations through October 29, 2022, and is subject to the same terms and conditions that the FAA has applied to the relief already made available through March 26, 2022, which the FAA reiterates in this notice. International operations, for the purpose of this notice, are flights intended for operation between one of the U.S. slot-controlled or IATA Level 2 airports and any point in a foreign jurisdiction.

It is not the policy of the Department of Transportation (DOT) to use slot and Level 2 rules to reserve capacity for historic incumbent carriers until demand returns to predetermined levels. Instead, it is the policy of the Department to encourage high utilization of scarce public infrastructure. As previously stated, at some point in time, continuing waivers to preserve pre-COVID slot holdings may impede the ability of airports and airlines to provide services that benefit the overall national economy and make appropriate use of scarce public assets. Therefore, the FAA emphasizes that operators should not assume further relief on the basis of COVID–19 will be forthcoming beyond the end of the Summer 2022 scheduling season.

Based on global vaccination rates, changing infection rates and the threat of new virus strains, continued unpredictability of travel restrictions, and the disparity between demand for domestic air travel and demand for international air travel, extending the current limited, conditional waiver for international operations by all carriers, is reasonable. The FAA believes extending the limited, conditional slot usage waiver, for international operations only, through the Summer 2022 season provides carriers with the flexibility to operate in the unpredictable international market and supports the long term viability of carrier operations at slot-controlled and IATA Level 2 airports in the United States.

The FAA recognizes that domestic carriers have a mix of both domestic and international operations, and therefore the agency intends to make this relief available for international operations that would have been operated in the Summer 2022 season, but for COVID–19 impacts on air travel demand. In other words, the FAA intends to provide this conditional relief to domestic carriers on a scale that is generally comparable to each carrier's pre-COVID level of international service. The FAA would generally evaluate any request for relief from U.S. carriers for the Summer 2022 scheduling season based on historical levels of operations to foreign points as demonstrated in published schedules from the Summer 2019 scheduling season. Domestic carriers seeking relief for a particular operation under the waiver would need to provide the FAA, if not readily apparent from FAA records and historic published schedule data, alternative supplemental information that predates this notice to demonstrate intent to use a slot or approved operating time for an international destination. The FAA would not accept evidence of intent to use a particular slot or approved operating time for an international flight during the Summer 2022 season if the information is dated after the Summer 2022 proposal (87 FR 11805) issued on February 25, 2022.

International operations eligible for a waiver under this relief are subject to all of the same conditions and policies made available in FAA's Winter 2021/2022 waiver, which remains in effect at slot-controlled, and IATA Level 2 airports in the United States for the Winter 2021/2022 season.[25] The FAA believes the conditions associated with the relief provided to date are generally comparable to the WASB package and remain necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential to suppress flight operations for which demand exists. The FAA has determined to make available to slot holders at U.S. slot-controlled airports (DCA, JFK, and LGA) a waiver from the minimum slot usage requirements, for international operations only, due to continuing COVID–19 impacts through October 29, 2022, subject to the following conditions:

(1) All slots not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these slots on an *ad hoc* basis without historic precedence. However, slots operated as approved on a non-historic basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 2023) for use on a non-historic basis, subject to capacity availability and consistent with established rules and policies in effect in the United

[24] The FAA notes that for purposes of the relief described in this proceeding, Canadian carriers are treated as foreign carriers.

[25] COVID–19 Related Relief Concerning Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Winter 2021/2022 Scheduling Season, 86 FR 58134 (Oct. 20, 2021).

States.[26] [27] Foreign carriers seeking priority under this provision will be required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Compliance with this condition is required for operations scheduled from May 2, 2022, through the duration of this relief; therefore, carriers must begin notifying the FAA of Summer returns by April 4, 2022;

(2) The waiver does not apply to slots newly allocated for initial use during the Summer 2022 season. New allocations meeting minimum usage requirements remain eligible for historic precedence. The waiver does not apply to historic in-kind slots within any 30-minute or 60-minute time period, as applicable, in which a carrier seeks and obtains a similar new allocation (*i.e.,* arrival or departure, air carrier or commuter, if applicable); and,

(3) The waiver does not apply to slots newly transferred on an uneven basis (*i.e.,* via one-way slot transaction/lease) since October 15, 2020, for the duration of the transfer.[28] Slots transferred prior to this date may benefit from the waiver if all other conditions are met. Slots granted historic precedence for subsequent seasons based on this relief are not eligible for transfer if the slot holder ceases all operations at the airport.

In addition, an exception may be granted to these conditions based on any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the slot was held. This exception applies under extraordinary circumstances only in which a carrier is able to demonstrate that the ability to operate a particular flight or comply with the conditions of the waiver is prevented or severely restricted due to an unpredictable official governmental action related to COVID–19. Official government actions that may qualify for this exception include—

- Government travel restrictions based on nationality, closed borders, government advisories related to COVID–19 that warn against all but essential travel, or complete bans on flights from/to certain countries or geographic areas.
- Government restrictions related to COVID–19 on the maximum number of arriving or departing flights and/or the number of passengers on a specific flight or through a specific airport.
- Government restrictions on movement or quarantine/isolation measures within the country or region where the airport or destination (including intermediate points) is located.
- Government-imposed closure of businesses essential to support aviation activities (*e.g.,* closure of hotels, ground handling suppliers, etc.).
- Governmental restrictions on airline crew, including unreasonable entry requirements or unreasonable testing and/or quarantine measures.

This exception is being administered by the FAA in coordination with the Office of the Secretary of Transportation (OST). The extraordinary circumstances exception in this slot usage relief is limited to the scope of the relief otherwise provided by this waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief for domestic operations.[29]

The conditions for COVID–19-related relief for prioritizing flights canceled at IATA Level 2 airports (ORD, EWR, LAX, and SFO), for purposes of establishing a carrier's operational baseline in the next corresponding season, which the FAA will apply to the relief in this notice include:

(1) All schedules as initially submitted by carriers and approved by the FAA and not intended to be operated must be returned at least four weeks prior to the date of the FAA-approved operation to allow other carriers an opportunity to operate these times on an *ad hoc* basis without assurance of priority in the next corresponding season. However, schedules operated as approved on an *ad hoc* basis in Summer 2022 will be given priority over new demands for the same timings in the next equivalent season (Summer 2023) for use on an *ad hoc* basis, subject to capacity availability and consistent with established rules and policies in effect in the United States. Foreign carriers seeking priority under this provision are required to represent that their home jurisdiction will provide reciprocal priority to U.S. carrier requests of this nature. Compliance with this condition is required for operations scheduled from May 2, 2022, through the duration of this relief; therefore, carriers must begin notifying the FAA of Summer returns by April 4, 2022; and,

(2) The priority for FAA schedules approved for Summer 2022 does not apply to net-newly approved operations for initial use during the Summer 2022 season. New approved times will remain eligible for priority consideration in Summer 2023 if actually operated in Summer 2022 according to established processes.

Consistent with the final decision for slot-controlled airports, limited exceptions may be granted from either or both of these conditions at Level 2 airports under extraordinary circumstances due to any government restriction that prevents or severely restricts travel to specific airports, destinations (including intermediate points), or countries for which the schedule approval was held, as discussed previously with respect to slot-controlled airports. If the exception is determined not to apply, carriers will be expected to meet the conditions for relief or operate consistent with standard expectations for the Level 2 environment. The extraordinary circumstances exception in this relief only applies within the scope of the relief otherwise provided by the waiver; U.S. carriers should not expect to rely on the extraordinary circumstances exception for relief related to domestic operations.

The FAA believes an extension of relief for international operations only, through October 29, 2022, is reasonable due to fluctuating travel restrictions and the ongoing economic and health impacts of COVID–19 internationally. The relief is expected to provide carriers with flexibility during this unprecedented situation and to support the long-term viability of international operations at slot-controlled and IATA Level 2 airports in the United States.[30]

[26] Consistent with the FAA's final policy statement issued January 13, 2021, this priority applies to slot or schedule requests for Summer 2023, which are comparable in timing, frequency, and duration to the non-historic ad hoc approvals made by the FAA for Summer 2022. This priority does not affect the historic precedence or priority of slot holders and carriers with schedule approvals, respectively, which meet the conditions of the waiver during Summer 2022 and seek to resume operating in Summer 2023. The FAA may consider this priority in the event that slots with historic precedence become available for permanent allocation by the FAA.

[27] Although the FAA is extending the four-week rolling return policy consistent with the Winter 2021/2022 waiver, any carrier returning full-season slots or schedule approvals at an airport outside the United States and associated with a route to the United States will generally be expected to similarly return the complementary full-season U.S. slot or schedule approval to the FAA for re-allocation on a non-historic or *ad hoc* basis.

[28] Consistent with prior proceedings, the FAA does not propose to revise this condition to include a buffer period for new transfers to be completed and still benefit from this waiver. Therefore, this policy remains in effect continuously from the initial effective date of October 16, 2020.

[29] The FAA may consider individualized requests from U.S. carriers for domestic relief on a case-by-case basis consistent with the applicable waiver standard.

[30] The FAA is responsible to develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. *See* 49 U.S.C. 40103(b)(1).

Continued

Continuing relief for this additional period is reasonable to mitigate the impacts on passenger demand for international air travel resulting from the spread of COVID–19 worldwide.

As of the date of issuance of this notice, COVID–19 continues to present a highly unusual and unpredictable condition for international operations that is beyond the control of carriers. The continuing impacts of COVID–19 on global aviation are dramatic and extraordinary, with an unprecedented decrease in passenger demand for international air travel globally. The ultimate duration and severity of COVID–19 impacts on passenger demand for international air travel remain unclear.

The FAA expects that foreign slot coordinators will provide reciprocal relief to U.S. carriers. To the extent that U.S. carriers fly to a foreign carrier's home jurisdiction and that home jurisdiction does not offer reciprocal relief to U.S. carriers, the FAA may determine not to grant a waiver to that foreign carrier. The FAA acknowledges that some foreign jurisdictions may opt to adopt more strict provisions in response to this policy than they had otherwise planned. However, as previously explained, the FAA believes the conditions associated with the relief provided in this notice are necessary to strike a balance between competing interests of incumbent carriers and those carriers seeking new or increased access at these historically-constrained airports, as well as to ensure the relief is appropriately tailored to reduce the potential for a long-term waiver to suppress flight operations for which demand exists. A foreign carrier seeking a waiver may wish to ensure that the responsible authority of the foreign carrier's home jurisdiction submits a statement by email to *ScheduleFiling@dot.gov* confirming reciprocal treatment of the slot holdings of U.S. carriers.

The FAA emphasizes that it strongly encourages carriers to return slots and approved schedules voluntarily as soon as possible and for as long a period as possible during the Summer 2022 season, so that other airlines seeking operations on an *ad hoc* basis may do so with increased certainty. The rolling four-week return deadline is only a minimum requirement, and FAA anticipates that carriers may often be able to provide notice of cancellations significantly further in advance than four weeks. In both the Level 2 and slot-controlled environments, the FAA seeks the assistance of all carriers to continue to work with the FAA to ensure the national airspace system capacity is not underutilized during the COVID–19 pandemic.

Carriers should advise the FAA Slot Administration Office of COVID–19-related cancellations and return the slots to the FAA by email to *7-awa-slotadmin@faa.gov* to obtain relief. Carriers that have already advised the FAA Slot Administration Office of COVID–19-related cancellations and slot returns contingent on the Summer 2022 final policy do not need to resubmit identical requests. The information provided should include the dates for which relief is requested, the flight number, origin/destination airport, scheduled time of operation, the slot identification number, as applicable, and supporting information demonstrating that flight cancelations directly relate to the COVID–19 pandemic. Carriers providing insufficient information to clearly identify slots that will not be operated at DCA, JFK, or LGA will not be granted relief from the applicable minimum usage requirements. Carriers providing insufficient information to identify clearly changes or cancellations from previously approved schedules at EWR, LAX, ORD, or SFO will not be provided priority for future seasons.

Issued in Washington, DC, on March 25, 2022.

Marc A. Nichols,

Chief Counsel.

Virginia T. Boyle,

Vice President, System Operations Services.

[FR Doc. 2022–06743 Filed 3–25–22; 4:15 pm]

BILLING CODE 4910–13–P

The FAA manages slot usage requirements under the authority of 14 CFR 93.227 at DCA and under the authority of Orders at LGA and JFK. *See* Operating Limitations at John F. Kennedy International Airport, 85 FR 58258 (Sep. 18, 2020); Operating Limitations at New York LaGuardia Airport, 85 FR 58255 (Sep. 18, 2020).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–0031]

Long Island Rail Road's Request To Amend Its Positive Train Control Safety Plan and Positive Train Control System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that, on March 22, 2022, Long Island Rail Road (LIRR) submitted a request for amendment (RFA) to its FRA-approved Positive Train Control Safety Plan (PTCSP). As this RFA may involve a request for FRA's approval of proposed material modifications to an FRA-certified positive train control (PTC) system, FRA is publishing this notice and inviting public comment on the railroad's RFA to its PTCSP.

DATES: FRA will consider comments received by April 18, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: *Comments:* Comments may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and the applicable docket number. The relevant PTC docket number for this host railroad is Docket No. FRA–2010–0031. For convenience, all active PTC dockets are hyperlinked on FRA's website at *https://railroads.dot.gov/train-control/ptc/ptc-annual-and-quarterly-reports.* All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: In general, Title 49 United States Code (U.S.C.) Section 20157(h) requires FRA to certify that a host railroad's PTC system complies with 49 CFR part 236, subpart I, before the technology may be operated in revenue service. Before making certain changes to an FRA-certified PTC system or the associated FRA-approved PTCSP, a host railroad must submit, and obtain FRA's approval of, an RFA to its PTCSP under Title 49 Code of Federal Regulations (CFR) section 236.1021.

Under 49 CFR 236.1021(e), FRA's regulations provide that FRA will publish a notice in the **Federal Register** and invite public comment in accordance with 49 CFR part 211, if an RFA includes a request for approval of a material modification of a signal and train control system. Accordingly, this notice informs the public that, on March 22, 2022, LIRR submitted an RFA to its PTCSP for its Advanced Civil Speed Enforcement System II (ACSES II) and that RFA is available in Docket No. FRA–2010–0031.

Interested parties are invited to comment on LIRR's RFA to its PTCSP

by submitting written comments or data. During FRA's review of this railroad's RFA, FRA will consider any comments or data submitted within the timeline specified in this notice and to the extent practicable, without delaying implementation of valuable or necessary modifications to a PTC system. *See* 49 CFR 236.1021; *see also* 49 CFR 236.1011(e). Under 49 CFR 236.1021, FRA maintains the authority to approve, approve with conditions, or deny a railroad's RFA to its PTCSP at FRA's sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–06613 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0127]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 1, 2022, Dakota, Missouri Valley & Western Railroad (DMVW) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.47, *Emergency brake valve.* The relevant FRA Docket Number is FRA–2017–0127.

Specifically, DMVW requests an extension of relief from the requirement that an emergency brake pipe valve be installed adjacent to the rear door of a locomotive for five EMO SD50 locomotive units (Numbers 5408, 5418, 5439, 5451, and 5454) and three EMO SD60 locomotive units (Numbers 5500, 5501, and 5544). The eight units are all of the same car body type and are not equipped with the rear conductor brake valve. Each of the units have rear walkways and switch style steps, thus allowing the engineer to see the person riding on the back along with radio communication. These units will be used in road service and will always be paired together.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by May 13, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–06596 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2015–0062]

Florida East Coast Railway's Request for Approval To Field Test Positive Train Control on Its Cocoa Subdivision

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability and request for comments.

SUMMARY: This document provides the public with notice that on March 18, 2022, Florida East Coast Railway (FECR) submitted a document entitled, ''Combined FECR Test Request V 2.0,'' dated March 1, 2022, to FRA. FECR asks FRA to approve its request so that FECR may field test, on its Cocoa Subdivision, FECR's freight trains and Brightline's passenger trains that have been equipped with positive train control (PTC) technology.

DATES: FRA will consider comments received by May 31, 2022. FRA may consider comments received after that date to the extent practicable and without delaying implementation of valuable or necessary modifications to a PTC system.

ADDRESSES: All comments should identify the agency name and Docket Number FRA–2015–0062, and may be submitted on *https://www.regulations.gov.* Follow the online instructions for submitting comments. All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information.

FOR FURTHER INFORMATION CONTACT: Gabe Neal, Staff Director, Signal, Train Control, and Crossings Division, telephone: 816–516–7168, email: *Gabe.Neal@dot.gov.*

SUPPLEMENTARY INFORMATION: On October 15, 2021, FRA conditionally certified FECR's Interoperable Electronic Train Management System (I–ETMS) PTC system under Title 49 Code of Federal Regulations (CFR) Section 236.1015 and Title 49 United States Code (U.S.C.) 20157(h). Pursuant to 49 CFR 236.1035, a railroad must obtain FRA's approval before field testing an uncertified PTC system, or a

product of an uncertified PTC system, or any regression testing of a certified PTC system on the general rail system. *See* 49 CFR 236.1035(a). Please see FECR's test request for the required information, including a complete description of both FECR's Concept of Operations and its specific test procedures, including the measures that will be taken to ensure safety during testing.

FECR's test request is available for review online at *https://www.regulations.gov* (Docket No. FRA–2015–0062). Interested parties are invited to comment on the test request by submitting written comments or data. During its review of the test request, FRA will consider any comments or data submitted. However, FRA may elect not to respond to any particular comment, and under 49 CFR 236.1035, FRA maintains the authority to approve, approve with conditions, or deny the test request at its sole discretion.

Privacy Act Notice

In accordance with 49 CFR 211.3, FRA solicits comments from the public to better inform its decisions. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See *https://www.regulations.gov/privacy-notice* for the privacy notice of regulations.gov. To facilitate comment tracking, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Carolyn R. Hayward-Williams,

Director, Office of Railroad Systems and Technology.

[FR Doc. 2022–06612 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2007–0030]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 11, 2022, NJ TRANSIT Corporation (NJT) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 213, 219, 221, 222, 223, 229, 231, 234, 236, 238, 239, 242, 243, and 270. The relevant FRA Docket Number is FRA–2007–0030.

Specifically, NJT requests an extension of relief from multiple regulations and seeks new relief from two additional parts (243 and 270) for NJT's Southern New Jersey Light Rail Transit (the ''River Line''). The River Line is a commuter light rail transit system that operates over the Bordentown Secondary Track, track NJT shares with the Consolidated Rail Corporation (Conrail). The operation uses diesel multiple unit trainsets during an exclusive passenger period, temporally separated from Conrail's nightly freight operations over the same tracks. NJT states that the relief facilitates more efficient and productive joint use of the trackage and that the limited nighttime joint operations have been carried out safely since the original waiver was granted.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by May 13, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–06595 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0023]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 11, 2022, North Shore Railroad Company & Affiliates (NSHR) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.23, *Periodic inspection: General.* FRA assigned the petition Docket Number FRA–2022–0023.

Specifically, NSHR requests relief of the 92-day inspection requirements for four locomotives (LVRR 9050, LVRR 9052, NSHR 2017, and NSHR 2012) used in seasonal in-plant switching in Washingtonville, PA. NSHR states that cycling the locomotives in and out of the plant for periodic inspections in a timely manner is difficult, as the locomotives do not have active on-board positive train control apparatuses and the rail line connecting to the plant is owned by a different railroad carrier (Norfolk Southern Railway). NSHR proposes that two of the locomotives would be used for in-plant unloading of synthetic gypsum and two of the locomotives would serve as alternate units. When the alternate units are not in the plant, they would receive normal 92-day periodic inspections at the NSHR locomotive shop in Williamsport, PA.

NSHR notes that the locomotives would be utilized for in-plant switching and remain captive at the plant during a scheduled unloading season (March through November), and would only operate at restricted speed, not to exceed 10 miles per hour. NSHR explains that its proposed safety plan includes: (1) A comprehensive shop

inspection (including a 92-day inspection by qualified locomotive mechanics) in advance of the seasonal work; (2) in-plant switching would be performed by certified NSHR employees who would perform daily inspections; and (3) a qualified locomotive mechanic would be dispatched to ensure safe operations while captive at the plant.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by May 13, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–06597 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2022–0028]

Agency Information Collection Activities; Notice and Request for Comment; Evaluation of the Model Minimum Uniform Crash Criteria Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes a collection of information for which NHTSA intends to seek OMB approval on an evaluation of the Model Minimum Uniform Crash Criteria (MMUCC) program.

DATES: Comments must be submitted on or before May 31, 2022.

ADDRESSES: You may submit comments identified by the Docket No. NHTSA–2022–0028 through any of the following methods:

- *Electronic Submissions:* Go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Instructions: All submissions must include the agency name and docket number for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact John Siegler, National Center for Statistics and Analysis (NSA–221), (202) 366–1268, National Highway Traffic Safety Administration, W55–233, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) how to enhance the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comments on the following proposed

collection of information for which the agency is seeking approval from OMB.

Title: Evaluation of the Model Minimum Uniform Crash Criteria (MMUCC) Program.

OMB Control Number: NEW.

Form Number(s): NHTSA Form 1635 and NHTSA Form 1636.

Type of Request: New information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: NHTSA is authorized by 49 U.S.C. 30182 and 23 U.S.C. 403 to collect data on motor vehicle traffic crashes to aid in the identification of issues and the development, implementation, and evaluation of motor vehicle and highway safety countermeasures

The MMUCC guideline identifies a minimum set of motor vehicle crash data variables and their attributes that States should consider collecting and including in their State crash data systems. MMUCC is a voluntary, minimum set of standardized data variables for describing motor vehicle traffic crashes. MMUCC promotes data uniformity within the highway safety community by creating a foundation for State crash data systems to provide the information necessary to improve highway safety. The crash data is used to identify issues, determine highway safety messages and strategic communication campaigns, optimize the location of selective law enforcement, inform decision-makers of needed highway safety legislation, and evaluate the impact of highway safety countermeasures. NHTSA developed MMUCC with the Governors Highway Safety Association in 1998 and have regularly updated the guidelines together, with the most recent fifth edition published in 2017.

NHTSA is seeking approval to conduct a national survey of active law enforcement officers. The purpose of the survey would be to solicit officers' judgement about collecting the crash data variables described in the current fifth edition of the Model Minimum Uniform Crash Criteria (MMUCC) Guideline (DOT HS 812 433, July 2017) as well as to test officers' abilities to accurately collect both existing MMUCC variables and proposed new or modified variables.

First, NHTSA will hire a contractor to contact police chiefs within the 397 sampling units used by NHTSA's Crash Reporting Sampling System (CRSS) to request the nomination of four law enforcement officers in their department who collect crash data to participate in the study. Specifically, NHTSA is requesting the police chiefs to provide personally identifiable information (PII) about the nominated law enforcement officers, including names and contact information (email, phone, and address) so that NHTSA can contact these officers to administer a survey on MMUCC data elements and arrange payment of an honorarium.

Second, NHTSA will send the officers who were nominated to participate in this study a unique link to one of two online surveys, which will examine the feasibility of collecting the MMUCC crash data. The surveys will collect limited information about each respondent including the State where they work as a law enforcement officer, the extent of their training for collecting crash data, and the number of years the respondents have completed crash reports. The surveys will collect information about respondents' beliefs and abilities to accurately collect crash data according to the MMUCC guidelines. The surveys will ask respondents to rate the difficulty of accurately collecting specific MMUCC data elements, assess respondents ability to collect information using MMUCC data elements for fictitious crash scenarios, and ask for suggestions on how MMUCC data elements can be improved.

Description of the Need for the Information and Proposed Use of the Information: States' adoption of MMUCC variables has been slow and inconsistent. Currently the variables collected on State's police crash reports alignment to MMUCC variables is less than 50 percent, NHTSA intends to conduct this information collection to learn why the alignment rate is so low. Before embarking on the sixth edition of MMUCC, NHTSA seeks to assess the feasibility of collecting the data variables in MMUCC and to identify problematic data variables and other factors that impede States from adopting the MMUCC variables.

To assess the ability of law enforcement officers to accurately collect MMUCC crash data variables, NHTSA will conduct an electronic survey of a national sample of law enforcement officers who complete crash reports. The survey will ask respondents to review fictitious crash scenarios and collect the MMUCC data variables. In addition, law enforcement officers will be asked about their confidence to accurately collect MMUCC data variables and to provide suggestions for improving each data variable as needed. Examples of the types of crash data variables in MMUCC that law enforcement will be asked about include Direction of Travel, Sequence of Events, Type of Intersection, and Restraint System Use. The information collected will allow NHTSA to identify data variables in MMUCC that officers might interpret differently. The results will inform deliberations about the content of the next edition of MMUCC. A summary of this research will be published as an appendix to the next edition of MMUCC.

Affected Public: Law enforcement.

Estimated Number of Respondents: NHTSA will send a short letter to 397 chief police officers to request they identify four police officers within their department to participate in the MMUCC survey. The total sample is 1,985 (397 police chiefs + 1,588 police officers).

Frequency: NHTSA plans to conduct this data collection once to prepare for the sixth edition of MMUCC.

Estimated Total Annual Burden Hours: To calculate the hour burden and labor cost associated with submitting the *Evaluation of the Model Minimum Uniform Crash Criteria,* NHTSA looked at wage estimates for Front Line Supervisors of Police and Detectives and Police and Sheriff's Patrol Officers who complete crash forms. NHTSA estimates the total opportunity costs associated with these burden hours by looking at the average wage for (1) Front line Supervisors of Police and Detectives and (2) Police and Sheriff's Patrol Officers. The Bureau of Labor Statistics (BLS) estimates that the average hourly wage for Front line Supervisors of Police and Detectives (BLS Occupation Code 33–1012) [1] is $46.72 and Police and Sheriff's Patrol Officers (BLS Occupation code 33–3051) is $33.66.[2] The Bureau of Labor Statistics estimates that wages represent 62.2 percent of total compensation for State and local government workers, on average.[3] Therefore, NHTSA estimates the hourly labor costs to be $75.11($46.72/.622) for Supervisors of Police and Sheriff's Patrol Officers and $54.12 ($33.66/622) for Police and Sheriff's Patrol Officers. NHTSA estimates that it will take about 10 minutes (0.17 of an hour) for the police

[1] *See* May 2020 National Occupational Employment and Wage Estimates. National Estimates for First-Line Supervisors of Police and Detectives. Available at *https://www.bls.gov/oes/current/oes331012.htm* (accessed July 1, 2021).

[2] *See* May 2020 National Occupational Employment and Wage Estimates. National Estimates for Police and Sheriff's Patrol Officers. Available at *https://www.bls.gov/oes/current/oes333051.htm* (accessed July 1, 2021).

[3] Employer Costs for Employee Compensation-March 2020, *https://www.bls.gov/news.release/archives/ecec_06182020.pdf.* Accessed 12/21/2021.

chiefs to nominate four law enforcement officers who investigate motor vehicle crashes, resulting in 67.49 (0.17 × 397) hours for 397 police chiefs. From pilot testing the survey instruments with six former law enforcement officers who work at NHTSA, the agency estimates that it will take the law enforcement officers one hour to complete the survey. Therefore, 1,588 hours for 1,588 law enforcement officers. NHTSA estimates the total hourly compensation cost for police chiefs to be $5,069.17 ($75.11 × 67.49 hours). NHTSA estimates the total hourly compensation cost for law enforcement officers to be $85,942.56 ($54.12 × 1,588 hours). Table 1 provides a summary of the estimated burden hours and labor costs associated with those respondents.

TABLE 1—BURDEN ESTIMATES

	Responses	Estimated burden per response	Average hourly labor cost	Labor cost per response	Total burden hours	Total labor costs
Police Chiefs nomination of law enforcement officer for study participation.	397	0.17 hour (10 minutes) ..	$75.11	$12.76	67.49	$5,069.17
Survey of Law Enforcement Officers	1,588	1 hour	54.12	54.12	1,588.00	85,942.56
Total	1,985	.....	.....	.....	1,655.49	91,011.73

Estimated Total Annual Burden Cost: This collection is not expected to result in any increase in costs to respondents other than the opportunity cost associated with the burden hours. Both the police chiefs who will nominate respondents and the law enforcement officers completing the survey on MMUCC possess the information needed to complete each survey.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Chou-Lin Chen,

Associate Administrator for the National Center for Statistics and Analysis.

[FR Doc. 2022–06496 Filed 3–28–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Requirements; Proposed Information Collection; Submission for OMB Review; Community Reinvestment Act Qualifying Activities Confirmation Request Form

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revised information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment on its form titled, ''Community Reinvestment Act Qualifying Activities Confirmation Request Form.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by April 28, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–NEW, 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.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–NEW'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On December 15, 2021, the OCC published a 60-day notice for this information collection, 86 FR 71318. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' drop-down menu. From the ''Currently under Review'' drop-down

menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–NEW'' or ''Community Reinvestment Act Qualifying Activities Confirmation Request Form.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. OCC asks that OMB approve the collection of information set forth in this document.

Title: Community Reinvestment Act Qualifying Activities Confirmation Request Form.

OMB Control No.: 1557–NEW.

Abstract: The OCC is revising and requesting a new OMB control number for its form titled ''Community Reinvestment Act Qualifying Activities Confirmation Request Form,'' which is currently approved under OMB Control No. 1557–0160.

The form was created to address the need for a qualifying activities confirmation process that would allow banks and interested parties to ascertain whether an activity qualifies under the Community Reinvestment Act (CRA). The process was well-received and strongly supported by commenters on the OCC ANPR and NPR that resulted in the 2020 final rule. Commenters on the OCC's September 2021 CRA NPR expressed continued support for such a confirmation system and, thus, the OCC has determined that it is important to allow for a more effective and efficient confirmation of CRA-qualified activities. The proposed revised form includes the following changes:

• The relocation of the regulation citation checklist of qualifying activities from the submitter portion of the form to the OCC portion of the form to reduce burden on the submitter and more accurately capture the qualifying basis of a CRA activity.

• The relocation of the activity title field from the submitter portion of the form to the OCC portion of the form to reduce burden on the submitter and permit the OCC to develop an appropriate and unique identifying title of the activity for the qualifying activities confirmation request decision list and the CRA Illustrative List of Qualifying Activities, when applicable.

• The relocation of the activity short description field from the submitter portion of the form to the OCC portion of the form to reduce burden on the submitter and permit the OCC to develop a unique, appropriate identifying short description of the activity for the qualifying activities confirmation request decision list and the CRA Illustrative List of Qualifying Activities, when applicable.

• The addition of a new field to the submitter portion of the form to provide for the identification of a contact's bank or organization, if applicable, as that entity may differ from the bank or organization conducting the activity.

• The elimination of the OCC portion of the form from the publicly-available submitter portion of the form consistent with the integration of the OCC portion of the form into a web-based platform that eliminates use of the Adobe Acrobat format in conducting the review of submitted activities.

• The revision of regulatory citations in the form.

• The addition of a field indicating whether the activity occurred between October 1, 2020 and December 31, 2021.

Type of Review: Regular.

Affected Public: Businesses or other for-profit; individuals.

Number of Respondents: 120.

Frequency of Response: On occasion.

Total Annual Burden: 2,280 hours.

On December 15, 2021, the OCC published a notice for 60 days of comment concerning this collection, 86 FR 71318. No comments were received. Comments continue to be solicited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–06552 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Requirements; Information Collection Renewals; Submission for OMB Review; Request for a Religious Exception to the COVID–19 Vaccine Requirement; and Request for a Medical Exception to the COVID–19 Vaccine Requirement

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and requests for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of two information collections as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collections titled, ''Request for a Religious Exception to the COVID–19 Vaccine Requirement;'' and ''Request for a Medical Exception to the COVID–19 Vaccine Requirement.'' The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: You should submit written comments by April 28, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

• *Email: prainfo@occ.treas.gov.*

• *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0352 or 1557–0353, 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.

• *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0352 or ''1557–0353'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On January 18, 2022, the OCC published a 60-day notice for this information collection, 87 FR 2669. You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0352'' or ''1557–0353''or ''Request for a Religious Exception to the COVID–19 Vaccine Requirement;'' and ''Request for a Medical Exception to the COVID–19 Vaccine Requirement.''. Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC requests that OMB extend its approval of the emergency approvals for the collections in this notice.

Title: Request for a Religious Exception to the COVID–19 Vaccine Requirement.

OMB Control No.: 1557–0353.

Title: Request for a Medical Exception to the COVID–19 Vaccine Requirement.

OMB Control No.: 1557–0352.

Abstract: The President, by Executive order 13991 (January 20, 2021) established the Safer Federal Workforce Task Force. The Taskforce was established to give the heads of Federal agencies ongoing guidance to keep their employees safe and their agencies operating during the COVID–19 pandemic. The Taskforce issued guidance, in accordance with the President's Executive Order 14043 (September 9, 2021), requiring federal employees to be vaccinated against COVID–19 by November 22, 2021 absent a legally required exception. To determine whether employees who requested a religious or medical exception qualified for the exception sought, or, alternatively, were required to comply with the November 22 deadline, the OCC developed the ''Request for Religious Exception to the COVID–19 Vaccination Requirement Form'' and the ''Request for Medical Exception to the COVID–19 Vaccination Requirement Form'' (collectively, Request forms). The Request forms were developed, consistent with guidance issued by the Task force and the U.S. Department of Treasury's Office of Civil Rights and Diversity, to gather information from employees and applicants for employment who requested religious or medical exceptions to determine whether such employees qualified for legal exceptions to the vaccine requirement. The Request forms also were used to collect information from job applicants who requested a legal exception upon receiving an offer of employment from the OCC.

To ensure compliance with an applicable preliminary nationwide injunction, which may be supplemented, modified, or vacated, depending on the course of ongoing litigation, Office of the Comptroller of the Currency will take no action to implement or enforce the COVID–19 vaccination requirement pursuant to Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees while the injunction is in effect.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Religious Exception:

Estimated Number of Respondents: 4 Job Applicants.

Estimated Burden per Respondent: 0.50 hours.

Total Burden: 2 hours.

Medical Exception:

Estimated Number of Respondents: 2 Job Applicants; 66 Medical Professionals.

Estimated Burden per Respondent: 0.25 hours for Job Applicants; 0.50 hours for Medical Professionals.

Total Burden: 33.5 hours.

On January 18, 2022, the OCC published a 60-day notice for this information collection, 87 FR 2669. No comments were received. Comments continue to be invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimates of the burden of the collections of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

A Notice Regarding Injunctions

The vaccination requirement issued pursuant to E.O. 14043, is currently the

subject of a nationwide injunction. While that injunction remains in place, the OCC will not process requests for a medical or religious exception from the COVID–19 vaccination requirement pursuant to E.O. 14043. The OCC will also not request the submission of any medical or religious information related to a request for an exception from the vaccination requirement pursuant to E.O. 14043 while the injunction remains in place. But the OCC may nevertheless receive information regarding a medical or religious exception. That is because, if the OCC were to receive a request for an exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 during the pendency of the injunction, the OCC will accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation and enforcement of the COVID–19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the injunction is in place. In other words, during the pendency of the injunction, any information collection related to requests for medical or religious exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 is not undertaken to implement or enforce the COVID–19 vaccination requirement.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–06537 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Domestic First Lien Residential Mortgage Data

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled ''Domestic First Lien Residential Mortgage Data.''

DATES: *Comments must be received by:* May 31, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0331, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0331'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet. Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0331'' or ''Domestic First Lien Residential Mortgage Data.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. Collection of information is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed extension of this collection of information.

Title: Domestic First Lien Residential Mortgage Data.

OMB Control No.: 1557–0331.

Description: Section 104(a) of the Helping Families Save Their Homes Act of 2009 (12 U.S.C. 1715z–25(a)) (Act), as amended by section 1493(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires the OCC to submit a quarterly report to Congress on mortgage modification activity in the Federal banking system. Section 104(b) of the Act (12 U.S.C. 1715z–25(b)) requires the OCC to collect mortgage modification data from national banks and Federal savings associations and provides for the collection of all data necessary to fulfill the reporting requirements of section 104(a). Those requirements include information on the number of mortgage modifications in each state that have certain characteristics such as changes to the principal amount of a loan or changes to a homeowner's total monthly principal and interest payment.

The OCC currently collects aggregate data on first-lien residential mortgage loans serviced by seven national banks with large mortgage-servicing portfolios. The required aggregate data are industry standard measures of portfolio performance, including: (1) Outstanding loan count and unpaid principal balance; (2) delinquency and liquidation ratios; and (3) the number of loss mitigation actions completed.

Type of Review: Extension without change of an existing information collection.

Affected Public: Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7.

Estimated Total Annual Burden: 576 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–06551 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Request for Comment; Identity Theft Red Flags and Address Discrepancies Under the Fair and Accurate Credit Transactions Act of 2003

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.''

DATES: Comments must be received by May 31, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0237, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0237'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* 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.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0237'' or ''Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.''

Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests and requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed extension of this collection of information.

Title: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003.

OMB Control No.: 1557–0237.

Description: Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) [1] amended section 615 of the Fair Credit Reporting Act

[1] 15 U.S.C. 1681m(e).

(FCRA) [2] to require the Agencies [3] to issue jointly:

- Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (in developing the guidelines, the Agencies are required to identify patterns, practices, and specific forms of activity that indicate the possible existence of identity theft. The guidelines must be updated as often as necessary and must be consistent with the policies and procedures required under section 326 of the USA PATRIOT Act, (31 U.S.C. 5318(l));
- Regulations that require each financial institution and each creditor to establish reasonable policies and procedures for implementing the guidelines in order to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and
- Regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances.

Section 315 of the FACT Act [4] also amended section 605 of FCRA to require the Agencies to issue regulations providing guidance regarding what reasonable policies and procedures a user of consumer reports must have in place and employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). These regulations are required to describe reasonable policies and procedures for users of consumer reports to:

- Enable a user to form a reasonable belief that it knows the identity of the person for whom it has obtained a consumer report; and
- Reconcile the address of the consumer with the CRA if the user establishes a continuing relationship with the consumer and regularly and, in the ordinary course of business, furnishes information to the CRA.

As required by section 114 of the FACT Act, appendix J to 12 CFR part 41 contains guidelines for financial institutions and creditors to use in identifying patterns, practices, and specific forms of activity that may indicate the existence of identity theft. In addition, 12 CFR 41.90 requires each financial institution or creditor that is a national bank, Federal savings association, Federal branch or agency of a foreign bank, and any of their operating subsidiaries that are not functionally regulated, to establish an Identity Theft Prevention Program (Program) designed to detect, prevent, and mitigate identity theft in connection with accounts. Pursuant to § 41.91, credit card and debit card issuers must implement reasonable policies and procedures to assess the validity of a request for a change of address under certain circumstances.

Section 41.90 requires each OCC-regulated financial institution or creditor that offers or maintains one or more covered accounts to develop and implement a Program. In developing a Program, financial institutions and creditors are required to consider the guidelines in appendix J and include the suggested provisions, as appropriate. The initial Program must be approved by the institution's board of directors or by an appropriate committee thereof. The board, an appropriate committee thereof, or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff members must be trained to carry out the Program. Pursuant to § 41.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request if it is followed by a request for an additional or replacement card. Before issuing the additional or replacement card, the card issuer must notify the cardholder of the request and provide the cardholder a reasonable means to report incorrect address changes or use another means to assess the validity of the change of address.

As required by section 315 of the FACT Act, 12 CFR 1022.82 [5] requires users of consumer reports to have in place reasonable policies and procedures that must be followed when a user receives a notice of address discrepancy from a CRA.

Section 1022.82 requires each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when it receives a notice of address discrepancy from a CRA. A user of consumer reports also must develop and implement reasonable policies and procedures for furnishing a customer address that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when the user can: (1) Form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) establish a continuing relationship with the consumer; and (3) establish that it regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Type of Review: Regular.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 1,172.

Estimated Total Annual Burden: 130,342 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–06549 Filed 3–28–22; 8:45 am]

BILLING CODE P

[2] 15 U.S.C. 1681m.

[3] Section 114 required the guidelines and regulations to be issued jointly by the federal banking agencies (OCC, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Corporation), the National Credit Union Administration, and the Federal Trade Commission. Therefore, for purposes of this filing, ''Agencies'' refers to these entities. Note that Section 1088(a)(8) of the Dodd-Frank Act further amended section 615 of FCRA to also require the Securities and Exchange Commission and the Commodity Futures Trading Commission to issue Red Flags guidelines and regulations.

[4] 15 U.S.C. 1681c(h)(2).

[5] Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act transferred this regulation to the Consumer Financial Protection Bureau. The OCC retains enforcement authority for this regulation for institutions with $10 billion or less in total assets.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2022–0006]

Mutual Savings Association advisory committee

AGENCY: Office of the Comptroller of the Currency (OCC), Department of the Treasury.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The OCC announces a meeting of the Mutual Savings Association Advisory Committee (MSAAC).

DATES: A public meeting of the MSAAC will be held on Tuesday, April 19, 2022, beginning at 8:30 a.m. Eastern Daylight Time (EDT). The meeting will be in person and virtually.

ADDRESSES: The OCC will host the April 19, 2022 meeting of the MSAAC at the OCC's offices at 400 7th Street SW, Washington, DC 20219 and virtually.

FOR FURTHER INFORMATION CONTACT: Michael R. Brickman, Deputy Comptroller for Thrift Supervision, (202) 649–5420, Office of the Comptroller of the Currency, Washington, DC 20219. You also may access prior MSAAC meeting materials on the MSAAC page of the OCC's website at Mutual Savings Association Advisory Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the regulations implementing the Act at 41 CFR part 102–3, the OCC is announcing that the MSAAC will convene a meeting on Tuesday, April 19, 2022. The meeting is open to the public and will begin at 8:30 a.m. EDT. The purpose of the meeting is for the MSAAC to advise the OCC on regulatory or other changes the OCC may make to ensure the health and viability of mutual savings associations. The agenda includes a discussion of current topics of interest to the industry.

Members of the public may submit written statements to the MSAAC. The OCC must receive written statements no later than 5:00 p.m. EDT on Thursday, April 14, 2022. Members of the public may submit written statements to *MSAAC@occ.treas.gov.*

Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Thursday, April 14, 2022, to inform the OCC of their desire to attend the meeting and whether they will attend in person or virtually, and to obtain information about attending in the meeting. Members of the public may contact the OCC via email at *MSAAC@OCC.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. Members of the public who are deaf, hard of hearing, or have a speech disability, should dial 7–1–1 to access telecommunications relay services for this meeting.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2022–06600 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Treasury Departmental Offices Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice, request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Departmental Offices (DO)

1. Title: Small Business Lending Fund Quarterly Supplemental Report.

OMB Control Number: 1505–0228.

Type of Review: Extension of a currently approved collection.

Description: Banks participating in the Small Business Lending Fund program are required to submit a Supplemental Report each quarter. The Supplemental Report is used to determine the bank's small business lending baseline and allows Treasury to assess the change in the small business lending for the previous quarter.

Form Number: TD F 102.3A and TD F 102.4.

Affected Public: Businesses and other for-profits.

Estimated Number of Respondents: 56.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 224.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 784.

2. Title: Determinations Regarding Certain Nonbank Financial Companies.

OMB Control Number: 1505–0244.

Type of Review: Extension without change of a current OMB approval.

Description: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''DFA'') (Pub. L. 111–203) provides the Financial Stability Oversight Council (the ''Council'') the authority to require that a nonbank financial company be supervised by the Board of Governors of the Federal Reserve System and be subject to prudential standards in accordance with Title I of the DFA if the Council determines that material financial distress at the firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States. The information collected in § 1310.20 from state and federal regulatory agencies and from nonbank financial companies will be used generally by the Council to carry out its duties under Title I of the Dodd-Frank Act. The collections of information in §§ 1310.21, 1310.22 and 1310.23 provide an opportunity for a nonbank financial company to request a hearing or submit written materials to the Council concerning whether, in the company's view, material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.

Form Number: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 20 hours.

3. Title: Equal Employment Opportunity Compliant Forms.

OMB Control Number: 1505–0262.

Type of Review: Extension of a currently approved collection.

Description: Title 29 of the United States Code of Federal Regulations (CFR) part 1614, directs agencies to maintain a continuing program to promote equal opportunity and to identify and eliminate discriminatory practices and policies. The Department of the Treasury (Department) is thus required to process complaints of employment discrimination from Department employees, former employees and applicants for jobs with the Department who claim discrimination based on their membership in a protected class, such as, race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age (over 40), disability, genetic information, or retaliation for engaging in prior protected activity. Claims of discrimination based on parental status are processed as established by Executive Order 11478 (as amended by Executive Order 13152). Federal agencies must offer pre-complaint ''informal'' counseling and/or Alternative Dispute Resolution (ADR) to these ''aggrieved individuals'' (the aggrieved), claiming discrimination by officials of the Department. If the complaint is not resolved during the informal process, agencies must issue a Notice of Right to File a Complaint of Discrimination form to the aggrieved. This information is being collected for the purpose of processing informal and formal complaints of employment discrimination against the Department on the bases of race, color, religion, sex (including pregnancy, sexual orientation and gender identity), national origin, age (over 40), disability, genetic information, parental status, or retaliation. Pursuant to 29 CFR 1614.105, the aggrieved must participate in pre-complaint counseling to try to informally resolve his/her complaint prior to filing a complaint of discrimination. Information provided on the pre-complaint forms may be used by the aggrieved to assist in determining if she or he would like to file a formal complaint against the Department. The information captured on these forms will be reviewed by the staff of the Department's Office of Civil Rights and Diversity to frame the claims for investigation and determine whether the claims are within the parameters established in 29 CFR part 1614. In addition, data from the complaint forms is collected and aggregated for the purpose of discerning whether any Department of the Treasury policies, practices or procedures may be curtailing the equal employment opportunities of any protected group.

Form Number: TD F 62–03.1, TD F 62–03.2, TD F 62–03.4, TD F 62–03.6, TD 62–03.7, TD 62–03.8, TD F 62–03.9, TD F 62–03.10, TD F 62–03.11, TD F 63–03.5.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 1 to 20.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 90.

Estimated Time per Response: 3 minutes to 1 hour.

Estimated Total Annual Burden Hours: 47.

Authority: 44 U.S.C. 3501 *et seq.*

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–06605 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Coronavirus Capital Projects Fund

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before April 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Coronavirus Capital Projects Fund.

OMB Control Number: 1505–0274.

Type of Review: Extension of a currently approved collection.

Description: Section 604 of the Social Security Act (the ''Act''), as added by section 9901 of the American Rescue Plan Act of 2021, Public Law 117–2 (Mar. 11, 2021) established the Coronavirus Capital Projects Fund (''CPF''). The CPF provides $10 billion in funding for the U.S. Department of the Treasury (''Treasury'') to make payments according to a statutory formula to States (defined to include each of the 50 states, the District of Columbia, and Puerto Rico), seven territories and freely associated states (the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau), and Tribal governments [1] ''to carry out critical capital projects directly enabling work, education, and health monitoring, including remote options, in response to the public health emergency with respect to the Coronavirus Disease (COVID–19).

Forms: Grant Applications (States, Territories, and Freely Associated States); Grant Applications (Tribal Governments); and Grant Plans (States, Territories, and Freely Associated States.

Affected Public: State, Tribal, Territorial, and Freely Associated State Governments.

Estimated Number of Respondents: 715.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 715.

Estimated Time per Response: 1 or 2 hours for Grant Applications. 60 hours for Grant Plans.

Estimated Total Annual Burden Hours: 4,793.

Authority: 44 U.S.C. 3501 *et seq.*

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–06534 Filed 3–28–22; 8:45 am]

BILLING CODE 4810–AK–P

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[1] An eligible Tribal government is the recognized governing body of any Indian or Alaska Native tribe, band, nation, pueblo, village, community, component band, or component reservation, individually identified (including parenthetically) in the list published most recently as of the date of enactment of this Act pursuant to section 104 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5131). The State of Hawaii, for exclusive use of the Department of Hawaiian Home Lands and the Native Hawaiian Education Programs to assist Native Hawaiians, is also eligible to apply for funding under this funding category.

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on April 14, 2022 focused on U.S. trade policy and impact of China's distortions on U.S. jobs, growth, and innovation.

DATES: The hearing is scheduled for Thursday, April 14, 2022 at 9:30 a.m.

ADDRESSES: This hearing will be held with panelists and Commissioners participating in-person or online via videoconference. Members of the audience will be able to view a live webcast via the Commission's website at *www.uscc.gov.* Also, please check the Commission's website for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Jameson Cunningham, 444 North Capitol Street NW, Suite 602, Washington, DC 20001; telephone: 202–624–1496, or via email at *jcunningham@uscc.gov. Reservations are not required to attend the hearing.*

ADA Accessibility: For questions about the accessibility of the event or to request an accommodation, please contact Jameson Cunningham via email at *jcunningham@uscc.gov.* Requests for an accommodation should be made as soon as possible, and at least five business days prior to the event.

SUPPLEMENTARY INFORMATION:

Background: This is the fourth public hearing the Commission will hold during its 2022 report cycle. The hearing will start by examining U.S. policies to address China's nonmarket economy practices, such as subsidies, excess capacity, and market access restrictions. The hearing will then explore U.S. approaches to defend against China's industrial policies related to innovation and technology as well as weak Chinese IP protection and theft. Next, the hearing will assess U.S. opportunities and challenges to regional economic and trade engagement in the Indo-Pacific, contrasted against China's strategy in the region. Finally, the hearing will evaluate the World Trade Organization's ability to address trade distortions resulting from China's policies and practices.

The hearing will be co-chaired by Commissioner Robin Cleveland and Commissioner Michael Wessel. Any interested party may file a written statement by April 14, 2022 by transmitting to the contact above. A portion of the hearing will include a question and answer period between the Commissioners and the witnesses.

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005), as amended by Public Law 113–291 (December 19, 2014).

Dated: March 24, 2022.

Christopher P. Fioravante,

Director of Operations and Administration, U.S.-China Economic and Security Review Commission.

[FR Doc. 2022–06556 Filed 3–28–22; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0495]

Agency Information Collection Activity: Martial Status Questionnaire

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 31, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0495'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0495'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 116–315, 38 U.S.C. 101(3) and 38 U.S.C. 103.

Title: Marital Status Questionnaire (VA Form 21P–0537).

OMB Control Number: 2900–0495.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21P–0537, Marital Status Questionnaire, is used to confirm the marital status of a surviving spouse in receipt of Dependency and Indemnity Compensation (DIC) benefits. If a surviving spouse remarries, he or she is no longer entitled to DIC unless the marriage began after age 55 or has been terminated. This is a revision. The respondent burden has decreased due to the estimated number of receivables averaged over the past year, no substantive changes have been made to the form. The estimated number of

receivables has been estimated from receivables through mail automation as well as data pulled from a document count of VA Form 21P–0537.

Affected Public: Individuals and households.

Estimated Annual Burden: 230 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,756 per year.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–06536 Filed 3–28–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Homeland Security

Department of Justice

Executive Office for Immigration Review

8 CFR Parts 208, 212, 235, et al.

Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208, 212, and 235

[CIS No. 2692–21; DHS Docket No. USCIS–2021–0012]

RIN 1615–AC67

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, 1235, and 1240

[A.G. Order No. 5369–2022]

RIN 1125–AB20

Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers

AGENCY: Executive Office for Immigration Review, Department of Justice; U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim final rule with request for comments.

SUMMARY: On August 20, 2021, the Department of Homeland Security (''DHS'') and the Department of Justice (''DOJ'') (collectively ''the Departments'') published a notice of proposed rulemaking (''NPRM'' or ''proposed rule'') that proposed amending regulations governing the procedures for determining certain protection claims and available parole procedures for individuals subject to expedited removal and found to have a credible fear of persecution or torture. After a careful review of the comments received, the Departments are now issuing an interim final rule (''rule'' or ''IFR'') that responds to comments received in response to the NPRM and adopts the proposed rule with changes. Most significantly, the IFR provides that DHS's United States Citizenship and Immigration Services (''USCIS'') will refer noncitizens whose applications are not granted to DOJ's Executive Office for Immigration Review (''EOIR'') for streamlined removal proceedings. The IFR also establishes timelines for the consideration of applications for asylum and related protection by USCIS and, as needed, EOIR. This IFR responds to comments received in response to the NPRM and adopts the NPRM with changes as described in this rule. The Departments solicit further public comment on the IFR's revisions, which will be considered and addressed in a future rule.

DATES: *Effective Date:* This interim final rule is effective May 31, 2022.

Submission of public comments: Comments must be submitted on or before May 31, 2022. The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit comments on the entirety of this interim final rule package, identified by DHS Docket No. USCIS–2021–0012, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the website instructions for submitting comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the interim final rule and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. The Departments also are not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 (not a toll-free call) for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

For USCIS: René Cutlip-Mason, Chief, Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588–0009; telephone (240) 721–3000 (not a toll-free call).

For EOIR: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

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I. Public Participation

The Departments invite all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this interim final rule by the deadline stated above. The Departments also invite comments that relate to the economic, environmental, or federalism effects that might result from this interim final rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to the Departments in implementing these changes will reference a specific portion of the interim final rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than those listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the interim final rule and may not receive a response from the Departments.

Instructions: If you submit a comment, you must include the agency name and the DHS Docket No. USCIS–2021–0012 for this rulemaking. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or that is offensive. For additional information, please read the Privacy and Security Notice available at *https://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *https://www.regulations.gov,* referencing DHS Docket No. USCIS–2021–0012. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

A. Background

On August 20, 2021, the Departments published an NPRM in the **Federal Register** proposing to amend the regulations governing the process for further consideration of asylum and related protection claims raised by individuals subject to expedited removal and found to have a credible fear of persecution or torture. *See* Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 86 FR 46906 (Aug. 20, 2021).

The preamble discussion in the NPRM, including the detailed presentation of the need for reforming the system for processing asylum and related protection claims at the Southwest border, is generally adopted by reference in this IFR, except to the extent specifically noted in this IFR, or in the context of proposed regulatory text that is not contained in this IFR.

To reform and improve the process, the NPRM proposed revisions to 8 CFR parts 208, 235, 1003, 1208, and 1235. Those proposed revisions fell into five main categories. First, individuals subject to expedited removal and found to have a credible fear of persecution or torture would have their claims for asylum, withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (''INA'' or ''the Act'') (''statutory withholding of removal''), or

Convention Against Torture (''CAT'')[1] protection initially adjudicated by USCIS following a nonadversarial interview before an asylum officer. Second, individuals granted protection by USCIS would be entitled to asylum, statutory withholding of removal, or protection under the CAT, as appropriate, without further adjudication. Third, individuals not granted protection would be ordered removed by the asylum officer but would have the ability to seek prompt, de novo review with an immigration judge (''IJ'') in EOIR through a newly established procedure, with appeal available to the Board of Immigration Appeals (''BIA'') and the Federal courts. Fourth, individuals placed in expedited removal proceedings would be eligible for consideration for parole from custody in accordance with section 212(d)(5) of the Act, if DHS determined, in the exercise of its discretion and on a case-by-case basis, that parole is warranted because, inter alia, detention is unavailable or impracticable (including situations in which continued detention would unduly impact the health or safety of individuals with special vulnerabilities). Finally, the NPRM proposed to restore the expedited removal framework and credible fear screening processes that were in place before various regulatory changes made from late 2018 through late 2020. Specifically, the longstanding ''significant possibility'' screening standard would apply once more to all such protection claims arising from expedited removal proceedings initiated pursuant to section 235(b)(1) of the Act, and the mandatory bars to asylum and withholding of removal (with limited exception) would not apply at this initial screening stage.

The comment period for the NPRM opened on August 20, 2021, and closed on October 19, 2021, with 5,235 public comments received. The Departments summarize and respond to the public comments below in Section IV of this preamble.

B. Legal Authority

The Departments are publishing this IFR pursuant to their respective and joint authorities concerning asylum, statutory withholding of removal, and protection under the CAT. Section 235 of the INA provides that if an asylum officer determines that a noncitizen subject to expedited removal has a credible fear of persecution, the noncitizen shall receive ''further consideration of the application for asylum.'' INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii). This IFR addresses how that further consideration, including of the noncitizen's related claims to statutory withholding of removal and CAT protection, will occur.

Section 208 of the INA authorizes the ''Secretary of Homeland Security or the Attorney General'' to ''grant asylum'' to a noncitizen—including a noncitizen subject to expedited removal under section 235(b) of the INA—''who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section.'' INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A); *see* INA 208(a)(1), 8 U.S.C. 1158(a)(1) (referencing asylum applications by noncitizens subject to expedited removal under section 235(b) of the INA, 8 U.S.C. 1225(b)); *see also* INA 208(d)(1), (d)(5)(B), 8 U.S.C. 1158(d)(1), (d)(5)(B) (further authorizing rulemaking concerning asylum applications).

These provisions of the INA reflect that the Homeland Security Act of 2002 (''HSA''), Public Law 107–296, 116 Stat. 2135, as amended, created DHS and transferred to it many functions related to the execution of Federal immigration law. *See, e.g.,* HSA 101, 441, 451(b), 471, 1511(d)(2), 6 U.S.C. 111, 251, 271(b), 551(d)(2). By operation of the HSA, certain references to the ''Attorney General'' in the INA are understood to refer to the Secretary. HSA 1517, 6 U.S.C. 557. As amended by the HSA, the INA thus ''charge[s]'' 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 grants the Secretary the power to ''establish such regulations; . . . issue such instructions; and perform such other acts as he deems necessary for carrying out his authority'' under the immigration laws, INA 103(a)(3), 8 U.S.C. 1103(a)(3). The Secretary's authority thus includes the authority to publish regulations governing the apprehension, inspection and admission, detention and removal, withholding of removal, and release of noncitizens[2] encountered in the interior of the United States or at or between the U.S. ports of entry. *See* INA 235, 236, 241, 8 U.S.C. 1225, 1226, 1231. Certain of the Secretary's authorities have been delegated within DHS to the Director of USCIS.[3] USCIS asylum officers conduct credible fear interviews, make credible fear determinations, and determine whether a noncitizen's affirmative asylum application should be granted. *See* 8 CFR 208.2(a), 208.9(a), 208.30.

In addition, under the HSA, the Attorney General retains authority to ''establish such regulations . . ., issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out'' his authorities under the INA. HSA 1102, INA 103(g)(2), 8 U.S.C. 1103(g)(2). The Attorney General also retains authority over certain individual immigration adjudications, including removal proceedings pursuant to section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings,'' ''section 240 proceedings,'' or ''240 proceedings''), and certain adjudications related to asylum applications, conducted by IJs within DOJ's EOIR. *See* HSA 1101(a), 6 U.S.C. 521(a); INA 103(g), 8 U.S.C. 1103(g). With limited exceptions, IJs within EOIR adjudicate asylum and withholding of removal applications filed by noncitizens during the pendency of section 240 removal proceedings, and IJs also adjudicate asylum applications referred by USCIS to the immigration court. 8 CFR 1208.2(b), 1240.1(a); *see* INA 101(b)(4), 240(a)(1), 8 U.S.C. 1101(b)(4), 1229a(a)(1); INA 241(b)(3), 8 U.S.C. 1231(b)(3).

The United States is a party to the 1967 United Nations Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268 (''Refugee Protocol''), which incorporates Articles 2 through 34 of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (''Refugee Convention''). Article 33 of the Refugee Convention contains a qualified non-refoulement obligation to refrain from expelling or returning ''a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'' 19 U.S.T. at 6276. The United States implements its obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory withholding of removal

[1] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

[2] This rule uses the term ''noncitizen'' as equivalent to the statutory term ''alien.'' *See* INA 101(a)(3), 8 U.S.C. 1101(a)(3); *Barton* v. *Barr,* 140 S. Ct. 1442, 1446 n.2 (2020).

[3] *See* DHS, *Delegation to the Bureau of Citizenship and Immigration Services, No. 0150.1* (June 5, 2003); *see also* 8 CFR 2.1, 208.2(a), 208.30.

provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), which provides that a noncitizen may not be removed to a country where his or her life or freedom would be threatened on account of one of the protected grounds listed in Article 33 of the Refugee Convention.

The Foreign Affairs Reform and Restructuring Act of 1998 (''FARRA'') provides the Departments with the authority to ''prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT], subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.'' Public Law 105–277, div. G, sec. 2242(b), 112 Stat. 2681. In addition, FARRA includes the following policy statement: ''It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture . . . . '' *Id.,* sec. 2242(a). DHS and DOJ have promulgated various regulations implementing U.S. obligations under Article 3 of the CAT, consistent with FARRA. *See, e.g.,* 8 CFR 208.16(c) through (f), 208.17, and 208.18; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999), as corrected by 64 FR 13881 (Mar. 23, 1999).

Section 212 of the INA vests in the Secretary the discretionary authority to grant parole to applicants for admission on a case-by-case basis for urgent humanitarian reasons or significant public benefit. INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). Section 103 of the INA authorizes the Secretary to establish rules and regulations governing parole. INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3).

C. Changes in the IFR

After carefully reviewing the public comments received in response to the NPRM, this IFR makes 23 changes to the regulatory provisions proposed in the NPRM, many of which were recommended or prompted by commenters. The regulatory changes pertain to both the DHS and DOJ regulations. As also described below, procedurally, the Departments could issue a final rule. However, the Departments are publishing this IFR rather than proceeding to a final rule in order to provide the public with an additional opportunity to comment. Although not legally required, the additional opportunity to comment on the IFR's changes to the NPRM is desirable given the new procedures and scheduling deadlines applicable to the IFR's streamlined EOIR process, the limited time between issuance of this IFR and when the first cases will be calendared for hearings, and the changes made to facilitate a shift from the proceedings proposed in the NPRM to the IFR's streamlined 240 proceedings. The Departments therefore solicit further public comment on the IFR's revisions, which will be considered and addressed in a final rule.

1. Revisions to the Proposed DHS Regulations

First, in new 8 CFR 208.30(g)(1)(i), this rule provides that USCIS may, in its discretion, reconsider a negative credible fear finding with which an IJ has concurred, provided such reconsideration is requested by the applicant or initiated by USCIS no more than 7 days after the concurrence by the IJ, or prior to the noncitizen's removal, whichever date comes first. USCIS, however, will not accept more than one such request for reconsideration of a negative credible fear finding.

Second, this rule adds a new 8 CFR 208.4(b)(2) to clarify that noncitizens whose asylum applications are retained by USCIS for further consideration following a positive credible fear determination may subsequently amend or correct the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or supplement the information collected during the process that concluded with a positive credible fear determination, provided the information is submitted directly to the asylum office no later than 7 days prior to the scheduled asylum interview, or for documents submitted by mail, postmarked no later than 10 days prior to the interview. This rule further provides that, upon the asylum officer finding good cause in an exercise of USCIS discretion, the asylum officer may consider amendments or supplements submitted after the 7- or 10-day submission deadline or may grant the applicant an extension of time during which the applicant may submit additional evidence, subject to the limitation on extensions described in new 8 CFR 208.9(e)(2) and provided in new 8 CFR 208.4(b)(2). In new 8 CFR 208.9(e)(2), this rule further provides that, in the absence of exigent circumstances, an asylum officer shall not grant any extensions for submission of additional evidence that would prevent a decision from being issued to the applicant within 60 days of service of the positive credible fear determination.

Third, this rule provides in new 8 CFR 208.2(a)(1)(ii), 208.30(f), 1208.2, and 1208.30(g) that USCIS may further consider the asylum application of a noncitizen found to have a credible fear of persecution or torture through a nonadversarial merits interview conducted by an asylum officer when such application is retained by USCIS or referred to USCIS by an IJ after an IJ has vacated a negative credible fear determination. Such nonadversarial merits interviews are known as ''Asylum Merits interviews'' and are governed by the procedures in 8 CFR 208.9.

Fourth, this rule provides in new 8 CFR 208.9(b) that, in the case of a noncitizen whose case is retained by USCIS for an Asylum Merits interview, an asylum officer will also elicit all relevant and useful information bearing on the applicant's eligibility for statutory withholding of removal and CAT protection. This rule provides that if the asylum application is not granted, the asylum officer will determine whether the noncitizen is eligible for statutory withholding of removal in accordance with 8 CFR 208.16(b) or CAT protection pursuant to 8 CFR 208.16(c). *See* 8 CFR 208.16(a), (c). Even if the asylum officer determines that the applicant has established eligibility for statutory withholding of removal or protection under the CAT, the asylum officer shall proceed with referring the asylum application to the IJ for a hearing pursuant to 8 CFR 208.14(c)(1). *See* 8 CFR 208.16(a). If the asylum application includes a dependent (that is, a spouse or child who is in the United States and is included on the principal applicant's application as a dependent, *cf.* 8 CFR 208.30(a), 208.14(f)) who has not filed a separate application and the principal applicant is determined to not to be eligible for asylum, the asylum officer will elicit sufficient information to determine whether there is a significant possibility that the dependent has experienced or fears harm that would be an independent basis for protection prior to referring the family to the IJ for a hearing. *See* 8 CFR 208.9(b). If the asylum officer determines that there is a significant possibility that the dependent has experienced or fears harm that would be an independent basis for asylum, statutory withholding of removal, or protection under the CAT, the asylum officer shall inform the dependent of that determination. *See id.* USCIS also intends to inform dependents that they may request their own credible fear determination and

may separately file an asylum application if they choose to do so. If a spouse or child who was included in the principal's request for asylum does not separately file an asylum application that is adjudicated by USCIS, the principal's asylum application will be deemed by EOIR to satisfy EOIR's application filing requirements for the spouse or child as principal applicants. *See* 8 CFR 208.3(a)(2), 1208.3(a)(2).

Fifth, this rule provides in 8 CFR 208.9(a)(1) that USCIS shall not schedule an Asylum Merits interview for further consideration of an asylum application following a positive credible fear determination fewer than 21 days after the noncitizen has been served a record of the positive credible fear determination. The asylum officer shall conduct the interview within 45 days of the date that the positive credible fear determination is served on the noncitizen, subject to the need to reschedule an interview due to exigent circumstances. *See* 8 CFR 208.9(a)(1).

Sixth, this rule includes language from existing regulations, currently in effect, in 8 CFR 208.9(d), that was inadvertently not included in the NPRM's proposed regulatory text related to USCIS's discretion to limit the length of a statement or comment and require its submission in writing. *See* 8 CFR 208.9(d)(1).

Seventh, this rule removes language proposed in the NPRM in 8 CFR 208.9(f)(2) related to having the Asylum Merits record include verbatim audio or video recordings, and provides that the interview will be recorded and a verbatim transcript of the interview shall be included in the record. *See* 8 CFR 208.9(f)(2).

Eighth, this rule clarifies in 8 CFR 208.9(g)(2) that if a USCIS interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purposes of employment authorization pursuant to 8 CFR 208.7. The rule continues to provide that, for asylum applications retained by USCIS for further consideration, if the applicant is unable to proceed effectively in English, the asylum officer shall arrange for the assistance of an interpreter in conducting the Asylum Merits interview. *See* 8 CFR 208.9(g)(2).

Ninth, although the NPRM proposed to amend 8 CFR 208.10(a) to provide that, for noncitizens whose cases are retained by USCIS for further consideration of their asylum application after a positive credible fear determination, failure of a noncitizen to appear for an Asylum Merits interview might result in the issuance of an order of removal, no changes to 8 CFR 208.10(a) are being made in this IFR. Failure to appear may result in referral of the noncitizen to section 240 removal proceedings before an IJ as well as dismissal of the asylum application. *See* 8 CFR 208.10(a).

Tenth, in 8 CFR 235.3(b)(2)(iii) and (b)(4)(ii), this rule establishes the regulatory authority for consideration for parole of noncitizens in expedited removal or in expedited removal with pending credible fear determinations consistent with the current regulation at 8 CFR 212.5(b).

Eleventh, the rule includes a technical amendment to 8 CFR 212.5(b) to incorporate a reference to 8 CFR 235.3(b).

Twelfth, in 8 CFR 235.3(c)(2), this rule includes a technical amendment to establish the regulatory authority for consideration for parole of noncitizens whose asylum applications are retained by USCIS for further consideration following a positive credible fear determination consistent with the current regulation at 8 CFR 212.5(b).

Thirteenth, the IFR includes edits to 8 CFR 208.14 and 8 CFR 1208.14 to emphasize that asylum officers' decisions on approval, denial, referral, or dismissal of an asylum application remain subject to review within USCIS, and an edit to 8 CFR 208.14(c)(1) to make clear that an asylum applicant described in 8 CFR 208.14(c)(4)(ii)(A), if not granted asylum, may first be placed into expedited removal and receive a positive credible fear screening before being referred to an IJ.

2. Revisions to the Proposed DOJ Regulations

In the fourteenth change from the NPRM, this rule neither adopts the NPRM's proposal to create a new IJ review process when USCIS does not grant asylum nor requires the applicant to affirmatively request such review. Instead, this rule requires DHS to refer noncitizens whose applications for asylum are not granted to section 240 removal proceedings by issuing a Notice to Appear (''NTA''). However, this rule adds 8 CFR 1240.17 to DOJ's regulations, which will impose streamlining measures to enable such proceedings to be completed more expeditiously than ordinary section 240 proceedings involving cases that originate from the credible fear process. The rules and procedures that apply during all section 240 proceedings will generally apply to cases governed by the new 8 CFR 1240.17, but the rule's additional procedural requirements will further ensure efficient adjudication while preserving fairness.

Fifteenth, this rule does not adopt the NPRM's proposed evidentiary limitations, which would have required the noncitizen to demonstrate that any additional evidence or testimony to be considered by the IJ was not duplicative of that considered by the asylum officer and was necessary to fully develop the record. Instead, with the exception of time limits, the long-standing evidentiary standards for section 240 removal proceedings will apply as provided in new 8 CFR 1240.17(g)(1). To ensure expeditious adjudication, this rule imposes deadlines for the submission of evidence as specified in new 8 CFR 1240.17(f). In general, new 8 CFR 1240.17(f)(2) requires the respondent to submit any additional documentary evidence by the time of the status conference which, under new 8 CFR 1240.17(f)(1), is held 30 days, or the next available date no later than 35 days, after the master calendar hearing unless a continuance or a filing extension is granted. Under new 8 CFR 1240.17(f)(3)(i), DHS must file any documents 15 days prior to the merits hearing or, if the IJ determines a merits hearing is not warranted, 15 days following the status conference. New 8 CFR 1240.17(f)(3)(ii) allows the respondent to submit a supplemental filing replying to DHS and identifying any additional witnesses or documentation 5 days prior to the merits hearing or, if the IJ determines a merits hearing is not warranted, 25 days following the status conference. These deadlines may be extended in accordance with the continuances and extension provisions in new 8 CFR 1240.17(h), and an IJ may otherwise accept late-filed evidence pursuant to new 8 CFR 1240.17(g)(2) under certain circumstances, including if required to do so under statute or the Constitution.

Sixteenth, the rule provides that streamlined section 240 removal proceedings for cases covered by the new 8 CFR 1240.17, where the USCIS Asylum Merits interview record is transmitted to EOIR for review, will generally be adjudicated under an expedited timeline. The master calendar hearing will occur 30 to 35 days after DHS commences proceedings as provided in new 8 CFR 1240.17(b) and (f)(1). Any merits hearing will be held 60 days after the master calendar hearing, or on the next available date no later than 65 days after the master calendar hearing, *see* 8 CFR 1240.17(f)(2), subject to continuance and filing extension requests as outlined in new 8 CFR 1240.17(h). This rule also imposes time limits for an IJ to issue a decision as provided in new 8 CFR

1240.17(f)(5). To ensure expeditious adjudication, this rule adopts the NPRM's requirement that USCIS must file the complete record of proceedings for the Asylum Merits interview, including the transcript and decision, with the immigration court and serve it on the respondent pursuant to new 8 CFR 1240.17(c). Additionally, as in the NPRM, this rule does not require the respondent to complete and file a new asylum application, but instead provides that the record of the positive credible determination shall be treated as satisfying the application filing requirements subject to any supplementation or amendment, and shall further be deemed to satisfy EOIR's application filing requirements for any spouse or child included in the cases referred by USCIS and who has not separately filed an asylum application that was adjudicated by USCIS, as provided in new 8 CFR 1208.3(a)(2). *See* 8 CFR 1240.17(e).

Seventeenth, to prepare cases for expeditious adjudication, this rule requires IJs to hold status conferences to take place 30 days after the master calendar hearing, or if a hearing cannot be held on that date, on the next available date no later than 35 days after the master calendar hearing, as outlined in new 8 CFR 1240.17(f)(2). This rule requires both parties to participate at the status conference, although the level of participation required by the respondent depends on whether the respondent has legal representation. At a minimum, as required by new 8 CFR 1240.17(f)(2)(i)(A), if the respondent will contest removal or seek any protection(s) for which the asylum officer did not determine the respondent eligible, the respondent shall indicate whether the respondent intends to testify, present any witnesses, or offer additional documentation. If a respondent thereafter obtains legal representation, nothing in the IFR prohibits respondent's counsel from supplementing statements or submissions made by the respondent during the status conference so long as there is no delay to the merits hearing or a filing deadline or, if the case will be delayed, the respondent satisfies the IFR's provisions governing continuances and filing extensions. Under new 8 CFR 1240.17(f)(2)(ii) and (f)(3), if DHS will participate in the case, DHS shall, at the status conference or in a written statement filed no later than 15 days prior to the scheduled merits hearing (or if the IJ determines that no such hearing is warranted, no later than 15 days following the status conference), set forth its position on the respondent's application and identify contested issues of law or fact, among other things. Where DHS has elected to participate in the case but does not timely provide its position as required under paragraph (f)(2)(ii), the IJ has authority pursuant to new 8 CFR 1240.17(f)(3)(i) to deem claims or arguments previously advanced by the respondent unopposed, subject to certain exceptions. The purpose of the status conference and these procedural requirements is to identify and narrow the issues and ready the case for a merits hearing.

Eighteenth, under new 8 CFR 1240.17(f)(2)(i)(B), a respondent may choose to concede removability and not seek asylum, in which case the IJ will issue an order of removal and deny asylum, but the IJ shall, with a limited exception, give effect to a determination by an asylum officer that the respondent is eligible for statutory withholding of removal or protection under the CAT. DHS may not appeal a grant of statutory withholding of removal or protection under the CAT in this context to the BIA except to argue that the IJ should have denied the application(s) based on certain evidence, as provided in new 8 CFR 1240.17(i)(2).

Nineteenth, new 8 CFR 1240.17(h) establishes standards for continuances during these streamlined section 240 removal proceedings. The rule adopts a ''good cause'' standard for respondent-requested continuances or filing extensions that would delay any merits hearing up to certain limits as detailed in new 8 CFR 1240.17(h)(2)(i). Any such continuance or extension generally shall not exceed 10 days. When the respondent has received continuances or filing extensions that cause a merits hearing to occur more than 90 days after the master calendar hearing, the rule requires the respondent to meet a heightened standard for further continuances or extensions as provided in new 8 CFR 1240.17(h)(2)(ii). Pursuant to new 8 CFR 1240.17(h)(2)(iii), any further continuances or extensions requested by the respondent that would cause a merits hearing to occur more than 135 days after the master calendar hearing may be granted only if the respondent demonstrates that failure to grant the continuance or extension would be contrary to statute or the Constitution. DHS may receive continuances or extensions based on significant Government need, as outlined in new 8 CFR 1240.17(h)(3), which will not count against the limits on respondent-requested continuances. Further, as provided in new 8 CFR 1240.17(h)(2)(iv) and (h)(4), any delay due to exigent circumstances shall not count toward the limits on continuances or extensions.

Twentieth, new 8 CFR 1240.17(f)(4)(i) and (ii) provide that in certain circumstances the IJ may decide the respondent's application without holding a merits hearing, including where neither party has elected to provide testimony and DHS has declined to cross-examine the respondent or where the IJ intends to grant the application and DHS has not elected to examine the respondent or present evidence or witnesses. Under these provisions, the IJ shall still hold a hearing if the IJ decides that a hearing is necessary to fulfill the IJ's duty to fully develop the record.

Twenty-first, new 8 CFR 1240.17(i)(2) provides that, where the asylum officer does not grant asylum but determines the respondent is eligible for statutory withholding of removal or CAT relief, and where the IJ subsequently denies asylum and issues a removal order, the IJ shall generally give effect to the asylum officer's determination(s). In such circumstances, the IJ shall issue a removal order, but the IJ shall give effect to the asylum officer's determination by granting statutory withholding of removal or protection under the CAT unless DHS presents evidence or testimony that specifically pertains to the respondent, that was not in the record of proceedings for the USCIS Asylum Merits interview, and that demonstrates that the respondent is not eligible for the protection in question.

Twenty-second, this rule sets forth certain exceptions from the procedures and timelines summarized above. Under new 8 CFR 1240.17(k), such exceptions include the following circumstances: The respondent was under the age of 18 on the date that the NTA was issued and is not in consolidated removal proceedings with an adult family member; the respondent has produced evidence demonstrating prima facie eligibility for relief or protection other than asylum, statutory withholding of removal, voluntary departure, or CAT relief and the respondent is seeking to apply for, or has applied for, such relief or protection; the respondent has produced evidence supporting a prima facie showing that the respondent is not subject to removal, and the question of removability cannot be resolved simultaneously with the adjudication of the applications for asylum and related protection; the IJ finds the respondent subject to removal to a country other than the country or countries in which the respondent claimed a fear of persecution, torture, or both before the asylum officer and the respondent claims a fear of persecution, torture, or

both in that alternative country or countries; the case is on remand or has been reopened following the IJ's order; or the respondent exhibits indicia of mental incompetency.

Finally, DOJ is making technical edits in 8 CFR 1003.42 to conform with changes to DHS regulations proposed in the NPRM and adopted in this rule related to the credible fear screening process in new 8 CFR 208.30(e).

D. Provisions of the IFR

The Departments carefully considered the 5,235 public comments received, and this IFR generally adopts the framework proposed in the NPRM with certain modifications as explained in this rule. This rule also relies on the justifications articulated in the NPRM, except as reflected in this preamble.

1. Credible Fear Screening Process

The Departments are generally returning to the regulatory framework governing the credible fear screening process in place before various regulatory changes were made from the end of 2018 through the end of 2020, which currently are not in effect.[4] As provided in this IFR, DHS is amending 8 CFR 208.30(b) to return to providing that noncitizens subject to expedited removal who indicate an intention to apply for asylum, or who express a fear of persecution or torture, or a fear of return to the noncitizen's country, shall be screened by a USCIS asylum officer for a credible fear of persecution or torture (rather than a credible fear of persecution, reasonable possibility of persecution, or reasonable possibility of torture). All references in 8 CFR 208.30 and 8 CFR 235.6 to a ''credible fear of persecution, reasonable possibility of persecution, or a reasonable possibility of torture'' are replaced with ''credible fear of persecution or torture'' or ''credible fear.''

DHS is further amending 8 CFR 208.30(b) to provide that the asylum officer to whom such a noncitizen is referred for a credible fear screening may, in USCIS's discretion and with supervisory concurrence, refer the noncitizen for proceedings under section 240 of the Act without making a credible fear determination.

DHS is amending 8 CFR 208.30(c) to provide for the inclusion of a noncitizen's concurrently arriving spouse or child in the noncitizen's positive credible fear evaluation and determination, unless the noncitizen declines such inclusion. Additionally, DHS is amending 8 CFR 208.30(c) to provide asylum officers with the discretion to include a noncitizen's other concurrently arriving family members in the noncitizen's positive credible fear evaluation and determination for purposes of family unity.

DHS is amending 8 CFR 208.30(e) to return to defining ''credible fear of persecution'' as ''a significant possibility, taking into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen's] claim and such other facts as are known to the [asylum] officer, that the [noncitizen] can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act.'' DHS is further amending 8 CFR 208.30(e) to return to defining ''credible fear of torture'' as ''a significant possibility that the [noncitizen] is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to [8 CFR] 208.16 or [ ] 208.17.''

Additionally, as provided in the NPRM, DHS is amending 8 CFR 208.30(e)(5) to return to the existing and two-decade-long practice of not applying at the credible fear screening the mandatory bars to applying for, or being granted, asylum that are contained in sections 208(a)(2)(B)–(D) and (b)(2) of the Act, including any bars established by regulation under section 208(b)(2)(C) of the Act, or bars to eligibility for statutory withholding of removal, with limited exceptions. DHS is maintaining the regulations related to the threshold screening under the safe third country agreement with Canada in 8 CFR 208.30(e)(6), but making technical edits to change ''credible fear of persecution, reasonable possibility of persecution, or reasonable possibility of torture'' to ''credible fear of persecution or torture'' to align the terminology with the rest of this IFR. DHS will continue to require supervisory review of all credible fear determinations before they can become final. *See* 8 CFR 208.30(e)(8).

Consistent with the NPRM, this IFR amends 8 CFR 208.30(g) to return to providing that once an asylum officer has made a negative credible fear determination, if a noncitizen refuses or fails to either request or decline IJ review, such refusal or failure to make an indication will be considered a request for IJ review. In those instances, the noncitizen will be served with a Form I–863, Notice of Referral to Immigration Judge. If, upon review of an asylum officer's negative credible fear determination, the IJ finds the noncitizen possesses a credible fear of persecution or torture, the IJ shall vacate the Form I–860, Notice and Order of Expedited Removal, and remand the case to DHS for further consideration of the application for asylum. Alternatively, DHS may commence section 240 removal proceedings, during which the noncitizen may file an

[4] On November 9, 2018, the Departments issued an IFR that barred noncitizens who entered the United States in contravention of a covered presidential proclamation or order from eligibility for asylum, required that they receive a negative credible fear finding on their asylum claims, and required that their statutory withholding and CAT claims be considered under the higher reasonable fear screening standard. *See* Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 FR 55934, 55939, 55943 (Nov. 9, 2018) (''Presidential Proclamation Bar IFR''). A month later, the U.S. District Court for the Northern District of California preliminarily enjoined the Departments from implementing the IFR, *E. Bay Sanctuary Covenant* v. *Trump,* 354 F. Supp. 3d 1094, 1121 (N.D. Cal. 2018), and the Ninth Circuit affirmed, *E. Bay Sanctuary Covenant* v. *Biden,* 993 F.3d 640, 680 (9th Cir. 2021).

On July 16, 2019, the Departments published another IFR, entitled ''Asylum Eligibility and Procedural Modifications,'' 84 FR 33829 (July 16, 2019) (''Third Country Transit (TCT) Bar IFR''), which generally barred noncitizens from asylum eligibility if they entered or attempted to enter the United States across the Southwest border after failing to apply for protection from persecution or torture while in any one of the third countries through which they transited, required a negative credible fear finding for such noncitizens' asylum claims, and required their withholding and CAT claims be considered under the higher reasonable fear screening standard. *Id.* at 33837–38. The U.S. District Court for the District of Columbia vacated the TCT Bar IFR. *Capital Area Immigrants' Rights Coal.* v. *Trump,* 471 F. Supp. 3d 25, 45–57 (D.D.C. 2020). The Departments issued a final rule on December 17, 2020, entitled ''Asylum Eligibility and Procedural Modifications,'' 85 FR 82260 (Dec. 17, 2020) (''TCT Bar rule''), which again attempted to bar from asylum eligibility those noncitizens who transited through a third country before arriving at the border. The U.S. District Court for the Northern District of California subsequently issued a preliminary injunction against implementation of the TCT Bar rule, which remains in place as of this writing. *E. Bay Sanctuary Covenant* v. *Barr,* 519 F. Supp. 3d 663, 668 (N.D. Cal. Feb. 2021).

Around the same time that the Departments issued the final TCT Bar rule, they also issued the final rule entitled ''Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review,'' 85 FR 80274 (Dec. 11, 2020) (''Global Asylum rule''). That rule revised the credible fear screening process to require that all the mandatory bars to asylum and withholding be considered during the credible fear screening process and established a new screening standard for withholding of removal and CAT protection. On January 8, 2021, the U.S. District Court for the Northern District of California preliminarily enjoined the Departments from implementing the Global Asylum rule. *Pangea Legal Servs.* v. *DHS,* 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021) (''*Pangea II*''). That preliminary injunction remains in place as of this writing.

Finally, the Departments also published a final rule entitled ''Security Bars and Processing,'' 85 FR 84160 (Dec. 23, 2020) (''Security Bars rule''), which added an additional bar to asylum and withholding that would be applied to the credible fear screening process. The Departments have delayed the Security Bars rule's effective date to December 31, 2022, as the Departments consider possible action to rescind or revise the rule. *See* Security Bars and Processing; Delay of Effective Date, 86 FR 73615 (Dec. 28, 2021).

application for asylum and withholding of removal. If the IJ concurs with the negative credible fear determination, DHS can execute the individual's expedited removal order, promptly removing the individual from the United States.

In comparison to the NPRM, in this IFR, DHS is amending 8 CFR 208.30(g) to provide that USCIS may, in its discretion, reconsider a negative credible fear determination with which an IJ has concurred, provided such reconsideration is requested by the noncitizen or initiated by USCIS no more than 7 days after the concurrence by the IJ, or prior to the noncitizen's removal, whichever date comes first, and further provided that no previous request for consideration has already been made.[5] There is no change for noncitizens who do not elect to have their determination reviewed by an IJ. Any reconsideration request made prior to review by an IJ will be treated as an election for review by an IJ. *See* 8 CFR 208.30(g)(1).

2. Applications for Asylum

Under section 235(b)(1)(B)(ii) of the Act, noncitizens who receive a positive credible fear determination from a USCIS asylum officer are referred for ''further consideration of the application for asylum.'' As provided in the NPRM, this rule establishes a new process by which such ''further consideration'' may occur, wherein a noncitizen will have their asylum claim adjudicated following an Asylum Merits interview before a USCIS asylum officer in the first instance, rather than by an IJ in section 240 removal proceedings. *See* 8 CFR 208.30(f).

In issuing both the NPRM and this IFR, the Departments concluded that the expedited removal process presented an opportunity for establishing a more efficient process for making protection determinations for those coming to our borders. The credible fear interview process creates a unique opportunity for the protection claim to be presented to a trained asylum officer and documented; that documentation can then initiate and facilitate a merits adjudication. Unlike those noncitizens who are placed directly into section 240 removal proceedings after apprehension at the border, noncitizens placed instead into expedited removal and who subsequently make a fear claim are referred to USCIS for an interview under oath. Rather than move noncitizens who receive positive credible fear determinations directly into section 240 proceedings—which is what happens to noncitizens apprehended at the border who are not placed into expedited removal—the Departments have determined that it is appropriate to establish a more efficient process that includes the involvement of USCIS and the creation of a documented record of the noncitizen's protection claim during the credible fear screening process. By treating the record of the credible fear determination as an asylum application and by issuing a follow-up interview notice when the credible fear determination is served, USCIS will be able to promptly schedule and conduct an interview on the merits of the noncitizen's protection claims and issue a final decision. For those noncitizens not granted asylum by USCIS, the IFR's process will also create a more complete record of the principal applicant's protection claims, as well as those of their spouse or child included on the application and interviewed during the Asylum Merits interview. EOIR can then use the rationale of the USCIS determination in a streamlined section 240 removal proceeding. Consistent with the NPRM, DHS is amending 8 CFR 208.3 to address application and filing requirements for noncitizens over whom USCIS retains jurisdiction for further consideration of asylum applications pursuant to the Asylum Merits process established by this rule. DHS is amending 8 CFR 208.3(a) to provide, in new 8 CFR 208.3(a)(2), that the written record of a positive credible fear finding satisfies the asylum application filing requirements in 8 CFR 208.3(a)(1). DHS is further amending 8 CFR 208.3(a) to provide, in new 8 CFR 208.3(a)(1) and (2), that noncitizens placed in the Asylum Merits process are subject neither to the general requirement in 8 CFR 208.3(a)(1) that asylum applicants file a Form I–589, Application for Asylum and for Withholding of Removal, nor to the benefit request submission requirements of 8 CFR 103.2.

Consistent with the NPRM, DHS is also amending 8 CFR 208.3(a) to provide that the written record of the positive credible fear determination shall be considered a complete asylum application for purposes of the one-year filing deadline at 8 CFR 208.4(a), requests for employment authorization based on a pending application for asylum under 8 CFR 208.7, and the completeness requirement at 8 CFR 208.9(a); shall not be subject to the requirements of 8 CFR 103.2; and shall be subject to the conditions and consequences in 8 CFR 208.3(c) upon signature at the Asylum Merits interview, as described in new 8 CFR 208.3(a)(2). DHS is amending 8 CFR 208.3(c)(3) to provide that receipt of a properly filed asylum application under 8 CFR 208.3(a) commences the period after which a noncitizen may file an application for employment authorization based on a pending asylum application. DHS is further amending 8 CFR 208.3(a) to provide, in new 8 CFR 208.3(a)(2), that the date that the positive credible fear determination is served on the noncitizen shall be considered the date of filing and receipt. DHS is further amending 8 CFR 208.3(a) to provide, in new 8 CFR 208.3(a)(2), that biometrics captured during expedited removal for the principal applicant and any dependents may be used to verify identity and for criminal and other background checks for purposes of an asylum application under the jurisdiction of USCIS and any subsequent immigration benefit.

DHS is amending current 8 CFR 208.4(c), rather than 8 CFR 208.3(a)(2) as provided in the NPRM, and redesignating it as 8 CFR 208.4(b), with certain modifications as compared to the NPRM, to provide the noncitizen the opportunity to subsequently amend or correct the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or supplement the information collected during the process that concluded with a positive credible fear determination, within a specified time frame (7 or 10 days, depending on the method of submission) prior to the scheduled Asylum Merits interview. DHS is further amending current 8 CFR 208.4(c) to provide, in new 8 CFR 208.4(b)(2), that, finding good cause in an exercise of USCIS's discretion, the asylum officer may consider amendments or supplements submitted after the 7- or 10-day submission deadline or may grant the applicant an extension of time during which the applicant may submit additional evidence, subject to the limitation on extensions described in 8 CFR 208.9(e)(2). In the absence of exigent circumstances, an asylum officer shall not grant any extensions for submission of additional evidence that would prevent an Asylum Merits decision from being issued to the applicant within 60 days of service of the positive credible fear determination, as described in new 8 CFR 208.9(e)(2).

[5] Reconsideration requests made by noncitizens of negative credible fear determinations already affirmed by an IJ are colloquially known as requests for reconsideration (''RFRs'').

3. Proceedings for Further Consideration of the Application for Asylum by USCIS Through Asylum Merits Interview for Noncitizens With Credible Fear

Under the framework in place prior to this rulemaking, if an asylum officer determined that a noncitizen subject to expedited removal had a credible fear of persecution or torture, DHS placed the noncitizen before an immigration court for adjudication of the noncitizen's claims by initiating section 240 removal proceedings. Section 235(b)(1)(B)(ii) of the INA, 8 U.S.C. 1225(b)(1)(B)(ii), however, authorizes a procedure for ''further consideration of [an] application for asylum'' that may commence outside of section 240 removal proceedings.

Consistent with the NPRM, DHS is amending 8 CFR 208.2(a) to provide that USCIS may take initial jurisdiction to further consider the application for asylum, in an Asylum Merits interview, of a noncitizen, other than a stowaway and a noncitizen physically present in or arriving in the Commonwealth of the Northern Mariana Islands (''CNMI''), found to have a credible fear of persecution or torture. DHS is amending 8 CFR 208.9(b) to provide that the purpose of the Asylum Merits interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. In comparison to the NPRM, DHS is further amending 8 CFR 208.9(b) to provide that, in the case of a noncitizen whose case is retained by USCIS for an Asylum Merits interview, an asylum officer will also elicit all relevant and useful information bearing on the applicant's eligibility for statutory withholding of removal and CAT protection. This rule further provides in 8 CFR 208.16(a) that, in the case of a noncitizen whose case is retained by or referred to USCIS for an Asylum Merits interview and whose asylum application is not approved, the asylum officer will determine whether the noncitizen is eligible for statutory withholding of removal under 8 CFR 208.16(b) or withholding or deferral of removal pursuant to the CAT under 8 CFR 208.16(c).

In comparison to the NPRM, DHS is amending 8 CFR 208.9(a) to provide that USCIS shall not schedule an Asylum Merits interview for further consideration of an asylum application following a positive credible fear determination fewer than 21 days after the noncitizen has been served a record of the positive credible fear determination. The asylum officer shall conduct the interview within 45 days of the date that the positive credible fear determination is served on the noncitizen subject to the need to reschedule an interview due to exigent circumstances, as provided in new 8 CFR 208.9(a)(1). Consistent with the NPRM, DHS is amending 8 CFR 208.9 to specify the procedures for such interviews before an asylum officer. With limited exception, these amendments generally provide that the same procedures applicable to affirmative asylum interviews will also apply to interviews under this rule, such as the right to have counsel present, 8 CFR 208.9(b), at no expense to the Government.

In this IFR, DHS also includes language from existing regulations in 8 CFR 208.9(d) that was inadvertently not included in the NPRM's proposed regulatory text related to the USCIS's discretion to limit the length of a statement or comment and require its submission in writing. As was stated in the NPRM, DHS is amending 8 CFR 208.9(f) to provide, in new 8 CFR 208.9(f)(2), that for Asylum Merits interviews, a verbatim transcript of the interview will be included in the referral package to the immigration judge. However, DHS is removing the language proposed in the NPRM regarding the record also including a verbatim audio or video recording in new 8 CFR 208.9(f)(2). DHS believes that recording the interview in order to produce a verbatim transcript that will be included in the record is sufficient to meet the aims of the rule.[6]

DHS is amending 8 CFR 208.9(g) to provide, in new 8 CFR 208.9(g)(2), that if a noncitizen is unable to proceed effectively in English at an Asylum Merits interview, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. In comparison to the NPRM, this rule provides in new 8 CFR 208.9(g)(2) that if a USCIS interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for purposes eligibility for employment authorization.

In comparison to the revisions proposed in the NPRM, this IFR leaves existing 8 CFR 208.10 unchanged—thus providing that a noncitizen's failure to appear for an Asylum Merits interview may result in the referral of the application for consideration in section 240 removal proceedings before an IJ (as opposed to the issuance of an order of removal). *See* 8 CFR 208.10(a)(1).

In 8 CFR 208.14(b), USCIS continues to implement its authority to grant asylum in any case within its jurisdiction. In comparison to the NPRM, DHS is amending 8 CFR 208.14(c) and 208.16(a) and (c) to provide that if an asylum officer conducting an Asylum Merits interview for further consideration of an asylum application after a positive credible fear determination does not grant asylum to an applicant, the asylum officer will determine whether the applicant is eligible for statutory withholding of removal or CAT protection. The asylum officer will not issue an order of removal as proposed in the NPRM, nor issue a final decision on an applicant's request for statutory withholding of removal or CAT protection. Instead, the asylum officer will refer the application—together with the appropriate charging document and written findings of, and the determination on, eligibility for statutory withholding of removal or CAT protection—to an IJ for adjudication in streamlined section 240 removal proceedings. *See* 8 CFR 208.14(c); 8 CFR 208.16(a), (b), (c)(4); 8 CFR 1208.14(c). The referral of the asylum application of a principal applicant to the IJ will also include any dependent of that principal applicant, as appropriate. *See* 8 CFR 208.3(a)(2), 208.14(c)(1). If the asylum application includes a dependent who has not filed a separate application and the principal applicant is determined to not to be eligible for asylum, the asylum officer will elicit sufficient information to determine whether there is a significant possibility that the dependent has experienced or fears harm that would be an independent basis for protection prior to referring the family to the IJ for a hearing. *See* 8 CFR 208.9(b), (i). If a spouse or child who was included in the principal's request for asylum does not separately file an asylum application that is adjudicated by USCIS, the principal's asylum application will be deemed by EOIR to satisfy EOIR's application filing requirements for the spouse or child as principal applicants. *See* 8 CFR 1208.3(a)(2).

4. Streamlined Section 240 Removal Proceedings Before the Immigration Judge

DOJ is adding 8 CFR 1240.17, which shall govern section 240 removal proceedings for respondents whose cases originate from the credible fear process and who have not been granted asylum after an initial adjudication by an asylum officer, pursuant to 8 CFR 208.14(c)(1). The general rules and procedures that govern all other removal proceedings under section 240 apply to removal proceedings covered by this

[6] The Departments may consider making available a process by which parties to EOIR proceedings under 8 CFR 1240.17 will be able to timely review, upon request, the recording of the USCIS Asylum Merits interview.

rule with certain exceptions designed to streamline the proceedings and account for the unique procedural posture of these cases.

Under new 8 CFR 1240.17(b), USCIS will issue an NTA to any noncitizen not granted asylum by USCIS after an Asylum Merits interview held pursuant to 8 CFR 208.2(a), with the master calendar hearing in these streamlined section 240 proceedings scheduled for 30 to 35 days after service of the NTA. Under new 8 CFR 1240.17(e), the record of the proceedings for the interview before the asylum officer and the asylum officer's decision shall be admitted as evidence and considered by the IJ. Moreover, this rule provides that a respondent is not required to separately prepare and file a Form I–589, Application for Asylum and for Withholding of Removal, and that the record of the positive credible fear determination satisfies the application filing requirements for the principal applicant as well as for any dependent included in the referral and who did not separately file an asylum application that was adjudicated by USCIS. *See* 8 CFR 208.3(a), 1208.3(a), 1240.17(e). That is, any spouse or child included in the referral will be deemed to have satisfied EOIR's application filing requirements as a principal applicant.

The Departments have determined that it is appropriate for cases under this rule to proceed on a streamlined time frame before the IJ as claims will have been significantly developed and analyzed by USCIS before the IJ proceedings start, the record will be available for review by the IJ, and respondents will not be required to prepare and file an asylum application. Accordingly, the rule establishes timelines for certain hearings to occur as provided in new 8 CFR 1240.17(f)(1)–(4). As set forth in new 8 CFR 1240.17(h), the rule imposes limitations on the length of continuances and filing extensions that can be granted before a respondent must satisfy a heightened standard to receive additional continuances or filing extensions that have the effect of further delaying a hearing required under the rule. The rule also imposes certain procedural requirements and gives IJs additional tools designed to narrow the issues and ready the case for a merits hearing, if necessary. Under new 8 CFR 1240.17(f)(1) and (2), the rule requires the IJ to hold a status conference 30 days after the master calendar hearing or, if a status conference cannot be held on that date, on the next available date no later than 35 days after the master calendar hearing, and imposes obligations on both parties to participate at the conference, although the level of participation required by the respondent depends on whether the respondent has legal representation. If DHS indicates that it will participate in the case, DHS has an obligation under new 8 CFR 1240.17(f)(2)(ii) and (f)(3) to set forth its position on the respondent's application and identify contested issues of law or fact (including which elements, if any, of the respondent's claim(s) it is challenging), among other things. In certain circumstances, where DHS does not respond in a timely manner to the respondent's claims, the IJ has authority to deem those claims unopposed, as provided in new 8 CFR 1240.17(f)(3)(i). However, DHS may respond at the merits hearing to any arguments or claimed bases for asylum first advanced by the respondent after the status conference. *See* 8 CFR 1240.17(f)(3)(i). Where DHS has indicated that it will not participate in a merits hearing, the rule allows DHS, in certain, limited instances, to retract this position prior to the merits hearing, as provided in new 8 CFR 1240.17(f)(2)(ii). The rule allows IJs to hold additional status conferences if the case is not ready for a merits hearing, as provided in new 8 CFR 1240.17(f)(2).

Under new 8 CFR 1240.17(f)(4), the IJ may forgo a merits hearing and decide the respondent's application on the documentary record (1) if neither party has requested to present testimony and DHS has indicated that it waives cross-examination, or (2) if the noncitizen has timely requested to present testimony, DHS has indicated that it waives cross-examination and does not intend to present testimony or produce evidence, and the IJ concludes that the application can be granted without further testimony. The rule preserves the IJ's ability to hold a merits hearing if the IJ decides that it is necessary to fulfill the IJ's duty to fully develop the record.

If the case cannot be decided on the documentary record, the new 8 CFR 1240.17(f)(2) requires the IJ to hold a merits hearing 60 days after the master calendar hearing or, if a hearing cannot be held on that date, on the next available date no later than 65 days after the master calendar hearing. At the merits hearing, the respondent may testify fully and offer any additional evidence that has been submitted in compliance with the time limits on evidentiary filings under the normal evidentiary standards that apply to 240 removal proceedings as provided in new 8 CFR 1240.17(f)(4)(iii)(A) and (g)(1). If the proceedings cannot be completed at the scheduled merits hearing, the IJ shall schedule any continued merits hearing as soon as possible but no later than 30 days after the initial merits hearing except in case of a continuance or extension as provided in 8 CFR 1240.17(f)(4)(iii)(B). Under new 8 CFR 1240.17(f)(5), the IJ is required, wherever practicable, to issue an oral decision on the date of the final merits hearing or, if the IJ concludes that no hearing is necessary, no later than 30 days after the status conference. Where issuance of an oral decision on such date is not practicable, the IJ must issue an oral or written decision as soon as practicable, and in no case more than 45 days after the applicable date described in the preceding sentence. *See* 8 CFR 1240.17(f)(5).

Under new 8 CFR 1240.17(i)(2), if the IJ denies asylum but an asylum officer has determined that the respondent is eligible for statutory withholding of removal or protection under the CAT with respect to the proposed country of removal, then the IJ shall enter an order of removal but give effect to the asylum officer's eligibility determination by granting the applicable form of protection, unless DHS demonstrates that evidence or testimony that specifically pertains to the respondent and that was not in the record of proceedings for the USCIS Asylum Merits interview establishes that the respondent is not eligible for such protection. Under new 8 CFR 1240.17(f)(2)(i)(B), the rule similarly provides that where an asylum officer has declined to grant asylum but has determined that the respondent is eligible for statutory withholding of removal or protection under the CAT with respect to the proposed country of removal, the respondent may elect not to contest removal and not pursue a claim for asylum before the IJ but still receive statutory withholding of removal or CAT protection. In such a case, the rule provides that the IJ shall enter an order of removal but give effect to the asylum officer's eligibility determination by granting the applicable form of protection, unless DHS makes a prima facie showing through evidence that specifically pertains to the respondent and that was not in the record of proceedings for the USCIS Asylum Merits interview that the respondent is not eligible for such protection. Similarly, new 8 CFR 1240.17(d) further provides that an IJ must give effect to an asylum officer's determination that a noncitizen is eligible for statutory withholding of removal or protection under the CAT, even if the noncitizen is ordered removed in absentia, unless DHS makes a prima facie showing through evidence that specifically pertains to the

respondent and that was not in the record of proceedings for the USCIS Asylum Merits interview that the respondent is not eligible for such protection. In addition, new 8 CFR 1240.17(l) makes clear that DHS may, in keeping with existing regulations, seek to terminate such protection.[7]

Finally, the rule specifically exempts certain cases that cannot be expedited under the circumstances from the timelines and other expedited aspects of the streamlined 240 proceedings. *See* 8 CFR 1240.17(k). Such exceptions include the following circumstances: The respondent was under the age of 18 on the date that the NTA was issued and is not in consolidated removal proceedings with an adult family member, 8 CFR 1240.17(k)(1); the respondent has produced evidence of prima facie eligibility for relief or protection other than asylum, statutory withholding of removal, protection under the CAT, and voluntary departure, and the respondent is seeking to apply for, or has applied for, such relief or protection, 8 CFR 1240.17(k)(2);[8] the respondent has produced evidence that supports a prima facie showing that the respondent is not removable and the IJ determines that the issue of whether the respondent is removable cannot be resolved simultaneously with the adjudication of the applications for asylum and related protection, 8 CFR 1240.17(k)(3); the IJ finds the respondent subject to removal to a country other than the country or countries in which the respondent claimed a fear of persecution, torture, or both before the asylum officer and the respondent claims a fear of persecution, torture, or both in that alternative country or countries, 8 CFR 1240.17(k)(4); the case is on remand or has been reopened following the IJ's order, 8 CFR 1240.17(k)(5); or the respondent exhibits indicia of mental incompetency, 8 CFR 1240.17(k)(6). The provisions at 8 CFR 1240.17(f), (g), and (h), which pertain to the schedule of proceedings, to the consideration of evidence and testimony, and to continuances, adjournments, and filing extensions, will not apply in such cases. The other provisions in 8 CFR 1240.17, however, will apply.

5. Parole

DHS is amending 8 CFR 235.3(b)(2)(iii) to permit parole of detained individuals whose inadmissibility is being considered in the expedited removal process, or who have been ordered removed under the expedited removal process, only on a case-by-case basis for urgent humanitarian reasons or significant public benefit, which includes, as interpreted in longstanding regulations, *see* 8 CFR 212.5(b), circumstances in which continued detention is not in the public interest, provided that the noncitizen presents neither a security risk nor a risk of absconding. Similarly, DHS is amending 8 CFR 235.3(b)(4)(ii) to permit parole of detained individuals pending a credible fear interview and any review of an asylum officer's credible fear determination by an IJ only on a case-by-case basis for urgent humanitarian reasons or significant public benefit, including if continued detention is not in the public interest, provided that the noncitizen presents neither a security risk nor a risk of absconding. This rule further finalizes, as proposed, that such a grant of parole would be for the limited purpose of parole out of custody and cannot serve as an independent basis for employment authorization under 8 CFR 274a.12(c)(11). *See* 8 CFR 235.3(b)(2)(iii), (b)(4)(ii). The IFR also includes a technical amendment to 8 CFR 212.5(b) to incorporate a reference to 8 CFR 235.3(b). Parole is not guaranteed but instead considered on a case-by-case basis to determine whether it is warranted as a matter of discretion; DHS also may impose reasonable conditions on parole such as periodic reporting to U.S. Immigration and Customs Enforcement (''ICE''). *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); 8 CFR 212.5(d).[9]

Additionally, DHS is including in this rule a technical amendment to 8 CFR 235.3(c)(2) to provide that parole of noncitizens with positive credible fear determinations whose asylum applications are retained by USCIS for further consideration through the Asylum Merits process is permissible only on a case-by-case basis for urgent humanitarian reasons or significant public benefit, including if continued detention is not in the public interest, provided that the noncitizen presents neither a security risk nor a risk of absconding. This technical amendment is necessary to clarify that the parole authority pertaining to noncitizens awaiting an Asylum Merits interview with USCIS under this rule will be consistent with 8 CFR 212.5, just as the parole authority pertaining to detained noncitizens subject to expedited removal who are placed in section 240 removal proceedings is consistent with 8 CFR 212.5. As noted above, parole is not guaranteed but instead considered on a case-by-case basis to determine whether it is warranted as a matter of discretion.

E. Summary of Costs and Benefits

The primary individuals and entities that this rule is expected to affect are: (1) Noncitizens who are placed into expedited removal and who receive a credible fear screening; (2) the support networks of asylum applicants who receive a positive credible fear determination; (3) USCIS; and (4) EOIR. The expected impacts to these individuals and entities and to others are detailed in Section V.B of this preamble. In brief, by reducing undue delays in the asylum adjudication system, and by providing a variety of procedural safeguards, the rule protects equity, human dignity, and fairness given that individuals who are eligible for asylum or other protection may receive that protection more promptly, while individuals who are ineligible may more promptly be ordered removed. In the Departments' judgment, these benefits—which are difficult or impossible to quantify—along with the benefits of the rule that are more amenable to quantification, amply justify the aggregate costs of the rule.

The rule's impact on affected noncitizens (and, in turn, on their support networks) may vary substantially from person to person depending on, among other things, whether the individual receives a positive credible fear determination and whether the individual's asylum claim is granted or not granted by USCIS. For example, some individuals may benefit more from an earlier grant of asylum because they may be able to enter the labor force sooner. And individuals who establish credible fear may benefit from cost savings associated with no longer having to file a Form I–589, Application for Asylum and for Withholding of Removal.

The Departments have estimated the human resource- and information-related expenditures required for USCIS to implement this rule. These estimates are developed along three population

[7] Nothing in this rule alters the existing regulatory provisions governing termination of withholding or deferral; these provisions apply to any noncitizen whose removal has been withheld or deferred, whether through the procedure established in this rule or otherwise. *See* 8 CFR 208.17(d), 208.24(f), 1208.17(d), 1208.24(f).

[8] The rule does not specify the particular type of evidence that must be produced in order to demonstrate prima facie eligibility for relief. Such evidence could include testimonial evidence as well as documentary evidence. The rule further does not require that a completed application for the relief at issue be filed with the immigration court.

[9] Noncitizens who are paroled are not considered to be ''admitted'' to the United States. *See* INA 101(a)(13)(B), 212(d)(5)(A); 8 U.S.C. 1101(a)(13)(B), 1182(d)(5)(A).

bounds to account for possible variations in the number of credible fear screenings in future years. Implementation of the rule also is expected to reduce EOIR's workload, allowing EOIR to focus efforts on other priority work and to reduce the growth of its substantial current backlog. That expected reduction in workload would result from (1) cases in which USCIS grants asylum never reaching EOIR, resulting in a potential 15 percent reduction in EOIR's caseload originating from credible fear screening (assuming historic grant rates), and (2) many of the cases reaching EOIR being resolved with less investment of immigration court time and resources than they would have required if referred directly to EOIR in the first instance.

An important caveat to the Departments' estimates of the potential costs and benefits associated with this rule is that it will take time to fully implement the rule, as the Departments intend to take a phased approach to implementing the rule.

F. Effective Date

This IFR will be effective 60 days from the date of publication in the **Federal Register**.

This rule applies prospectively and only to adults and families who are placed in expedited removal proceedings and indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home country, after the rule's effective date. The rule does not apply to unaccompanied children, as they are statutorily exempt from expedited removal proceedings. *See* 8 U.S.C. 1232(a)(5)(D)(i) (providing that ''any unaccompanied alien child'' whom DHS seeks to remove ''shall be . . . placed in removal proceedings under section 240'' of the INA); *see also* 6 U.S.C. 279(g)(2) (defining ''unaccompanied alien child'').[10] The rule also does not apply to individuals in the United States who are not apprehended at or near the border and subject to expedited removal.[11] Such individuals will continue to have their asylum claims heard in section 240 removal proceedings in the first instance, or through an affirmative asylum application under section 208 of the INA, 8 U.S.C. 1158, if they have not yet been placed in immigration proceedings. The rule also does not apply to (1) stowaways or (2) noncitizens who are physically present in or arriving in the CNMI who are determined to have a credible fear. Such individuals will continue to be referred to asylum-and-withholding-only proceedings before an IJ under 8 CFR 208.2(c).

III. Discussion of the IFR

The principal purpose of this IFR is to simultaneously increase the promptness, efficiency, and fairness of the process by which noncitizens who cross the border without appropriate documentation are either removed or, if eligible, granted protection. The IFR accomplishes this purpose both by instituting a new process for resolving the cases of noncitizens who have been found to have a credible fear of persecution or torture and by facilitating the use of expedited removal for more of those who are eligible, and especially for populations whose detention presents particular challenges. When individuals placed into the expedited removal process make a fear claim, they are referred to a USCIS asylum officer, who interviews them to determine whether they have a credible fear of persecution or torture. *See* INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii); 8 CFR 208.30. Under procedures in place immediately prior to the effective date of this IFR, individuals who receive a positive credible fear determination are referred to an immigration court for section 240 removal proceedings, during which they have the opportunity to apply for asylum and other forms of relief or protection from removal. *See* 8 CFR 208.30(f) (2018) (providing that if a noncitizen, other than a stowaway, ''is found to have a credible fear of persecution or torture, the asylum officer will so inform the [noncitizen] and issue an NTA, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act''). As explained in the NPRM, it may take years before the individual's protection claim is first adjudicated by an IJ. This delay creates additional stress and uncertainty for those ultimately determined to merit asylum and other forms of humanitarian protection, as they are left in limbo as to whether they might still be removed, are unable to lawfully work until their asylum application has been granted or has remained pending for several months, and are unable to petition for qualified family members, some of whom may still be at risk of harm. Moreover, the ability to stay in the United States for years waiting for an initial decision may motivate unauthorized border crossings by individuals who otherwise would not have sought to enter the United States and who lack a meritorious protection claim. Such additional entrants only further increase the backlog and lengthen the delays.

To respond to this problem, this rule at 8 CFR 208.2(a)(1)(ii) and 208.9 provides USCIS the authority to adjudicate in the first instance the asylum claims of individuals who receive a positive credible fear determination, and further provides that USCIS does so following a nonadversarial interview by an asylum officer. The rule also provides at 8 CFR 208.3(a)(2) that the record of a credible fear interview will serve as an asylum application for noncitizens whose cases are retained by or referred back to USCIS for adjudication after a positive credible fear determination, thereby allowing cases originating with a credible fear screening to be adjudicated substantially sooner. Both the Departments and the noncitizen can avoid the burden caused by delays associated with otherwise requiring the noncitizen to file a Form I–589, Application for Asylum and for Withholding of Removal. *See* Section IV.D.4.a of this preamble. By

[10] In lieu of being placed in section 240 removal proceedings, unaccompanied children from contiguous countries who meet special criteria may be permitted to withdraw their applications for admission and be voluntarily returned to their country of nationality or country of last habitual residence. *See* 8 U.S.C. 1232(a)(2).

[11] The former Immigration and Naturalization Service (''INS'') initially implemented expedited removal processes only for certain noncitizens arriving at ports of entry. In 2002, DHS, by designation, expanded the application of expedited removal to certain noncitizens who (1) entered the United States by sea, either by boat or other means, (2) were not admitted or paroled into the United States, and (3) had not been continuously present in the United States for at least 2 years. Notice Designating Aliens Subject to Expedited Removal Under Section 235(b)(1)(A)(iii) of the Immigration and Nationality Act, 67 FR 68924 (Nov. 13, 2002). In 2004, DHS published an immediately effective notice in the **Federal Register** to expand the application of expedited removal to certain noncitizens encountered within 100 miles of the border and to noncitizens who entered the United States without inspection fewer than 14 days before they were encountered. Designating Aliens for Expedited Removal, 69 FR 48877 (Aug. 11, 2004). In 2019, DHS expanded the process to the full extent authorized by statute to reach certain noncitizens, not covered by prior designations, who entered the country without inspection less than two years before being apprehended and who were encountered anywhere in the United States. Designating Aliens for Expedited Removal, 84 FR 35409 (July 23, 2019). President Biden has directed DHS to consider whether to modify, revoke, or rescind that 2019 expansion. Executive Order 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, 86 FR 8267, 8270–71 (Feb. 2, 2021). On March 21, 2022, DHS published a **Federal Register** Notice rescinding the 2019 designation. *See* Rescission of the Notice of July 23, 2019, Designating Aliens for Expedited Removal, 87 FR 16022 (Mar. 21, 2022).

authorizing USCIS to adjudicate in the first instance the asylum claims of individuals who receive a positive credible fear determination and by making it possible for this adjudication to be made promptly and independently of EOIR, the Departments predict that the rule will also help to stem the rapid growth of the EOIR caseload, described in greater detail in the NPRM. *See* 86 FR 46937. As for the noncitizen, this change reduces potential barriers to protection for eligible applicants by enabling asylum seekers to meet the statutory requirement to apply for asylum within one year of arrival, avoiding the risk of filing delays, and immediately beginning the waiting period of work authorization eligibility. *See id.* at 46916. Any spouse or child who arrived with the principal asylum applicant and is included as a dependent on the principal applicant's positive credible fear determination may make a separate claim for protection and submit their own principal asylum application to USCIS for consideration.

As noted in the NPRM, the current system for processing protection claims made by individuals encountered at or near the border and who establish credible fear was originally adopted in 1997. From 2018 through 2020, however, several attempts were made to change the credible fear screening process. Many of these attempts have been initially vacated or enjoined, and the implementation of others has been delayed pending consideration of whether they should be revised or rescinded.[12] The Global Asylum rule, which is enjoined, revised regulations to provide that noncitizens with positive credible fear determinations would be placed in asylum-and-withholding-only proceedings before an IJ. *See* 85 FR 80276. In the Global Asylum rule, the Departments explained their view that placing such noncitizens in asylum-and-withholding-only proceedings before an IJ would ''bring the proceedings in line with the statutory objective that the expedited removal process be streamlined and efficient,'' *id.,* and later noted that it would ''lessen the strain on the immigration courts by limiting the focus of such proceedings and thereby streamlining the process,'' *id.* at 80286. The Departments provided that these asylum-and-withholding-only proceedings would follow the same rules of procedure that apply in section 240 proceedings and that a noncitizen could appeal their case to the BIA and Federal circuit courts, as necessary. *See id.* at 80289. The Departments acknowledged that IJs often adjudicate multiple forms of relief in a single removal proceeding, in addition to asylum, statutory withholding of removal, or CAT protection claims, and stated that those additional issues ''generally only serve to increase the length of the proceedings'' and that ''there may be rare scenarios in which [noncitizens] subject to expedited removal are eligible for a form of relief other than asylum.'' *Id.* In the Global Asylum rule, the Departments concluded that placing noncitizens with positive credible fear determinations into more limited asylum-and-withholding-only proceedings properly balanced the need to prevent noncitizens from being removed to countries where they may face persecution or torture with ensuring efficiency in the overall adjudication process. *See id.*

This rule offers another approach. It establishes a streamlined and simplified adjudication process for individuals encountered at or near the border, placed into expedited removal, and determined to have a credible fear of persecution or torture, with the aim of deciding protection claims in a more timely fashion while ensuring appropriate safeguards against error.[13] The rule authorizes USCIS to adjudicate in the first instance the asylum claims of individuals who receive positive credible fear determinations under the expedited removal framework in section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1). The procedures that USCIS asylum officers will use to adjudicate these claims will be nonadversarial, and the decisions will be made within time frames consistent with those established by Congress in section 208(d)(5)(A) of the INA, 8 U.S.C. 1158(d)(5)(A).[14]

The Departments believe that the approach in this rule, in contrast to the approach outlined in the Global Asylum rule, will allow for noncitizens' claims to be heard more efficiently and fairly. As further explained in this rule, allowing noncitizens with positive credible fear determinations to have their asylum, statutory withholding, and CAT protection claims heard in a nonadversarial setting before an asylum officer capitalizes on the investment of time and expertise that USCIS has already made and, for the subset of cases in which asylum is granted by USCIS, saves investment of time and resources by EOIR and ICE. *See* Sections II.C. and IV.D.5 of this preamble. The extensive and well-rounded training that asylum officers receive is designed to enable them to conduct nonadversarial interviews in a fair and sensitive manner. This rule will also enable meritorious cases to be resolved more quickly, reducing the overall asylum system backlogs and using limited asylum officer and IJ resources more efficiently. If the asylum officer does not grant asylum following an Asylum Merits interview, the noncitizen will be referred to an IJ for streamlined section 240 removal proceedings, with a structure that provides for the prompt resolution of their claims and that allows the noncitizen to seek other forms of relief. If the asylum application includes a dependent who has not filed a separate application and the principal applicant is determined not to be eligible for asylum, the asylum officer will elicit sufficient information to determine whether there is a significant possibility that the applicant's dependent has experienced or fears harm that would be an independent basis for protection prior to referring the family to the IJ for a hearing. This will allow EOIR to consider all family members to have separately filed an asylum application once the family is placed into the streamlined section 240 removal proceedings.

This IFR will help more effectively achieve many of the goals outlined in the Global Asylum rule—including improving efficiency, streamlining the adjudication of asylum, statutory withholding of removal, and CAT protection claims, and lessening the strain on the immigration courts—albeit with a different approach. This rule helps meet the goal of lessening the strain on the immigration courts by having USCIS asylum officers adjudicate asylum claims in the first instance, rather than IJs. As explained further in this rule, the Departments anticipate that the number of cases USCIS refers to EOIR for adjudication will decrease. *See* Sections IV.F.1.a and V.B.4.b.ii of this preamble. In contrast to the Global Asylum rule, in this rule, the

[12] *See supra* note 4 (discussing recent regulations and their current status).

[13] Section 4(b)(i) of Executive Order 14010, Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, instructed the Secretary to review the procedures for individuals placed into expedited removal at or near the border and issue a report with recommendations ''for creating a more efficient and orderly process that facilitates timely adjudications [of asylum and protection claims] and adherence to standards of fairness and due process.'' 86 FR 8267, 8270 (Feb. 2, 2021).

[14] *See* INA 208(d)(5)(A)(ii)–(iii), 8 U.S.C. 1158(d)(5)(A)(ii)–(iii) (specifying that an initial interview or hearing on an asylum application should generally commence within 45 days after the filing of the application and that final administrative adjudication should generally be completed within 180 days after the filing of the application).

Departments are amending regulations to include several time frames for the adjudication process and particular procedural requirements designed to streamline the overall process and take advantage of the record created by the asylum officer, while still providing noncitizens with a full and fair opportunity to present testimony and evidence in support of their claims before an IJ. *See* Sections II.A.4 and III.D of this preamble. Accordingly, these changes better meet the Departments' goals of improving efficiency and streamlining the process. In addition, upon reconsideration, the Departments recognize that giving noncitizens the opportunity to seek other forms of relief within the context of streamlined section 240 removal proceedings helps reduce barriers to accessing other immigration benefits that may be available, and that the potential benefits to noncitizens of having such an opportunity outweigh efficiency concerns.

The Departments clarify that nothing in this rule is intended to displace DHS's (and, in particular, USCIS's) prosecutorial discretion to place a covered noncitizen in, or to withdraw a covered noncitizen from, expedited removal proceedings and issue an NTA to place the noncitizen in ordinary section 240 removal proceedings at any time after they are referred to USCIS for a credible fear determination. *See* 8 CFR 208.30(b), (f); *Matter of J–A–B– & I–J–V–A–,* 27 I&N Dec. 168, 171 (BIA 2017); *Matter of E–R–M– & L–R–M–,* 25 I&N Dec. 520, 523 (BIA 2011). Moreover, should any provision of the rule governing the USCIS process for cases covered by 8 CFR 208.2(a)(1)(ii) be enjoined or vacated, EOIR has the discretion to place into ordinary section 240 proceedings any case referred to EOIR under this section.

A. Credible Fear Screening Process

The credible fear screening regulations under this rulemaking generally recodify the current screening process, returning the regulatory language, in large part, to what was in place prior to the various regulatory changes made from the end of 2018 through the end of 2020. Noncitizens encountered at or near the border or ports of entry and determined to be inadmissible pursuant to INA 212(a)(6)(C) or (a)(7), 8 U.S.C. 1182(a)(6)(C) or (a)(7), can be placed in expedited removal and provided a credible fear screening if they indicate an intention to apply for asylum, a fear of persecution or torture, or a fear of return to their home countries. *See* INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); 8 CFR 235.3(b)(4), 1235.3(b)(4). Individuals claiming a fear or an intention to apply for protection are referred to USCIS asylum officers for an interview and consideration of their fear claims under the ''significant possibility'' standard, which presently applies to all relevant protection claims because the regulatory changes referenced above have been vacated or enjoined.[15]

The Departments are returning to codifying the historical practice of applying the ''significant possibility'' standard across all forms of protection screened in the credible fear process. This rule adopts the ''significant possibility'' standard for credible fear screening for purposes of asylum, statutory withholding of removal, and CAT protection. While the statutory text at INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v), only defines ''credible fear'' for purposes of screening asylum claims, the Departments believe that the efficiency gained in screening the same or a closely related set of facts using the same legal standard at the same time is substantial and should not be overlooked. Moreover, the credible fear screening process is preliminary in nature; its objective is to sort out, without undue decision costs, which cases merit further consideration. *See generally* INA 235(b)(1)(B); 8 U.S.C. 1225(b)(1)(B). Efficiently using one standard of law at the preliminary step is consistent with that objective, even though the ultimate adjudication of a noncitizen's claim for each form of protection may require a distinct analysis.

The standard for establishing a credible fear of persecution under the INA requires ''a significant possibility, taking into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen's] claim and such other facts as are known to the officer, that the [noncitizen] could establish eligibility for asylum under section 208'' of the INA. INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). While the ''significant possibility'' standard for the purpose of screening for asylum is established by statute, the statute does not specify a standard to be used in screening for statutory withholding of removal or CAT protection. In June 2020, the Departments proposed alternative standards for statutory withholding of removal and CAT protection. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, 36268 (June 15, 2020) (''Global Asylum NPRM''). Under that proposed rule, ''asylum officers would consider whether [noncitizens] could establish a credible fear of persecution, a reasonable possibility of persecution, or a reasonable possibility of torture.'' *Id.* at 36269. In finalizing that rule, the Departments noted that in changing the standard of law for withholding of removal and deferral of removal, an individual's ''screening burdens would become adequately analogous to the merits burdens, where the [individual's] burdens for statutory withholding of removal and protections under the CAT regulations are higher than the burden for asylum.'' Global Asylum rule, 85 FR 80277. However, pursuant to an Executive order and with the additional context of the court's injunction against the implementation of the Global Asylum rule in *Pangea II,*[16] the Departments have reviewed and reconsidered that rule. *See* Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, 86 FR 8277 (Feb. 2, 2021) (''E.O. on Legal Immigration'') (ordering review of existing regulations for consistency with the E.O. on Legal Immigration). In line with this review, the Departments have revisited the approach of having divergent standards applied during the credible fear screening and determined that keeping one standard in screening for asylum, statutory withholding, and CAT protection better promotes an efficient credible fear screening process.

In multiple rulemaking efforts, the Departments promulgated divergent standards for asylum and withholding of removal, along with variable standards for individuals barred from certain types of protection.[17] However, in working to create efficiencies within this process, as well as recognizing that the Departments have signaled their intention to either modify or rescind these rules,[18] adhering to the legal standard that was set by Congress in section 235(b)(1)(B)(v) of the Act, 8 U.S.C. 1225(b)(1)(B)(v), is the logical

[15] *See supra* note 4 (discussing recent regulations and their current status).

[16] *See supra* note 4 (discussing recent regulations and their current status).

[17] *See supra* note 4 (describing the TCT Bar IFR, Presidential Proclamation Bar IFR, and Security Bars rule).

[18] *See* Executive Office of the President, Office of Management and Budget (''OMB''), Office of Information and Regulatory Affairs (''OIRA''), Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaHistory* (last visited Mar. 5, 2022) (select DHS or DOJ); Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaMain* (last visited Mar. 5, 2022) (select DHS or DOJ).

choice. *See* 86 FR 46914. Upon reconsideration, the Departments believe that the varied legal standards created by different rulemakings, and enjoined or vacated by legal challenges, defeat their intended purpose, and complicate and extend the initial screening process provided for in INA section 235. Having asylum officers apply varied legal standards would generally lead to the need to elicit additional testimony from noncitizens at the time of the credible fear screening interview, which lengthens credible fear interviews and increases adjudication times. In the Departments' view, the delays associated with complicating and extending every credible fear interview likely outweigh any efficiencies gained by potential earlier detection of individuals who may be barred from or ineligible for certain types of protection. For example, when the TCT Bar IFR was in effect,[19] asylum officers were required to spend additional time during any interview where the bar potentially applied developing the record related to whether the bar applied, whether an exception to the bar might have applied, and, if the noncitizen appeared to be barred and did not qualify for an exception to the bar, developing the record sufficiently such that a determination could be made according to the higher reasonable fear standard. This additional time spent developing the record when the higher reasonable fear standard applied decreased the efficiency of the screening interviews themselves and complicated the analysis asylum officers were required to perform, thus contributing to the overall lengthening of the entire process.

In the Global Asylum NPRM, the Departments stated that ''[r]aising the standards of proof to a 'reasonable possibility' for the screening of [noncitizens] seeking statutory withholding of removal and CAT protection would allow the Departments to better screen out non-meritorious claims and focus limited resources on claims much more likely to be determined to be meritorious by an immigration judge.'' 85 FR 36271. However, based on the Departments' experience implementing divergent screening standards for asylum, statutory withholding of removal, and CAT protection while the TCT Bar IFR was in effect, no evidence has been identified that this approach resulted in more successful screening out of non-meritorious claims while ensuring the United States complied with its non-refoulement obligations.

The Departments also reasoned in the Global Asylum NPRM: ''Adopting a higher standard for statutory withholding and CAT screenings would not hinder the streamlined process envisioned for expedited removal. Asylum officers already receive extensive training and guidance on applying the 'reasonable possibility' standard in other contexts because they are determining whether a reasonable possibility of persecution or torture exists in reasonable fear determinations pursuant to 8 CFR 208.31. In some cases, asylum officers would need to spend additional time eliciting more detailed testimony from [noncitizens] to account for the higher standard of proof; however, the overall impact on the time asylum officers spend making screening determinations would be minimal.'' 85 FR 36271. However, the Departments have reconsidered these predictions, again based on the experience implementing divergent screening standards while the TCT Bar IFR was in effect. Beyond the additional time asylum officers themselves spent conducting these screening interviews, making determinations, and recording their assessments, supervisory asylum officers reviewing these cases spent additional time assessing whether the varying standards of proof were properly applied to the forms of relief for which asylum officers screened. This effort also required the additional investment of time and resources from Asylum Division headquarters, including training and quality assurance staff who had to develop and deliver guidance and trainings on the new process, monitor the work being conducted in the field to ensure compliance with regulations and administrative processes, and provide guidance to asylum officers and supervisory asylum officers on individual cases. Attorneys from the USCIS Office of Chief Counsel had to spend time and resources reviewing and advising on training materials and guidance issued by the Asylum Division, as well as on individual cases on which legal advice was sought to ensure proper application of the divergent screening standards on various forms of relief. IJs reviewing negative determinations by asylum officers were also compelled to spend additional time ensuring the proper application of these screening standards, compared to the time spent reviewing determinations under a single standard in the status quo ante. The Departments failed to account in the relevant rulemakings for the necessity of expending these additional resources beyond time spent by asylum officers themselves making screening determinations.

The Departments also stated in the Global Asylum NPRM: ''The procedural aspects of making screening determinations regarding fear of persecution and of torture would remain largely the same. Moreover, using a higher standard of proof in the screening context for those seeking statutory withholding of removal or protection under the CAT regulations in the immigration courts allows the Departments to more efficiently and promptly distinguish between aliens whose claims are more likely or less likely to ultimately be meritorious.'' 85 FR 36271. However, for the reasons detailed above, the Departments' experience implementing divergent screening standards while the TCT Bar IFR was in effect demonstrated that these predictions of increased efficiency and promptness did not materialize, undermining congressional intent that the screening process in the expedited removal context operate nimbly and in a truly expedited manner.

In clarifying that the ''significant possibility'' standard applies not only to credible fear screening for asylum, but also to credible fear screening for statutory withholding and CAT protection, the Departments will help ensure that the expedited removal process remains truly expedited, and will allow for asylum officers to adhere to a single legal standard in screening claims for protection from persecution and torture in the expedited removal process.

Similarly, through this rulemaking, the Departments are generally returning the regulatory text to codify the pre-2018, and current, practice of screening for eligibility for asylum and statutory withholding of removal while not applying most bars to asylum or withholding of removal in the credible

[19] The TCT Bar IFR went into effect on July 16, 2019, *see* 84 FR 33829, and was vacated on June 30, 2020, *see Capital Area Immigrants' Rights Coal.* v. *Trump,* 471 F. Supp. 3d at 45–57. The TCT Bar rule went into effect on January 19, 2021. *See* 85 FR 82260. However, it did not have an impact on credible fear processing. The TCT Bar rule did not directly make any amendments to the credible fear regulations at 8 CFR 208.30 and instead relied on changes to the credible fear regulations made by the Global Asylum rule in order to apply the TCT bar in credible fear. On January 8, 2021, the Global Asylum rule was preliminarily enjoined. *See Pangea II,* 512 F. Supp. 3d 966. As a result of the preliminary injunction in *Pangea II,* the amendments to 8 CFR 208.30 made by the Global Asylum rule were enjoined. Thus, the bar to asylum eligibility at 8 CFR 208.13(c)(4) established in the TCT Bar rule did not apply in credible fear while the Global Asylum rule remained enjoined. The TCT Bar rule itself was enjoined on February 16, 2021. *See E. Bay Sanctuary Covenant,* 519 F. Supp. 3d at 668. Therefore, only the TCT Bar IFR ever went into effect.

fear screening process. The Global Asylum rule, which has been enjoined, attempted to require the application of a significantly expanded list of mandatory bars during credible fear screenings and mandated a negative credible fear finding should any of the bars apply to the noncitizen at that initial stage. *See* 85 FR 80278; *supra* note 4. In the Global Asylum NPRM, the Departments justified this change by stating: ''From an administrative standpoint, it is pointless and inefficient to adjudicate claims for relief in section 240 proceedings when it is determined that an alien is subject to one or more of the mandatory bars to asylum or statutory withholding at the screening stage. Accordingly, applying those mandatory bars to aliens at the 'credible fear' screening stage would eliminate removal delays inherent in section 240 proceedings that serve no purpose and eliminate the waste of adjudicatory resources currently expended in vain.'' 85 FR 36272. However, upon reconsideration, the Departments have determined that, in most cases, the stated goal of promoting administrative efficiency can be better accomplished through the mechanisms established in this rulemaking rather than through applying mandatory bars at the credible fear screening stage. The Departments now believe that it is speculative whether, had the Global Asylum rule been implemented, a meaningful portion of the EOIR caseload might have been eliminated because some individuals who were found at the credible fear screening stage to be subject to a mandatory bar would not have been placed into section 240 proceedings. This is particularly true in light of the Global Asylum rule's preservation of a noncitizen's ability to request review of a negative credible fear determination (including the application of mandatory bars at the credible fear stage) by an IJ, as well as that rule's allowance for individuals found subject to a mandatory bar to asylum at the credible fear screen stage to nonetheless have their asylum claims considered by an IJ in asylum-and-withholding-only proceedings if they demonstrate a reasonable possibility of persecution or torture and are not subject to a bar to withholding of removal. Requiring asylum officers to broadly apply mandatory bars during credible fear screenings would have made these screenings less efficient, undermining congressional intent that the expedited removal process be truly expeditious, and would further limit DHS's ability to use expedited removal to an extent that is operationally advantageous.

Requiring asylum officers to broadly apply the mandatory bars at credible fear screening would increase credible fear interview and decision times because asylum officers would be expected to devote time to eliciting testimony, conducting analysis, and making decisions about all applicable bars. For example, when the TCT Bar IFR was in effect,[20] asylum officers were required to spend additional time during any interview where the bar potentially applied developing the record related to whether the bar applied, whether an exception to the bar might have applied, and, if the noncitizen appeared to be barred and did not qualify for an exception to the bar, developing the record sufficiently such that a determination could be made according to the higher reasonable fear standard. As another example, a ''particularly serious crime'' is not statutorily defined in detail, beyond an aggravated felony,[21] and offenses typically are designated as particularly serious crimes through case-by-case adjudication—the kind of fact-intensive inquiry requiring complex legal analysis that would be more appropriate in a full adjudication before an asylum officer or in section 240 proceedings with the availability of judicial review than in credible fear screenings.[22] Presently, asylum officers ask questions related to all mandatory bars to develop the record sufficiently and identify potential bars but, since mandatory bars are not currently being applied in the credible fear determination, the record does not need to be developed to the level of detail that would be necessary if the issue of a mandatory bar was outcome-determinative for the credible fear determination. If a mandatory bar were to become outcome determinative, it would be necessary to develop the record sufficiently to make a decision about the mandatory bar such that, depending on the facts, the interview would go beyond its congressionally intended purpose as a screening for potential eligibility for asylum or related protection—and a fail-safe to minimize the risk of refoulement—and would instead become a decision on the relief or protection itself. The level of detailed testimony necessary in some cases to make such a decision would require asylum officers to spend significantly more time developing the record during the interview and conducting additional research following the interview.

IJs reviewing negative credible fear determinations where a mandatory bar was applied would, depending on the facts, similarly face a more complicated task, undermining the efficiency of that process as well. Applying a mandatory bar often involves a complex legal and factual inquiry. While asylum officers are trained to gather and analyze such information to determine the applicability of mandatory bars in affirmative asylum adjudications, they are currently instructed to assess whether certain bars may apply in the credible fear screening context. *See* USCIS, Credible Fear of Persecution and Torture Determinations Lesson Plan 42–43 (Feb. 13, 2017). The latter assessment is designed to identify any mandatory bar issues requiring further exploration for IJs and the ICE attorneys representing DHS in section 240 removal proceedings, *see* 6 U.S.C. 252(c), rather than to serve as a comprehensive analysis upon which a determination on the applicability of a bar may be based.[23] Because of the complexity of the inquiry required to develop a sufficient record upon which to base a decision to apply certain mandatory bars, such a decision is, in general and depending on the facts, most appropriately made in the context of a full merits interview or hearing, whether before an asylum officer or an IJ, and not in a screening context.

Furthermore, the Departments recognize that considerations of procedural fairness counsel against applying mandatory bars that entail extensive fact-finding during the credible fear screening process. In

[20] *See supra* note 19.

[21] *See* INA 208(b)(2)(A)(ii), (B)(i), 8 U.S.C. 1158(b)(2)(A)(ii), (B)(i).

[22] *See Matter of Frentescu,* 18 I&N Dec. 244, 247 (BIA 1982) (setting out multi-factor test to determine whether a noncitizen has committed a particularly serious crime, including ''the nature of the conviction, the circumstances and underlying facts of the conviction, the type of sentence imposed, and, most importantly, whether the type and circumstances of the crime indicate that the alien will be a danger to the community''); *see also Matter of L–S–,* 22 I&N Dec. 645, 649 (BIA 1999) (en banc); *Matter of G–G–S–,* 26 I&N Dec. 339, 343–43 (BIA 2014) (''We have held that for an alien who has not been convicted of an aggravated felony or whose aggravated felony conviction did not result in an aggregate term of imprisonment of 5 years or more, it is necessary to examine the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction to determine whether the crime was particularly serious.'').

[23] *See* USCIS, Credible Fear of Persecution and Torture Determinations Lesson Plan 44 (Feb. 13, 2017) (''The officer must keep in mind that the applicability of these bars requires further evaluation that will take place in the full hearing before an immigration judge if the applicant otherwise has a credible fear of persecution or torture. In such cases, the officer should consult a supervisory officer follow procedures on 'flagging' such information for the hearing, and prepare the appropriate paperwork for a positive credible fear finding.'').

response to the Global Asylum NPRM, a commenter emphasized that each of the mandatory bars involves intensive legal analysis and asserted that requiring asylum officers to conduct this analysis during a screening interview would result in ''the return of many asylum seekers to harm's way.'' Global Asylum rule, 85 FR 80294. Another commenter expressed the concern that ''countless asylum-seekers could be erroneously knocked out of the process based on hasty decisions, misunderstandings, and limited information.'' *Id.* at 80295. Upon review and reconsideration, due to the intricacies of the fact-finding and legal analysis often required to apply mandatory bars, the Departments now believe that individuals found to have a credible fear of persecution generally should be afforded the additional time, procedural protections, and opportunity to further consult with counsel that the Asylum Merits process or section 240 removal proceedings provide.

In light of these concerns, the Departments have reconsidered their position stated in the preamble to the Global Asylum NPRM that any removal delays resulting from the need to fully consider the mandatory bars in section 240 proceedings ''serve no purpose'' and amount to ''adjudicatory resources currently expended in vain.'' 85 FR 36272. As stated above, the Departments now believe that, in many cases, especially when intensive fact-finding is required, the notion that consideration of mandatory bars at the credible fear screening stage would result in elimination of removal delays for individuals subject to the bars is speculative. Moreover, to the extent consideration of mandatory bars in section 240 proceedings does result in delays to removal, the Departments believe in light of the public comments cited above that such delays do serve important purposes—particularly in cases with complicated facts—namely, ensuring that the procedures and forum for determining the applicability of mandatory bars appropriately account for the complexity of the inquiry and afford noncitizens potentially subject to the mandatory bars a reasonable and fair opportunity to contest their applicability. Adjudicatory resources designed to ensure that noncitizens are not refouled to persecution due to the erroneous application of a mandatory bar are not expended in vain. Rather, the expenditure of such resources helps keep the Departments in compliance with Federal law and international treaty obligations.

Given the need to preserve the efficiencies Congress intended in making credible fear screening part of the expedited removal process and to ensure procedural fairness for those individuals found to have a significant possibility of establishing eligibility for asylum or statutory withholding of removal but for the potential applicability of a mandatory bar, the Departments have decided that the Global Asylum rule's broad-based application of mandatory bars at the credible fear screening stage should be rescinded.[24]

If an asylum officer determines that an individual does not have a credible fear of persecution or torture, the individual can request that an IJ review the asylum officer's negative credible fear determination. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.30(g), 1208.30(g). The Departments also are re-codifying the treatment of a failure or refusal on the part of a noncitizen to request IJ review of a negative credible fear determination as a request for IJ review. *See* 8 CFR 208.30(g)(1), 1208.30(g)(2)(i). In the Global Asylum rule, the Departments amended regulations to treat a noncitizen's refusal to indicate whether they would like IJ review as declining IJ review. *See* 85 FR 80296. The Departments explained that treating refusals as requests for review serves to create unnecessary and undue burdens and that it is reasonable to require an individual to answer affirmatively when asked by an asylum officer if they would like IJ review. *See id.* In this rule, the Departments are reverting to the pre-existing regulations. Upon reconsideration, the Departments recognize that there may be numerous explanations for a noncitizen's refusal or failure to indicate whether they would like to seek IJ review—and indeed there will be cases in which a noncitizen wants review but fails to explicitly indicate it. The Departments now conclude that treating any refusal or failure to elect review as a request for IJ review, rather than as a declination of such review, is fairer and better accounts for the range of explanations for a noncitizen's failure to seek review. Treating such refusals or failures to elect review as requests for IJ review appropriately ensures that any noncitizen who may wish to pursue IJ review (that is, any noncitizen who has not, in fact, declined IJ review) has the opportunity to do so. A noncitizen who genuinely wishes to decline review may of course withdraw the request for review before the IJ; in such a case, the IJ will return the noncitizen's case to DHS for execution of the expedited removal order. *See* 8 CFR 1208.30(g)(2).

In comparison to the NPRM, in this rule, the Departments are amending 8 CFR 208.30(g) to provide, in new 8 CFR 208.30(g)(1)(i), that USCIS may, in its discretion, reconsider a negative credible fear determination with which an IJ has concurred, provided the request for reconsideration is received from the noncitizen or their attorney or initiated by USCIS no more than 7 days after the concurrence by the IJ, or prior to the noncitizen's removal, whichever date comes first. USCIS's reconsideration of any such request is discretionary. After an IJ has concurred with a negative credible fear determination, DHS can execute the individual's expedited removal order, promptly removing the individual from the United States. Under no circumstances, however, will USCIS accept more than one request for reconsideration.

The Departments carefully considered the public comments received in response to the NPRM related to the proposal to foreclose any DHS reconsideration of negative credible fear determinations. Based on those comments, the Departments decided to retain the existing regulatory language related to DHS reconsideration, *see* 8 CFR 208.30(g), but to place reasonable procedural limits on the practice. Accordingly, the Departments are amending the regulation to include numerical and time limitations and clarify that DHS may, in its discretion, reconsider a negative credible fear determination with which an IJ has concurred. These procedural limitations and clarifications are necessary to ensure that reconsideration requests to USCIS do not obstruct the streamlined process that Congress intended in creating expedited removal. These changes also are consistent with the statutory scheme of INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B), under which it is the IJ review of the negative credible fear determination that serves as the check to ensure that noncitizens who have a credible fear of persecution or torture are not returned based on an erroneous screening determination by USCIS. The expedited removal statute and its implementing regulations generally prohibit any further administrative review or appeal of an IJ's decision made after review of a

[24] In addition to the proposed changes to the DOJ portions of the regulations in the NPRM related to the application of mandatory bars in the credible fear process, the IFR also includes a similar edit to 8 CFR 1003.42(d)(1). Both 8 CFR 1003.42 and 8 CFR 1208.30 relate to IJs' review of asylum officers' credible fear determinations, and the Departments intend for the regulations to be consistent with regard to the treatment of mandatory bars in the credible fear review process.

negative credible fear determination. *See* INA 235(b)(1)(B)(iii)(III), (C), 8 U.S.C. 1225(b)(1)(B)(iii)(III), (C); 8 CFR 1003.42(f)(2), 1208.30(g)(2)(iv)(A). Congress similarly has made clear its intent that expedited removal should remain a streamlined, efficient process by limiting judicial review of many determinations in expedited removal. *See* INA 242(a)(2)(A), (e), 8 U.S.C. 1252(a)(2)(A), (e). These statutory provisions limiting administrative and judicial review and directing expeditious determinations reflect clear congressional intent that expedited removal be a truly expedited process.

The numerical and time limitations promulgated in this rule are consistent with congressional intent and with the purpose of the current regulation allowing for such requests. The Departments believe that, over time, the general allowance for reconsideration by USCIS asylum offices came to be used beyond its original intended scope. Such requests have not used a formalized process, since there is currently no formal mechanism for noncitizens to request reconsideration of a negative credible fear determination before USCIS; instead, they are entertained on an informal, ad hoc basis whereby individuals contact USCIS asylum offices with their reconsideration requests after an IJ has affirmed the negative credible fear determination. This informal, ad hoc allowance for such requests, including multiple requests, has proven difficult to manage. To deal with these many requests, USCIS has had to devote time and resources that could more efficiently be used on initial credible fear and reasonable fear determinations, affirmative asylum cases, and now, Asylum Merits interviews with the present rule.

B. Applications for Asylum

If the noncitizen is found to have a credible fear, this IFR changes the procedure as described above. Under this rule, rather than referring the individual to an IJ for an adversarial section 240 removal proceeding in the first instance, or, as provided for in a presently enjoined regulation, asylum-and-withholding-only proceedings before an IJ,[25] the individual's asylum application instead may be retained for further consideration by USCIS through a nonadversarial interview before an asylum officer. *See* 8 CFR 208.30(f). Similarly, if, upon review of an asylum officer's negative credible fear determination, an IJ finds that an individual does have a credible fear of persecution or torture, the individual also can be referred back to USCIS for further consideration of the individual's asylum claim. *See* 8 CFR 1003.42, 1208.30(g). To eliminate delays between a positive credible fear determination and the filing of an application for asylum, the Departments are amending regulations to provide, in new 8 CFR 208.3(a)(2), that the written record of the credible fear determination created by USCIS during the credible fear process, and subsequently served on the individual together with the service of the credible fear decision itself, will be treated as an ''application for asylum,'' with the date of service on the individual considered the date of filing. Every individual who receives a positive credible fear determination and whose case is retained by USCIS will be considered to have filed an application for asylum at the time the determination is served on them. The application will be considered filed or received as of the service date for purposes of the one-year filing deadline for asylum, *see* INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B), and for starting the waiting period for eligibility to file for employment authorization based upon a pending asylum application, *see* 8 CFR 208.3(c)(3). The Departments are amending regulations to provide that this application for asylum will be considered a complete application for purposes of 8 CFR 208.4(a), 208.7, and 208.9(a) in order to qualify for an interview and adjudication, and will be subject to the other conditions and consequences provided for in 8 CFR 208.3(c) once the noncitizen signs the documentation under penalty of perjury and with notice of the consequences of filing a frivolous asylum application at the time of the Asylum Merits interview, as provided in new 8 CFR 208.3(a)(2).[26]

The Departments will implement these changes to the credible fear process by having the USCIS asylum officer conducting the credible fear interview advise the noncitizen of the consequences of filing a frivolous asylum application and capture the noncitizen's relevant information through testimony provided under oath. During the credible fear interview, as 8 CFR 208.30(d) already provides and will continue to provide under the IFR, the asylum officer will ''elicit all relevant and useful information'' for the credible fear determination, create a summary of the material facts presented by the noncitizen during the interview, review the summary with the noncitizen, and allow the noncitizen to correct any errors. The record created will contain the necessary biographical information and sufficient information related to the noncitizen's fear claim to be considered an application. As a matter of longstanding practice in processing families through credible fear screenings, the information captured by the asylum officer during the credible fear interview will contain information about the noncitizen's spouse and children, if any, including those who were not part of the credible fear determination—but under this rule only a spouse or child who was included in the credible fear determination issued pursuant to 8 CFR 208.30(c) or who has a pending asylum application with USCIS pursuant to 8 CFR 208.2(a)(1)(ii) can be included as a dependent on the request for asylum.[27] *See* 8 CFR 208.3(a)(2). Any spouse or child included as a dependent on the credible fear determination may request to file a separate asylum application as a

[25] *See* Global Asylum rule, 85 FR 80276; *supra* note 4 (discussing recent regulations and their current status).

[26] In addition, the Departments are amending 8 CFR 1208.3 and 1208.4 to account for changes made by this rule, including the provisions that will treat the record of the credible fear determination as an application for asylum in the circumstances addressed by the rule. The amendment at 8 CFR 1208.3(c)(3) affects language that was enacted in the rule entitled ''Procedures for Asylum and Withholding of Removal,'' 85 FR 81698 (Dec. 16, 2020). The December 16, 2020, rulemaking made various changes to DOJ regulations, including 8 CFR 1208.3(c)(3). *Id.* at 81750–51. The December 16, 2020, rulemaking is preliminarily enjoined. *See* Order at 1, *Nat'l Immigrant Justice Ctr.* v. *Exec. Office for Immigration Review,* No. 21–cv–56 (D.D.C. Jan. 14, 2021). This rule makes changes to the regulations only as necessary to effectuate its goals. The Departments anticipate that additional changes to the relevant regulations, including rescission of or revision to the language added by the preliminarily enjoined regulation, will be made through later rulemakings. *See* Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1125-AB15* (last visited Feb. 28, 2022).

[27] While only a spouse or child included on the credible fear determination or who presently has an asylum application pending with USCIS after a positive credible fear determination can be included as a dependent on the subsequent asylum application under this process, the noncitizen granted asylum remains eligible to apply for accompanying or follow-to-join benefits for any qualified spouse or child not included on the asylum application, as provided for in 8 CFR 208.21. The Departments believe that it is procedurally impractical to attempt to include a spouse or child on the application when the spouse or child has not previously been placed into expedited removal and subsequently referred to USCIS after a positive credible fear determination. This is similar to the inability to include a spouse or child not in section 240 removal proceedings on the asylum application of a principal asylum applicant who is in such section 240 removal proceedings. Under such circumstances, there is no clear basis for issuing a final order of removal against such an individual spouse or child should the asylum application not be approved.

principal applicant with USCIS at any time while the principal's asylum application is pending with USCIS. *See* 8 CFR 208.3(a)(2). A copy of the principal applicant's application for asylum—the record of the credible fear determination, including the asylum officer's notes from the interview, the summary of material facts, and other materials upon which the determination was based—will be provided to the noncitizen at the time that the positive credible fear determination is served. *See* 8 CFR 208.30(f). As provided in new 8 CFR 208.4(b)(2), the noncitizen may subsequently amend or correct the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or supplement the information collected during the process that concluded with a positive credible fear determination, up until 7 days prior to the scheduled Asylum Merits interview before a USCIS asylum officer, or for documents submitted by mail, postmarked no later than 10 days before the scheduled Asylum Merits interview. The asylum officer, finding good cause in an exercise of USCIS discretion, may consider amendments or supplements submitted after the 7- or 10-day submission deadline or may grant the applicant an extension of time during which the applicant may submit additional evidence, subject to the limitation on extensions described in 8 CFR 208.9(e)(2). In new 8 CFR 208.9(e)(2), this rule further provides that, in the absence of exigent circumstances, an asylum officer shall not grant any extensions for submission of additional evidence that would prevent the Asylum Merits decision from being issued to the applicant within 60 days of service of the positive credible fear determination. The Departments believe that such limitations are necessary to ensure that the process remains expeditious while maintaining fairness.

The information required to be gathered during the credible fear screening process is based on the noncitizen's own testimony under oath in response to questions from a trained USCIS asylum officer. Thus, the Departments believe that the screening would provide sufficient information upon which to ascertain the basis of the noncitizen's request for protection. Under this rule, noncitizens who receive a positive credible fear determination would have an asylum application on file with the Government within days of their credible fear screenings, thereby meeting the one-year asylum filing deadline, avoiding the risk of filing delays, and expeditiously beginning the waiting period for employment authorization eligibility.

C. Proceedings for Further Consideration of the Application for Asylum by USCIS Through Asylum Merits Interview for Noncitizens With Credible Fear

In this IFR, consistent with the NPRM, the Departments are amending regulations to authorize USCIS asylum officers to conduct Asylum Merits interviews for individuals whose cases are retained for further consideration by USCIS following a positive credible fear determination or returned to USCIS if an IJ vacates an asylum officer's negative credible fear finding.[28] The Departments carefully considered the comments received in response to the NPRM focused on timelines related to Asylum Merits interviews, and, in this IFR, are including regulatory language clarifying timelines for scheduling hearings and providing asylum decisions.

As provided in 8 CFR 208.9(a)(1), USCIS will not schedule an Asylum Merits interview for further consideration of an asylum application following a positive credible fear determination fewer than 21 days after the noncitizen has been served a record of the positive credible fear determination, unless the applicant requests in writing that an interview be scheduled sooner. The asylum officer shall conduct the interview within 45 days of the date that the positive credible fear determination is served on the noncitizen—*i.e.,* the date the asylum application is considered filed, *see* 8 CFR 208.3(a)(2)—subject to the need to reschedule an interview due to exigent circumstances. *See* 8 CFR 208.9(a)(1). These timelines are consistent with the INA, which provides that, ''in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed.'' INA 208(d)(5)(A)(ii), 8 U.S.C. 1158(d)(5)(A)(ii).

The nonadversarial Asylum Merits interview process will provide several procedural safeguards, such as the following: (1) The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence, 8 CFR 208.9(b); (2) the applicant or applicant's representative will have an opportunity to make a statement or comment on the evidence presented and the representative will also have the opportunity to ask follow-up questions of the applicant and any witness, 8 CFR 208.9(d)(1); (3) a verbatim transcript of the interview will be included in the referral package to the IJ, with a copy also provided to the noncitizen, 8 CFR 208.9(f)(2), 1240.17(c); (4) an asylum officer will arrange for the assistance of an interpreter if the applicant is unable to proceed effectively in English, and if a USCIS interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for purposes of eligibility for employment authorization, 8 CFR 208.9(g); and (5) the failure of a noncitizen to appear for an interview may result in the referral of the noncitizen to section 240 removal proceedings before an IJ, 8 CFR 208.10(a)(1)(iii), unless USCIS, in its own discretion, excuses the failure to appear, 8 CFR 208.10(b)(1). The Departments believe that these procedural safeguards will enhance efficiency and further the expeditious adjudication of noncitizens' asylum claims, while at the same time balancing due process and fairness concerns. The protection claims considered in Asylum Merits interviews will be adjudicated in a separate queue, apart from adjudications of affirmative asylum applications filed directly with USCIS.

Allowing the cases of individuals who receive a positive credible fear determination to remain with USCIS for the Asylum Merits interview, rather than initially referring the case to an IJ for an adversarial section 240 removal proceeding or, as provided for in a presently enjoined regulation, for an asylum-and-withholding-only proceeding,[29] will capitalize on the investment of time and expertise that USCIS has already made and, for the subset of cases in which asylum is granted by USCIS, save investment of time and resources by EOIR and ICE. It will also enable meritorious cases to be resolved more quickly, reducing the overall asylum system backlogs and using limited asylum officer and IJ resources more efficiently. The Asylum Merits interview process affords noncitizens a fair opportunity to present their claims. In addition, noncitizens

[28] In addition to the proposed changes to the DHS portion of the regulations in the NPRM, the IFR also includes a similar edit to 8 CFR 1003.42(d)(1). This edit is intended to ensure consistency with 8 CFR 1003.42 and the proposed edits to 8 CFR 1208.30(g)(2) so that both provisions properly direct that a case where an IJ vacates a negative credible fear finding will be referred back to USCIS as intended by both the NPRM and the IFR.

[29] *See* Global Asylum rule, 85 FR 80276; *supra* note 4 (discussing recent regulations and their current status).

who are not granted asylum will be referred to an immigration court for a streamlined section 240 removal proceeding, which means that an IJ will consider their asylum and, as necessary, statutory withholding and CAT protection claims. Overall, these ample procedural safeguards will ensure due process, respect human dignity, and promote equity.

Section 235(b)(1)(B)(ii) of the INA, 8 U.S.C. 1225(b)(1)(B)(ii), authorizes a procedure for ''further consideration'' of asylum applications that is separate from section 240 removal proceedings. As the Department of Justice recognized over two decades ago, ''the statute is silent as to the procedures for those who . . . demonstrate a credible fear of persecution.'' Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10320 (Mar. 6, 1997) (interim rule). It ''does not specify how or by whom this further consideration should be conducted.'' Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 444, 447 (Jan. 3, 1997) (proposed rule).

By not specifying what ''further consideration'' entails, the statute leaves it to the Departments to determine. Under the familiar *Chevron* framework, it is well-settled that such ''ambiguity constitutes an implicit delegation from Congress to the agency to fill in the statutory gaps.'' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 159 (2000) (citing *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 844 (1984)); *see also Epic Sys. Corp.* v. *Lewis,* 138 S. Ct. 1612, 1629 (2018) (noting that *Chevron* rests on ''the premise that a statutory ambiguity represents an implicit delegation to an agency to interpret a statute which it administers'' (quotation marks and citation omitted)). An agency may exercise its delegated authority to plug the gap with any ''reasonable interpretation'' of the statute. *Chevron,* 467 U.S. at 844.

By its terms, the phrase ''further consideration'' is open-ended. The fact that Congress did not specify the nature of the proceedings for those found to have a credible fear, *see* INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii), contrasts starkly with two other provisions in the same section that expressly require or deny section 240 removal proceedings for certain other classes of noncitizens. In one provision, INA 235(b)(2)(A), 8 U.S.C. 1225(b)(2)(A), Congress provided that an applicant for admission who ''is not clearly and beyond a doubt entitled to be admitted'' must be ''detained for a proceeding under [INA 240].'' And in another, INA 235(a)(2), 8 U.S.C. 1225(a)(2), Congress provided that ''[i]n no case may a stowaway be considered . . . eligible for a hearing under [INA 240].'' This shows that Congress knew how to specifically require or prohibit referral to a section 240 removal proceeding when it wanted to do so. ''Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Salinas* v. *United States R.R. Ret. Bd.,* 141 S. Ct. 691, 698 (2021) (quotation marks and citation omitted).

The D.C. Circuit has ''consistently recognized that a congressional mandate in one section and silence in another often suggests not a prohibition but simply a decision *not to mandate* any solution in the second context, *i.e.,* to leave the question to agency discretion.'' *Catawba Cnty., N.C.* v. *EPA,* 571 F.3d 20, 36 (D.C. Cir. 2009) (quotation marks and citation omitted). That Congress's silence in section 235(b)(1)(B)(ii) of the INA, 8 U.S.C. 1225(b)(1)(B)(ii), permits the Departments discretion to establish procedures for ''further consideration'' is reinforced by the fact that the noncitizens whom DHS has elected to process using the expedited removal procedure are expressly excluded from the class of noncitizens who are statutorily guaranteed section 240 removal proceedings under section 235(b)(2)(A) of the INA, 8 U.S.C. 1225(b)(2)(A).

If, following an Asylum Merits interview described in this IFR, USCIS grants asylum, the individual may be allowed to remain in the United States indefinitely with the status of asylee and eventually may apply for lawful permanent residence. *See* INA 208(c)(1), 209(b), 8 U.S.C. 1158(c)(1), 1159(b). If asylum is not granted, the asylum officer will refer the application, together with the appropriate charging document and the record of the Asylum Merits interview, for adjudication in streamlined section 240 removal proceedings before an IJ. *See* 8 CFR 208.14(c)(1), 1240.17(a).

The Departments carefully considered the public comments received in response to the NPRM and reconsidered the proposals outlined in the NPRM related to having USCIS asylum officers make final decisions regarding statutory withholding of removal and CAT protection claims and issue removal orders. *See* 86 FR 46917–19. In this IFR, DHS is amending 8 CFR 208.9(b) to provide that, in the case of a noncitizen whose case is retained by or referred to USCIS for further consideration through an Asylum Merits interview, an asylum officer will also elicit all relevant and useful information bearing on the applicant's eligibility for statutory withholding of removal or CAT protection. This IFR further provides in 8 CFR 208.16(a) and (c) that if the asylum application is not granted, the asylum officer will determine whether the noncitizen is eligible for statutory withholding of removal under 8 CFR 208.16(b) or CAT protection under 8 CFR 208.16(c). Asylum officers will not issue orders of removal to applicants who are not granted asylum as proposed in the NPRM, but rather will refer applicants who are not granted asylum to the immigration court for consideration of their protection claims in streamlined section 240 removal proceedings before an IJ. *See* 8 CFR 208.14(c)(1), 208.16(a). USCIS will not issue a final decision on an applicant's request for statutory withholding of removal or CAT protection. Rather, pursuant to new 8 CFR 1240.17(d), (f)(2)(i)(B), and (i)(2), if an asylum officer does not grant asylum but determines the noncitizen is eligible for statutory withholding of removal or CAT protection and the IJ does not grant asylum, the IJ will issue a removal order and, subject to certain exceptions, give effect to USCIS's determination.

If the asylum application includes a dependent who has not filed a separate application, the asylum officer will, as appropriate and prior to referring the family to streamlined section 240 proceedings before an IJ, elicit information sufficient to determine whether there is a significant possibility that the applicant's dependent has experienced or fears harm that would be an independent basis for protection in the event that the principal applicant is not granted asylum. *See* 8 CFR 208.9(b), (i). If a spouse or child who was included in the principal applicant's request for asylum does not separately file an asylum application that is adjudicated by USCIS, the principal's asylum application will be deemed by EOIR to satisfy EOIR's application filing requirements for the spouse or child as principal applicants. *See* 8 CFR 208.3(a)(2), 1208.3(a)(2). This provision will allow any spouse or child in the streamlined procedure to exercise their right to seek protection on an independent basis without the need for delaying the proceedings to allow for the preparation and filing of an I–589, Application for Asylum and for Withholding of Removal. The

Departments have determined that these changes meet the goals of this rule, such as improving efficiency while allowing noncitizens to receive a full and fair opportunity to be heard, and are also responsive to commenters' concerns raised in response to the NPRM, as detailed in Sections IV.D.5 and 6 of this preamble. While USCIS will not make final decisions regarding statutory withholding of removal and CAT protection claims and issue removal orders, it is appropriate for USCIS to make eligibility determinations regarding statutory withholding of removal and protection under the CAT. As a threshold issue, applications for asylum, statutory withholding of removal, and protection under the CAT are all factually linked. While the legal standards and requirements differ among the forms of relief and protection, the relevant applications will substantially share the same set of operative facts that an asylum officer would have already elicited, including through evidence and testimony, in the nonadversarial Asylum Merits interview. Moreover, asylum officers receive extensive training, and develop extensive expertise, in assessing claims and country conditions, and are qualified to determine whether an applicant will face harm in the proposed country. *See* INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E); 8 CFR 208.1(b). Asylum officers also receive training on the standards and eligibility issues related to determinations for statutory withholding of removal and CAT protection in order to conduct credible fear screening interviews and make appropriate credible fear determinations under 8 CFR 208.30(e). *See* 8 CFR 208.1(b).

While asylum officers will also not make final decisions regarding a dependent's eligibility for asylum, statutory withholding of removal, and CAT protection claims if the dependent has not received a prior separate positive credible fear determination or filed a separate principal asylum application with USCIS, it is appropriate for asylum officers to elicit sufficient information regarding each dependent's eligibility for protection in order to allow for those claims to be on the record and appropriately considered should the family be placed into streamlined section 240 removal proceedings. In many cases, the family members will likely substantially share the same set of operative facts that an asylum officer would have already elicited from the principal applicant, including through evidence and testimony, during the same nonadversarial Asylum Merits interview. Accordingly, the additional questioning that will ordinarily be needed to develop the record enough to facilitate an IJ's adjudication of any claims through streamlined section 240 proceedings is expected to be modest. Moreover, any dependent who wishes to be adjudicated as a principal applicant by USCIS may file a separate application with USCIS prior to referral to removal proceedings.

Where a noncitizen's asylum application is not granted by USCIS, automatic referral to streamlined section 240 proceedings—as further discussed in Section III.D of this preamble—ensures that the application of the principal applicant and any family members may be reviewed by the IJ. In the streamlined section 240 proceedings, the IJ will adjudicate de novo the noncitizen's and any family members' applications for asylum and, if USCIS determined them ineligible for statutory withholding of removal or protection under the CAT, such claims as well. Statutory withholding of removal and CAT protection are nondiscretionary forms of protection, the granting of which is mandatory upon a showing of eligibility. *See, e.g., Myrie* v. *Att'y Gen. United States,* 855 F.3d 509, 515–16 (3d Cir. 2017); *Benitez Ramos* v. *Holder,* 589 F.3d 426, 431 (7th Cir. 2009). Because an asylum officer does not issue an order of removal under the IFR, it is appropriate to wait until the IJ enters the order of removal before generally giving effect to USCIS's statutory withholding of removal and CAT protection eligibility determinations. *See Matter of I–S– & C–S–,* 24 I&N Dec. 432, 433 (BIA 2008).

D. Streamlined Section 240 Removal Proceedings Before the Immigration Judge

Upon careful consideration of the comments received in response to the NPRM, as discussed in Section IV of this preamble, this IFR does not adopt the IJ review proceedings proposed in the NPRM. *See* 86 FR 46946–47 (8 CFR 1003.48, 1208.2(c) (proposed)). Instead, the Departments will place noncitizens whose applications for asylum are not granted by USCIS, as well as any spouse or children included on the noncitizen's application, in section 240 proceedings that will be streamlined as provided in new 8 CFR 1240.17. *See* 8 CFR 1240.17(a), (b). As provided in new 8 CFR 1240.17(a), IJs must conduct these proceedings in accordance with the procedures and requirements set forth in section 208 of the Act, 8 U.S.C. 1158.

Currently, further consideration of an asylum application by an individual in expedited removal is done through section 240 proceedings. *See, e.g.,* 8 CFR 208.30(f) (2020);[30] 8 CFR part 1240, subpart A (2020). Such proceedings follow issuance of an NTA, which informs the noncitizen of DHS's charges of inadmissibility or removability, INA 239(a)(1), 8 U.S.C. 1229(a)(1), and these proceedings provide an opportunity for the noncitizen to make his or her case to an IJ, INA 240(a)(1), 8 U.S.C. 1229a(a)(1). Parties in section 240 removal proceedings have a wide range of well-established rights, including the following: The right to representation at no expense to the Government, INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A); a reasonable opportunity to examine evidence, present evidence, and cross-examine witnesses, INA 240(b)(4)(B), 8 U.S.C. 1229a(b)(4)(B); the right to seek various forms of relief, 8 CFR 1240.1(a)(1)(ii)–(iii); the right to file a motion to continue, 8 CFR 1003.29; and the right to appeal specified decisions to the BIA, 8 CFR 1003.3(a), 1003.38(a), and to later file a petition for review in the appropriate U.S. Court of Appeals, INA 242, 8 U.S.C. 1252.

Under the IFR, USCIS will have authority to adjudicate asylum claims brought by noncitizens subject to expedited removal and found to have a credible fear of persecution or torture rather than immediately referring such cases for adjudication by IJs in section 240 removal proceedings. The Departments have determined that noncitizens who subsequently are not granted asylum by USCIS should be referred to section 240 removal proceedings that will be streamlined as described in new 8 CFR 1240.17. The well-established rights that apply in section 240 proceedings will continue to apply during the 240 proceedings described in new 8 CFR 1240.17, but the latter will include new procedures designed to streamline the process while continuing to ensure fairness.

The Departments believe that these cases can be adjudicated more expeditiously than other cases in section 240 removal proceedings. Unlike other cases, noncitizens subject to this IFR will have had a full opportunity to present their protection claims to an asylum officer. Moreover, as established in new 8 CFR 1240.17(c) and (e), IJs and parties in any subsequent streamlined section 240 removal proceedings will have the benefit of a fully developed record and

[30] The Global Asylum rule would have revised the process, placing such noncitizens into asylum-and-withholding-only proceedings instead of section 240 proceedings, *see* 85 FR 80276, but it was enjoined, *see supra* note 4.

decision prepared by USCIS.[31] Because the USCIS Asylum Merits interview will create a record that includes testimony and documentary evidence, the Departments believe that less time will be needed in immigration court proceedings to build the evidentiary record. Thus, cases will be resolved more expeditiously before the IJ. The Departments recognize that, in some instances, IJs may need to take additional testimony and evidence—beyond what is contained in the USCIS record—to fully develop the record. *See, e.g.,* 8 CFR 1240.17(f)(4)(iii). By providing IJs with the ability to rely upon the previously developed record in most cases, while preserving the flexibility for IJs to take new evidence and testimony when warranted, without the additional motions practice contemplated by the NPRM's provisions, the IFR creates more streamlined, efficient adjudications overall. Accordingly, the Departments believe that it is possible to achieve the purposes of the NPRM—to increase efficiency and maintain procedural fairness—by making procedural changes to streamline existing 240 proceedings instead of establishing the IJ review proceedings proposed under the NPRM.

In keeping with this goal, the IFR provides that these section 240 proceedings will be subject to particular procedural requirements designed to streamline the overall process and take advantage of the record created by the asylum officer while still providing noncitizens with a full and fair opportunity to present testimony and evidence in support of their claims. Where the IJ would not be able to take advantage of that record, the streamlining measures do not apply. Thus, new 8 CFR 1240.17(k) exempts certain cases from the streamlined process, including, for example, where the respondent has produced evidence of prima facie eligibility for relief or protection other than asylum, statutory withholding of removal, CAT protection, or voluntary departure, 8 CFR 1240.17(k)(2); where the respondent has raised a substantial defense to the removal charge,[32] 8 CFR 1240.17(k)(3); or where the designated country of removal is different from the one that the asylum officer considered in adjudicating the noncitizen's application for asylum or protection, 8 CFR 1240.17(k)(4).[33] New 8 CFR 1240.17(k) makes other exceptions for certain vulnerable noncitizens and it exempts cases that have been reopened or remanded. *See* 8 CFR 1240.17(k)(1), (5), (6). Accordingly, with these exceptions, the Departments believe that these proceedings can be expedited given the limited forms of relief and protection that will need to be adjudicated by the IJ and given that the IJ and the parties will benefit from the record developed before USCIS.

The IFR provides additional procedures that will contribute to efficient adjudication. As provided in revised 8 CFR 208.3(a)(2) and 8 CFR 1208.3(a)(2) and new 8 CFR 1240.17(e), the IFR treats the record underlying the positive credible fear determination as the noncitizen's asylum application, as well as an asylum application for any spouse or child included as a dependent on the application for purposes of EOIR's filing requirements if USCIS does not grant the principal applicant's application and if the spouse or child does not separately file an asylum application that is adjudicated by USCIS. This procedure obviates the need for the noncitizen and any dependent to prepare and file a new application before the IJ. IJs are also required to hold status conferences to identify and narrow issues under new 8 CFR 1240.17(f)(1), (2). The USCIS Asylum Merits interview record and decision will permit the parties and the IJ to identify any errors or omissions in the record, narrow issues, and provide any additional bases for asylum or related protection. Specifically, the rule, as provided in new 8 CFR 1240.17(f)(2) and (3), imposes obligations on the parties to identify and narrow the issues prior to the merits hearing, although the obligations on the noncitizen depend on whether the noncitizen has representation. As provided by new 8 CFR 1240.17(f)(2)(ii)(A), DHS must state whether it intends to rest on the existing record, waive cross-examination of the respondent, otherwise participate in the proceedings before the IJ, or waive appeal in the event the IJ grants protection. This position may be retracted by DHS, orally or in writing, prior to the issuance of the IJ's decision, if DHS seeks consideration of evidence pursuant to the standard laid out in 8 CFR 1240.17(g)(2). *See* 8 CFR 1240.17(f)(2)(ii)(C). Moreover, if DHS indicates that it will participate in the case, at the status conference or via a subsequent written statement it shall state its position on the respondent's claim(s); state which elements of the respondent's claim(s) it is contesting and which facts it is disputing, if any, and provide an explanation of its position; identify any witnesses it intends to call; provide any additional non-rebuttal or non-impeachment evidence; and state the status of the identity, law enforcement, or security investigations or examinations required by section 208(d)(5)(A)(i) of the Act, 8 U.S.C. 1158(d)(5)(A)(i), and 8 CFR 1003.47. *See* 8 CFR 1240.17(f)(2)(ii), (f)(3). If DHS does not timely respond, either at the status conference or in its written statement, to one or more of the respondent's arguments or claimed bases for asylum, including which arguments raised by the respondent DHS is disputing and which facts it is contesting, the IJ has authority to deem those arguments or claims unopposed, provided, however, that DHS may respond at the merits hearing to any arguments or claimed bases for asylum first advanced by the respondent after the status conference. *See* 8 CFR 1240.17(f)(3)(i). The IFR creates additional efficiencies by permitting IJs to decide applications on the documentary record in certain circumstances, including where neither party has elected to present testimony and DHS has not elected to cross-examine the noncitizen or where the IJ determines that the application can be granted without further testimony and DHS declines to cross-examine the noncitizen. *See* 8 CFR 1240.17(f)(4)(i), (ii). Notwithstanding these provisions,

[31] New 8 CFR 1240.17(c) provides that DHS will serve the record of proceedings for the Asylum Merits interview and the asylum officer's written decision on the respondent and on the immigration court no later than the date of the master calendar hearing; it further provides that, in the exceptional case in which service is not effectuated by that date, the schedule of proceedings pursuant to new 8 CFR 1240.17(f) will be delayed until service is effectuated.

[32] As stated in note 8, *supra,* the rule does not specify that a particular type of evidence is required in order to show prima facie eligibility for relief, and such evidence could include testimonial evidence as well as documentary evidence.

[33] Under this IFR, a noncitizen's accompanying spouse and children may be included in the request for asylum if they were included in the credible fear determination. *See* 8 CFR 208.3(a)(2), 208.30(c). Where a noncitizen is accompanied by a spouse or children, and the noncitizen is found to have a credible fear of persecution or torture, the family has the choice to have the spouse and children be included as dependents on the asylum application or to separately seek asylum as principal applicants. *See* 8 CFR 208.3(a)(2), 208.30(c). Should the family choose to have the spouse and children proceed solely as dependents, the asylum officer will, as appropriate, elicit sufficient information to determine whether there is a significant possibility that the applicant's spouse or child has experienced or fears harm that would be an independent basis for protection in the event that the principal applicant is not granted asylum prior to referring the family to the IJ for a hearing. *See* 8 CFR 208.9(b), (i). If a spouse or child who was included in the principal applicant's request for asylum does not separately file an asylum application that is adjudicated by USCIS, the principal's asylum application will be deemed by EOIR to satisfy EOIR's application filing requirements for the spouse or child as principal applicants. *See* 8 CFR 1208.3(a)(2).

however, the IJ shall hold a hearing if the IJ decides that a hearing is necessary to fulfill the IJ's duty to fully develop the record. *See id.*

The IFR also gives appropriate effect to the asylum officer's determination of a noncitizen's eligibility for statutory withholding of removal or protection under the CAT. This serves to increase efficiency and provides a safeguard where an asylum officer has already found that the noncitizen could be subject to persecution or torture if removed. In general, in cases where the IJ denies asylum and issues a removal order, the IJ will give effect to the asylum officer's determination of eligibility for statutory withholding of removal or protection under the CAT; the IJ may not sua sponte review the asylum officer's determination. *See* 8 CFR 1240.17(d), (f)(2)(i)(B), (i)(2). However, these provisions account for the possibility that DHS may submit evidence or testimony that specifically pertains to the respondent and that was not included in the record of proceedings for the USCIS Asylum Merits interview in order to demonstrate that the respondent is not eligible for the protection(s) the asylum officer determined. *See id.* In such a case, the IJ will, based on the review of this new evidence or testimony, make a separate determination regarding the noncitizen's eligibility for statutory withholding of removal or protection under the CAT, as relevant.

1. Schedule of Proceedings

The Departments are imposing procedural adjudication time frames and limitations on continuances and filing extensions during streamlined section 240 removal proceedings under this IFR. The Departments believe that these time frames and limitations are justified given both the streamlining procedures discussed above and the fact that such cases will come to the IJ with a complete asylum application and following a nonadversarial interview before an asylum officer at which a comprehensive record, including a verbatim transcript and decision, has been assembled.

Under new 8 CFR 1240.17, the Departments will impose procedural time frames on IJs with respect to their hearing schedules. Specifically, an IJ will hold a master calendar hearing 30 days after service of the NTA or, if a hearing cannot be held on that date, on the next available date no later than 35 days after service. As provided by new 8 CFR 1240.17(f)(1) and (2), the IJ will hold a status conference 30 days after the master calendar hearing or, if a status conference cannot be held on that date, on the next available date no later than 35 days after the master calendar hearing, followed by a merits hearing, if necessary, 60 days after the master calendar hearing or, if a hearing cannot be held on that date, on the next available date no later than 65 days after the master calendar hearing.[34] If needed, under new 8 CFR 1240.17(f)(4)(iii), the IJ may hold a subsequent merits hearing to resolve any lingering issues or complete testimony no later than 30 days after the initial merits hearing. As further discussed below, the IJ may grant continuances and filing extensions under specified standards. *See* 8 CFR 1240.17(h). Finally, under 8 CFR 1240.17(f)(5), whenever practical, the IJ shall issue an oral decision on the date of the final merits hearing or, if the IJ determines that no such hearing is warranted, no more than 30 days after the status conference; and where issuance of an oral decision on such date is not practicable, the IJ shall issue an oral or written decision as soon as practicable, no later than 45 days after the final merits hearing or, if the IJ concludes that no hearing is necessary, no later than 75 days after the status conference.[35]

The combined effect of these provisions should fully achieve the NPRM's efficiency goals while allowing noncitizens to receive a full and fair hearing in streamlined section 240 removal proceedings rather than through the IJ review process contemplated by the NPRM. The well-established rights that apply in ordinary section 240 proceedings will continue to apply during the streamlined section 240 proceedings described in new 8 CFR 1240.17, but certain new procedures will streamline the process by taking advantage of the record created by the asylum officer and ensure a prompt, efficient, and fair hearing on the respondent's claim.

a. Pre-Hearing Procedures

In order to best prepare the case for adjudication, new 8 CFR 1240.17(f) establishes initial procedures to ensure that the IJ has a complete picture of the case and the relevant issues prior to conducting any merits hearing that may be needed. As provided in new 8 CFR 1240.17(f)(1), at the master calendar hearing, the IJ will perform the functions required by 8 CFR 1240.10(a), including advising the respondent of the right to be represented, at no expense to the Government, by counsel of the respondent's own choosing. *See* 8 CFR 1240.17(f)(1). Additionally, the IJ will advise as to the nature of the streamlined section 240 removal proceedings, including that the respondent has pending applications for asylum, statutory withholding of removal, and withholding or deferral of removal under the CAT, as appropriate; that the respondent has the right to testify, call witnesses, and present evidence in support of these applications; and of the deadlines that govern the submission of evidence. *See id.* Finally, except where the noncitizen is ordered removed in absentia, at the conclusion of the master calendar hearing the IJ will schedule a status conference to take place 30 days after the master calendar hearing or, if necessary, on the next available hearing date no later than 35 days after the master calendar hearing. *See id.* The IJ will also advise as to the requirements for the status conference. *See id.* The adjournment of the case until the status conference will not be considered a noncitizen-requested continuance under new 8 CFR 1240.17(h)(2). *See id.*

The purpose of the status conference is to take pleadings, identify and narrow any issues, and determine whether the case can be decided on the documentary record alone or, if a merits hearing before the IJ is needed, to ready the case for such a hearing. *See* 8 CFR 1240.17(f)(2). In general, the Departments expect that the parties will use the record of the Asylum Merits interview as a tool to prepare the proceeding for the IJ's adjudication. *See id.*

At the status conference, the noncitizen must indicate, orally or in writing, whether the noncitizen intends to contest removal or seek any protection(s) for which the asylum officer did not determine the noncitizen eligible. *See* 8 CFR 1240.17(f)(2)(i). The IJ will also advise the noncitizen that the respondent has the right to testify, call witnesses, and present evidence in support of the noncitizen's application; and of the deadlines that govern the

[34] Because the timing of the merits hearing is tied to the date that the status conference occurs, the Departments note that any delay of the status conference will necessarily result in a corresponding delay of the merits hearing. In other words, if the status conference occurs 45 days after the master calendar hearing rather than 30–35 days after it because, for example, the respondent requested a continuance to seek counsel or the immigration court had to close on the original date of the status conference, *see* 8 CFR 1240.17(h), the merits hearing would still occur 30–35 days after the status conference—on days 75–80.

[35] In other words, where it is not practicable to issue an oral decision on the date of the final merits hearing, the immigration judge has up to 45 days to issue a decision. Where an IJ has determined that a merits hearing is not necessary, and it is not practicable to issue a decision within 30 days after the status conference, the IJ has up to an additional 45 days within which to issue a decision.

submission of evidence. If a noncitizen expresses an intent to contest removal or seek protection for which the asylum officer did not determine the noncitizen eligible, the noncitizen must, orally or in writing: (1) Indicate whether the noncitizen plans to testify before the IJ; (2) identify any witnesses the noncitizen plans to call at the merits hearing; and (3) provide any additional documentation in support of the applications. *See* 8 CFR 1240.17(f)(2)(i)(A). A represented noncitizen is further required to: (4) Describe any alleged errors or omissions in the asylum officer's decision or the record of proceedings before the asylum officer; (5) articulate or confirm any additional bases for asylum and related protection, whether or not they were presented or developed before the asylum officer; and (6) state any additional requested forms of relief or protection. If a noncitizen is unrepresented, the IJ will ask questions and guide the proceedings in order to elicit relevant information from the noncitizen and otherwise fully develop the record. *See Quintero* v. *Garland,* 998 F.3d 612, 623–30 (4th Cir. 2021) (describing the general duty of the IJ to develop the record, which is ''especially crucial in cases involving unrepresented noncitizens''); *see also Matter of S–M–J–,* 21 I&N Dec. 722, 723–24, 729 (BIA 1997) (en banc) (also describing the general duty of the IJ to develop the record). If a noncitizen does not express an intent to contest removal or seek protection for which the asylum officer did not determine the noncitizen eligible, the IJ will order the noncitizen removed and will not conduct further proceedings. *See* 8 CFR 1240.17(f)(2)(i)(B). In such cases, where the asylum officer determined the noncitizen eligible for statutory withholding of removal or protection under the CAT, the IJ will issue a removal order and will give effect to that protection, unless DHS makes a prima facie showing—through evidence that specifically pertains to the noncitizen and that was not included in the record of proceedings for the USCIS Asylum Merits interview—that the noncitizen is not eligible for such protection. *See id.*

For its part, DHS must indicate at the status conference, orally or in writing, whether it intends to: (1) Rest on the record; (2) waive cross-examination of the noncitizen; (3) otherwise participate in the case; or (4) waive appeal if the IJ decides to grant the noncitizen's application. *See* 8 CFR 1240.17(f)(2)(ii). If DHS indicates that it will participate in the case, it then must, orally or in writing: (1) State its position on each of the noncitizen's claimed grounds for asylum or related protection; (2) state which elements of the noncitizen's claim for asylum or related protection it is contesting and which facts it is disputing, if any, and provide an explanation of its position; (3) identify any witnesses it intends to call at any merits hearing; (4) provide any additional non-rebuttal or non-impeachment evidence; and (5) state whether the appropriate identity, law enforcement, or security investigations or examinations have been completed. *See id.* DHS can provide this information at the status conference or by submitting a written statement under 8 CFR 1240.17(f)(3)(i) as outlined below. *See id.*

At the status conference, as further detailed below, the IJ will determine whether further proceedings are warranted; if they are, the IJ will schedule the merits hearing to take place 60 days after the master calendar hearing or, if the merits hearing cannot be held on that date, on the next available date no later than 65 days after the master calendar hearing. *See* 8 CFR 1240.17(f)(2). The IJ may also schedule additional status conferences prior to any merits hearing if the IJ determines such conferences will contribute to efficient resolution of the case. *See id.*

After the adjournment of the status conference, where DHS intends to participate in a case, DHS is required to file a written statement providing information required under 8 CFR 1240.17(f)(2)(ii) but that DHS did not provide at the status conference, as well as any other relevant information or argument in response to the noncitizen's submissions. *See* 8 CFR 1240.17(f)(3)(i). DHS's written statement is due no later than 15 days prior to the scheduled merits hearing or, if the IJ determines that no such hearing is warranted, no later than 15 days following the status conference. *See id.* The noncitizen may also submit a supplemental filing after the status conference to reply to any statement submitted by DHS, identify any additional witnesses, and provide any additional documentation in support of the respondent's application. *See* 8 CFR 1240.17(f)(3)(ii). Any such filing is due no later than 5 days prior to the scheduled merits hearing or, if the IJ determines that no such hearing is warranted, no later than 25 days following the status conference. *See id.*

The IFR's efficiencies and timeline are predicated on the parties' participation in the status conference and other procedural steps needed to narrow the issues and prepare the case for adjudication in advance of any merits hearing before an IJ. This rule helps ''ensure efficient adjudication by focusing the immigration courts' limited resources on the issues that the parties actually contest.'' *Matter of A–C–A–A–,* 28 I&N Dec. 351, 352 (A.G. 2021). In this regard, as described above, DHS ICE Office of the Principal Legal Advisor attorneys representing DHS in immigration court (''DHS attorneys'') play a critical role in narrowing the issues during section 240 removal proceedings. The Departments believe that the rule's requirements will increase the overall efficiency of case adjudications and help parties better prepare their respective positions before the IJ.

b. Merits Hearing(s)

Based on the parties' statements and submissions at the status conference, the IJ will determine whether the noncitizen's application may be decided on the documentary record without a merits hearing or whether a merits hearing is required. *See* 8 CFR 1240.17(f)(4)(i)–(iii). Specifically, an IJ may decline to hold a merits hearing and decide the application on the documentary record if: (1) DHS has indicated that it waives cross-examination and neither the noncitizen nor DHS has requested to present testimony under the pre-hearing procedures described above, *see* 8 CFR 1240.17(f)(4)(i); or (2) the noncitizen has timely requested to present testimony and DHS has indicated that it waives cross-examination and does not intend to present testimony or produce evidence, and the IJ concludes that the asylum application can be granted without further testimony, *see* 8 CFR 1240.17(f)(4)(ii). Notwithstanding these provisions, the IJ shall hold a hearing if the IJ decides that a hearing is necessary to fulfill the IJ's duty to fully develop the record. *See* 8 CFR 1240.17(f)(4)(i), (ii).[36]

[36] The Departments emphasize that permitting the IJ to issue decisions in some cases without holding a hearing does not undermine the fairness or integrity of asylum proceedings because the respondent will already have testified, under oath, before the asylum officer. The IFR's framework only allows for the IJ to render a decision without scheduling a hearing in a manner that would not prejudice the noncitizen or undermine the integrity of asylum proceedings.

In *Matter of Fefe,* 20 I&N Dec. 116 (BIA 1989), the BIA held that ''[a]t a minimum . . . the regulations require that an applicant for asylum and withholding take the stand, be placed under oath, and be questioned as to whether the information in the written application is complete and correct.'' *Id.* at 118. The BIA determined that the regulations required these procedures for fairness reasons and to maintain ''the integrity of the asylum process itself.'' *Id.* The provisions in this IFR that permit IJs to decide applications without a hearing in certain

Continued

If the IJ determines to hold a merits hearing, the IJ will conduct that hearing as in section 240 removal proceedings generally. The IJ will swear the noncitizen to the truth and accuracy of any information or statements, hear all live testimony requested by the parties, and consider the parties' submissions. *See* 8 CFR 1240.17(f)(4)(iii)(A).

The Departments' goal is for the IJ to issue an oral decision at the conclusion of a single merits hearing (when a merits hearing is required) whenever practicable, *see* 8 CFR 1240.17(f)(4)(iii)(A), (f)(5), but the Departments recognize that not every case may be resolved in that fashion. The rule therefore allows the IJ flexibility in such circumstances to hold another status conference and take any other steps the IJ considers necessary and efficient for the resolution of the case. *See* 8 CFR 1240.17(f)(4)(iii)(B). In all circumstances, the IJ will be required to schedule any subsequent merits hearing no later than 30 days after the initial merits hearing. *Id.*

2. Evidentiary Standard

This IFR provides that, in the streamlined section 240 proceedings, noncitizens and DHS will have the opportunity to address alleged errors in the USCIS Asylum Merits record, present testimony, and submit additional evidence. The longstanding evidentiary standard for section 240 proceedings applies—evidence must be relevant and probative, and its use must be fundamentally fair. 8 CFR 1240.17(g)(1); *see* 8 CFR 1240.7(a) (''The immigration judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case . . . .''); *Nyama* v. *Ashcroft,* 357 F.3d 812, 816 (8th Cir. 2004) (''The traditional rules of evidence do not apply to immigration proceedings . . . . 'The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.' '' (citations omitted) (citing *Henry* v. *INS,* 74 F.3d 1, 6 (1st Cir. 1996); quoting *Espinoza* v. *INS,* 45 F.3d 308, 310 (9th Cir. 1995))); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 505 (BIA 1980) (holding that evidence must be ''relevant and probative and its use not fundamentally unfair''). In addition, any evidence submitted must be timely (after taking into account a timely request for a continuance or filing extension that is granted), *see* 8 CFR 1240.17(g)(1), subject to certain exceptions, *see* 8 CFR 1240.17(g)(2). Evidence submitted after the deadline set by the IJ but before the IJ issues a decision in the case may be considered only if it could not reasonably have been obtained and presented before the applicable deadline through the exercise of due diligence, or it its exclusion would violate a statute or the Constitution.[37] *See id.* As in all section 240 proceedings, the IJ will exclude evidence that does not meet the requirements described above. *See* 8 CFR 1240.17(g)(1).

The Departments are not adopting the NPRM's proposal that noncitizens seeking to submit additional evidence for IJ review would have to demonstrate that it was not duplicative and was necessary to develop the record. Instead, the Departments believe the IFR's provisions will promote efficiency and fairness by allowing the parties and adjudicators to apply longstanding, workable evidentiary standards. The Departments believe that the NPRM's efficiency goals can be achieved in the context of streamlined section 240 removal proceedings without the NPRM's evidentiary restrictions because, unlike individuals in ordinary section 240 removal proceedings, noncitizens whose cases are subject to this rule will already have received an initial adjudication by USCIS, and their case will come to the immigration court with a fully developed record.

3. Timeline for Proceedings

As noted in the NPRM, the Departments' purpose for conducting rulemaking on this topic is to develop a ''better and more efficient'' system for processing applications for asylum and related relief brought by individuals subject to expedited removal under section 235 of the Act, 8 U.S.C. 1225. 86 FR 46907. Under the current procedures, individuals who are first placed in the expedited removal process but who are subsequently found to have a credible fear of persecution or torture are placed in section 240 removal proceedings before the immigration court. 8 CFR 208.30(f) (2020). Under existing procedures, these proceedings often take several years to complete and can be highly protracted and inefficient. Further, as stated in the NPRM, the current system was created at a time when most noncitizens encountered at the border were single adults from Mexico, relatively few of whom made asylum claims. *See* 86 FR 46908. In contrast, at present, a large share of noncitizens encountered at the border are families and unaccompanied children, a significant portion of whom express the intention to seek asylum. *See id.*

Given the above, the IFR establishes the timeline and procedures detailed below to apply in all cases subject to the streamlined section 240 removal proceedings. The Departments believe that these procedures serve important efficiency interests while still permitting noncitizens an appropriate amount of time to prepare for proceedings.

Immigration court proceedings commence when DHS files the NTA, and the master calendar hearing will take place 30 days after the date the NTA is served or, if a hearing cannot be held on that date, on the next available date no later than 35 days after service. *See* 8 CFR 1240.17(b). Except where the noncitizen is ordered removed in absentia, the IJ will then schedule a status conference 30 days after the initial master calendar hearing or, if a status conference cannot be held on that date, on the next available date no later than 35 days after the master calendar hearing. *See* 8 CFR 1240.17(f)(1). From there, if warranted, the merits hearing will be scheduled 60 days after the master calendar hearing or, if a hearing cannot be scheduled on that date, on the next available date no later than 65 days after the master calendar hearing. *See* 8 CFR 1240.17(f)(2). If any subsequent merits hearing is necessary, the IJ will schedule it no later than 30 days after the initial merits hearing. *See* 8 CFR 1240.17(f)(4)(iii)(B). Finally, whenever practicable, the IJ shall issue an oral decision on the date of the final merits hearing or, if no such hearing is held, 30 days after the status conference. *See* 8 CFR 1240.17(f)(4)(iii)(A), (f)(5). If the IJ cannot issue a decision on that date, the IJ must issue an oral or written decision as soon as practicable and no later than 45 days after the applicable date described in the previous sentence. *See* 8 CFR 1240.17(f)(5).

Under the default timeline set forth in the IFR, at least 90 days is provided from the service of the NTA before the merits hearing for the noncitizen to secure counsel, obtain evidence, and otherwise prepare—in addition to the time the noncitizen had to secure counsel and obtain evidence leading up to the Asylum Merits interview. *See Matter of C–B–,* 25 I&N Dec. 888, 889 (BIA 2012) (holding that ''the [IJ] must grant a reasonable and realistic period of time to provide a fair opportunity for a

circumstances do not raise the same concerns that animated the BIA's decision in *Matter of Fefe,* including because the cases covered by the IFR involve noncitizens who have already received a hearing on their asylum and protection claims before an asylum officer.

[37] In addition, as described below, under new 8 CFR 1240.17(h), a party may seek to have an extension of a filing deadline. For example, a party may seek to have a filing deadline extended if there is an unexpected delay in receipt of the evidence from a medical practitioner or other party.

noncitizen to seek, speak with, and retain counsel''). Moreover, as discussed below, 8 CFR 1240.17(h) contemplates continuances and filing extensions by request of the parties. The Departments believe these time frames, including the standards for continuances and extensions, ensure adequate time and protect procedural fairness while also meeting the Department's goal of creating efficient and streamlined proceedings. Unlike in ordinary section 240 removal proceedings, noncitizens in these streamlined section 240 proceedings will already have had an incentive and time to obtain representation prior to the commencement of immigration court proceedings. Similarly, noncitizens will not be appearing in immigration court on a totally blank slate; they will have had notice regarding what sort of evidence is needed and a prior opportunity to obtain any available evidence ahead of the Asylum Merits interview. In addition, where a noncitizen is placed in removal proceedings under the procedures in the IFR, the noncitizen will have already applied before USCIS for asylum, withholding of removal, and protection under the CAT, as relevant. The noncitizen will have had the opportunity to testify before, and submit evidence to, the asylum officer, and the asylum officer will have fully evaluated the noncitizen's eligibility for asylum, withholding of removal, and protection under the CAT. Moreover, any dependent would have also had the opportunity to testify before the asylum officer, and the asylum officer would have elicited testimony from the dependent for any independent basis for eligibility for asylum, withholding of removal, and protection under the CAT. The IJ will be provided with the record before USCIS, including the asylum officer's decision, the verbatim transcript of the Asylum Merits interview, and the evidence on which the asylum officer relied in reaching the decision. In the Departments' view, it is appropriate for cases under this IFR to proceed on an expedited time frame before the immigration courts as claims will have been significantly developed and analyzed before the proceedings start.

4. Continuances and Filing Extensions

The IFR establishes modified standards for continuances and filing extensions in streamlined 240 proceedings. Generally, in immigration proceedings, a noncitizen may file a motion for continuance for good cause shown. *See* 8 CFR 1003.29. The regulations have incorporated this ''good cause'' standard since 1987, *see* 8 CFR 3.27 (1987),[38] and substantial case law and agency guidance have elaborated on its meaning, *see, e.g., Matter of L–A–B–R–,* 27 I&N Dec. 405, 413–19 (A.G. 2018) (clarifying the framework for applying the ''good cause'' standard when a noncitizen requests a continuance to pursue collateral relief); *Matter of Hashmi,* 24 I&N Dec. 785, 790 (BIA 2009) (setting forth factors for consideration when determining whether there is good cause for a continuance so that a noncitizen may pursue adjustment of status before USCIS); *Matter of Garcia,* 16 I&N Dec. 653, 657 (BIA 1978) (holding that, in general, IJs should favorably exercise discretion to continue proceedings when a prima facie approvable visa petition and adjustment application are submitted); *Usubakunov* v. *Garland,* 16 F.4th 1299, 1305 (9th Cir. 2021) (holding that the denial of a noncitizen's motion for a continuance to permit his attorney to be present at his merits hearing amounted to a violation of his statutory right to counsel). The Departments believe that good cause remains an appropriate standard for most continuances because it provides IJs with sufficient guidance and discretion to manage their cases both fairly and efficiently, and the IFR adopts this standard as the default for continuance requests by noncitizens in streamlined section 240 proceedings, subject to certain restrictions described below.

Specifically, the IFR imposes limits on the length of continuances that may be granted for good cause. First, no individual continuance for good cause may exceed 10 days unless the IJ determines that a longer continuance would be more efficient. *See* 8 CFR 1240.17(h)(2)(i). This will ensure that continuances do not delay proceedings unnecessarily, either by being too long or too short. The Departments recognize that, on occasion, it may be appropriate and more efficient to grant one lengthier continuance to achieve its intended purpose—for example, to gather evidence that will take time to obtain or to secure the availability of a witness—such that it would not be necessary to grant further continuances at the time that the proceedings are scheduled to reconvene. *Cf. Meza Morales* v. *Barr,* 973 F.3d 656, 665 (7th Cir. 2020) (Barrett, J.) (''[T]imeliness' is not a hard and fast deadline; some cases are more complex and simply take longer to resolve. Thus, not all mechanisms that lengthen the proceedings of a case prevent 'timely' resolution. That is presumably why nobody appears to think that continuances conflict with the regulation's timeliness requirement.''). Thus, this IFR provides IJs with sufficient flexibility to grant continuances for good cause to ensure fairness of proceedings while appropriately balancing efficiency considerations.

Second, the IFR also establishes two modified continuance procedures that govern in specific factual circumstances unique to streamlined section 240 removal proceedings. The Departments believe that the IFR's streamlined section 240 proceedings warrant modified standards for continuances under certain conditions because the IFR's streamlined 240 proceedings occur after noncitizens have had a nonadversarial hearing before an asylum officer and have had a chance to present their claims for asylum and protection from removal. Additionally, the Departments have a considerable interest in developing an efficient process to fully and fairly adjudicate the claims of those noncitizens who were initially screened for expedited removal but have demonstrated a credible fear of persecution or torture. As noted in the NPRM, section 235 of the Act, 8 U.S.C. 1225, developed a system that ''was initially designed for protection claims to be the exception, not the rule, among those encountered at or near the border.'' 86 FR 46909. Accordingly, the IFR's imposition of modified requirements for continuances in streamlined section 240 removal proceedings is in keeping with the NPRM's purpose to develop more fair and efficient processes to adjudicate the claims of individuals encountered at or near the border and found to have a credible fear of persecution or torture.

Specifically, the IFR provides that IJs should apply the ''good cause'' standard only where the aggregate length of all continuances and extensions requested by the noncitizen does not cause a merits hearing to take place more than 90 days after the master calendar hearing. 8 CFR 1240.17(h)(2)(i). The IFR then implements different criteria based

[38] *See also* Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 FR 2931, 2934, 2938 (Jan. 29, 1987) (final rule). The regulation at 8 CFR 3.27 has been redesignated twice—first to 8 CFR 3.29, second to its current location at 8 CFR 1003.29—without amending the regulatory text. *See* Executive Office for Immigration Review; Rules of Procedures, 57 FR 11568, 11569 (Apr. 6, 1992) (interim rule); Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824, 9830 (Feb. 28, 2003) (final rule). The regulatory text was recently amended by ''Procedures for Asylum and Withholding of Removal,'' 85 FR 81698, 81699, 81750 (Dec. 16, 2020) (final rule), but that rule has been preliminarily enjoined, *see* Order at 1, *Nat'l Immigrant Justice Ctr.* v. *EOIR,* No. 21–cv–56 (D.D.C. Jan. 14, 2021).

on the length of the resulting delay for deciding requests for continuances and extensions by the noncitizen that would cause a merits hearing to occur more than 90 days after the master calendar hearing. *See* 8 CFR 1240.17(h)(2)(ii)–(iii).

Where a noncitizen-requested continuance or filing extension would cause a merits hearing to take place between 91 and 135 days after the master calendar hearing, an IJ should grant a continuance or filing extension if the noncitizen demonstrates that it is necessary to ensure a fair proceeding and the need for it exists despite the noncitizen's exercise of due diligence. *See* 8 CFR 1240.17(h)(2)(ii). The length of continuances and extensions under this provision are, as a matter of procedure, limited to the time necessary to ensure a fair proceeding. *See id.*

Next, should the noncitizen request any continuances or filing extensions that would cause a merits hearing to take place more than 135 days after the master calendar hearing, the noncitizen must demonstrate that failure to grant the continuance or extension would be contrary to statute or the Constitution. 8 CFR 1240.17(h)(2)(iii).

Noncitizens in removal proceedings have the ''right to a full and fair hearing,'' *Arrey* v. *Barr,* 916 F.3d 1149, 1157 (9th Cir. 2019) (collecting cases), which ''derives from the Due Process Clause of the Fifth Amendment,'' *Cinapian* v. *Holder,* 567 F.3d 1067, 1074 (9th Cir. 2009); *see also Matter of Sibrun,* 18 I&N Dec. 354, 356 (BIA 1983) (''It should be emphasized that the full panoply of procedural protections . . . are not mandated for [noncitizens] in these civil, administrative proceedings . . . . All that is required here is that the hearing be fundamentally fair.'' (citations omitted)). A full and fair hearing, ''at a minimum, includes a reasonable opportunity to present and rebut evidence and to cross-examine witnesses.'' *Grigoryan* v. *Barr,* 959 F.3d 1233, 1240 (9th Cir. 2020) (citing *Cinapian,* 567 F.3d at 1074 (citing, in turn, section 240(b)(4)(B) of the Act, 8 U.S.C. 1229a(b)(4)(B))). When adjudicating continuance and extension requests pursuant to the IFR's heightened standards, IJs should consider whether the request is related to the noncitizen's ability to reasonably present his or her case or implicates any of the rights found at section 240(b)(4)(B) of the Act, 8 U.S.C. 1229a(b)(4)(B). Thus, continuance requests to present testimony and evidence, to rebut evidence, or to cross-examine witnesses may meet the standards set forth in new 8 CFR 1240.17(h)(2)(ii) and (iii).[39]

In addition to the foregoing, the Departments emphasize that the Act provides noncitizens in section 240 removal proceedings with the right to representation at no Government expense, INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A), and that the noncitizen must be provided a reasonable opportunity to obtain counsel. *See Matter of C–B–,* 25 I&N Dec. 888, 889 (BIA 2012) (''In order to meaningfully effectuate the statutory and regulatory privilege of legal representation where it has not been expressly waived by a noncitizen, the Immigration Judge must grant a reasonable and realistic period of time to provide a fair opportunity for the noncitizen to seek, speak with, and retain counsel.''). Federal courts have strictly reviewed IJ decisions to deny continuances for seeking counsel or take other actions that may impinge that right in proceedings. *See, e.g., Usubakunov,* 16 F.4th at 1305 (holding that the denial of a noncitizen's motion for a continuance to permit his attorney to be present at his merits hearing amounted to violation of his statutory right to counsel); *see also Leslie* v. *Att'y Gen. of U.S.,* 611 F.3d 171, 180–81 (3d Cir. 2010) (The ''statutory and regulatory right to counsel is also derivative of the due process right to a fundamentally fair hearing.''); *Hernandez Lara* v. *Barr,* 962 F. 3d 45, 54 (1st Cir. 2021) (''The statutory right to counsel is a fundamental procedural protection worthy of particular vigilance.''). Accordingly, a continuance to seek representation would be sufficient to qualify for the heightened continuance standards in these streamlined 240 proceedings if denial would violate a noncitizen's right to representation or another statutory or constitutional right.[40]

The Departments emphasize that the time periods that determine the relevant continuance standard do not begin to run until the day after the master calendar hearing, at which the IJ will advise noncitizens of their rights in the streamlined section 240 proceedings, including their right to representation, at no expense to the Government, and of the availability of pro bono legal services, and will ascertain that noncitizens have received a list of such pro bono legal service providers. 8 CFR 1240.17(f)(1) (citing 8 CFR 1240.10(a)); *see* INA 240(b)(4), 8 U.S.C. 1229a(b)(4). Furthermore, these calculations only pertain to delay of hearings and deadlines specifically included in this regulation, namely, the status conference hearing or a merits hearing and any filing deadline that, if extended, would have the effect of delaying a hearing. Any continuances with respect to interim hearings or deadlines that may be set by the IJ do not impact determination of the continuance standard that applies in this section.[41] Continuances or filing extensions granted due to exigent circumstances, such as court closures or

[39] The Departments note, however, that the decision to grant or deny a continuance or extension will depend on the individual facts and circumstances present in each case. *See, e.g., De Ren Zhang* v. *Barr,* 767 F. App'x 101, 104–05 (2d Cir. 2019) (collecting cases in which the Second Circuit upheld an IJ's denial of a continuance where a noncitizen ''had already received multiple continuances, or had a significant amount of time in which to gather and submit evidence'' but, under the particular circumstances of that case, concluding that the IJ's denial of a continuance was an abuse of the IJ's discretion); *Bondarenko* v. *Holder,* 733 F.3d 899, 906–08 (9th Cir. 2013) (holding that the denial of the noncitizen's request for a continuance to investigate the Government's forensic report was a violation of the noncitizen's right to due process); *Cruz Rendon* v. *Holder,* 603 F.3d 1104, 1111 (9th Cir, 2010) (determining that ''the denial of the requested continuance'' to obtain evidence that bore directly on the noncitizen's eligibility for relief, ''in conjunction with the limitations placed upon her testimony, prevented [the noncitizen] from fully and fairly presenting her case'').

[40] This does not mean that a request for a continuance to seek counsel can never be denied. *See Usubakunov,* 16 F.4th at 1304 (''We recognize that immigration courts bear a crushing caseload and an applicant cannot unreasonably delay the administrative process, which has various component parts and must be managed efficiently by the IJ.''); *see also Arrey,* 916 F.3d at 1158 (explaining that a noncitizen ''is not denied the right to counsel where continuing the hearing would have been futile or where the IJ had done everything he reasonably could to permit [the noncitizen] to obtain counsel'' (quotation marks and citation omitted)). Such determinations are made on a case-by-case basis. *See Biwot* v. *Gonzales,* 403 F.3d 1094, 1099 (9th Cir. 2005) (''The inquiry is fact-specific and thus varies from case to case. We pay particular attention to the realistic time necessary to obtain counsel; the time frame of the requests for counsel; the number of continuances; any barriers that frustrated a [noncitizen's] efforts to obtain counsel, such as being incarcerated or an inability to speak English; and whether the [noncitizen] appears to be delaying in bad faith.''); *see also Gonzalez-Veliz* v. *Garland,* 996 F.3d 942, 949 (9th Cir. 2021) (comparing cases granting and denying requests for continuances to seek counsel).

[41] In other words, the IJ would determine the appropriate standard to consider when reviewing a noncitizen's request for a continuance by considering how much the continuance would shift the merits hearing. For example, the IJ would apply the ''good cause'' standard under 8 CFR 1240.17(h)(2)(i) if a noncitizen requests an initial continuance of the status conference for 10 days, which would in turn cause the merits hearing to be delayed by 10 days (because the merits hearing will occur 30–35 days after the status conference). However, if the noncitizen later requests further continuances that would cause the status conference to occur later than day 60, and in turn would cause the merits hearing to occur later than day 90, the IJ would apply the heightened continuance standard under 8 CFR 1240.17(h)(2)(ii).

illness of a party, will not count against the aggregate limits on continuances, as further explained below and as set forth at new 8 CFR 1240.17(h)(4).

The Departments have also contemplated DHS's need for continuances and provided for them in appropriate situations. The IJ may grant DHS a continuance and extend filing deadlines based on significant Government need, as set forth at new 8 CFR 1240.17(h)(3). The Departments anticipate that significant Government need will only arise in exceptional cases. The IFR provides a nonexclusive list of examples of significant Government needs, including ''confirming domestic or foreign law enforcement interest in the respondent'' and ''conducting forensic analysis of documents submitted in support of a relief application or other fraud-related investigations.'' 8 CFR 1240.17(h)(3). The Departments believe that requiring DHS to demonstrate a significant Government need for a continuance serves efficiency interests without undermining DHS's opportunity to present its case. First, DHS inherently possesses the subject-matter expertise to navigate section 240 proceedings in general and does not face the same obstacles as do noncitizens in exploring and securing competent representation. Second, noncitizens, not DHS, bear the burden of proof throughout the majority of streamlined section 240 proceedings. Of particular relevance, noncitizens generally bear the burden of demonstrating eligibility for protection-based relief. *See, e.g.,* INA 208(b)(1)(B), 8 U.S.C. 1158(b)(1)(B). Third, DHS does not face the same issues with respect to access to counsel, especially when taking into consideration the likelihood that some noncitizens will be detained during the course of proceedings. IJs must be able to take such factors under consideration when considering continuance requests made by noncitizens, but they are not relevant to such requests made by DHS.

In addition, these timelines and standards do not apply to an IJ's ability to continue a case, extend a filing deadline, or adjourn a hearing due to exigent circumstances, such as the unavailability of the IJ, the parties, or counsel due to illness, or the closure of the immigration court. *See* 8 CFR 1240.17(h)(4). Such continuances must be limited to the shortest time necessary and each must be justified. *See id.* The Departments recognize the magnitude and weight of asylum claims, and the importance of ensuring that asylum procedures do not undermine the fairness of proceedings. *See Quintero,* 998 F.3d at 632 (''[N]eedless to say, these cases *per se* implicate extremely weighty interests in life and liberty, as they involve individuals seeking protection from persecution, torture, or even death.''); *Xue* v. *BIA,* 439 F.3d 111, 113–14 (2d Cir. 2006) (''We should not forget, after all, what is at stake. For each time we wrongly deny a meritorious asylum [or withholding] application, . . . we risk condemning an individual to persecution. Whether the danger is of religious discrimination, extrajudicial punishment, forced abortion or involuntary sterilization, physical torture or banishment, we must always remember the toll that is paid if and when we err.''); *Matter of O–M–O–,* 28 I&N Dec. 191, 197 (BIA 2021) (''The immigration court system has no more solemn duty than to provide refuge to those facing persecution or torture in their home countries, consistent with the immigration laws.''). The Departments believe that this rule strikes the appropriate balance by providing noncitizens with a full and fair opportunity to present their claims—first before USCIS and then, if necessary, in streamlined section 240 removal proceedings—while ensuring that such claims are adjudicated in a timely and efficient manner.

5. Consideration of Statutory Withholding of Removal and CAT Protection

The NPRM proposed that, where USCIS denied asylum, IJs would reconsider the entire USCIS Asylum Merits record de novo, including grants of statutory withholding of removal and protection under the CAT. *See, e.g.,* 86 FR 46946 (8 CFR 1003.48(a) (proposed)). Upon further review, including the review of comments as discussed further below, the Departments have determined that IJs should generally give effect to an asylum officer's determination that a noncitizen is eligible for statutory withholding of removal or protection under the CAT subject to certain exceptions.

Specifically, under new 8 CFR 1240.17(i)(1), if an asylum officer finds that the noncitizen is not eligible for asylum or other protection sought, IJs will adjudicate de novo all aspects of a noncitizen's application, including the noncitizen's eligibility for asylum and, if necessary, statutory withholding of removal or protection under the CAT. However, if an asylum officer does not grant asylum but finds that a noncitizen is eligible for statutory withholding of removal or protection under the CAT, the noncitizen has two options.

First, the noncitizen may indicate that the noncitizen does not intend to contest removal or seek protection(s) for which the asylum officer did not find the noncitizen eligible, as described at new 8 CFR 1240.17(f)(2)(i)(B). In that case, unless DHS makes a prima facie showing, through evidence that specifically pertains to the noncitizen and was not in the record of proceedings for the USCIS Asylum Merits interview, that the noncitizen is not eligible for such protection(s), the IJ will issue the removal order and give effect to any protection for which the asylum officer found the noncitizen eligible, and no further proceedings will be held.[42]

Second, and alternatively, the noncitizen may contest the asylum officer's decision to not grant asylum, in which case the IJ will adjudicate de novo the noncitizen's application for asylum. *See* 8 CFR 1240.17(i)(2). If the IJ subsequently denies asylum, then the IJ will enter an order of removal and give effect to the protections for which the asylum officer deemed the noncitizen eligible, unless DHS demonstrates through evidence or testimony that specifically pertains to the respondent and that was not included in the record of proceedings for the USCIS Asylum Merits interview that the noncitizen is not eligible for such protection. *See id.*[43]

[42] In addition, at 8 CFR 1240.17(d), the IFR provides that a noncitizen who fails to appear and who is ordered removed in absentia under section 240(b)(5)(A) of the INA, 8 U.S.C. 1229a(b)(5)(A), will still receive the benefit of any protections from removal for which the asylum officer found that the noncitizen was eligible unless DHS makes a prima facie showing through evidence that specifically pertains to the noncitizen and that was not included in the record of proceedings for the USCIS Asylum Merits interview that the noncitizen is not eligible for such protection. Where USCIS has determined that an applicant is eligible for statutory withholding of removal or protection under the CAT, the United States would risk violating its nonrefoulement obligations by nonetheless removing the noncitizen to the country in which they more likely than not would be subject to persecution or torture due to the failure to appear. That would particularly be so if the noncitizen's failure to attend the hearing were due to misunderstanding, confusion, or a belief that no further steps were necessary to preserve the noncitizen's eligibility for statutory withholding of removal or protection under the CAT.

[43] The Departments emphasize that the evidence or testimony relied upon by DHS to demonstrate that the noncitizen is not eligible for withholding of removal or protection under the CAT must be evidence or testimony not considered by the asylum officer that pertains specifically to the noncitizen and establishes that the noncitizen is not eligible. For example, DHS could submit information that arose from background checks conducted after the asylum officer interview, but DHS cannot point to a statement by the noncitizen in the Form I–213, Record of Deportable/Inadmissible Alien. The evidence or testimony must demonstrate the noncitizen's ineligibility for the protection that the asylum officer determined the noncitizen was eligible for. The IJ's decision must be based on such new evidence or testimony; the IJ may not

Continued

The Departments have determined that these changes are advisable for several reasons. First, after reviewing comments, the Departments have declined to adopt certain provisions proposed in the NPRM and instead have set forth that after an asylum officer does not grant asylum, an individual will be automatically referred to streamlined section 240 removal proceedings. Automatic referral to streamlined section 240 proceedings means that every noncitizen whose application is not approved by the asylum officer will have the opportunity to have their case reviewed by the IJ, without first affirmatively requesting review. During streamlined 240 proceedings, the noncitizen may elect to have the IJ adjudicate de novo the noncitizen's asylum application, and any protection claim for which the asylum officer found the noncitizen ineligible. At the same time, the rule recognizes that an asylum officer's determination that a noncitizen is eligible for protection should generally be given effect in the interest of efficiency and to ensure that the noncitizen is not returned to a country where an immigration official has already determined that the noncitizen may be persecuted or tortured.

It is appropriate for USCIS to make eligibility determinations for statutory withholding of removal and protection under the CAT. As a threshold issue, applications for asylum, statutory withholding of removal, and protection under the CAT are all factually linked. While the legal standards and requirements differ among the forms of relief and protection, the relevant applications will substantially share the same set of operative facts that an asylum officer would have already elicited, including through evidence and testimony, in the nonadversarial proceeding. Moreover, asylum officers receive extensive training, and develop extensive expertise, in assessing claims and country conditions and are qualified to determine whether an applicant will face harm in the proposed country. *See* INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E); 8 CFR 208.1(b). Asylum officers also receive training on standards and eligibility issues related to determinations for statutory withholding of removal and CAT protection in order to conduct credible fear screening interviews and make appropriate credible fear determinations under 8 CFR 208.30(e). *See* 8 CFR 208.1(b). Finally, statutory withholding of removal and protection under the CAT are nondiscretionary forms of protection, the granting of which is mandatory upon a showing of eligibility. *See, e.g., Myrie,* 855 F.3d at 515–16; *Benitez Ramos,* 589 F.3d at 431. Because the asylum officer does not issue an order of removal under the IFR, it is appropriate to wait until the IJ enters the order of removal before giving effect to USCIS's statutory withholding of removal and CAT protection eligibility determinations. *See Matter of I–S– & C–S–,* 24 I&N Dec. at 433.

Thus, this IFR recognizes that applications for discretionary and mandatory forms of protection will be reviewed by IJs. However, determinations that a noncitizen is eligible for a mandatory form of protection will be given effect by the IJs, unless DHS demonstrates, through new evidence specifically pertaining to the noncitizen, that the noncitizen is not eligible for such protection.

Considering the comments received on the NPRM, the Departments recognize that this procedure is an intermediate approach between the NPRM and the commenters' suggestions described below in Section IV.D.6 of this preamble. Whereas the NPRM would have allowed the IJ to sua sponte review the asylum officer's statutory withholding and CAT determinations, the IFR instead places the burden on DHS to demonstrate, with new evidence specific to the noncitizen, that the noncitizen is not eligible for such protections. The Departments have determined that this process is most efficient, given that there may be particular instances, such as evidence of fraud or criminal activity, where overturning the asylum officer's eligibility determination is justified. If the Departments provided no mechanism in these streamlined section 240 removal proceedings through which the asylum officer's eligibility determinations could be overturned, DHS would have to follow the procedures set forth in 8 CFR 208.17(d) and 208.24(f) in instances where overturning the asylum officer's eligibility determinations is justified. Providing an exception where DHS demonstrates that evidence or testimony specifically pertaining to the noncitizen and not in the record of proceedings for the USCIS Asylum Merits interview establishes that the noncitizen is not eligible is substantially more efficient, consistent with the overall aims of this IFR.

6. Exceptions to Streamlined Procedures

The IFR provides specific exceptions that will allow certain noncitizens or situations to be exempted from these streamlined procedures and timelines despite originating in the expedited removal process and being referred to immigration court following an asylum officer's initial adjudication. *See* 8 CFR 1240.17(k). These exceptions ensure procedural fairness because not all cases that might otherwise be placed in streamlined section 240 removal proceedings would in fact be suitable for the expedited timeline.

At new 8 CFR 1240.17(k)(3), the IFR provides an exception to the expedited timeline if the noncitizen has raised a substantial challenge to the charge that the noncitizen is subject to removal—*e.g.,* if the noncitizen has a claim to U.S. citizenship or the charge that the noncitizen is subject to removal is not supported by the record—and that challenge cannot be resolved simultaneously with the noncitizen's applications for asylum, statutory withholding of removal, or withholding or deferral of removal under the CAT.

Because the IFR places noncitizens into section 240 proceedings, the noncitizen can affirmatively elect to apply for a wide range of relief in addition to asylum, statutory withholding of removal, and protection under the CAT. *See, e.g.,* 8 CFR 1240.1(a)(1)(ii) (providing IJs with the authority to adjudicate a wide range of applications for relief); 8 CFR 1240.11(a)(2) (''The immigration judge shall inform the [noncitizen] of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the [noncitizen] an opportunity to make application during the hearing . . . .''). The IFR therefore provides an exception to the timeline if the noncitizen produces evidence of prima facie eligibility for relief or protection other than asylum, statutory withholding of removal, withholding or deferral of removal under the CAT, or voluntary departure, and is seeking to apply for, or has applied for, such relief or protection. *See* 8 CFR 1240.17(k)(2). For example, a noncitizen who also is eligible to seek adjustment of status under section 245 of the Act, 8 U.S.C. 1255, could provide the IJ with proof of prima facie eligibility and a copy of the submitted Form I–130, Petition for Alien Relative, and upon receipt of such evidence, the timeline in 8 CFR 1240.17(f)–(h) would not apply.[44] Testimonial evidence, and

reconsider the asylum officer's determination or deny eligibility based merely on disagreement with the asylum officer's conclusions or evaluation of the record before the asylum officer.

[44] Although a submitted visa petition demonstrating prima facie eligibility for relief would be an optimal way to demonstrate

out-of-court written statements, could also be considered by immigration judges as evidence of prima facie eligibility for relief. The Departments believe this exception from the timeline is appropriate to allow effective adjudication of the new relief being sought because the IJ will not have the benefit of an already developed record regarding those forms of relief, which the IJ will have for the noncitizen's application for asylum or other protection.[45]

Similarly, the IFR provides an exception where the IJ finds the noncitizen subject to removal to a different country from the country or countries in which the noncitizen claimed a fear of persecution and torture before the asylum officer, and the noncitizen claims a fear of persecution or torture with respect to that alternative country. *See* 8 CFR 1240.17(k)(4). The Departments similarly believe the IFR's timeline should not apply in these circumstances because the record would need to be developed without the benefit of previous adjudication.

The Departments have also considered the effect of the streamlined 240 proceedings on vulnerable populations. To ensure procedural fairness, the Departments will exempt the following categories of noncitizens from these procedures: Noncitizens under the age of 18 on the date the NTA was issued, except noncitizens in section 240 proceedings with an adult family member, 8 CFR 1240.17(k)(1); and noncitizens who have exhibited indicia of mental incompetency, 8 CFR 1240.17(k)(6).

Finally, the expedited timeline does not apply to cases that have been reopened or remanded following the IJ's order. 8 CFR 1240.17(k)(5). Reopened and remanded cases may present unique issues that are outside of the scope of these streamlined 240 proceedings.

E. Other Amendments Related to Credible Fear

In addition to the new procedures at 8 CFR 1240.17, this IFR amends 8 CFR 1003.42, 1208.2, 1208.3, 1208.4, 1208.5, 1208.14, 1208.16, 1208.18, 1208.19, 1208.22, 1208.30, and 1235.6. Except for the amendments at 8 CFR 1003.42, the Departments proposed amendments to all of these sections in the NPRM in order to: (1) Effectuate the reestablishment of the ''significant possibility'' standard in credible fear review proceedings before EOIR; (2) ensure that IJs, like asylum officers, do not apply the mandatory bars at the credible fear screening process; and (3) ensure that the provisions providing for the USCIS Asylum Merits process are accurately reflected in EOIR's regulations where relevant, including confirmation that the written record of the positive credible fear determination will count as an asylum application. The IFR adopts these same changes with limited technical amendments where necessary to accord with the streamlined section 240 proceedings under new 8 CFR 1240.17.

The Departments also include amendments to 8 CFR 1003.42(d)(1) in this IFR. Although these amendments were not included in the NPRM, they are direct corollaries of the NPRM's proposed amendments and are necessary to ensure consistency, both internally within DOJ's regulatory provisions and more broadly between DHS's and DOJ's regulations. Specifically, the IFR amends 8 CFR 1003.42(d)(1) to ensure consistency with the revisions to 8 CFR 208.30(e) related to credible fear screening standards and treatment of mandatory bars in the credible fear screening process and with the revisions to 8 CFR 1208.30(g)(2) so that both provisions properly direct that when an IJ vacates a negative credible fear finding, the IJ will refer the case back to USCIS as intended by the NPRM and the IFR.

F. Parole

This rule amends the DHS regulations governing the circumstances in which parole may be considered for individuals who are being processed under the expedited removal provisions of INA 235(b)(1), 8 U.S.C. 1225(b)(1). Expedited removal is a procedure that applies when an immigration officer ''determines'' that a noncitizen ''arriving in the United States,'' or a noncitizen covered by a designation who has not been admitted or paroled into the United States, is inadmissible under either INA 212(a)(6)(C), 8 U.S.C. 1182(a)(6)(C) (fraud or misrepresentation), or INA 212(a)(7), 8 U.S.C. 1182(a)(7) (lack of proper documents), and further determines that the noncitizen should be placed in expedited removal. INA 235(b)(1)(A)(i), (iii), 8 U.S.C. 1225(b)(1)(A)(i), (iii). Other noncitizens who are applicants for admission—and whom an immigration officer determines are not clearly and beyond a doubt entitled to be admitted—generally are referred for ordinary removal proceedings under INA 240, 8 U.S.C. 1229a. *See* INA 235(b)(2)(A), 8 U.S.C. 1225(b)(2)(A).

The statute generally provides for the detention of noncitizens subject to expedited removal pending a final credible fear determination and, if no such fear is found, until removed. *See* INA 235(b)(1)(B)(iii)(IV), 8 U.S.C. 1225(b)(1)(B)(iii)(IV) (noncitizens in the expedited removal process ''shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed''). The statute, likewise, provides that noncitizens determined to have a credible fear ''shall be detained for further consideration of the application for asylum.'' INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii). Congress has, however, expressly granted DHS the authority to release any applicant for admission from detention via parole ''on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). This includes DHS's authority to parole noncitizens detained under section 235 of the Act, 8 U.S.C. 1225. *See Jennings* v. *Rodriguez,* 138 S. Ct. 830, 837, 844 (2018).

The NPRM proposed to replace the current narrow parole standard with a standard that would permit parole ''only when DHS determines, in the exercise of discretion, that parole is required to meet a medical emergency, for a legitimate law enforcement objective, or because detention is unavailable or impracticable (including situations in which continued detention would unduly impact the health or safety of individuals with special vulnerabilities).'' 86 FR 46946 (8 CFR 235.3(b)(2)(iii) (proposed)); *see id.* at 46913–14. Having considered all comments received on this issue, DHS has determined that the current narrow standard should be replaced not with the standard proposed in the NPRM but with the longstanding parole standard applicable in other circumstances and described in 8 CFR 212.5(b), with which DHS officers and agents have substantial experience. That provision describes

qualification for this exception, there may exist circumstances in which a filed petition would not be possible to present on an expedited timeline due to factors outside of a noncitizen's control. For example, a complaint for custody and motion for Special Immigrant Juvenile classification (''SIJ'') findings, as filed with a State court, along with a statement and evidence as to other eligibility factors listed on the Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, could be sufficient to permit the IJ to assess a respondent's prima facie eligibility for SIJ classification.

[45] The Departments also note that this shift from the NPRM to streamlined section 240 removal proceedings addresses comments that the NPRM would have improperly burdened noncitizens by requiring them to file motions to vacate their removal orders and by limiting noncitizens to only one such motion. Further, by placing noncitizens into streamlined 240 proceedings—thereby allowing them to seek various forms of relief or protection for which they may be eligible—the IFR also addresses comments that the NPRM would have authorized the IJs to exercise discretion over whether to allow the respondent to apply for additional forms of relief or protection.

five categories of certain noncitizens detained under 8 U.S.C. 1225(b) who may meet the parole standard of INA 212(d)(5), 8 U.S.C. 1182(d)(5), provided they present neither a security risk nor a risk of absconding: (1) Noncitizens who have serious medical conditions such that continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) noncitizens who will be witnesses in proceedings conducted by judicial, administrative, or legislative bodies in the United States; and (5) noncitizens whose continued detention is not in the public interest. *See* 8 CFR 212.5(b)(1)–(5). Consistent with the statute and the regulation, DHS will consider noncitizens covered by this rule for parole under this standard pending their credible fear interview ''only on a case-by-case basis,'' 8 CFR 212.5(b), and may impose reasonable conditions on parole (including, for example, periodic reporting to ICE) to ensure that the noncitizen will appear at all hearings and for removal from the United States if required to do so, 8 CFR 212.5(c)–(d); *see* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

For purposes of making these case-by-case determinations concerning parole of noncitizens pending a credible fear interview, the Secretary recognizes that, in circumstances where DHS has determined that the continued detention of a noncitizen who has been found not to be a flight risk or a danger to the community is not in the public interest, the release of that noncitizen on parole may serve ''urgent humanitarian reasons'' or achieve ''significant public benefit.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see* 8 CFR 212.5(b)(5).

The INA does not define these ambiguous terms, leaving them to the agency's reasonable construction.[46] In implementing the statutory parole authority, DHS and the former INS have long interpreted the statute to permit parole of noncitizens whose continued detention is not in the public interest as determined by specific agency officials. Specifically, prior to the 1996 amendment to the INA that provided for parole ''on a case-by-case basis for urgent humanitarian reasons or significant public benefit,'' Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Pub. L. 104–208, div. C, tit. VI, subtit. A, sec. 602, 110 Stat. 3009, 3009–689, the former INS had paroled individuals ''whose continued detention'' was ''not in the public interest,'' 8 CFR 212.5(b)(5) (1995); *see* Detention and Parole of Inadmissible Aliens; Interim Rule With Request for Comments, 47 FR 30044, 30045 (July 9, 1982) (interim rule). After the 1996 amendment, the agency incorporated the new ''case-by-case'' requirement into its regulation, while also providing, similar to prior regulatory authority, that parole of certain noncitizens, including those who pose neither a security risk nor a risk of absconding and whose ''continued detention is not in the public interest'' would generally be justified for ''significant public benefit'' or ''urgent humanitarian reasons,'' consistent with the 1996 statutory amendment. 62 FR 10348; *see id.* at 10313.

Nothing in INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A), prohibits DHS from considering its resources and detention capacity when it determines, on a case-by-case basis, whether the parole of a noncitizen otherwise subject to detention under INA 235(b), 8 U.S.C. 1225(b), would have a significant public benefit or would advance urgent humanitarian reasons.[47] Rather, consistent with the statute, 8 CFR 212.5, and longstanding practice, DHS may take into account the important prerogative for it to use its detention resources for other individuals whose detention is in the public interest, including because of public safety or national security reasons. As has been the case for decades, DHS views detention as not being in the public interest where, in light of available detention resources, and considered on a case-by-case basis, detention of any particular noncitizen would limit the agency's ability to detain other noncitizens whose release may pose a greater risk of flight or danger to the community.[48] With regard to noncitizens detained pending a credible fear interview, whose inadmissibility was still being considered, or who had been ordered removed in expedited removal proceedings, the former INS, in a 1997 rule, restricted the regulatory authority for release on parole to where parole is required for a ''medical emergency'' or ''a legitimate law enforcement objective.'' 8 CFR 235.3(b)(2)(iii), (b)(4)(ii) (current); *see* 62 FR 10356. As the NPRM explained, this current narrow standard effectively prevents DHS from placing into expedited removal many noncitizens who would otherwise be eligible for this process, especially families, given the practical constraints and the legal limits of the *Flores* Settlement Agreement (''FSA'').[49] *See* 86 FR 46910. These restrictions on DHS's ability to detain families in significant numbers and for an appreciable length of time, coupled with capacity constraints imposed by the COVID–19 pandemic, have effectively prevented the Government from processing more than a very limited number of families under expedited removal. Amending the regulation by which the former INS previously constrained itself (and now DHS) to considering parole for noncitizens in the expedited removal process far more narrowly than what the statute authorizes will advance the significant public benefit of allowing DHS to place more eligible noncitizens, particularly noncitizen families, in

[46] *See* INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3); *see also Nat'l Cable & Telecomms. Ass'n* v. *Brand X internet Servs.,* 545 U.S. 967, 980 (2005) (''If a statute is ambiguous, and if the implementing agency's construction is reasonable, *Chevron* requires a federal court to accept the agency's construction of the statute, even if agency's reading differs from what the court believes is the best statutory interpretation.'' (citing *Chevron,* 467 U.S. at 843–44)); *Garfias-Rodriguez* v. *Holder,* 702 F.3d 504, 515 (9th Cir. 2012) (en banc) (''We defer to an agency not because it is better situated to interpret statutes, but because we have determined that Congress created gaps in the statutory scheme that cannot be filled through interpretation alone, but require the exercise of policymaking judgment.'' (citing *Chevron,* 467 U.S. at 865)); *cf., e.g., Ibragimov* v. *Gonzales,* 476 F.3d 125, 137 n.17 (2d Cir. 2007) (deferring to another aspect of 8 CFR 212.5).

[47] *See, e.g., New Mexico* v. *McAleenan,* 450 F. Supp. 3d 1130, 1174 n.5 (D. N.M. 2020) (''This vague ['significant public benefit'] standard [in INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A)] conceivably encompasses a wide range of public benefits, such as conserving resources otherwise spent on housing asylum seekers . . . .'').

[48] *See, e.g.,* ICE, *Interim Guidance for Implementation of* Matter of M–S-, *27 I&N Dec. 509 (A.G. 2019) During the Stay of the Modified Nationwide Preliminary Injunction in Padilla* v. *ICE, No. 18–298, 2019 WL 2766720 (W.D. Wash. July 2, 2019): Parole of Aliens Who Entered Without Inspection, Were Subject to Expedited Removal, and Were Found to Have a Credible Fear of Persecution or Torture (July 15, 2019); Memorandum from DHS Secretary John Kelly, Implementing the President's Border Security and Immigration Enforcement Improvement Policies 3 (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf; Memorandum from Gene McNary, INS Commissioner, Parole Project for Asylum Seekers at Ports of Entry and INS Detention 1* (Apr. 20, 1992).

[49] Stipulated Settlement Agreement, *Flores* v. *Reno,* No. 85–cv–4544 (C.D. Cal. Jan. 17, 1997); *see also* 86 FR 46910 & n.27 (describing the FSA). The FSA provides for a general policy favoring release of minors and requires the expeditious transfer of minors who are not released from custody, including minors accompanied by their parents or legal guardians, to a non-secure, state-licensed program. *See* FSA ¶¶ 6, 12, 14, 19. When the former ICE family residential centers were operational, the court determined that such facilities were secure, unlicensed facilities; therefore, DHS generally released noncitizen children detained during their immigration proceedings within 20 days. *See Flores* v. *Sessions,* 394 F. Supp. 3d 1041, 1070–71 (C.D. Cal. 2017).

expedited removal proceedings, rather than processing them through lengthy and backlogged ordinary section 240 removal proceedings.

This approach will allow DHS to more efficiently obtain orders of removal for families who do not raise a fear claim or who are found not to possess a credible fear, thereby facilitating their expeditious removal without the need for lengthy immigration court proceedings, and will allow other families to have their fear claims adjudicated in a more timely manner. Accordingly, the flexibility of the 8 CFR 212.5(b) standard—subject, of course, to the limitations on the parole authority contained in INA 212(d)(5), 8 U.S.C. 1182(d)(5)—will allow DHS to achieve the significant public benefits of more effectively utilizing the expedited removal authority in response to changing circumstances and promoting border security. DHS expects that expedited removal of families who do not make a fear claim, or who are determined not to have a credible fear of persecution or torture, will reduce the incentives for abuse by those who will not qualify for protection and smugglers who exploit the processing delays that result from ordinary removal backlogs.

Finally, the contours of the category of noncitizens ''whose continued detention is not in the public interest,'' 8 CFR 212.5(b)(5), have been developed through directives and guidance. For example, in 2009 ICE issued guidance stating that ''when an arriving alien found to have a credible fear establishes to the satisfaction of [ICE Detention and Removal Operations (DRO)] his or her identity and that he or she presents neither a flight risk nor danger to the community, DRO should, absent additional factors (as described [later in the directive]), parole the alien on the basis that his or her continued detention is not in the public interest.'' ICE Policy No. 11002.1 ¶ 6.2, Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture (Dec. 8, 2009), *https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_aliens_found_credible_fear.pdf.* DHS intends to use further directives and guidance to apply the parole standard to noncitizens in expedited removal pending a credible fear interview. DHS emphasizes that any such directives or guidance will account for the fact that there are important and relevant differences between the population of noncitizens who have received a positive credible fear determination and the population of noncitizens in expedited removal who have not received a credible fear determination, including the expected length of time before such an individual may be ordered removed and considerations relevant to assessing flight risk.

G. Putative Reliance Interests

In responses to comments below, the Departments have addressed the reliance interests in the status quo asserted by commenters. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (requiring agencies to consider ''serious reliance interests'' when changing policies); *see also Encino Motorcars, LLC* v. *Navarro,* 579 U.S. 211, 222 (2016) (referring to ''significant'' and ''serious'' reliance interests (quotation marks omitted)). The governmental commenters do not appear to have identified any reliance interests. Although some commenters identified what they believed would be burdens on or injuries to State, county, and local governments as a result of the proposed rule—claims that are addressed in the Departments' responses to comments—none clearly identified any significant reliance interests in the current state of affairs.

The Departments perceive no serious reliance interests on the part of any State, county, or local governmental entity in the currently existing provisions the NPRM implicated or that are affected by this IFR. Even if such reliance interests exist, the Departments would nevertheless promulgate this regulation for the reasons stated in this rule.

IV. Response to Public Comments on the Proposed Rule

A. Summary of Public Comments

In response to the proposed rule, the Departments received 5,235 comments during the 60-day public comment period. Approximately 1,347 of the comments were letters submitted through mass mailing campaigns, and 3,790 comments were unique submissions. Primarily, individuals and anonymous entities submitted comments, as did multiple State Attorneys General, legal service providers, advocacy groups, attorneys, religious and community organizations, elected officials, and research and educational institutions, among others.

Comments received during the 60-day comment period are organized by topic below. The Departments reviewed the public comments received in response to the proposed rule and address relevant comments in this IFR, grouped by subject area. The Departments do not address comments seeking changes in U.S. laws, regulations, or agency policies that are unrelated to the changes to made by this rule. This IFR does not resolve issues outside the scope of this rulemaking. A brief summary of comments the Departments deemed to be out of scope or unrelated to this rulemaking, making a substantive response unnecessary, is provided at the end of the section. Comments may be reviewed at *https://www.regulations.gov,* docket number USCIS–2021–0012.

Following careful consideration of public comments received, the Departments in this IFR have made modifications to the regulatory text proposed in the NPRM. The rationale for the proposed rule and the reasoning provided in the background section of that rule remain valid with respect to those regulatory amendments, except where a new or supplemental rationale is reflected in this IFR. As a general matter, the Departments believe that the IFR addresses concerns expressed by a majority of those who commented on the NPRM's proposed IJ review procedure by establishing that where the asylum officer denies a noncitizen's application for asylum, that noncitizen will be placed into streamlined section 240 proceedings, rather than the alternative procedure proposed in the NPRM. While the Departments found a number of the concerns raised by commenters to be persuasive in making this change, general statements that the IFR addresses commenters' concerns should not be read to mean that the Departments have adopted or agree with commenters' reasoning in whole or in part.

The Departments welcome comments on the IFR's revisions that are submitted in accordance with the instructions for public participation in Section I of this preamble. Among other topics, the Departments invite comment on the procedures for streamlined section 240 proceedings and whether any further changes to those procedures would be appropriate.

B. General Feedback on the Proposed Rule

1. General Support for the Proposed Rule

a. Immigration Policy Benefits

Comments: Several commenters supported the proposed rule on the basis of immigration policy benefits, including: Reducing duplication of effort between USCIS asylum officers and IJs by allowing asylum officers to adjudicate claims that originated through the USCIS-administered credible fear screening process with less or no expenditure of immigration court time or resources; improving the process to better serve traumatized populations;

expediting the asylum application process and allowing covered asylum seekers to receive protection sooner; making the asylum application process more efficient and fair; helping to better manage migrant flows and increase security at the Southwest border; and providing due process, dignity, and equity within the system.

Response: The Departments acknowledge the commenters' support for the rule.

b. Positive Impacts on Applicants, Their Support Systems, and the Economy

Comments: A few commenters supported the proposed rule, without substantive rationale, on the basis of positive impacts on applicants, their support systems, and the U.S. economy. Some commenters supported the proposed rule and expressed gratitude for helping people who are in fear for their lives and encouraged facilitating a smoother pathway for noncitizens once they get through the initial process successfully. Another commenter stated that the rule represents a fundamental shift that will help eligible asylum applicants receive humanitarian protection and not keep asylum seekers in limbo for years while awaiting a final status determination. An individual commenter supporting the rule wrote that asylum seekers who have received a positive credible fear determination may be able to enter the labor force sooner. According to this commenter, enabling earlier access to employment for asylum-eligible individuals could reduce the public burden, reduce the burden on the asylum support network, and benefit those asylum seekers in terms of equity, human dignity, and fairness.

Response: The Departments acknowledge these commenters' support for the rule and agree the rule will benefit asylum seekers and their support systems, including public entities.

2. General Opposition to the Proposed Rule

a. Immigration Policy Concerns

Comments: Many commenters expressed general opposition to the rule out of a belief that this Administration is not committed to enforcing U.S. immigration law or deterring unauthorized migration into the United States, or out of a belief that the Administration intends to drive more irregular migration for political reasons. Several of these commenters pointed to the high numbers of Southwest border encounters that have occurred in 2021 as support for their beliefs.

Response: The Departments acknowledge the commenters' frustration with the high rates of unauthorized entry into the United States between ports of entry on the Southwest border in 2021, a continuation of an increase that has been observed since April 2020.[50] However, the Departments disagree with the commenters' suggestion that the high numbers of border encounters imply either that the Administration supports or is indifferent to such unauthorized entries. To the contrary, maintaining an orderly, secure, and well-managed border and reducing irregular migration are priorities for the Departments and for the Administration. The Fiscal Year (''FY'') 2022 President's Budget directs resources toward robust investments in border security and safety measures, including border technology and modernization of land ports of entry. *See* DHS, *FY 2022 Budget in Brief* 1–2, *https://www.dhs.gov/sites/default/files/publications/dhs_bib_-_web_version_-_final_508.pdf.* Under this Administration, the United States has also bolstered public messaging discouraging irregular migration and strengthened anti-smuggling and anti-trafficking operations, while at the same time investing in Central America to address the lack of economic opportunity, weak governance and corruption, and violence and insecurity that lead people to leave their homes in the first place and attempt the dangerous journey to our Southwest border. *See* Press Release, The White House, FACT SHEET: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System (July 27, 2021) *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/27/fact-sheet-the-biden-administration-blueprint-for-a-fair-orderly-and-humane-immigration-system/* (last visited Mar. 14, 2022). The Departments emphasize that the COVID–19 pandemic and associated economic downturn, along with two severe hurricanes that together impacted Nicaragua, Honduras, Guatemala, and El Salvador in November 2020, have added to those longstanding problems. *See* DHS, Statement by Homeland Security Secretary Alejandro N. Mayorkas Regarding the Situation at the Southwest Border (Mar. 16, 2021), *https://www.dhs.gov/news/2021/03/16/statement-homeland-security-secretary-alejandro-n-mayorkas-regarding-situation;* USAID, Latin American Storms—Fact Sheet #1, (FY) 2021 (Nov. 19, 2020), *https://www.usaid.gov/crisis/hurricanes-iota-eta/fy21/fs1* (last visited Mar. 14, 2022). Finally, misinformation—including the false message that our borders are ''open''—has also driven irregular migration. *See* DHS, Secretary Mayorkas Delivers Remarks in Del Rio, TX (Sep. 20, 2021), *https://www.dhs.gov/news/2021/09/20/secretary-mayorkas-delivers-remarks-del-rio-tx.* The Departments reiterate that the borders of the United States are not open and that individuals should not put their own lives or the lives of their family members in the hands of smugglers or other criminals who represent otherwise.

Comments: Many commenters generally opposed the rule due to concerns that USCIS asylum officers would be more likely than IJs to grant asylum or other protection to individuals who should not be eligible for it or to otherwise ''loosen'' the requirements for asylum eligibility. Some commenters expressed, without providing details, that IJs are better trained, better qualified, or better equipped to ''vet'' applicants or detect fraudulent claims. Other commenters explained that they were concerned USCIS asylum officers would not apply the law or would not serve as impartial adjudicators. Commenters based this concern on at least two different rationales. Some commenters reasoned that asylum officers were subject to greater political control than IJs; other commenters reasoned that asylum officers are too ''unaccountable'' to the public. Finally, a few commenters expressed concern about USCIS being ''fee-driven'' and that having a ''fee-driven'' agency control the credible fear process removes it from congressional oversight.

While most comments that disapproved of authorizing asylum officers to adjudicate defensive asylum applications urged the Departments to continue to require that IJs within EOIR adjudicate all such applications, some comments urged that ''Federal judges'' or immigration judges ''appointed by the judicial branch'' should be hired to quickly and impartially adjudicate asylum claims.

Response: The Departments disagree with the assertion that USCIS asylum officers cannot appropriately vet or determine eligibility for protection. Asylum officers are career Government employees selected based on merit, they receive extensive training, and they possess expertise in determining eligibility for protection. *See* INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E); 8 CFR 208.1(b); *see, e.g.,* USAJOBS,

[50] *See* U.S. Customs and Border Protection (''CBP''), Southwest Land Border Encounters, *https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters.*

Asylum Officer, *https://www.usajobs.gov/job/632962200* (last visited Mar. 14, 2022) (specifying that asylum officers are members of the competitive service); *see also* 22 U.S.C. 6473(b) (requisite training on religious persecution claims). USCIS asylum officers must undergo ''special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles.'' 8 CFR 208.1(b); *see also* INA 235(b)(1)(E)(i), 8 U.S.C. 1225(b)(1)(E)(i) (requiring that asylum officers have ''professional training in country conditions, asylum law, and interview techniques''). While IJs handle a broad swath of immigration-related matters, USCIS asylum officers are uniquely trained to adjudicate protection claims. Additionally, USCIS asylum officers have dedicated resources available to them to address fraud concerns, including Fraud Detection and National Security (''FDNS'') officers embedded within the USCIS Asylum Division.[51] FDNS employs numerous measures to detect and deter immigration benefit fraud and aggressively pursues benefit fraud cases in collaboration with USCIS adjudication officers and Federal law enforcement agencies. Since 2004, FDNS and ICE have collaborated in a strategic partnership to combat immigration fraud. FDNS officers work closely with law enforcement and intelligence community partners to resolve potential fraud, national security, and public safety concerns and to ensure the mutual exchange of current and comprehensive information. They conduct administrative investigations into suspected benefit fraud and aid in the resolution of national security or criminal concerns. Administrative investigations may include compliance reviews, interviews, site visits, and requests for evidence, and they may also result in a referral to ICE for consideration of a criminal investigation. Determining asylum eligibility and vetting is already a necessary part of the day-to-day work of a USCIS asylum officer and will continue to be so after this rule takes effect. Regardless of whether it is an IJ or an asylum officer who adjudicates an application, no individual may be granted asylum or withholding of removal until certain vetting and identity checks have been made. INA 208(d)(5)(A)(i), 8 U.S.C. 1158(d)(5)(A)(i); 8 CFR 208.14(b), 1003.47. The Departments believe that commenters' concerns about USCIS having a financial incentive to ''rubber-stamp'' grant applications for asylum or lacking congressional oversight because it is primarily fee-funded are likewise misplaced. USCIS adjudicates asylum applications without charge, *see* 86 FR 46922, and is subject to congressional oversight.

Moreover, EOIR is currently burdened with a heavy case backlog, as described in the NPRM. Notably, EOIR's caseload includes a wide range of immigration and removal cases. *See EOIR Policy Manual,* Part II.1.4(a) (updated Dec. 30, 2020), *https://www.justice.gov/eoir/eoir-policy-manual* (''EOIR Policy Manual''). Allowing USCIS to take on cases originating in the credible fear process therefore is expected to reduce delays across all of EOIR's dockets, as well as reducing the time it takes to adjudicate these protection claims. The Departments believe that alleviating immigration court caseloads through the fair, efficient process articulated in this rule is a positive step forward. Suggestions asking for additional Federal judges within the judicial branch to handle the influx of asylum and protection-related cases should be directed to Congress.

Comments: Many commenters generally opposed the rule on the ground that a higher-priority or better way to address the overwhelmed U.S. asylum system would be to ''regain control'' over who enters the country by ''tak[ing] steps to significantly reduce the number of people flowing across the border'' and by not releasing individuals who have entered the United States without inspection or parole.

Response: The Departments acknowledge concerns raised by the commenters and note that this rulemaking is one part of a multifaceted whole-of-government approach to addressing irregular migration and ensuring that the U.S. asylum system is fair, orderly, and humane. This whole-of-government approach seeks to make better use of existing enforcement resources by investing in border security measures that will facilitate greater effectiveness in combatting human smuggling and trafficking and addressing the entry of undocumented migrants. The United States also is working with governments of nearby countries to facilitate secure management of borders in the region and to investigate and prosecute organizations involved in criminal smuggling.[52] These and other efforts to address irregular migration are beyond the scope of this rule, which specifically concerns the procedures by which individuals who are encountered near the border and placed into expedited removal will receive consideration of their claims for asylum or other protection, as is required by law. INA 235(b)(1), 8 U.S.C. 1225(b)(1). However, to the extent that the significant delays in the adjudication of asylum claims today contribute to rates of irregular migration, the Departments believe that the efficiencies introduced by the rule will help to reduce any incentive to exploit the system and enhance the Government's efforts to address irregular migration. By limiting the amount of time a noncitizen may remain in the United States while a claim for relief or protection is pending, the rule stands to dramatically reduce potential incentives for noncitizens to make false claims for relief and protection.

Finally, the Departments emphasize that individuals who have entered the United States without inspection or parole and who are subsequently encountered and placed into expedited removal are presumptively detained, as the statute provides that such individuals are subject to mandatory detention. *See* INA 235(b)(1)(B)(ii), (iii)(IV), 8 U.S.C. 1225(b)(1)(B)(ii), (iii)(IV). Such individuals may be released on parole only in accordance with the statutory and regulatory standards. *See* INA 212(d)(5), 8 U.S.C. 1182(d)(5); 8 CFR 212.5, 235.3(b)(2)(iii), (b)(4)(ii).

Comments: Many commenters generally opposed the rule on the ground that allowing USCIS to adjudicate the merits of asylum claims through a nonadversarial process would ''take away the rights of the American people to be represented in court when migrants seek benefits that would place them on the path to citizenship'' or ''remov[e] . . . safeguards that are meant to protect the American population.'' Commenters asserted that allowing asylum claims to be adjudicated without a DHS attorney cross-examining the applicant and having the opportunity to offer impeachment evidence would give fewer rights to the American people, while the noncitizen applicant would

[51] *See* USCIS, Fraud Detection and National Security Directorate, *https://www.uscis.gov/about-us/directorates-and-program-offices/fraud-detection-and-national-security-directorate.*

[52] *See* Press Release, The White House, FACT SHEET: The Biden Administration Blueprint for a Fair, Orderly and Humane Immigration System (July 27, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/27/fact-sheet-the-biden-administration-blueprint-for-a-fair-orderly-and-humane-immigration-system/* (last visited Mar. 14, 2022).

still have the opportunity to be represented by counsel.

Response: The Departments do not agree with the premise of commenters' assertions. A nonadversarial process does not take away the rights of the American people, but rather it allows for the presentation and consideration of asylum and other protection claims in a manner that is fair and efficient. Asylum officers are Government officials who are well-trained in making credibility determinations and assessing evidence. The asylum officer position is a specialized position focusing on asylum and related relief and protection from removal; as explained in Section III.B of this preamble, asylum officers already adjudicate affirmative asylum claims through a nonadversarial process. An asylum officer can consider evidence relevant to an applicant's claim, including evidence that might be introduced as impeachment evidence in immigration court, and an asylum officer, where appropriate, can ask the applicant questions similar to those that a DHS attorney might ask in immigration court during a cross-examination. The Departments believe that the American public is better served if claims for asylum or related protection that originate through the credible fear screening process may be adjudicated—fairly and efficiently—not only within section 240 proceedings before IJs but also by asylum officers who specialize in such claims.

Comment: Several commenters generally opposed the rule out of a belief that it is being promulgated solely for the purpose of providing asylum or other immigration benefits faster or through an easier procedure and is thereby putting the interests of migrants ahead of the interests of U.S. persons or of the public interest.

Response: The Departments disagree with the view that the rule is not in the public interest. Rather, providing a process through which vulnerable populations may seek protection is the means by which the United States meets its obligations under both U.S. and international law. *See* Refugee Protocol, 19 U.S.T. 6223; INA 208, 241(b)(3), 8 U.S.C. 1158, 1231(b)(3); FARRA sec. 2242. Amending the existing process to allow adjudications—both those that end in grants and those that end in denials—to be made more promptly, while maintaining fundamental fairness, is a change that is in the public interest. For decades, U.S. law has protected vulnerable populations from return to a country where they would be persecuted or tortured. *See, e.g., INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 424 (1987) (observing that the Refugee Act of 1980 established ''a broad class of refugees who are eligible for a discretionary grant of asylum, and a narrower class of aliens who are given a statutory right not to be deported to the country where they are in danger''); FARRA sec. 2242 (legislation implementing U.S. obligations under Article 3 of the CAT not to remove noncitizens to any country where there are substantial grounds for believing the person would be in danger of being subjected to torture). Ensuring that the Departments uphold these American values as enshrined in U.S. law is in the national interest. It is also in the public interest that the procedures by which the Departments administer the law and uphold these values not regularly result in years-long delays, which may be detrimental to both the U.S. public and those seeking protection. Efficient processing of cases is in the public interest, as cases that span years can consume substantially greater Government resources, including by contributing to delays in immigration court proceedings that hinder DHS's ability to swiftly secure the removal of noncitizens who are high priorities for removal. The process created by this rule therefore advances the public interest by authorizing the Departments to employ a fair and efficient procedure for individuals to seek protection as an appropriate alternative to the exclusive use of section 240 proceedings and by reducing immigration court backlogs that are detrimental to the public interest.

Comments: Some commenters generally opposed the rule on the ground that it allows noncitizens to seek review of any denial of asylum or other protection but does not allow an opportunity for correcting or reviewing erroneous grants of asylum or other protection.

Response: The Departments acknowledge the concern regarding error correction when asylum or other protection is granted, but the Departments believe this concern is addressed by existing statutory and regulatory provisions, as well as by DHS's longstanding practices regarding the supervision of asylum officers. To reiterate those longstanding supervision practices, the Departments have revised 8 CFR 208.14(b) and (c) and, correspondingly, 8 CFR 1208.14(b) and (c), to emphasize that asylum officers' decisions on approval, denial, dismissal, or referral of an asylum application remain subject to review within USCIS.

As noted above, the Secretary of Homeland Security is charged with the administration and enforcement of the immigration laws and has the control, direction, and supervision of all employees and of all the files and records of USCIS. *See* INA 103(a)(1), (2), 8 U.S.C. 1103(a)(1), (2). Further, the asylum statute vests the Secretary of Homeland Security with the authority to grant asylum. *See* INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A). The Secretary's broad authority includes the authority to review and modify immigration benefit decisions, including grants of asylum. Such authority has been delegated to the Director of USCIS. *See* DHS, Delegation to the Bureau of Citizenship and Immigration Services, No. 0150.1 (June 5, 2003); *see also* 8 CFR 2.1. Further, USCIS retains authority under this delegation to reopen or reconsider decisions (including asylum decisions) at any time on the agency's own motion, based upon any new facts or legal determinations. *See* 8 CFR 103.5(a)(5). Nothing in this IFR in any way detracts from or diminishes the authority and responsibility of the Secretary of Homeland Security and the Director of USCIS over any grant of asylum that is issued by USCIS.

Beyond these statutory and regulatory provisions, 100 percent of USCIS asylum officers' approvals, denials, referrals, or dismissals of an asylum application are currently subject to supervisory review before a final decision is made and served on the applicant. *See* Memorandum from Andrew Davidson, Chief, Asylum Div., USCIS, *Modifications to Supervisory Review of Affirmative Asylum Cases* (Mar. 31, 2021). The decision of the asylum officer on whether or not to grant asylum undergoes review by a supervisor, and may be further reviewed as USCIS deems appropriate, before finalization and service on the applicant. *Id.* The Departments have revised 8 CFR 208.14(b) and (c), and made corresponding revisions to 8 CFR 1208.14(b) and (c), to emphasize these longstanding review practices. The Asylum Division also as a matter of policy determines which cases should receive further review at the headquarters level before being finalized. *See, e.g.,* USCIS Asylum Division, *Affirmative Asylum Procedures Manual,* III.Q. Quality Assurance Review (May 2016), *https://www.uscis.gov/sites/default/files/document/guides/AAPM-2016.pdf.* Further, the Director of USCIS, or the Director's delegate, ''may direct that any case or class of cases be certified'' to another USCIS official, including the USCIS Director herself, for decision. *See* 8 CFR 103.4(a)(1). Accordingly, USCIS

adjudicates each asylum claim, and the individual asylum officer is only empowered to grant asylum, as an exercise of the Secretary's authority. *See* 8 CFR 208.9(a).

If a grant of asylum or withholding of removal is not warranted, the grant may be terminated by USCIS or an immigration judge, as appropriate. *See* INA 208(c)(2), 8 U.S.C. 1158(c)(2); 8 CFR 208.24, 1208.24. A grant of CAT deferral of removal may also be terminated. *See* 8 CFR 208.17(d)–(f), 1208.17(d)–(f). The procedures for termination of a grant of asylum, withholding of removal, or deferral of removal is not changed by the rule. Any further judicial review may occur after the termination of asylum or other protection commences.

Moreover, with regard to individuals who are found eligible for withholding of removal but not granted asylum, the rule generally provides an opportunity for correcting an erroneous finding of eligibility through the streamlined section 240 proceeding. For example, if the DHS attorney becomes aware of new derogatory information indicating that the noncitizen is ineligible for that other protection, such information can be submitted and accounted for in the IJ's removal order. Finally, to the extent this IFR sets up a process under which, where an asylum officer declines to grant a noncitizen's asylum claim, that noncitizen can continue to pursue that claim before an IJ, the IFR does not break new ground. Rather, in these respects, the IFR mirrors the longstanding affirmative asylum process.

Comments: Several commenters generally opposed the rule on the ground that it would delay or otherwise make it harder for DHS to remove noncitizens by giving them more opportunities to appeal. Commenters expressed concern that delays in removal, coupled with more expeditious grants of asylum, would encourage more irregular migration and incentivize individuals to make fraudulent claims for asylum to obtain parole from detention.

Response: The Departments acknowledge the commenters' concern but disagree with their conclusions. The rule intends to streamline adjudication of protection claims, whether granted or not. As noted in the NPRM, for claims involving non-detained individuals in section 240 removal proceedings, including asylum seekers encountered at the border and initially screened into expedited removal who establish a credible fear of persecution, the current average case completion time for EOIR is 3.75 years, and individuals who arrive at the border and seek protection therefore often must wait several years for an initial adjudication by an IJ. *See* 86 FR 46909, 46928 tbl. 6. Any appeal after that adjudication adds even more time that an individual may expect to remain in the United States. Given the length of the process under the status quo and the streamlining procedures incorporated into the new process to promote prompt resolution of removal proceedings, it is unlikely that the new process allowed by the rule will result in further ''delays in removal'' that commenters fear may encourage further irregular migration or incentivize the filing of non-meritorious claims by individuals who do not need protection. The new process replaces a single section 240 removal proceeding in immigration court with a merits interview before an asylum officer, followed by a streamlined section 240 removal proceeding if USCIS does not grant asylum. Comments that assume this new two-step process will result in greater delays overlook that the new process is tailored specifically to adjudicate asylum and related protection claims, and individuals in the process will have been determined by an immigration officer to be inadmissible under section 235(b)(1)(A)(i) of the INA, 8 U.S.C. 1225(b)(1)(A)(i).[53] Additionally, as detailed in Section III.D of this preamble, the streamlined 240 removal proceeding will be governed by special procedural rules, including time frames and limits on continuances, that assure prompt completion. This streamlined process, as provided by the rule, thus addresses the commenters' underlying concern regarding delays. As explained in the NPRM, the Departments believe that this rule will substantially reduce the average time to adjudicate asylum claims—whether the final decision is a grant or a denial—thereby reducing any incentive for exploitation of the asylum system.

Comments: Several commenters generally opposed the rule based on the view that nearly all the migrants encountered at or near the Southwest border are economic migrants, not legitimate asylum seekers, and that all such individuals should therefore be removed without wasting resources on adjudications and appeals.

Response: The Departments acknowledge commenters' concern that legitimate asylum seekers be identified and distinguished from individuals seeking to enter the United States for other purposes, and the rule is indeed designed to more expeditiously and fairly distinguish the one group from the other. The Departments disagree with commenters' characterization that nearly all migrants encountered at the Southwest border are only seeking economic opportunity. Recent surveys of individuals seeking to migrate to the United States have found that individuals cite a variety of factors, often in combination, for leaving their country of origin. While economic concerns and a belief in American prosperity and opportunity are common reasons stated, violence and insecurity have been cited as reasons for migrating by majorities or near majorities of those surveyed.[54] And, regardless, Congress has instructed that individuals in expedited removal who claim a fear of persecution or indicate an intent to apply for asylum be given an individualized credible fear screening. INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii); *see also* 8 CFR 208.30. The purpose of these individualized screenings is to prevent the removal of individuals in need of protection to a country where they face persecution or torture. Under this IFR, as under current regulations, individuals who receive a positive credible fear determination are given a fair opportunity to pursue their claim for asylum or other protection. Individuals who receive a negative credible fear determination and individuals who are determined to not warrant a discretionary grant of asylum or to be otherwise ineligible for protection will be subject to removal. Moreover, by making changes to facilitate the more frequent use of expedited removal for broader classes of individuals and families, the IFR will enable the Departments to more quickly secure removal orders in cases in which no fear claim is asserted or no credible fear is established than if such individuals and families were instead placed directly in removal proceedings, as frequently occurs.

[53] To be sure, the IFR includes exceptions to these streamlined section 240 proceedings. One of those exceptions is for noncitizens who raise a substantial challenge to the charges of inadmissibility or removability. *See* 8 CFR 1240.17(k)(3). Certain streamlining provisions under 8 CFR 1240.17, including the deadlines, and the limits on continuances and extensions of deadlines, will not apply in cases involving such noncitizens.

[54] *See, e.g.,* Randy Capps et al., Migration Policy Institute, *From Control to Crisis: Changing Trends and Policies Reshaping U.S.-Mexico Border Enforcement* 18–19 (Aug. 2019), *https://www.migrationpolicy.org/sites/default/files/publications/BorderSecurity-ControltoCrisis-Report-Final.pdf* (last visited Mar. 15, 2022); Medicins Sans Frontieres, *Forced to Flee Central America's Northern Triangle: A Neglected Humanitarian Crisis* 10–11 (May 2017), *https://www.msf.org/sites/msf.org/files/msf_forced-to-flee-central-americas-northern-triangle_e.pdf* (last visited Mar. 15, 2022).

Comments: Multiple individual commenters generally opposing the proposed rule asserted that the rule, contrary to its stated purpose, would most likely increase the backlog of asylum cases, either because of the multiple levels of appeal available whenever an individual's claim is not granted or because the rule would likely encourage more people to enter the United States and make a fear claim.

Response: The Departments agree that high rates of asylum applications relative to historic data are of concern for both USCIS asylum offices and the immigration courts. However, commenters misapprehend the nature of the review and appeal structure proposed in the NPRM and finalized, in modified form, in this IFR. The new process replaces a single section 240 removal proceeding in immigration court with an interview before an asylum officer, which is followed by a streamlined section 240 removal proceeding if the asylum officer does not grant asylum. Commenters assume that any new two-step process will increase the backlog of asylum cases, but the process this IFR establishes is tailored specifically to adjudicate asylum claims. Additionally, as detailed above in Section III.D of this preamble, unlike an ordinary section 240 removal proceeding, streamlined section 240 removal proceedings will be governed by special procedural rules, including limits on continuances, that assure prompt completion. As a result, the process established by this rule is expected to take less time and assist in stemming case backlogs relative to the current process of initially adjudicating all claims through an ordinary section 240 proceeding, followed by the possibility of appeal to the BIA and review by the U.S. Courts of Appeals. The Departments also disagree with commenters' predictions that the rule would increase the backlog of asylum cases by encouraging more individuals to seek asylum or related protection, as commenters have not identified any evident causal mechanism by which the rule as a whole, in context, would systematically and substantially incentivize more individuals to seek to enter the United States and pursue asylum. On the contrary, the Departments believe that, by enabling prompt adjudication of asylum claims—including the prompt rejection of claims that lack merit—the rule would discourage individuals who lack a basis for asylum or related protection to seek to enter the United States or claim protection.

Comments: A few commenters expressed opposition for each of the following reasons: The proposed rule would change the substantive standard for asylum eligibility; the proposed rule would allow noncitizens who entered the United States without authorization to ''cut the line'' ahead of those who have been awaiting legal immigration and therefore will be unfair and harmful to those whose cases are delayed and will remove incentives for individuals to pursue legal immigration; and the proposed rule would automatically provide for ''immediate'' U.S. citizenship. A few commenters also expressed opposition on the ground that only elected officials should make asylum decisions or, alternatively, only voters should make asylum determinations. In addition, one commenter opposing the rule described it as ''giving two chances at asylum'' and another commenter described it as a proposal to ''cut funding for the detention of asylum seekers.''

Response: The concerns expressed by these commenters are based on apparent factual misunderstandings of the asylum standards, the asylum adjudications system, and the effect of an asylum grant. In that regard, the NPRM would not have changed, and the IFR does not change, the standards for qualifying for asylum. Further, the NPRM would not have provided, and the IFR does not provide, ''immediate'' U.S. citizenship to anyone. Rather, this rulemaking is concerned with the system for adjudicating asylum claims by noncitizens found to have credible fears of persecution or torture. While a noncitizen granted asylum may eventually apply for and receive citizenship if certain conditions are met, a grant of asylum on its own does not entitle the recipient to citizenship. The Departments believe that the changes suggested by these comments either are not within the scope of the rulemaking or would be impermissible under current U.S. law.

Comments: A commenter stated that the proposed rule would negatively affect individuals seeking asylum through the affirmative application process. The commenter noted that USCIS has more than 400,000 pending affirmative asylum cases, and most cases take more than 180 days to adjudicate. The commenter stated that the proposed rule would exacerbate this backlog by adding to the queue the asylum claims of individuals in expedited removal proceedings. While the commenter acknowledged that the Departments proposed in the NPRM to increase staffing levels in order to implement the new rule, the commenter stated that these additional resources should be used to adjudicate existing cases in order within the 180-day period mandated by Congress. Other commenters stated that the Departments have not addressed whether the proposed rule will increase backlogs and wait times for affirmative cases.

Response: The Departments acknowledge the commenter's concern for individuals with affirmative asylum cases pending before USCIS but disagree that this rule will negatively affect them. As discussed in the NPRM, the Departments have planned for the new process described in this rule to be implemented in phases, as the necessary staffing and resources are put into place. A phased implementation will allow the Departments to begin employing the proposed process in a controlled manner for a limited number of cases, giving USCIS the opportunity to work through operational challenges and ensure that each noncitizen placed into the process is given a full and fair opportunity to have any protection claim presented, heard, and properly adjudicated in full conformance with the law. As the commenter acknowledged, USCIS plans to hire new employees and secure additional funding to implement this rule so that it will not be necessary to divert resources from existing caseloads, including affirmative asylum, to do so. USCIS has estimated that it will need to hire approximately 800 new employees and spend approximately $180 million to fully implement the proposed Asylum Merits interview and adjudication process to handle approximately 75,000 cases annually. While addressing the affirmative asylum backlog is outside the scope of the rulemaking, the Departments acknowledge the importance of doing so and note that USCIS has taken other actions to address this priority. These include expanding facilities; hiring and training new asylum officers; implementing operational changes to increase interviews and case completions and reduce backlog growth; establishing a centralized vetting center; and working closely with technology partners to develop several tools that streamline case processing and strengthen the integrity of the asylum process.[55] In addition, on September 30, 2021, Congress passed the Extending Government Funding and Delivering Emergency Assistance Act, which provides dedicated backlog elimination funding to USCIS for ''application

[55] *See* USCIS, *Backlog Reduction of Pending Affirmative Asylum Cases: Fiscal Year 2021 Report to Congress* (Oct. 20, 2021), *https://www.dhs.gov/sites/default/files/2021-12/USCIS%20-%20Backlog%20Reduction%20of%20Pending%20Affirmative%20Asylum%20Cases.pdf.*

processing, the reduction of backlogs within asylum, field, and service center offices, and support of the refugee program.'' Public Law 117–43, sec. 132, 135 Stat. 344, 351.

Comments: Some commenters generally proposed alternative ways to reduce delays and strain on the U.S. system for asylum adjudication and urged the Departments to implement these alternatives rather than the proposed rule. Proposed alternatives included the following actions:

- Taking unspecified actions to significantly reduce the number of people crossing the border;
- devoting more resources to the current asylum process, including hiring more IJs;
- adopting stricter substantive standards for demonstrating asylum eligibility;
- implementing the Migrant Protection Protocols (''MPP'');
- criminally prosecuting anyone who makes a fraudulent asylum claim;
- denying all asylum requests; and
- denying asylum to noncitizens who cross the border between ports of entry.

Response: The Departments acknowledge the commenters' suggestions and recognize that building an immigration system that works and maintaining an orderly, secure, and well-managed border requires multiple coordinated lines of effort. High numbers of unauthorized border crossings, transnational criminal organizations seeking to profit from a range of illicit activities, and the ongoing impact of COVID–19 on the processing of migrants present significant challenges along the Southwest border. DHS has deployed unprecedented levels of personnel, technology, and resources and has made critical security improvements to secure and manage our borders. The Departments emphasize that this rule addresses specifically the way in which asylum and related protection claims of certain individuals encountered near the border are considered, with the aim of adjudicating those claims in a timelier manner while ensuring fundamental fairness. Comments advocating for other immigration policy changes that in theory could lead to fewer individuals making fear claims are outside the scope of this rulemaking.

The Departments agree that increasing the number of IJs is part of the solution to alleviating the current strain on the U.S. asylum system. The Fiscal Year 2022 President's Budget requests an additional 100 IJs and associated support staff to ensure the efficient and fair processing of cases, and EOIR will continue to request funding to add additional IJs. *See* DOJ, *FY 2022 Budget Request, https://www.justice.gov/jmd/page/file/1398846/download.* Given the increase in the number of immigration judges requested of and authorized by Congress during recent budget cycles, the Fiscal Year 2022 President's Budget also requests 100 additional ICE litigators to prosecute the removal proceedings initiated by DHS, consistent with 6 U.S.C. 252(c). *See* DHS, *ICE Budget Overview Fiscal Year 2022 Congressional Justification* ICE–O&S–22, *https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf* (explaining that the ICE Office of the Principal Legal Advisor currently faces a staffing budgetary shortfall of several hundred positions).

b. Negative Impacts on Applicants and Their Support Systems

Comments: A few commenters opposed the proposed rule based on generally stated concerns about negative consequences for asylum seekers. Commenters stated that the existing process for adjudicating asylum claims originating in credible fear screening is effective and provides strong legal protections for asylum seekers, including the opportunity for judicial review. Other commenters expressed concern that any streamlining of the existing process would result in asylum seekers being ordered removed without receiving full and fair consideration of their protection claims.

Response: The Departments disagree with the commenters' premise that any change from the existing procedure that seeks to determine relief or protection claims in a timelier manner will be detrimental to individuals who are seeking asylum. The procedure established by this rule gives individuals appropriate procedural protections, as well as an opportunity for those whose relief or protection claims are denied to seek judicial review after exhausting their administrative remedies. Moreover, as described above, the Departments are finalizing the rule with certain changes from the NPRM that are responsive to concerns about fairness, such as retaining USCIS's authority to entertain reconsideration of a negative credible fear determination that has been upheld by an IJ, specifying a minimum number of days between a positive credible fear determination and the Asylum Merits interview, and eliminating the restrictions on the evidence applicants may submit before IJs.

c. Negative Impacts on U.S. Citizens and the Economy

Comments: Many commenters generally opposed the rule due to concerns that it will lead to increases in unauthorized immigration, immigration benefits illegally obtained by fraud, or lawful immigration that the commenters perceived as illegitimate. Commenters expressed concern that such immigration would have negative effects on U.S. citizens and the U.S. economy, including with respect to availability of housing and other resources, wages and jobs, public health, costs of schools and healthcare, crime and safety, the deficit, and the environment, among other things. For the most part, commenters did not provide details about why they believed that the rule would result in increased immigration or increased rates of fraud or misrepresentation. Some commenters, however, explained that they believed the rule would drive increased unauthorized or fraudulent immigration ''by promising aliens who have made bogus asylum claims freedom from detention.'' Other commenters explained that they believed the rule would drive increased unauthorized or fraudulent immigration by allowing for nonadversarial merits adjudications, without an ICE attorney assigned to cross-examine the applicant or present impeachment evidence.

Response: The Departments acknowledge the comments on the potential negative impacts of lawful immigration, including the impacts on wages, jobs, and the labor force. However, because the rule does not change the substantive standard for asylum or related protection, the Departments do not expect that the rule will lead to increases in legal immigration, although it may lead to some eligible noncitizens receiving asylum or related protection sooner than they otherwise would. Section V.B of this preamble estimates the effects, on a per-individual, per-day basis, of individuals receiving employment authorization earlier as a result of efficiencies introduced by the rule. Contrary to commenters' claims, as detailed in Section V.B of this preamble, the increased efficiencies of this IFR could also result in fewer individuals who are ineligible for protection receiving employment authorization, if their applications are not granted before the waiting period for employment authorization under 8 CFR 274a.12(c)(8) has run. Furthermore, even if there were reason to believe that the rule may lead to increases in legal immigration, the Departments note that commenters did not provide any data or studies

supporting negative net impacts of asylees on U.S. citizens or the U.S. economy.[56]

While the Departments acknowledge the commenters' concerns about the negative impacts of unauthorized immigration and unauthorized entrance into the United States without inspection or parole, the Departments disagree with the commenters that there is reason to believe that the rule will result in an increase in the number of individuals who enter the United States without inspection or parole, or in an increase in those who stay beyond their authorized period of admission. If anything, by more expeditiously ordering removed those who are ineligible for protection, this rule may send a stronger deterrent signal relative to the status quo. Moreover, as outlined above, the United States is undertaking a range of efforts to address irregular migration and promote security at the border. Without additional information about the mechanism by which commenters anticipate that this rule will lead to more unauthorized migration, the Departments cannot further evaluate these comments. The Departments note that the rule does not ''promis[e] . . . freedom from detention,'' and the Departments disagree with the commenters' concern about the nonadversarial nature of the Asylum Merits interview, as previously explained.

Similarly, while the Departments appreciate commenters' concerns about individuals seeking to obtain asylum or related protection by fraud or misrepresentation, the Departments disagree that there is any reason to believe that the rule will result in an increase in either the incidence or success of such fraud or misrepresentation. As explained earlier in Section IV.B.2.a of this preamble, the Departments are confident that asylum officers have the training, skills, and experience needed to assess credibility and appropriately determine asylum eligibility through a nonadversarial interview.[57] With respect to comments noting a negative impact of immigration (whether lawful or unauthorized) on availability of housing, public health, costs of schools and healthcare, the deficit, and the environment, the comments lacked specific information expanding on these statements and explaining how this rule would impact these areas. Environmental issues are addressed in Section V.J of this preamble.

Comments: Numerous commenters stated that the needs, interests, and protection of the American people should come first, and they asserted that the proposed rule would ''elevate'' asylum seekers and others who enter the United States without authorization above U.S. citizens. Many individual commenters stated that the asylum program should be halted, or should not be changed, until the United States can support and help its own citizens who are in need.

Response: The Departments acknowledge the commenters' concern for U.S. citizens, and in particular for U.S. citizens in need. The Departments disagree, however, with the commenters' assumption that the rule either prioritizes the interests of asylum seekers over the interests of U.S. citizens or will be to the detriment of the needs, interests, or protection of U.S. citizens. An asylum system that more expeditiously determines whether individuals are or are not eligible for asylum or other protection in the United States, while providing due process, is in the public interest. It complies with Congress's instruction in INA 235, 8 U.S.C. 1225, that individuals in expedited removal be screened for credible fear of persecution and receive individualized consideration of their claims; it allows individuals who are not eligible for protection to be removed more promptly, thereby reducing any incentives to exploit the process; and it allows individuals who are eligible for asylum or other protection to sooner receive that assurance and integrate into their new community. Some commenters invoked particular categories of U.S. citizens in need, including persons experiencing unemployment or homelessness, veterans, persons with disabilities, and children in foster care, but the commenters did not provide any explanation or information to support the idea that this rule will operate to the detriment of these groups, or to support the idea that halting the asylum program—as some commenters proposed—would benefit these groups. The Departments note that the rule's potential and uncertain impacts on the U.S. labor force are analyzed in Section V.B of the preamble.

Comments: Multiple commenters stated generally that asylees' dependence on Government programs for support would lead to an undue burden on American taxpayers, exacerbation of the U.S. deficit, or increased costs of education and healthcare in the communities where asylees live.

Response: The Departments appreciate commenters' concern that public costs at the Federal, State, or local level might accompany increases in the number of individuals granted asylum in the United States. However, these general comments did not provide information or explanation to support either (1) the premise that this rule will lead to more individuals being granted asylum in the United States, or (2) the premise that increases in the number of individuals granted asylum in the United States would, on net, lead to increased public costs or costs of education or healthcare. The Departments believe that the IFR is unlikely to lead to significant increases in the number of individuals granted asylum in the United States, much less to increased public costs or costs of education or healthcare that outpace asylees' contributions in taxes and economic activity. A more detailed explanation of the possible impacts of this rule is provided in Section V.B of this preamble. Additionally, the Departments emphasize that estimating the fiscal impacts of immigration is a complex calculation. The first-order net fiscal impact of immigration is the

[56] Isolating immigration's effect on labor markets has been an ongoing task in the research. A 2017 National Academies of Sciences, Engineering, and Medicine (''NAS'') publication synthesizes the current peer-reviewed literature on the effects of immigration and empirical findings from various publications. NAS, *The Economic and Fiscal Consequences of Immigration* (2017), *https://www.nap.edu/catalog/23550/the-economic-and-fiscal-consequences-of-immigration* (last visited Mar. 5, 2022) (''2017 NAS Report''). Although this report is not specific to asylees, its analysis may be instructive. The report cautions that economic theory alone is not capable of producing definitive answers about the net impacts of immigration on labor markets over specific periods or episodes. Empirical investigation is needed. But wage and employment impacts created by flows of foreign-born workers into labor markets are difficult to measure. The effects of immigration have to be isolated from many other influences that shape local and national economies and the relative wages of different groups of workers. *Id.* at 4.

[57] The approval rate [total cases granted/total cases granted + total case denied + total cases referred (USCIS affirmative asylum processing only)] of asylum officers and IJs on the merits of asylum claims from Fiscal Years 2017 through 2021 show approval rates for asylum claims adjudicated by asylum officers to be in the 26–37 percent range, while IJ approval rates on asylum claims that started as credible fear screenings ranged from 31–39 percent and on all asylum claims (regardless of whether they began in the expedited removal or credible fear process) ranged from 26–37 percent. This information suggests that asylum officers are just as equipped to identify individuals not meeting asylum eligibility requirements as IJs who use the adversarial process with the participation of ICE's Office of the Principal Legal Advisor to reach a decision on asylum eligibility. USCIS, Refugee, Asylum and Int'l Operations Directorate, Asylum Division Workload Statistics for Affirmative Asylum 2009 to 2021 (2022); EOIR Adjudications Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim (Jan. 19, 2022), *https://www.justice.gov/eoir/page/file/1062976/download;* EOIR Adjudications Statistics: Asylum Decision Rates (Jan. 19, 2022), *https://www.justice.gov/eoir/page/file/1248491/download.*

difference between the various tax contributions the immigrants in question make to public finances and the Government expenditures on public benefits and services they receive. These first-order impacts are sensitive to immigrants' demographic and skill characteristics, their role in labor and other markets, and the rules regulating accessibility and use of Government programs.[58] In addition, second-order effects may also occur, and analysis of such effects presents methodological and empirical challenges. For example, as with the native-born population, the age structure of an immigrant population plays a major role in assessing any fiscal impacts. Children and young adults contribute less to society in terms of taxes and draw more in benefits by using public education, for example. On average, as people age and start participating in the labor market, they become net contributors to public finances, paying more in taxes than they draw from public benefit programs. Moreover, older adults could again become net users of public benefit programs. Compared to the native-born population, immigrants can also differ in their characteristics in terms of skills, education levels, income levels, number of dependents in the family, the places they choose to live, etc., and any combination of these factors could have varying fiscal impacts. Local and State economic conditions and laws that govern public finances or the availability of public benefits also vary and can influence the fiscal impacts of immigration.

d. Other General Opposition to the Proposed Rule

Comments: Many commenters stated that asylum seekers should remain in Mexico during the pendency of their immigration hearings or otherwise generally referred to the Migrant Protection Protocols (''MPP''). Similarly, other commenters asked the Department to clarify how the rule may comply or conflict with MPP. Specifically, commenters raised concerns regarding implementation of the program, litigation surrounding MPP, as well as alternative proposals for MPP.

Response: Because MPP is decidedly separate from the expedited removal and credible fear process, comments concerning MPP are outside the scope of the changes made in this rule.[59] The Departments appreciate engagement and concerns related to MPP, but discussion of the program, ongoing litigation, and DHS's efforts to terminate the program are outside the scope of this rulemaking. Moreover, the Secretary of DHS has already explained in detail his reasons for terminating MPP and his decision not to use the contiguous-territory-return authority on a programmatic basis.[60]

C. Basis for the Proposed Rule

1. DOJ and DHS Statutory/Legal Authority

Comments: Many individual commenters generally argued that the Departments do not have the statutory or legal authority to issue the rule, but the commenters did not provide a basis for their belief. Some individual commenters stated that the rule is unlawful, bypasses Congress, or cannot be issued as an executive decision.

Response: The Departments believe that these general comments misapprehend or misstate the legal authorities involved in this rulemaking. As noted above in Section II.B of this preamble, asylum, statutory withholding of removal, and protection under the CAT are established or required by statute. *See* INA 208, 8 U.S.C. 1158; INA 241(b)(3), 8 U.S.C. 1231(b)(3); FARRA sec. 2242. This rule does not seek to bypass Congress or otherwise act where Congress has not given the Departments authority. This rule is consistent with statutory authority provided by Congress, and it is intended to create efficiencies in implementing a framework allowing for fair, consistent adjudications.

Comments: Commenters argued that the Homeland Security Act of 2002 expressed congressional intent that defensive asylum claims be adjudicated by IJs rather than asylum officers by granting EOIR the authority to adjudicate these claims but making no such provision for USCIS. Moreover, commenters noted that because the HSA specified the date on which powers would be vested in USCIS, Congress did not intend that the Departments be able to reallocate the authorities of IJs and asylum officers through regulations and that Congress has decided not to reallocate authorities relevant to the proposed rule since 2003. Another comment argued that the Illegal Immigration Reform and Immigrant Responsibility Act expressed congressional intent that asylum seekers found to have a credible fear of persecution have their cases adjudicated by IJs. One comment cited IIRIRA legislative history in arguing that the credible fear interview's purpose is to ''weed out non-meritorious cases'' and that asylum proceedings should be overseen by an IJ. One commenter asserted that legislative proposals under consideration in both the House and the Senate demonstrate Congress's interest in asylum policy and in immigration policy generally. The commenter argued that gridlock in Congress does not give executive agencies a ''free pass'' to overstep the legislative directives given to them by Congress.

Response: The Departments believe that these comments misapprehend or misstate the legal authorities involved in this rulemaking. This rule does not seek to bypass Congress or otherwise act where Congress has not given the Departments authority. If an asylum officer determines that a noncitizen has a credible fear of persecution, the noncitizen ''shall be detained for further consideration of the application for asylum.'' INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii). The statute, however, ''does not specify how or by whom this further consideration should be conducted.'' Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 444, 447 (Jan. 3, 1997).

By not specifying what ''further consideration'' entails, the statute leaves it to the agency to determine. Under *Chevron,* it is well-settled that such ''ambiguity constitutes an implicit delegation from Congress to the agency

[58] *See generally* 2017 NAS Report at 323–27.

[59] Individuals processed for expedited removal are excluded from MPP, as that program is being implemented in compliance with the court order in *Texas* v. *Biden,* No. 2:21–cv–67, —F. Supp. 3d. —, 2021 WL 3603341 (N.D. Tex. Aug. 13, 2021). By its terms, MPP applies only to noncitizens initially placed into section 240 proceedings, not the noncitizens at issue here, who are initially placed into expedited removal proceedings. *See* Memorandum from Robert Silvers, Under Secretary, Office of Strategy, Policy, and Plans, *Guidance Regarding the Court-Ordered Reimplementation of the Migrant Protection Protocols* 4 (Dec. 2, 2021), *https://www.dhs.gov/sites/default/files/2022-01/21_1202_plcy_mpp-policy-guidance_508.pdf.* Nor does MPP eliminate expedited removal as an option for processing certain inadmissible noncitizens arriving in the United States. Some individuals—*e.g.,* Mexican nationals or nationals of countries outside the Western Hemisphere—may be eligible for processing through expedited removal but could not be considered for processing under MPP, which explicitly excludes certain categories of noncitizens. Additionally, the permanent injunction in *Texas* v. *Biden* specifically preserves the Secretary of DHS's discretion to make individual determinations about how to process a particular individual. *See Texas* v. *Biden,* 2021 WL 3603341, at *27. That discretion encompasses whether to process a specific noncitizen for 240 proceedings or expedited removal. *See Matter of E–R–M– & L–R–M–,* 25 I&N Dec. 520 (BIA 2011).

[60] *See* Memorandum from Alejandro N. Mayorkas, Secretary of Homeland Security, *Termination of Migrant Protection Protocols* (Oct. 29, 2021), *https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-memo.pdf;* DHS, *Explanation of the Decision to Terminate the Migrant Protection Protocols* (Oct. 29, 2021), *https://www.dhs.gov/sites/default/files/publications/21_1029_mpp-termination-justification-memo.pdf.*

to fill in the statutory gaps.'' *FDA* v. *Brown & Williamson Tobacco Corp.,* 529 U.S. 120, 159 (2000) (citing *Chevron,* 467 U.S. at 844); *see also Epic Sys. Corp.,* 138 S. Ct. at 1629 (noting that *Chevron* rests on ''the premise that a statutory ambiguity represents an implicit delegation to an agency to interpret a statute which it administers'' (quotation marks omitted)). An agency may exercise its delegated authority to plug the gap with any ''reasonable interpretation'' of the statute. *Chevron,* 467 U.S. at 844.

By its terms, the phrase ''further consideration'' is open-ended. The fact that Congress did not specify the nature of the proceedings for those found to have a credible fear contrasts starkly with two other provisions in the same section that expressly require or deny section 240 removal proceedings for certain other classes of noncitizens. In one provision, INA 235(b)(2)(A), 8 U.S.C. 1225(b)(2)(a), Congress provided that an applicant for admission who ''is not clearly and beyond a doubt entitled to be admitted'' must be ''detained for a proceeding under section [INA 240].'' And in another, INA 235(a)(2), 8 U.S.C. 1225(a)(2), Congress provided that ''[i]n no case may a stowaway be considered . . . eligible for a hearing under section [INA 240].'' These examples show that Congress knew how to specifically require immediate referral to a section 240 removal proceeding when it wanted to do so. ''Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'' *Salinas,* 141 S. Ct. at 698 (quotation marks omitted).

The D.C. Circuit has ''consistently recognized that a congressional mandate in one section and silence in another often suggests not a prohibition but simply a decision *not to mandate* any solution in the second context, *i.e.,* to leave the question to agency discretion.'' *Catawba Cnty.,* 571 F.3d at 36 (quotation marks omitted). The suggestion that Congress's silence in section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1), permits the Departments discretion to establish procedures for ''further consideration'' is reinforced by the fact that the noncitizens whom DHS has elected to process using the expedited removal procedure are expressly excluded from the class of noncitizens who are statutorily guaranteed section 240 removal proceedings under section 235(b)(2)(A) of the INA, 8 U.S.C. 1225(b)(2)(A). *See* INA 235(b)(2)(B)(ii), 8 U.S.C. 1225(b)(2)(B)(ii).

The Departments disagree with the comments arguing that any statute requires asylum cases to be adjudicated through an adversarial process. The rule is designed to implement the statute, which does not specify what ''further consideration of [an] application for asylum'' entails and which thereby leaves it to the agency to determine what will occur when an individual placed in expedited removal is found to have demonstrated a credible fear of persecution. INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii). Nothing in the asylum statute requires the Secretary of Homeland Security to establish an adversarial procedure to determine whether a noncitizen may be granted asylum.

The Departments also disagree with the comments that defensive asylum applications are statutorily required to be adjudicated by DOJ instead of by DHS. The asylum statute provides that specified noncitizens ''may apply for asylum,'' including ''in accordance with . . . [INA 235(b), 8 U.S.C. 1225(b)],'' INA 208(a)(1), 8 U.S.C. 1158(a)(1), and that ''[t]he Secretary of Homeland Security or the Attorney General may grant asylum to [a noncitizen] who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under [the asylum statute] if the Secretary of Homeland Security or the Attorney General determines that such [noncitizen] is a refugee,'' INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A). Section 208(b)(1)(A) of the INA does not distinguish between affirmative and defensive asylum applications, and its text—''*may* grant asylum,'' indicating that the Secretary of Homeland Security, on considering an asylum application, may determine not to grant it—confers adjudicatory authority.

Cross-references between the asylum statute and the expedited removal statute provide further support for the conclusion that the asylum statute authorizes DHS to adjudicate defensive asylum applications. *See, e.g.,* INA 208(a)(1), 8 U.S.C. 1158(a)(1) (citing INA 235(b), 8 U.S.C. 1225(b)); INA 235(b)(1)(A)(i), (ii), 8 U.S.C. 1225(b)(1)(A)(i), (ii) (citing INA 208, 8 U.S.C. 1158). The legislative history of the asylum statute supports this reading as well. Prior to 2005, section 208(b)(1)(A) referred only to the Attorney General. *See* INA 208(b)(1) (2000), 8 U.S.C. 1158(b)(1) (2000). Congress specifically added in certain references to the Secretary of Homeland Security in the REAL ID Act of 2005 and backdated the references' effectiveness to the HSA's effective date. Public Law 109–13, div. B, 101(a)(1), (2), (h)(1), 119 Stat. 231.[61] In addition, the REAL ID Act's conference report explains that the Act amended INA 208(b)(1) ''to clarify that the Secretary of Homeland Security and the Attorney General both have authority to grant asylum,'' ''[b]ecause both the Secretary of Homeland Security and the Attorney General may now exercise authority over asylum depending on the context in which asylum issues arise.'' H.R. Rep. No. 109–72, at 162 (2005).

Last, although the Departments acknowledge that some statements in IIRIRA's legislative history could be read to suggest an expectation that noncitizens detained for ''further consideration'' would be placed in ''normal non-expedited removal proceedings,'' *see, e.g.,* H.R. Rep. No. 104–828, at 209 (1996), the legislative history is inconsistent and, in any event, ''legislative history is not the law,'' *Epic Sys.,* 138 S. Ct. at 1631. The Departments decline to read a limitation from the inconsistent legislative history into otherwise open-ended statutory text.

Comments: Several commenters remarked that the proposed rule would create a rushed adjudication process in violation of U.S. obligations under both domestic and international law and contrary to United Nations High Commissioner for Refugees (''UNHCR'') guidance. Pursuant to such guidance, commenters recommended that the Departments make efforts to maximize asylum seekers' access to counsel and argued that the detention of asylum seekers poses obstacles in this regard. Another commenter requested that no part of the asylum process, including the credible fear interview, should occur in a U.S. Customs and Border Protection facility. Similarly, another commenter cited UNHCR guidance and argued that accelerated procedures must, under international law, minimize risks of non-refoulement by giving asylum seekers guidance on the procedure itself and access to necessary facilities, including a competent interpreter, for submitting a protection claim, as well as the right to appeal a negative fear determination.

Response: The Departments disagree with the commenters that the procedures for considering protection claims promulgated in this rule violate U.S. or international law. As an initial

[61] That is not to say that the Secretary lacks other authorities in INA 208, 8 U.S.C. 1158, where Congress did not expressly add the Secretary in the REAL ID Act of 2005. Since enactment of the HSA, Congress has inserted piecemeal references to the Secretary in various provisions of the INA without doing so comprehensively.

note, while the Departments do consider and value UNHCR guidance in interpreting the United States' obligations under the 1967 Refugee Protocol, such guidance is not binding. The Departments agree with the commenters on the need to provide access to counsel to individuals making fear claims and have done so in this rule. For example, 8 CFR 235.3(b)(4)(ii) provides that prior to a credible fear interview, a noncitizen shall be given time to contact and consult with any person or persons of their choosing. In 8 CFR 208.30(d)(4), DHS provides that such person or persons may be present at the credible fear interview. In 8 CFR 208.9(b), DHS provides that individuals may have counsel or a representative present at affirmative asylum interviews or Asylum Merits interviews. In 8 CFR 1240.3 and 1240.10(a)(1), DOJ provides that noncitizens may have representation in section 240 proceedings before the IJ. The provisions at 8 CFR 1240.3 and 1240.10(a)(1) will apply in removal proceedings under this rule; though these proceedings are streamlined, noncitizens in them will have the right to representation at no expense to the Government. Furthermore, the Departments plan to ensure as part of the service of the positive credible fear determination, where an individual is placed in the Asylum Merits process, that they are provided with a fact sheet explaining the process and a contact list of free or low-cost legal service providers similar to what the individual would be provided if they were issued an NTA and placed into section 240 removal proceedings before EOIR.

The Departments agree with the commenters that individuals subject to an accelerated procedure, such as a credible fear screening within expedited removal, should be provided guidance about the procedure, including information about the right to review of a negative credible fear determination. In 8 CFR 235.3(b)(4)(i), DHS continues to provide that individuals referred for credible fear interviews receive a written disclosure on Form M–444, Information About Credible Fear Interview, describing ''[t]he purpose of the referral and description of the credible fear interview process''; ''[t]he right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government''; ''[t]he right to request a review by an [IJ] of the asylum officer's credible fear determination''; and ''[t]he consequences of failure to establish a credible fear of persecution or torture.'' Additionally, for every credible fear interview, asylum officers are trained to explain the purpose of the interview and ensure the individual understands. In addition, 8 CFR 208.30(d)(2) requires asylum officers conducting credible fear interviews to verify that the noncitizen has received Form M–444, Information About Credible Fear Interview, and to determine that they understand the credible fear determination process. Under this rule, if an asylum officer determines an individual does not have a credible fear of persecution or torture, the asylum officer must refer the individual to an IJ if the individual requests review or refuses or fails to indicate whether he or she requests review of the asylum officer's credible fear determination. 8 CFR 208.30(g)(1), 1208.30(g)(2)(i). The process for IJ review of negative credible fear determinations involves the creation of a record of proceeding, the receiving of evidence, the provision of interpreters, and the right to consult with a person or persons of the individual's choosing prior to the review. *See* INA 235(b)(1)(B)(iv), 8 U.S.C. 1225(b)(1)(B)(iv); 8 CFR 1003.42.

The Departments further agree with commenters on the need to provide competent interpretation. In 8 CFR 208.30(d)(5), DHS continues to provide that asylum officers conducting credible fear interviews will arrange for the assistance of an interpreter for noncitizens unable to proceed effectively in English where the asylum officer is unable to proceed competently in a language the alien speaks and understands. The rule provides in 8 CFR 208.9(g)(2) that asylum officers conducting Asylum Merits interviews will arrange for interpreter services for applicants unable to proceed effectively in English. Similarly, EOIR will provide interpretation services in credible fear determinations and hearings before an IJ. 8 CFR 1003.42(c), 1240.5. The Departments have mechanisms in place to ensure the quality of interpretation, including the absence of improper bias. These include training adjudicators to recognize signs of potential problems with interpretation and taking appropriate remedial measures; channels to report interpretation issues to the contracting entities providing interpretation services; and the periodic review of the terms and conditions of interpretation services contracts.

Regarding the commenters' opposition to the detention of asylum seekers, the Departments note that INA 235(b)(1)(B)(iii)(IV), 8 U.S.C. 1225(b)(1)(B)(iii)(IV), provides that individuals receiving credible fear interviews ''shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.'' INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii), further provides that noncitizens who receive a positive credible fear determination ''shall be detained for further consideration of the application for asylum.'' However, the INA additionally authorizes the Secretary to parole into the United States temporarily, on a case-by-case basis, such individuals ''for urgent humanitarian reasons or significant public benefit.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). And as explained in more detail above, the Departments have provided in this rule for the reform of certain regulatory provisions implementing this statutory authority for individuals detained in the expedited removal process and for those pending a credible fear determination or any review thereof.

Similarly, the Departments disagree with commenters' proposal of disallowing credible fear interviews by USCIS asylum officers in CBP facilities during the credible fear process and note that this proposal is outside the scope of this rulemaking. Given the expedited nature of credible fear interviews and their role in initial processing of a covered noncitizen, CBP plays an important role in referral of claims of fear to a USCIS asylum officer. While the Departments have implemented safeguards to decouple law enforcement aims from the sensitive nature of protection screening, DHS and DOJ will remain flexible in how they use DHS facilities.

2. Need for the Proposed Rule/DOJ and DHS Rationale

Comments: A commenter stated that the rule would create stronger ''pull factors'' encouraging foreign nationals to take advantage of quick release on parole and with the expectation that they would be able to live and work in the United States indefinitely while seeking asylum through an even more extended process than now exists. Other commenters argued that the proposed rule would lead to granting more asylum applications and that such an outcome is inappropriate because most asylum applications are not meritorious. Another commenter similarly argued that requiring noncitizens to prove their worthiness for a ''discretionary form of relief'' is required under existing laws and consistent with congressional intent; the commenter faulted the proposal for, in the commenter's view, disregarding the requirements of the expedited removal statute.

Conversely, a commenter stated that the proposed rule wrongly assumes that

asylum seekers at the border are more likely to have fraudulent claims and suggested imposing section 240 proceedings as the mechanism for review of asylum officer adjudication. The commenter cited a statistic that found that ''83 percent of [affirmative asylum] cases that asylum officers did not grant after interview were subsequently granted asylum by the immigration courts in 2016.'' Another commenter noted that the increase in credible fear referrals in the past decade more likely resulted from the deterioration of human rights conditions in nearby countries rather than an increase in fraudulent claims.

Response: The Departments disagree with the generalized belief that the availability of parole in accordance with INA 212(d)(5), 8 U.S.C. 1182(d)(5), serves as a pull factor for individuals who would be covered by this process. As stated above in Section IV.B.2.a of this preamble, recent surveys of individuals seeking to migrate to the United States have found that individuals cite a variety of factors, often in combination, for leaving their country of origin. While economic concerns and a belief in American prosperity and opportunity are common reasons stated, violence and insecurity have been cited as reasons for migrating by majorities or near majorities of those surveyed.[62] To the extent that individuals are motivated by economic concerns, the mere possibility of parole out of custody marginally earlier—based on an individualized determination—is not expected to significantly increase or alter the incentives that lead an individual to journey to the United States or remain in their country of origin. Importantly, noncitizens in expedited removal who are paroled prior to a credible fear determination (that is, the noncitizens affected by this IFR's amendment to the regulations concerning parole) will not be eligible for employment authorization based on having been paroled.

As to the claim that the majority of asylum applications are fraudulent, the Departments disagree. This assertion is not supported by fact. Moreover, denied asylum claims are not necessarily fraudulent. If an individual is not granted asylum or related protection by a USCIS asylum officer, it may be because they are ineligible for protection or have not shown that they merit a discretionary grant of asylum. In addressing commenters' concern about the percentage of affirmative asylum applications that were not granted by USCIS but subsequently granted asylum by EOIR, the Departments note that numerous factors may explain this difference in outcomes, including that the IJ may be presented with additional evidence and testimony beyond what was heard by the asylum officer, and that the IJ may consider the asylum claim in light of changed circumstances underlying the application since the asylum officer's decision. INA 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D).

Comment: Many commenters expressed concern for ensuring balance between fairness and efficiency. Commenters noted that addressing immigration backlogs should be the Departments' priority, but the commenters also stated that procedural safeguards must be retained. Other commenters supported the implementation of a nonadversarial hearing process but asserted that due process concerns related to the expedited removal process could undermine the Departments' goals of improving fairness or efficiency. Another commenter stated that compressed timelines may harm applicants who need time to develop trust in their attorneys and the asylum system.

Response: The Departments agree that addressing the backlog of cases should be a priority, and applicants for asylum and related protection must be given due process. The Departments anticipate this rule will divert certain cases from immigration court and will enhance efficient processing of noncitizens subject to the expedited removal process, thereby stemming the growth of EOIR's current backlog. The Departments also agree that ensuring fairness while being efficient may take time to execute on a national scale. It is for that reason that the Departments adopt a phased approach such that efficiencies can be developed while fairness is not lost due to administrative exigencies. While asylum applications are governed by a statutory timeline and this rule also uses a timeline to ensure applications stay on track, the Departments have incorporated safeguards to ensure that integrity is not compromised for the sake of administrative efficiency. Specifically, as noted in the regulatory text, the IFR provides for appropriate exceptions to the timelines at various stages of the asylum case, including submission of late-filed evidence and the timing of scheduled hearings.

Comments: Comments attributed the immigration court backlog to ''confusing and rapid fluctuations in the agencies' interpretation of the particular social group definition,'' changes in DHS prosecutorial discretion policies, policies divesting IJs of authority to control their dockets, BIA and Attorney General opinions that preclude IJs from relying on parties' stipulations, and office and court closures resulting from the COVID–19 pandemic.

Response: The Departments recognize commenters' concerns that numerous factors may impact the pending caseload. Accordingly, there may be numerous individual and combined approaches for addressing this issue. The Departments will not discuss at length the potential factors identified by commenters, as they are largely outside of the scope of this rulemaking.

However, the Departments note that the goal of this IFR is to implement more efficient procedures for adjudicating certain protection-based claims. This will, in turn, help address the pending caseload while also ensuring that such cases are given appropriate full and fair consideration. To the extent that the IFR limits IJs' authority to fully control their dockets, for example by establishing a regulatory timeline for scheduling and adjudicating these claims, the Departments believe that this regulatory schedule will ensure efficient processing of such claims while also permitting sufficient flexibility for IJs to deviate from the schedule by granting continuances where appropriate.

Comments: One commenter stated that expediting the processing of asylum claims will not solve the current border crisis if the Administration also expands the categories of eligibility for asylum and stated that an improvement to asylum efficiency requires a combination of tightening the screening standards of eligibility for asylum and faster processing, including swift removal of those with meritless claims.

Another commenter asserted that the Departments must not only consider immigration through a national security perspective, but must also pay attention to ''humanitarian protection, legal immigration and naturalization, foreign student education and cultural exchange, and economic competitiveness.'' The commenter expressed approval of the proposal in light of the challenges posed by backlogs. Conversely, at least one other commenter stated that the Departments should focus more on national security.

Response: The Departments agree that fair and efficient processing of asylum claims is in the interest of the American people. Such a program of humanitarian protection not only speaks to American values of altruism, inclusiveness, and charity but is necessarily tied to our national security and economic interests. *See, e.g.,* Deborah E. Anker &

[62] *See supra* note 54.

Michael H. Posner, *The Forty Year Crisis: A Legislative History of the Refugee Act of 1980,* 19 San Diego L. Rev. 9 (1981) (noting that humanitarian protection speaks to American values). National security is a critical aspect of the asylum and refugee protection programs, not only because the Departments vet applicants to ensure they are not ineligible for asylum on national security grounds, but also because ensuring a safe haven for forcibly displaced persons around the world can promote national security. *See, e.g.,* Elizabeth Neumann, *Robust Refugee Programs Aid National Security* (Dec. 17, 2020), *https://immigrationforum.org/wp-content/uploads/2020/12/Robust-Refugee-Programs-Aid-National-Security12_16_20.pdf* (last visited Mar. 14, 2022). In this rule, the Departments are not expanding asylum eligibility, but putting forward procedures that will use their respective resources to more effectively and efficiently issue decisions on protection claims. The Departments believe that such efficiencies will allow meritorious claims to be granted more promptly and will facilitate removal of those individuals who do not warrant protection from removal.

3. Prior Immigration Rulemakings

Comments: Two commenters expressed support for the immigration rulemakings finalized during the prior Administration, stating that they kept borders safe and reduced the flow of unauthorized migrants. However, one commenter stated that the prior Administration destroyed the immigration system by overturning previously accepted legal interpretations and implementing procedures to deny people asylum. Another commenter expressed support for abandoning regulatory changes implemented under the prior Administration that obstructed access to asylum relief. One commenter stated that the proposed changes to the screening process for people in expedited removal proceedings are an important improvement over the previous regulatory changes implemented under the prior Administration.

A commenter asserted that neither the Global Asylum rule nor the Security Bars rule should be implemented, as their provisions are incompatible with international legal standards and could have risks for individuals seeking protection in the United States. Another commenter suggested that, to ensure cases move quickly through asylum offices and court systems without delay, DHS and DOJ should reverse the prior rules and policies such as the TCT Bar rule, Presidential Proclamation Bar IFR, Global Asylum rule, and Security Bars rule.

A commenter stated that two asylum-related rules, the Global Asylum rule and Procedures for Asylum and Bars to Asylum Eligibility, 85 FR 67202 (Oct. 21, 2020) (''Criminal Bars to Asylum rule''), issued by the prior Administration were issued in violation of the HSA and the Federal Vacancies Reform Act (''FVRA'') and did not provide sufficient time for public comment on their ''complicated provisions.'' Therefore, the commenter said, both rules are null and void. The commenter also asserted that the provision of the Global Asylum rule that forced people into asylum-and-withholding-only proceedings was inconsistent with the INA, as Congress created a default rule that arriving individuals seeking asylum are to be placed in section 240 removal proceedings. The commenter also wrote that DHS and DOJ acted arbitrarily and capriciously by requiring individuals with credible fear findings to be placed in asylum-and-withholding-only proceedings.

Another commenter stated that DHS should continue to rescind employment authorization rules issued by the prior Administration because they were issued by agency officials in violation of the Administrative Procedure Act (''APA''). With respect to employment authorization based on a pending asylum application, the commenter said this Administration should immediately restore the 150-day waiting period and 30-day processing time requirement for asylum seekers.

Response: The Departments are revisiting and reconsidering numerous asylum-related rulemakings and policies in accordance with Executive Order 14010, Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border (''E.O. on Migration''), and the E.O. on Legal Immigration. The E.O. on Migration provides that the ''United States will . . . restore and strengthen our own asylum system, which has been badly damaged by policies enacted over the last 4 years that contravened our values and caused needless human suffering.'' 86 FR 8267. The E.O. on Migration directs the Departments to determine whether to rescind various rules, such as the Presidential Proclamation Bar IFR, the TCT Bar rule, and other policies, which the Departments have been reviewing and reconsidering. *See* 86 FR 8269–70. In addition, the E.O. on Legal Immigration instructed the Secretary of State, Attorney General, and Secretary of Homeland Security to ''identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers.'' 86 FR 8277. The Departments have outlined several rulemaking efforts in the Spring and Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, consistent with the E.O. on Migration and the E.O. on Legal Immigration.[63] The Departments plan to address the Presidential Proclamation Bar IFR, TCT Bar rule, Criminal Bars to Asylum rule, and other provisions of the Global Asylum rule in separate rulemakings.

The Departments acknowledge the commenter's concerns about the regulatory changes made in the Global Asylum rule, which are enjoined, related to placing noncitizens with positive credible fear determinations in asylum-and-withholding-only proceedings. As explained earlier in this IFR, the Departments are amending regulations to allow for USCIS to retain such noncitizens' asylum applications for a nonadversarial Asylum Merits interview before an asylum officer, rather than initially refer them to an IJ for asylum-and-withholding-only proceedings, as provided in the presently enjoined regulation. *See* 8 CFR 208.30(f). Meanwhile, DHS maintains the discretion to place a covered noncitizen in, or to withdraw a covered noncitizen from, expedited removal proceedings and issue an NTA to place the noncitizen in section 240 removal proceedings at any time after they are referred to USCIS for a credible fear determination. *See* 8 CFR 208.30(b), (f); *Matter of J–A–B– & I–J–V–A–,* 27 I&N Dec. at 171; *Matter of E–R–M– & L–R–M–,* 25 I&N Dec. 520, 523–24 (BIA 2011).

On December 23, 2020, the Departments published the Security Bars rule, which was scheduled to become effective on January 22, 2021. The effective date of the Security Bars rule has been delayed several times,

[63] *See* Executive Office of the President, OMB, OIRA, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaHistory* (last visited Mar. 14, 2022) (select ''Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions,'' then select DHS or DOJ); Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaMain* (last visited Mar. 14, 2022) (select DHS or DOJ).

most recently until December 31, 2022.[64] Thus, the Security Bars rule is not currently in effect. The Departments are reviewing and reconsidering the Security Bars rule and plan to publish a separate NPRM to solicit public comments on whether to modify or rescind the Security Bars rule.[65] The commenters' claims related to these rules, the rules related to employment authorization for noncitizens with pending asylum applications,[66] and the HSA, APA, and FVRA fall outside of the scope of this rulemaking, and thus are not being addressed.

Comments: A commenter expressed support for this Administration's decision to vacate an Attorney General ruling issued under the prior Administration that prohibited IJs from managing their own dockets through administrative closure. The commenter suggested that the Administration should promulgate clear rules on administrative closure, which can improve inefficiencies and backlogs.

Response: This comment is beyond the scope of this rule because the rule does not involve or impact administrative closure. DOJ plans, however, to initiate a rulemaking that provides general administrative closure authority to IJs and the BIA.[67]

D. Proposed Changes

1. Applicability

Comments: A commenter asserted that it would be unfair for asylum seekers who have been issued an NTA to be unable to have a nonadversarial interview before an asylum officer or a review before an IJ. The commenter stated that if the Administration has determined that the USCIS interview process is the most efficient and fair, then it should also be accessible to noncitizens ICE places in section 240 proceedings, such as pregnant women and families.

A commenter asserted that the rule does not remedy the unequal treatment of affirmative and defensive cases, remarking that it instead goes halfway, by saying that some noncitizens in expedited removal—those referred for hearings before asylum officers—could seek a ''partial review'' with an IJ instead of the ''full case review'' that those in the affirmative asylum process would have if they were not granted asylum by USCIS. Additionally, a commenter remarked that it is unclear why the rule differentiates between ''normal'' cases and those of stowaways and asylum seekers physically present in or arriving in the Commonwealth of the Northern Mariana Islands.

Response: The Departments disagree that it is unfair for noncitizens who are placed in section 240 removal proceedings to continue to have their claims heard before IJs rather than in nonadversarial interviews before USCIS in the first instance. It is well established that DHS officials have broad discretion to decide who should be subject to arrest, detainers, removal proceedings, and the execution of removal orders. *See Arizona* v. *United States,* 567 U.S. 387, 396 (2012) (''A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.'' (citation omitted)). USCIS, in particular, has the prosecutorial discretion, as appropriate, to place a covered noncitizen in, or to withdraw a covered noncitizen from, expedited removal proceedings and issue an NTA to place the noncitizen in section 240 removal proceedings at any time after they are referred to USCIS for a credible fear determination. *See, e.g., Matter of E–R–M–& L–R–M–,* 25 I&N Dec. at 523–24. Such discretion is needed because there may be circumstances in which it may be more appropriate for a noncitizen's protection claims to be heard and considered in the adversarial process before an IJ in the first instance (for example, in cases where a noncitizen may have committed significant criminal activity, have engaged in past acts of harm to others, or pose a public safety or national security threat). In addition, the Departments anticipate that DHS will also need to continue to place many noncitizens receiving a positive credible fear determination into ordinary section 240 removal proceedings while USCIS takes steps needed to allow for full implementation of the new process for all cases. This rule establishes an appropriate alternative to the exclusive use of ordinary section 240 removal proceedings. Nevertheless, noncitizens who are placed into streamlined section 240 removal proceedings will continue to have access to the same procedural protections that have been in place for asylum adjudications for many years. This rule authorizes the Departments to employ a fair and efficient procedure for individuals to seek protection, which includes opportunities for applicants to present their claims fully and fairly before asylum officers in a nonadversarial setting and, if not granted asylum, before IJs in streamlined section 240 removal proceedings. The comment related to the processing of claims of stowaways and noncitizens arriving from the Commonwealth of the Northern Mariana Islands falls outside of the scope of this rulemaking and, therefore, is not being addressed. As noted in the NPRM, this IFR would not apply to (1) stowaways or (2) noncitizens who are physically present in or arriving in the Commonwealth of the Northern Mariana Islands who are determined to have a credible fear. Such individuals would continue to be referred to asylum-and-withholding-only proceedings before an IJ under 8 CFR 208.2(c).

2. Parole

a. General Comments on Parole

Comments: Several commenters provided general comments on parole or the rule's proposed change to the regulations governing the circumstances in which individuals in expedited removal proceedings may be paroled. Many of these commenters expressed opposition to DHS loosening the parole requirements or paroling noncitizens ''simply because they lack resources to detain them.'' Some of these commenters expressed doubt about the legality of paroling noncitizens simply because detention is unavailable or impractical.

Response: The Departments acknowledge and take seriously the concerns expressed. The Departments

[64] The Security Bars rule's effective date was first delayed by the rule, Security Bars and Processing; Delay of Effective Date, 86 FR 6847 (Jan. 25, 2021), until March 22, 2021. The effective date of the Security Bars rule was again delayed until December 31, 2021, Security Bars and Processing; Delay of Effective Date, 86 FR 15069 (Mar. 22, 2021), and further delayed until December 31, 2022, Security Bars and Processing; Delay of Effective Date, 86 FR 73615 (Dec. 28, 2021).

[65] *See* Executive Office of the President, OMB, OIRA, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Bars to Asylum Eligibility and Procedures, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC69* (last visited Mar. 14, 2022); Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, Bars to Asylum Eligibility and Procedures, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1615-AC69* (last visited Mar. 14, 2022).

[66] On February 7, 2022, in *AsylumWorks* v. *Mayorkas,* No. 20–cv–3815, 2022 WL 355213, at *12 (D.D.C. Feb. 7, 2022), the United States District Court for the District of Columbia vacated two DHS employment authorization-related rules entitled ''Asylum Application, Interview, and Employment Authorization for Applicants,'' 85 FR 38532 (June 26, 2020) (''2020 Asylum EAD Rule''), and ''Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications,'' 85 FR 37502 (June 22, 2020).

[67] Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1125-AB18* (last visited Mar. 14, 2022).

note, however, that the comments suggesting that the Departments had proposed for parole to be automatically granted upon a determination that detention is ''unavailable or impracticable'' are mistaken; as proposed, parole would be ''in accordance with section 212(d)(5) of the Act and § 212.5 of this chapter,'' 86 FR 46946 (8 CFR 235.3 (proposed)), which impose additional prerequisites to the exercise of parole authority. In this IFR, DHS is finalizing a change to the DHS regulations that will make even clearer that parole of noncitizens who are being processed under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), may be granted ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). Because the regulatory text that DHS is finalizing no longer specifies that parole may be considered when detention is ''unavailable or impracticable,'' the Departments decline to address in detail commenters' arguments respecting that particular language. Nevertheless, the Departments have explained the longstanding regulatory and policy basis, consistent with the statutory authority, for taking detention resources into consideration when making parole determinations. *See supra* Section III.F of this preamble.

b. Change in Circumstances Under Which Parole May Be Considered

Comments: Many commenters either supported the proposed expansion of the circumstances under which parole may be considered or urged the adoption of what they characterize as a broader standard, consistent with section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5). Some commenters urged DHS to adopt the long-standing parole standards applicable in other circumstances described in 8 CFR 212.5(b). Commenters stated that they welcomed a change that would allow families the possibility of parole—or that would allow for greater availability of parole in general—and help ensure the availability of detention space for those who pose the greatest threats to national security and public safety. One commenter stated that the proposed change would be an effective step toward a policy that, where possible, ensures noncitizens' compliance with appointments and court dates and timely departure from the United States, if ordered removed, through supervision and case management rather than through detention. Numerous commenters stated that, while they welcomed the proposed rule's expansion of the circumstances in which parole may be considered, the proposed provisions were too narrow and should be amended to allow consideration of parole in a broader range of circumstances, consistent with the breadth of DHS's statutory parole authority under section 212(d)(5) of the Act, 8 U.S.C. 1182(d)(5). Commenters stated that adopting the standard of 8 CFR 212.5(b), which would allow parole consideration, among other things, when continued detention is not in the public interest, would give the agency more flexibility, achieve a uniform regulatory standard across the removal process, and promote family stability.

A few commenters requested that DHS establish a presumption of parole, with DHS bearing a burden of demonstrating by clear and convincing evidence that there is a need for detention based on the public interest. Commenters also suggested that this standard should apply to all asylum seekers who establish a credible fear during the credible fear interview, regardless of their manner of entry, and regardless of whether they are referred for section 240 proceedings or for an Asylum Merits interview. One commenter urged that the regulations should support a presumption that detention is not in the public interest in cases of survivors fleeing gender-based violence, as well as for others who have established a credible fear. Some commenters also asked the Departments to clarify that asylum seekers should only be detained as a last resort. Similarly, one commenter stated that detention should only be used when it is demonstrated that an individual is a danger to the community or a flight risk that cannot be mitigated by other conditions. Another commenter stated that ''detailing clear and consistent provisions for parole and detention'' would be more efficient than case-by-case determinations. One commenter urged that the regulations at 8 CFR 235.3(b) should be amended to emphasize release from custody at the earliest possible stage of proceedings and asserted that parole eligibility should not be contingent on the outcome of credible fear screening.

Other commenters opposed the proposed expansion of the circumstances under which parole may be considered. Some commenters opposed the NPRM on the ground that any policy that makes it more likely that noncitizens encountered at the border will be released from custody will, in the commenters' view, encourage illegal immigration and harm the integrity of the immigration system. In explanation, one commenter discussed past policy changes related to parole and stated that the lesson to be learned is that as soon as a policy is enacted that makes it more likely that asylum seekers will be released from DHS custody, the number of asylum seekers who enter to exploit that policy ''balloons.'' Other commenters expressed concern that noncitizens who are aware they most likely will not be granted asylum will have a strong incentive to abscond. Citing the statistic that 38 percent of people who receive a positive credible fear determination and are released do not file an asylum application, a commenter expressed concern about a more permissive approach to parole, especially if individuals realize that their cases will no longer take years to resolve and thus their best chance for remaining in the United States would be to abscond.

Response: The Departments acknowledge the range of views expressed, from support for the proposed regulatory amendment, to support for adopting instead the standard of 8 CFR 212.5(b), to support for more expansive use of parole for noncitizens subject to INA 235, 8 U.S.C. 1225, to opposition to any change that would expand the circumstances under which parole may be considered for such individuals. As explained above, having considered all comments received, the Departments agree with those commenters who suggested that the standard of 8 CFR 212.5(b)—the standard already applicable to, *e.g.,* noncitizens who have received a positive credible fear determination and whose cases are pending—should replace the more constrained standard of 8 CFR 235.3(b)(2)(iii) and (b)(4)(ii), which allow for parole only for medical emergency or legitimate law enforcement objective. The Departments agree that the standard of 8 CFR 212.5(b), allowing for parole for urgent humanitarian reasons or significant public benefit, will give DHS more flexibility to delineate the circumstances in which parole may be considered, on a case-by-case basis and consistent with section 212(d)(5)(A) of the Act, 8 U.S.C. 1182(d)(5)(A), for this population. That said, the Departments emphasize that individuals who have not yet received a positive credible fear determination may not be similarly situated to individuals who have, as those pending a credible fear interview may shortly be subject to a final removal order. As a result, subsequent directives or guidance will clarify how officers and agents may determine whether ''continued detention is not in the public interest,'' 8 CFR 212.5(b)(5), for noncitizens who are being processed

under INA 235(b)(1), 8 U.S.C. 1225(b)(1), and who have not yet received a positive credible fear determination for purposes of deciding whether parole for urgent humanitarian reasons or significant public benefit would be warranted. Thus, while the IFR establishes a uniform regulatory standard in the DHS regulations for consideration of parole for individuals described in 8 CFR 235.3(b) (*i.e.,* those in the expedited removal process) and 8 CFR 235.3(c) (*i.e.,* ''arriving aliens'' placed in section 240 removal proceedings), application of that standard on a case-by-case basis will appropriately account for individualized considerations particular to noncitizens who have not already been determined to have a credible fear of persecution or torture, as explained above in Section III.F of this preamble.

The Departments disagree with the commenters who urged that the regulations at issue should be amended to establish a presumption of parole, or to provide that detention will be used only as a last resort. These commenters did not explain how the standards they proposed would be permitted under section 212(d)(5)(A) of the Act, 8 U.S.C. 1182(d)(5)(A), and the Departments conclude that such options would be inconsistent with DHS's discretionary parole authority.

The Departments also disagree with the commenters who opposed loosening current regulatory restrictions on the exercise of parole authority on the ground that doing so would encourage illegal immigration and harm the integrity of the immigration system. These comments do not account for the fact that the amended standard for parole applies only to individuals being processed under the Departments' expedited removal authority under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), and that the effect of the amendment will be to allow DHS to process more individuals through expedited removal rather than referring them to lengthier section 240 removal proceedings. As a result, individuals who express no fear of persecution or torture or who are determined not to have a credible fear can be ordered removed more promptly, which should discourage such individuals from seeking to enter the United States and thereby improve the integrity of the immigration system. The Departments acknowledge commenters' contention that increases in the number of noncitizens at the border have been observed after various past policy changes. However, considering the many complex factors that may affect the rates of individuals seeking to enter the United States and make a claim for asylum, the Departments disagree that this perceived correlation amounts to evidence of causation or to a compelling reason to depart from a policy change that is otherwise justified. The Departments acknowledge the concern expressed by some commenters about the risk that paroled individuals may abscond but emphasize that the regulations will continue to provide that parole is available only to those noncitizens who present ''neither a security risk nor a risk of absconding.'' With regard to the commenter who suggested that noncitizens who do not file an asylum application after receiving a positive credible fear determination mean to abscond rather than pursue an asylum claim, the Departments note that failure to timely submit an asylum application after receiving a positive credible fear determination may be due to a lack of understanding or inability to obtain the language or other assistance needed to complete and file a Form I–589, Application for Asylum and for Withholding of Removal, or for other reasons not indicative of an intent to abscond. The Departments are unaware of, and commenters did not provide, any information showing that a noncitizen's intention to abscond can reasonably be inferred from a failure to timely submit an asylum application. In addition, DHS officials, in their discretion, may impose reasonable conditions on the grant of parole (including, *e.g.,* periodic reporting to ICE) to ensure that the individual will appear at all hearings and for removal from the United States when required to do so. *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); 8 CFR 212.5(c)–(d).

Comments: Some commenters stated that the NPRM would establish a subjective, ambiguous standard for when parole may be allowed. Specifically, commenters stated that the proposed rule did not address what condition or set of conditions would be sufficient for DHS to consider detention ''impracticable'' and recommended that the rule utilize more definite language. Commenters also remarked that ''unavailable'' is not clearly defined and within DHS's control to an extent that the proposed standard is ''ripe for agency abuse.''

Response: Although the Departments disagree that the standard proposed in the NPRM was ''ripe for agency abuse,'' the Departments acknowledge commenters' uncertainty about the contours of the proposed standard. The Departments are not finalizing the proposed amendment that would have allowed parole consideration if ''detention is unavailable or impracticable'' and, thus, need not further address that standard. Instead, DHS is finalizing an amendment that would allow for consideration of parole under the existing standards in 8 CFR 212.5(b), which, as explained in Section III.F above, includes parole on a case-by-case basis when continued detention is not in the public interest. The longstanding authority for DHS to take its detention capacity into account when making parole determinations is explained above, and future directives and guidance will build upon existing directives and guidance documents that are well understood by DHS officers and agents even as they are applied to the populations affected by this rule.

Comments: At least one commenter offered the following specific suggestions: That 8 CFR 235.3(b)(2)(iii) and (b)(4)(ii) be amended to clarify that DHS should parole people if continued detention is not in the public interest; that 8 CFR 235.3(c) be amended to clarify that any asylum seeker who is placed in section 240 removal proceedings may be released on parole in the public interest, regardless of their manner of entry, by deleting the phrase ''arriving alien(s)'' and replacing it with ''noncitizen(s)''; and that regulatory language be revised to ensure that all asylum seekers who establish a credible fear of persecution or torture are eligible for parole under 8 CFR 212.5(b)(5), regardless of whether they are referred to ordinary section 240 removal proceedings or have their cases retained by USCIS for an Asylum Merits interview.

Response: DHS is amending 8 CFR 235.3(b)(2)(iii) and (b)(4)(ii) to permit parole consideration in accordance with the longstanding regulation at 8 CFR 212.5(b), which includes parole in circumstances where continued detention is not in the public interest. The Departments emphasize that—consistent with INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A), and 8 CFR 212.5(b)—parole will be granted ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.''

The Departments decline the commenter's other suggestions. First, the commenter's suggestion to amend 8 CFR 235.3(c) in the manner suggested is outside the scope of this rule. This rule concerns only noncitizens processed under the expedited removal provisions of INA 235(b)(1), 8 U.S.C. 1225(b)(1), whereas 8 CFR 235.3(c) generally pertains to ''arriving aliens'' who are placed in section 240 proceedings. Second, 8 CFR 208.30(f) already provides that ''[i]f an alien, other than

an alien stowaway, is found to have a credible fear of persecution or torture,'' then ''[p]arole . . . may be considered only in accordance with section 212(d)(5) of the Act and 8 CFR 212.5'' to cover those who are placed directly into section 240 removal proceedings. DHS, moreover, is amending 8 CFR 212.5 to provide that the standard of 8 CFR 212.5(b) applies to noncitizens detained pursuant to 8 CFR 235.3(b), as well as 8 CFR 235.3(c). Finally, the Departments are adding language to 8 CFR 235.3(c) to allow for parole under the standard of 8 CFR 212.5(b) for noncitizens whose asylum cases are retained by or referred to USCIS for an Asylum Merits interview under this rule after a positive credible fear determination. Thus, regardless of whether the noncitizen's asylum case is retained by USCIS for adjudication on the merits or referred to immigration court, noncitizens who receive a positive credible fear determination are generally eligible for parole consideration under the standard of 8 CFR 212.5(b).

Comments: Some commenters stated that the proposed rule did not clearly indicate whether parole would be available (and if so, under what standard) for individuals who receive a positive credible fear determination and are placed into the new Asylum Merits process. These commenters suggested specific revisions to the text of current 8 CFR 235.3(c). A few other commenters also expressed doubt that individuals who receive a positive credible fear determination and are placed into the new Asylum Merits process would have access to parole.

Response: In the IFR, DHS is clarifying that parole will be available for individuals who receive a positive credible fear determination and are placed into the new Asylum Merits process under the standard of 8 CFR 212.5(b)—that is, under the same standard as for individuals who receive a positive credible fear hearing and are referred to immigration court. *See* 8 CFR 208.30(f), 8 CFR 235.3(c).

Comments: Some commenters asserted that the proposed rule's expansion of parole would be unlawful and unauthorized by Congress. One commenter stated that the proposed rule is ultra vires, contending that INA 235(b)(1), 8 U.S.C. 1225(b)(1), provides for the detention of noncitizens in expedited removal proceedings throughout the entire process, from apprehension to a determination on any subsequent asylum claim. This commenter also discussed the statutory history of the parole provision and claimed that it shows a congressional intent that parole be used in a restrictive manner. Other commenters urged that authorizing DHS to parole asylum seekers into the United States whenever DHS determines that detention is ''unavailable or impracticable'' would directly conflict with the INA and congressional intent to delegate only limited parole authority to DHS. One of these commenters stated that the rationale behind the proposed rule is ''pretextual at best'' and remarked that it simply provides a convenient, albeit ultra vires, reason to release asylum seekers from custody. Another commenter stated that, because current rates of migrant encounters mean that DHS will never have enough space to detain every person, detention would always be unavailable or impracticable, and more and more noncitizens would be released. Several commenters further stated that detention capacity is within DHS's control and that it can make space unavailable to effectively make the detention of any noncitizen unavailable or impractical, which would violate the INA.

Response: The Departments disagree that the expansion of the circumstances in which parole may be considered for a noncitizen in expedited removal proceedings proposed in the NPRM would be unlawful or ultra vires and also disagree with the unsupported assertion that the Departments' rationale is in any way ''pretextual.'' As explained above, Congress has given DHS discretion to ''parole'' a noncitizen who is an applicant for admission ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). The Departments have always understood this parole authority to apply to individuals detained pursuant to the detention provisions of INA 235, 8 U.S.C. 1225, and the Supreme Court has endorsed this interpretation in *Jennings* v. *Rodriguez,* 138 S. Ct. 830, 837, 844 (2018).

This rule amends DHS regulations to replace the exceptionally narrow standard governing the circumstances in which parole may be allowed for noncitizens being processed under expedited removal, and who have not yet received a credible fear determination, *see* 8 CFR 235.3(b)(2)(iii), (b)(4)(ii), with the broader regulatory standard that already governs the circumstances in which parole may be allowed after a noncitizen has received a positive credible fear determination, *see* 8 CFR 208.30(f)(2), 212.5(b). This broader regulatory standard is fully consistent with DHS's statutory parole authority. While the agency previously drew a distinction between the parole standard for those pending a credible fear determination (or whose inadmissibility is still being considered or subject to an expedited removal order) and those found to have a credible fear—perhaps as a matter of policy—there is no legal requirement for this distinction. The parole statute does not distinguish between the various procedural postures of noncitizens covered by INA 235(b), 8 U.S.C. 1225(b), or specifically reference any of the detention provisions at INA 235(b), 8 U.S.C. 1225(b). *See* INA 212(d)(5), 8 U.S.C. 1182(d)(5). There is, therefore, no reason on the face of the statute to read the detention provision at INA 235(b)(1)(B)(iii)(IV), 8 U.S.C. 1225(b)(1)(B)(iii)(IV), any differently from the identically worded detention provisions in INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii), and INA 235(b)(2)(A), 8 U.S.C. 1225(b)(2)(A), which the Supreme Court has endorsed as subject to the Secretary's full statutory release-on-parole authority. *See Jennings,* 138 S. Ct. at 844; *see also Clark* v. *Martinez,* 543 U.S. 371, 378 (2005) (''To give these same words a different meaning for each category [of person it applied to] would be to invent a statute rather than interpret one.'').

This amendment would also allow DHS, in making parole determinations for individual noncitizens on a case-by-case basis, to utilize its limited detention bed space for noncitizens found to be a flight risk or danger to the community, as well as permit the DHS officers to devote more time to their handling of assigned detained cases—allowing for more efficient processing of issues, including responding to inquiries, requests for release, and securing travel documents for noncitizens subject to orders of removal. DHS would also be able to reallocate detention resources to other areas, such as alternatives to detention, which are not as cost prohibitive.

The Departments reject the contention that DHS's control over its detention capacity is so complete that it is capable of increasing the use of parole by artificially reducing available bedspace. The Department's capacity to detain an individual on any given day is determined by many different factors, including the availability of appropriated funds, the number and demographic characteristics of individuals in custody as well as those encountered at or near the border or within the interior of the United States, and the types of facilities with available bedspace. Capacity restrictions at individual facilities imposed for a variety of reasons ranging from public

health requirements to court-ordered limitations also constrain the availability of detention space.

Because the regulatory text that DHS is finalizing no longer specifies that parole may be considered when detention is ''unavailable or impracticable,'' the Departments decline to address in detail commenters' arguments respecting that particular language.

Comments: A few commenters that encouraged DHS to amend the regulations to provide for parole when continued detention is not in the public interest stated that this term should be interpreted to encompass, among other things, the impact of continued detention on an individual's or their family's physical or mental health, safety, well-being, family unity, and other considerations.

Response: As explained above, DHS intends to use further directives or guidance to promote fair and consistent determinations as to when ''continued detention is not in the public interest'' for noncitizens in expedited removal who have not yet received a credible fear determination. The Departments recognize that the term ''public interest'' is open to interpretation but note that the noncitizen's personal interests, while potentially relevant, are not determinative of whether continued detention is not in the public interest.

Comments: A few commenters stated that, although any change that increases DHS's ability to grant parole seems positive on its face, the proposed rule still leaves the decision of whether to parole an individual up to the discretion of a DHS officer. Commenters expressed concern about this discretion based on their experience with parole decisions they described as arbitrary or biased. Commenters recommended that the rule create accountability mechanisms and clear decision-making procedures to ensure parole requests are decided consistently, without bias or undue political influence, or in pro forma fashion without regard to the substance of the requests. For example, one commenter suggested there be a mandate that ICE provide a timely response in a language the applicant can understand that includes individualized analysis of the reasons why parole was denied. Another commenter recommended that DHS amend its regulations to include a specific time frame within which ICE officers must review parole requests and issue parole decisions, a mandate that parole interviews must take place before the issuance of a denial of a parole request, a requirement of detailed recordkeeping to help provide transparency and oversight of parole decisions, and an independent department charged with routinely reviewing each ICE field office's parole grant and denial rates. A commenter asked that the rule specify to whom at the agency asylum seekers should submit their parole requests, which officers make these decisions, and what documentation should be included or can be provided as satisfactory alternatives.

Response: The NPRM proposed to amend, and this IFR will amend, the DHS regulations specifying the circumstances in which parole may be considered for noncitizens in expedited removal proceedings. Additionally, consistent with the INA, DHS's exercise of discretion will be conducted on a case-by-case basis, given the unique factual circumstances of each case and to ensure the requirements for parole have been thoroughly considered and addressed. Comments that suggest new regulatory provisions to establish accountability mechanisms and decision-making procedures are therefore beyond the scope of the current rulemaking.

Comments: One commenter urged that the rule should not include detention availability as a factor for parole, since the determination of whether to deprive an individual of their liberty ''should never be contingent on or determined by the budget or physical infrastructure of a Federal agency.'' Another commenter expressed concern that the proposed rule's allowance for parole consideration when detention is unavailable or impracticable would lead to increased calls for detention beds, an outcome the commenter opposed. A commenter asserted that, under the expanded grounds for parole, detention should only be considered ''practical'' if asylum seekers are provided with the ability to access medical care, legal counsel, and language assistance.

Response: Because the regulatory text that DHS is finalizing no longer specifies that parole may be considered when detention is ''unavailable or impracticable,'' the Departments decline to address in detail commenters' arguments respecting that particular language. With regard to the comment premised on the idea that detention ''should never be contingent on or determined by the budget or physical infrastructure of a Federal agency,'' the Departments disagree. By statute, a noncitizen who is being processed under the expedited removal provisions of section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), is subject to detention unless DHS exercises its discretion to ''parole'' the noncitizen ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A). DHS's resources may appropriately be considered in determining whether to exercise parole authority pursuant to section 212(d)(5)(A) of the Act, 8 U.S.C. 1182(d)(5)(A). Indeed, the availability of DHS detention resources is integral from an operational standpoint. For example, there may be a limited number of available detention beds in a particular facility or an insufficient number of DHS officers available to handle the volume of detainees, thereby hampering DHS's ability to promptly and efficiently process cases. DHS can focus its detention resources on those noncitizens found to be a flight risk or danger to the community, particularly when there are a limited number of detention beds.

Comment: A few commenters stated that the proposed rule's expansion of the circumstances in which parole may be allowed is a welcome development but requested clarification regarding how the changed parole standard will be integrated into the proposed adjudicative process. Specifically, a commenter inquired whether a paroled person would be subject to the new procedure established by the rule and, if so, when and where the credible fear interview and Asylum Merits interview would take place. The commenter also asked whether a paroled person would be forced to remain near where they were detained and what the process would be for changing the venue of the asylum interview.

Response: The procedure established by the rule is available to parolees. If the person or family unit is paroled prior to their credible fear interview, the Departments anticipate that their credible fear interview and Asylum Merits interview, if applicable, will take place at a USCIS Asylum Office near their destination within the United States and that such persons would not be required to remain in the vicinity of where they were detained. DHS anticipates that the credible fear interview will normally take place within 30 days of referral of the noncitizen to USCIS. DHS officials, in their discretion, may impose reasonable conditions on the grant of parole (including, *e.g.,* periodic reporting to ICE) to ensure that the individual will appear at all hearings and for removal from the United States when required to do so. *See* INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); 8 CFR 212.5(c)–(d).

c. Availability of Employment Authorization for Those in Expedited Removal Who Have Been Paroled From Custody

Comments: Several commenters urged that the proposed regulations should be amended to provide for parole-based employment authorization eligibility for all people whom DHS paroles from detention, to respect the dignity of asylum seekers and ensure that they can support themselves and their families. Several commenters asserted that ensuring parole-based eligibility for an employment authorization document (''EAD'') for asylum seekers released from detention would help them secure housing, food, health care, and other necessities. Commenters discussed how authorizing asylum seekers to work at the earliest practicable stage would offer a variety of benefits to both asylum seekers and host communities, including helping to reduce their social and economic exclusion; reduce the risk that they experience extreme poverty, food insecurity, or homelessness; and alleviate the loss of skills, low self-esteem, and mental health problems that often accompany prolonged periods of idleness. One commenter also stated that barriers to employment authorization often impede asylum seekers' access to counsel or other services, such as food assistance, and remarked that asylum seekers' inability to work may have long-term negative impacts on their economic prospects and mental health. A commenter asserted that forcing parolees to wait for months or years for an adjudication of their claim without any means to find legal employment lends itself to abusive and harmful employment arrangements that are marked by unscrupulous employers taking advantage of asylum seekers' desperation. A commenter stated that the denial of EADs to parolees would have a particularly negative impact on LGBT migrants, as they often travel alone with no support system.

A commenter noted that the EAD is often the only government-issued identification an asylum seeker may have in their possession, and individuals forced to wait to apply for employment authorization would thus likely be without a valid identification, leading to challenges when securing housing, opening bank and utility accounts, or encountering law enforcement. The commenter concluded that limiting employment authorization for individuals released under 8 CFR 235.3(b)(4)(ii) would endanger the lives of asylum seekers and their families.

On the other hand, another commenter noted that it supports the decision to restrict EAD eligibility ''solely on the basis of receiving parole'' and recommended that this decision be maintained. The commenter asserted that DHS does not have the authority to grant EADs to asylum seekers for whom the INA does not provide such eligibility or for whom the INA expressly grants the Secretary discretionary authority. The commenter argued that it would be unreasonable to conclude that Congress authorized DHS to use parole to permit an indefinite number of asylum seekers to enter the United States, in its discretion, and to allow them to engage in employment. The commenter also said providing EAD eligibility ''solely on the basis of being paroled'' would serve as a powerful pull factor for illegal immigration.

Several commenters addressed the waiting period for EAD eligibility for asylum seekers. Some commenters argued that the one-year waiting period for EAD eligibility based on a pending asylum application, pursuant to the current DHS regulations at 8 CFR 208.7, is excessive and inhumane. One commenter stated that individuals forced to wait a year to apply for employment authorization would likely be unable to secure necessities such as food, shelter, and medical care. However, another commenter maintained that, per section 208(d)(2) of the Act, 8 U.S.C. 1158(d)(2), the Secretary cannot grant employment authorization to an asylum applicant until at least 180 days after the filing of the application for asylum. The commenter encouraged DHS to abide by the INA's 180-day restriction, arguing that failing to do so would encourage illegal immigration and fraud in the asylum system.

A commenter suggested that DHS require by regulation that parole-based EADs be adjudicated within 30 days of receipt, claiming that delays in USCIS adjudication force individuals to wait for months for parole-based employment authorization. A commenter, in asserting that the proposed rule's parole provision is an ultra vires application, stated that the proposed rule does not actually limit employment authorization. The commenter stated that, even though the proposed rule provides that parole would not serve as an independent basis for employment authorization, nothing in 8 CFR 274a.12(c)(8) prohibits applications filed after the asylum seeker files a completed asylum application.

Response: The Departments acknowledge the multiple comments both in support of and in opposition to the NPRM's provision restricting EAD-eligibility based on parole for this subset of parolees. The Departments have considered comments highlighting potential benefits that would accrue to asylum applicants and their support networks if they were to receive employment authorization earlier as well as the potential drawbacks of providing earlier employment authorization and balanced those benefits and drawbacks in light of the broader interests served in the rulemaking. On balance, the Departments believe that this rulemaking's overall framework promoting efficiency in the adjudication of protection-related claims and the overall statutory scheme with respect to obtaining employment authorization based on pending asylum applications is best served by finalizing the DHS regulatory language in the NPRM for several reasons.

First, the Departments note that the overall goal of the rulemaking is to ensure that noncitizens receive final decisions on their claims for protection as quickly and efficiently as possible, consistent with fundamental fairness, and ensuring that noncitizens appear for any interviews and hearings is key to this process. Providing parole-based employment authorization to noncitizens who are in expedited removal or in expedited removal with a pending credible fear determination (that is, employment authorization with no prerequisite waiting period) risks incentivizing more individuals to enter the United States and seek out this process in the hopes of obtaining parole under this framework while disincentivizing appearance. Moreover, individuals for whom employment authorization is the most salient benefit of securing asylum, if eligible, would have less of an incentive to appear for subsequent interviews and hearings. *See* 8 CFR 235.3(b)(2)(iii), (b)(4)(ii). Second, the Departments believe that their approach is consistent with the provisions in section 208(d)(2) of the Act, 8 U.S.C. 1158(d)(2), regarding a waiting period for employment authorization for asylum applicants, which states that ''[a]n applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum.'' INA 208(d)(2), 8 U.S.C. 1158(d)(2). The Departments recognize that the ''otherwise eligible'' language in section 208(d)(2) of the Act, 8 U.S.C. 1158(d)(2), could be read to encompass employment authorization based on

parole. However, noncitizens paroled with a pending credible fear determination are all seeking asylum (or related protection) and are being paroled on a case-by-case basis for urgent humanitarian reasons or significant public benefit while they await a screening interview on their protection claims. The Departments note that potential benefits associated with more expeditious employment authorization are expected under the new process in that the waiting period will begin running sooner here as an application will be considered filed at the time of a positive credible fear determination. Additionally, eligible noncitizens will likely receive a final determination granting relief or protection, and employment authorization incident to status, prior to being eligible for an employment authorization under 8 CFR 274a.12(c)(8) based on a pending asylum application.

With respect to waiting periods for asylum-based EADs generally, the Departments note that on February 7, 2022, in *AsylumWorks* v. *Mayorkas,* No. 20–cv–3815, 2022 WL 355213, at *12 (D.D.C. Feb. 7, 2022), the United States District Court for the District of Columbia vacated two DHS employment authorization-related rules entitled ''Asylum Application, Interview, and Employment Authorization for Applicants,'' 85 FR 38532 (June 26, 2020), and ''Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications,'' 85 FR 37502 (June 22, 2020). Finally, the Departments disagree with the commenter that states that the Secretary of Homeland Security lacks the discretionary authority to grant employment authorization to those paroled. The Departments note that the Secretary of Homeland Security, as a matter of policy for the reasons outlined above, is exercising his discretionary authority narrowly as to noncitizens who are in expedited removal or in expedited removal with a pending credible fear determination and who are paroled from custody.

d. Other Comments on Proposed Approach to Parole

Comments: A few commenters urged that detained asylum seekers should have access to bond determination hearings, as well as regular opportunities to challenge continued detention. Another commenter stated that regulations should ensure meaningful access to counsel for those in immigration detention, readily accessible confidential attorney-client meeting spaces, confidential free telephone and televideo communication options, as well as minimum restrictions on visitation.

Response: These comments are beyond the scope of the current rulemaking, given that the rule neither addresses bond determinations nor conditions for those held in immigration detention.

Comments: One commenter stated that the proposed rule would essentially deny all individuals the right to have their custody reviewed by a neutral arbiter and urged that the regulations should require a neutral decisionmaker. The commenter suggested that IJs should be given the power to review and revise parole decisions made under the proposed regulations.

Response: These comments are beyond the scope of the current rulemaking, which amends only the regulatory provisions specifying the circumstances in which parole may be considered for noncitizens subject to expedited removal.

Comments: A commenter stated that the unprecedented surge in family unit migration, which the commenter attributed to the *Flores* Settlement Agreement, is endangering children at the border and that such migration will continue to soar unless the dynamics causing this trend are changed. The commenter asserted that the Departments should ''address'' the *Flores* Settlement Agreement before taking any steps to expand the availability of parole for asylum seekers and suggested that the agencies promulgate regulations that would enable DHS to detain adults and children entering illegally in family units, to comply with the detention provisions in the INA.

Response: The *Flores* Settlement Agreement requires the promulgation of the relevant and substantive terms of the FSA as regulations, FSA ¶ 9, and based on a 2001 Stipulation, the Agreement terminates ''45 days following defendants' publication of final regulations implementing [the] Agreement,'' Stipulation Extending Settlement Agreement ¶ 40, *Flores* v. *Reno,* No. 85–cv–4544 (C.D. Cal. Dec. 7, 2001). In August 2019, DHS and the Department of Health and Human Services published a *Flores* final rule, Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children, 84 FR 44392 (Aug. 23, 2019); however, that rule was partially enjoined, *see Flores* v. *Rosen,* 984 F.3d 720 (9th Cir. 2020). While the FSA does impose restrictions on DHS's ability to detain family units, addressing the FSA by promulgating regulations to implement such Agreement is outside the scope of this rule.

Comments: Several commenters supported expanding the circumstances in which parole may be granted to allow release of families from detention but opposed any expansion of the expedited removal system upon which the proposed asylum process is premised. A couple of commenters asserted that the expedited removal process is harmful and emphasized that DHS is not required to use expedited removal. These commenters recommended that the proposed rule be amended to avoid the use of expedited removal. Commenters argued that the expedited removal process does not provide due process, fails to comply with domestic refugee law and international commitments, and has led to mistreatment and the return of refugees to persecution.

Commenters also argued that the proposed changes to 8 CFR 235.3 to expand the possibility of parole would eliminate the barrier to placing families into expedited removal and would risk further cementing expedited removal as a primary tool to remove noncitizens, creating possibilities for use of the expedited removal structure to be expanded by future administrations.

Response: The Departments disagree that the expedited removal process does not comport with due process or U.S. refugee law. *See, e.g., DHS* v. *Thuraissigiam,* 140 S. Ct. 1959, 1963–64 (2020) (addressing the Due Process Clause of the Fifth Amendment). Comments expressing opposition to the Departments' use of expedited removal generally are also beyond the scope of this rulemaking, which amends certain procedures and standards applicable to noncitizens once they have already been placed into expedited removal.

Comments: Several commenters stated that detention is a harmful and punitive practice that should be reduced or eliminated completely and expressed disappointment that the proposed rule did not include systematic efforts to limit or eliminate the detention of asylum seekers. A couple of commenters added that detention is not necessary to achieve the goal of ensuring that people seeking asylum appear for their appointments. A few commenters remarked that detention makes it nearly impossible for asylum seekers to assert their protection claims effectively, as their ability to access legal resources and legal representation is often non-existent. One commenter stated that only 30 percent of detained immigrants receive legal representation and argued that the remote location of detention facilities, the inadequate

access to counsel and interpreters, and the frequent transfer of detainees present nearly insurmountable barriers to detainees seeking to obtain legal assistance. A few commenters asserted that detention of asylum seekers flouts U.S. legal obligations under the Refugee Convention and Protocol or that presumptive detention of asylum seekers violates international refugee and human rights law. Some commenters suggested that DHS invest its resources in housing, medical treatment, and travel expenses for asylum seekers, rather than expediting asylum interviews and moving people through detention faster. They stated that this would help ensure that those entering the United States are welcomed by a supportive community.

Response: Although the Departments acknowledge the commenters' concerns about access to legal services, the Departments disagree with the commenters who urged that the regulations at issue should be amended to systematically limit or eliminate the detention of anyone indicating an intention to seek asylum. The Departments believe that the standards proposed by these commenters would not be consistent with the detention provisions of section 235(b)(1)(B)(ii) of the Act, 8 U.S.C. 1225(b)(1)(B)(ii), or DHS's parole authority under section 212(d)(5)(A) of the Act, 8 U.S.C. 1182(d)(5)(A). Proposals to change those detention provisions are properly directed to Congress, not to the Departments. The Departments also do not believe that commenters' requests are feasible. Commenters did not explain what budget authority DHS would have to invest resources in non-detention housing, medical treatment, and travel expenses for noncitizens arriving at the border and indicating an intention to apply for asylum in the United States.

3. Credible Fear Screening Process

a. General Comments on Credible Fear Screening Process

Comments: Some commenters indicated that the changes to the credible fear screening process in the NPRM are valuable and necessary and expressed general support for the changes. Other commenters expressed opposition to the procedural changes based on the belief that individuals in the expedited removal process are coached to lie and express fear. Several commenters described the credible fear process as a ''loophole'' to be exploited by dangerous people to get into the United States. Other commenters stated that the majority of asylum seekers are not properly vetted, while another stated that individuals claim credible fear without any proof. Similarly, several commenters stated that documented proof should be submitted, and that testimony alone or a simple statement of credible fear is unacceptable.

Another commenter stated that credible fear should be established immediately after the individual is detained to avoid having U.S. persons suffer at the hands of criminals. Similarly, another commenter suggested that individuals who are national security threats or have ''egregious criminal histories'' should not be permitted to make credible fear claims. Some commenters stated that asylum officers should not be conducting credible fear interviews, asserting that the existing process lacks transparency and oversight, and another commenter recommended that IJs handle credible fear claims.

Several commenters expressed concern with conditions and due process in expedited removal and credible fear interviews in general, arguing that those factors would affect the case outcome in various stages of the asylum process.

Response: The Departments acknowledge the commenters' support for the changes to the credible fear screening process in this rule and acknowledge the other commenters' concerns about the credible fear screening process. The Departments disagree that the credible fear screening process is a loophole to be exploited by dangerous individuals and that the rule will only encourage more individuals to come to the border and request asylum. Expedited removal and the credible fear screening process were established by Congress. The credible fear process ensures that the U.S. Government adheres to its international obligations, as implemented through U.S. law, to refrain from removing a noncitizen to a country where the noncitizen would be persecuted or tortured. *See* Section II.B and II.C of this preamble. To the extent that commenters assert that noncitizens seeking protection generally are liars or criminals seeking to exploit a ''loophole,'' the Departments reject that characterization as unfounded. This rulemaking is one part of a multifaceted whole-of-government approach to addressing irregular migration and ensuring that the U.S. asylum system is fair, orderly, and humane, and this rulemaking is consistent with the E.O. on Migration, which states that ''[s]ecuring our borders does not require us to ignore the humanity of those who seek to cross them. The opposite is true.'' 86 FR 8267. This whole-of-government approach seeks to make better use of existing enforcement resources by investing in border security measures that are proven to work and that will facilitate greater effectiveness in combatting human smuggling and trafficking and the entry of undocumented individuals. This rule seeks to ensure that the Departments process the protection claims of individuals in the credible fear screening process promptly and efficiently, meaning that it allows individuals who are not eligible for protection to be removed more promptly.

The Departments recognize that the credible fear screening and review process involves eliciting testimony from individuals seeking protection and does not require noncitizens to provide written statements or documentation. Both asylum officers and IJs receive training and have experience with assessing evidence and the credibility of noncitizens who appear before them for interviews or hearings. Asylum officers and IJs have experience identifying and raising concerns surrounding inconsistencies and lack of detail, and thus are equipped to make well-reasoned decisions regarding credibility, even in the absence of written statements or other documentation. Moreover, requiring written statements or other documentation would likely limit the ability of certain asylum seekers to obtain protection, given that some may have fled their home countries without the ability to secure documentation, and obtaining documentation once they are in the United States may not be feasible. Indeed, the INA explicitly provides that ''testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.'' INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii).

Moreover, the Departments respectfully disagree with commenters' assertions that credible fear interviews are plagued with due process concerns. While some issues may arise due to the nature of credible fear interviews—which may be the first time or one of the first times an individual has provided testimony related to sensitive topics and which often occur remotely with an interpreter and with the individual in a detained setting—USCIS asylum officers are trained to conduct those interviews in a fair and sensitive manner, and

every credible fear determination is reviewed by a supervisory asylum officer and subject to additional IJ review if the applicant so chooses or, under this IFR, fails or refuses to decline such review. The Departments do not agree that potential issues with the credible fear determination, to the extent that any may exist, would necessarily affect case outcomes in the new process. Applicants will have ample opportunity to correct any biographic or informational errors in the Form I–870. Asylum officers will not be limited to considering only the testimony provided during the credible fear interview but will conduct a full nonadversarial interview to determine asylum eligibility for the principal applicant. Moreover, if the applicant fails to establish asylum eligibility before the asylum officer at the Asylum Merits interview under the IFR, they will have the opportunity to present their claims for asylum and withholding or deferral of removal before an IJ when they are placed in streamlined section 240 proceedings and the IJ will review their claims.

b. ''Significant Possibility'' Standard for Protection Claims

Comments: Several commenters expressed general support for restoring the ''significant possibility'' standard. One commenter stated that clarifications at proposed 8 CFR 208.30(e)(2) provide important protections to individuals in expedited removal and comport with section 235(b)(1)(B) of the Act, 8 U.S.C. 1225(b)(1)(B).

Other commenters expressed general disapproval with the use of the ''significant possibility'' standard, either advocating for a higher standard or stating that the use of a less stringent standard may encourage frivolous claims or claims from individuals solely seeking employment authorization.

Response: The Departments acknowledge the support of commenters. The rule adopts the ''significant possibility'' standard for credible fear screenings for purposes of asylum, withholding of removal, and CAT protection. As explained above in Section III.A of this preamble, while the statutory text only defines ''credible fear'' for purposes of screening asylum claims, *see* INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v); *see also* 86 FR 46914, the Departments believe that the efficiency gained in screening the same set of facts using the same standard of law for all three forms of protection is substantial and should not be overlooked. Moreover, the credible fear screening process is preliminary in nature; its objective is to sort out, without undue decision costs, which cases merit further consideration and to act as a fail-safe to minimize the risk of refoulement. Using one standard of law is consistent with those objectives, even though the ultimate adjudication of a noncitizen's claim for each form of protection may require a distinct analysis.

Comments: One commenter requested that the Departments elaborate upon the ''significant possibility'' test to make clear that the showing that must be made is not a ''significant possibility'' of persecution, but a ''significant possibility'' that the ''claimant could make out a well-founded fear of such persecution where there exists as little as a one in ten chance of such serious harm occurring.'' The commenter argued that the ''preponderance of the evidence'' threshold is not applicable during this process. The commenter also stressed that nothing in the proposed rule requires the asylum officer to investigate all the possible avenues by which an applicant for protection may be able to access asylum. Similarly, some commenters said that more training and oversight is needed to ensure that asylum officers correctly apply the low bar standard and do not misinterpret it.

Alternatively, a commenter suggested that the standard ''manifestly unfounded'' be applied during the credible fear screening. That is, the commenter believes that unless an individual's claim is assessed to be manifestly unfounded, or unrelated to the criteria for granting asylum, they should have access to full proceedings. The commenter believes this would guard against the risk that an individual would be returned to a country where they face persecution. The commenter further stated that the ''significant possibility'' standard is a step in the right direction but still does not match international standards. Another commenter expressed the concern that the ''significant possibility'' standard proposed in the rule is largely impossible to meet in practice because ''it virtually forces the non-citizen to produce at once all of the evidence necessary to gain success at trial.''

Response: The Departments appreciate comments regarding further elaboration on the ''significant possibility'' standard, alternative standards, and the ''significant possibility'' standard's use in credible fear interviews. The ''significant possibility'' standard is a statutory standard found at INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v), and suggested use of the ''manifestly unfounded'' or other international standards concerning refugee claims in screening for credible fear would require legislative change. As commenters have recognized, appropriate application of the ''significant possibility'' standard is nuanced and fact-intensive. The Departments therefore believe that further elaboration on the appropriate application of the standard is best accomplished through case law, training, and oversight, rather than through abstract discussion or further codification. Such training is an integral part of ensuring the appropriate application of this standard, but the Departments do not believe it is appropriate to codify such training or oversight in the regulatory text.

Comments: Some commenters stated that the return to the ''significant possibility'' standard is appropriate but observed that the proposed rule does not specify a choice of law rule, which is important for respecting the rights of asylum seekers, and commenters suggest that this language be added at 8 CFR 208.30. One commenter asked that DHS apply the law most favorable to the individual seeking protection when determining whether he or she meets the credible fear standard.

Response: The Departments agree that USCIS should apply the law most favorable to the individual seeking protection at the credible fear screening stage. DHS remains subject to the injunction in *Grace* v. *Whitaker,* 344 F. Supp. 3d 96, 135–40, 146 (D.D.C. 2018), which found that a DHS policy memo applying only the law of the circuit where the credible fear interview occurs rather than the circuit law most favorable to the applicant's claim was unlawful. Therefore, USCIS continues to apply the choice of law most favorable to the applicant when screening for credible fear.

Comment: A few commenters generally opposed the rule on the ground that changing the standard for credible fear screening will delay removal of noncitizens with meritless claims for protection.

Response: The Departments disagree that the rule's changes to the credible fear screening process will, in the aggregate, contribute to delays in removal. Divergent standards for asylum and withholding of removal along with variable standards for individuals barred from certain types of relief were promulgated in multiple rulemaking efforts over the last few years.[68] However, in working to create efficiencies within this process, adopting the standard of law that was

[68] *See supra* note 4 (discussing recent regulations and their current status).

set by Congress for credible fear claims is the logical choice. The varied legal standards created by asynchronous rulemaking, and often enjoined or vacated by legal challenges, defeated their intended purpose by complicating and extending the initial screening process provided for in section 235 of the Act, 8 U.S.C. 1225. Use of different legal standards for asylum, statutory withholding of removal, and CAT protection required additional time for adjudicators to evaluate whether a mandatory bar to asylum or to statutory withholding of removal was present. Additionally, adjudicators were required to evaluate the same evidence twice for the same factual scenario. Notably, use of the different standards would require asylum officers to apply the mandatory bars to asylum in order to consider screening for statutory withholding of removal. In turn, this would inevitably increase credible fear interview and decision times, requiring analysis of the bars and then applying the higher evidentiary standard. For example, when the TCT Bar IFR was in effect, asylum officers were required to spend additional time during any interview where the bar potentially applied developing the record related to whether the bar applied and, if so, whether an exception to the bar might have applied. Then, if the noncitizen appeared to be barred and did not qualify for an exception to the bar, asylum officers had to develop the record sufficiently such that a determination could be made according to the higher reasonable possibility standard. IJs reviewing negative credible fear determinations where a mandatory bar was applied would similarly be required to review the credible fear determination under two different standards, undermining the efficiency of that process as well.

In the Departments' view, the delays associated with complicating and extending each and every credible fear interview to use two different standards outweigh any efficiency that could be gained by potential earlier detection of individuals who may be barred from or ineligible for certain types of protection. Commenters have not provided any data or information suggesting that the asylum caseload would be meaningfully reduced by evaluating the existence of bars to eligibility during the credible fear screening or by applying a ''reasonable possibility'' standard (rather than the ''significant possibility'' standard) in screening claims for statutory withholding of removal or CAT protection. In clarifying that the ''significant possibility'' standard applies not only to credible fear screening for asylum, but also to credible fear screening for statutory withholding and CAT protection, the Departments will continue to ensure that the expedited removal process remains expedited and will allow for asylum officers and, upon credible fear review, IJs, to adhere to a single standard of law in fulfilling the United States' nonrefoulement obligations.

c. Due Process in Credible Fear Screening

Comments: Multiple commenters recommended that the Departments retain the language at 8 CFR 208.30(g)(2)(i) acknowledging USCIS's ability to reconsider a negative credible fear finding after it has been upheld by an IJ. Commenters expressed their belief that an additional option for review, even after a Supervisory Asylum Officer (''SAO'') has reviewed the asylum officer's credible fear determination and an IJ has concurred with the determination, is still necessary to preserve the rights of noncitizens.

Commenters described a range of issues that they allege render the credible fear process systematically ''unreliable,'' making the need for additional safeguards against refoulement—including USCIS reconsideration—more acute. Describing the negative effects of trauma and procedural limitations on credible fear outcomes, commenters suggested that the ability to file a request for reconsideration with USCIS has saved ''countless'' asylum seekers from refoulement. One commenter noted that reconsideration provides ''an important safety net'' and can address instances in which the credible fear process may not have provided a fair process, including where appropriate interpretation for indigenous language speakers and adequate accommodations for disabilities were not provided. Another commenter suggested that the reconsideration processes in place are ''central to the American value of due process'' and a second commenter, for similar reasons, expressed strong opposition to eliminating them through this rule.

Multiple commenters argued that revising this provision would eliminate a key procedural safeguard for asylum seekers, citing a September 2021 study by Human Rights First.[69] Several commenters provided examples of individuals who successfully sought reconsideration and, as a result, won protection. These commenters concluded that reconsideration by USCIS is a means to avoid unlawful refoulement due to mishandled credible fear interviews, errors in the initial credible fear record, and barriers to adequate review by an IJ.

Adding to the above arguments, a commenter asserted that the factors distinguishing USCIS reconsideration from IJ review favor due process and administrative efficiency. The commenter said reconsideration allows for more time to access counsel, since asylum seekers can request reconsideration at any time following the credible fear determination and prior to removal. On the other hand, EOIR is required to schedule hearings within 7 business days of the credible fear determination. The commenter added that USCIS asylum officers will often provide asylum seekers time to explain errors with their initial interview, while IJ reviews move quickly and do not consider procedural errors in the credible fear interview. Furthermore, the commenter suggested that USCIS benefits from requests for reconsideration, as they serve as checks and balances for the agency while informing future asylum officer training. Given the differences between IJ review and USCIS reconsideration, an individual commenter argued that ''[requests for reconsideration] are often our only recourse after a negative [credible fear interview] finding.''

Response: The Departments acknowledge the comments related to whether an IJ should have sole jurisdiction to review negative credible fear determinations made by USCIS, or whether USCIS should retain the practice of entertaining requests for reconsideration even after a negative credible fear determination is served on the applicant and reviewed and affirmed by an IJ. Some context for the regulatory language at play and the way this practice has developed is helpful to frame this discussion. Prior to publication of the Global Asylum rule on December 11, 2020, the language related to reconsideration was located at 8 CFR 1208.30(g)(2)(iv)(A). With the Global Asylum rule, the Departments moved it from that section to 8 CFR 208.30(g)(2)(i).[70] The regulatory language recognizes USCIS's inherent discretionary authority to reconsider its own determination, but it was never meant to provide for a general process

[69] *See* Human Rights First, *Biden Administration Move to Eliminate Requests for Reconsideration Would Endanger Asylum Seekers, Deport Them to Persecution and Torture* (Sept. 2021), *https://www.humanrightsfirst.org/sites/default/files/RequestsforReconsideration.pdf* (last visited Mar. 14, 2022).

[70] *See* 85 FR 80275; *supra* note 4 (discussing recent regulations and their current status).

by which individuals could submit requests for reconsideration of negative credible determinations to USCIS that had already been reviewed and upheld by an IJ as a matter of course. In practice, however, this regulatory language has served as a basis for entertaining such requests and, over the years, they have become an ad hoc yet increasingly significant portion of the work of USCIS asylum offices. Because this was never meant to be a formalized process, there is no formal mechanism for individuals to request reconsideration of a negative credible fear determination before USCIS; instead, such requests are entertained on an informal ad hoc basis whereby individuals contact USCIS asylum offices with their requests for reconsideration after an IJ has affirmed the negative credible fear determination, and asylum offices have to quickly assign officers and supervisors to review those requests. This informal, ad hoc allowance for such requests has proven difficult to manage and led to the expenditure of significant USCIS resources to entertain such requests. Yet USCIS has continued to entertain these requests because, in line with what some commenters argued, IJ review has sometimes failed to address allegations of error or newly available evidence that may compel a positive credible fear determination, and individuals would otherwise have no other recourse.

The informal ad hoc approach of USCIS entertaining requests for review of negative credible fear determinations that has developed over time requires USCIS to devote resources to these requests that could more efficiently be used on initial credible fear and reasonable fear determinations, affirmative asylum adjudications, and now Asylum Merits interviews under the present rule. Because there is no formal mechanism by which to accept and review such requests, there can be no uniform procedure guiding their review. Likewise, because they are not applications, petitions, motions, or some other type of formal request, USCIS does not maintain comprehensive, official data in the Asylum Division's case management system on requests for reconsideration in a standardized manner that can be readily queried. In any event, the Departments agree with commenters that some type of data related to these requests, including how many are received, how often the negative credible fear determinations are reconsidered, and how often a positive decision is issued, would be helpful to inform this discussion. The Departments accordingly have attempted to gather the best data available related to these requests, based on informal tracking by some offices, which is not comprehensive or standardized.

The available data related to requests for reconsideration (''RFRs'') of negative credible fear determinations already affirmed by an IJ is as follows:

Fiscal Year 2019 (''FY19'')

During FY19, the following USCIS asylum offices informally tracked credible fear RFRs received at their offices: Houston, TX (ZHN); Los Angeles, CA (ZLA); New York, NY (ZNY); Newark, NJ (ZNK); New Orleans, LA (ZOL); and San Francisco, CA (ZSF). The remaining offices (Arlington, VA (ZAR/ZAC); Chicago, IL (ZCH); and Miami, FL (ZMI)) did not track RFRs received.

FY19: Total negative CF determinations by the offices that tracked RFRs.	12,071.
FY19: Total RFRs submitted to offices that tracked RFRs	2,086 (17 percent of negatives from the offices that tracked RFRs).
FY19: Total negative determinations changed to positive post-RFR by offices that tracked RFRs.	231 (11 percent of RFR submissions and 2 percent of all negatives from the offices that tracked RFRs).

Fiscal Year 2020 (''FY20'')

During FY20, the following USCIS asylum offices informally tracked credible fear RFRs received at their offices: Boston, MA (ZBO); Houston, TX (ZHN); Los Angeles, CA (ZLA); New York, NY (ZNY); Newark, NJ (ZNK); New Orleans, LA (ZOL); and San Francisco, CA (ZSF). The remaining offices (Arlington, VA (ZAR/ZAC); Chicago, IL (ZCH); and Miami, FL (ZMI)) did not track RFRs received.

FY20: Total negative CF determinations by the offices that tracked RFRs.	7,698.
FY20: Total RFRs submitted to offices that tracked RFRs	2,109 (27 percent of negatives from the offices that tracked RFRs).
FY20: Total negative determinations changed to positive post-RFR by offices that tracked RFRs.	150 (7 percent of RFR submissions and 2 percent of all negatives from the offices that tracked RFRs).

Fiscal Year 2021 (''FY21'')

During FY21, the following USCIS asylum offices informally tracked credible fear RFRs received at their offices: Arlington, VA (ZAR/ZAC); Boston, MA (ZBO); Houston, TX (ZHN); Los Angeles, CA (ZLA); New York, NY (ZNY); Newark, NJ (ZNK); and New Orleans, LA (ZOL). The remaining offices (Chicago, IL (ZCH); Miami, FL (ZMI); and San Francisco, CA (ZSF)) did not track RFRs received.

FY21: Total negative CF determinations by the offices that tracked RFRs.	11,232.
FY21: Total RFRs submitted to offices that tracked RFRs	1,213 (10.7 percent of negatives from the offices that tracked RFRs).
FY21: Total negative determinations changed to positive post-RFR by offices that tracked RFRs.	188 (15 percent of RFR submissions and 1.6 percent of all negatives from the offices that tracked RFRs).

Although the above data do not account for every case in which a request for reconsideration of a negative credible fear determination was made, they demonstrate the significant number of requests for reconsideration that USCIS asylum offices have entertained. Anecdotally, offices report that given the sizeable number of requests received, it is not uncommon to have four or five senior asylum officers working on RFRs full-time, along with two supervisors dedicating half of each day to RFRs on a regular basis, with additional oversight (approximately one

hour per day) by upper management (such as a Section Chief). The number of hours required to review an RFR may vary, as the task includes reviewing the credible fear record in light of any allegations of clear error or the presentation of any newly available evidence that may change the decision from a negative to a positive and determining if another interview is necessary to make a decision. In cases in which another interview is provided, a single request could take upwards of four hours to complete. Moreover, given the time-sensitive nature of the request, considering the individual is in the process of being expeditiously removed, where offices exercise their discretion to review such requests, they have to act quickly to ensure the review takes place prior to removal. Where RFRs are entertained, to ensure the review takes place prior to removal, if an office does not already have full-time staff dedicated to RFR review at a given moment, they must pull asylum officers off their regular caseload of credible fear, reasonable fear, or affirmative asylum cases and require them to quickly shift gears to review RFRs, in addition to requiring SAOs to do the same. Furthermore, while offices have not tracked cases where multiple RFRs are received, anecdotally, they report that it is not uncommon to receive multiple RFRs from the same applicant, in some instances as many as two to three or more per case.

To channel USCIS's resources to where they can most efficiently be used, with the present rulemaking, the Departments first proposed revising 8 CFR 208.30(g)(1)(i) to eliminate USCIS reconsiderations and provide that an IJ has sole jurisdiction to review whether the individual has established a credible fear of persecution or torture once the asylum officer has made a negative credible fear determination and the individual is served with a Form I–863 (after the individual either requests IJ review or declines to request review and that declination is treated as a request for review). Once the Form I–863 was served, jurisdiction to review the credible fear determination would then have rested solely with EOIR. The Departments based this revision on the notion that requests to reconsider negative credible fear determinations where applicants have new, previously unavailable evidence, or where a clear procedural or substantive error in the determination is alleged, should properly take the form of motions to reopen before EOIR and be decided by an IJ.

Upon further consideration and after reflecting on the comments received on this topic, however, the Departments agree with many of the commenters that even after a negative credible fear determination has been reviewed by an SAO, the individual has been served with the decision, and an IJ has reviewed and concurred with the negative determination, in some rare instances USCIS may still want to reconsider the determination as a matter of discretion. For example, if there is an allegation of procedural or substantive error in the original determination and the IJ did not address this issue during IJ review, it may be an appropriate exercise of USCIS's discretion to reconsider the case. While the Departments disagree with the commenters' characterization of credible fear interviews as rife with procedural errors, the Departments also recognize that errors sometimes occur given all the unique circumstances at play. In some instances, errors that may or may not have been avoidable will occur and should be corrected. In those instances, the Departments believe there should be some recourse for the noncitizens who are affected. The Departments do not take lightly the notion that, as referred to by commenters and as demonstrated by the above data, there are some cases where the negative credible fear determination is overturned and, absent such individuals requesting reconsideration and USCIS exercising its discretion to reconsider, these individuals may have been removed to a country where they were in fact ultimately able to demonstrate a credible fear of persecution or torture. Considering the gravity of the consequences of failing to address a potential clear error in the negative credible fear determination, including potentially violating the United States' non-refoulement obligations and returning the individual to a country where there is a significant possibility that the individual could be persecuted or tortured, the Departments agree that it is appropriate to allow an option for reconsideration as a last resort. While the NPRM framed that option as being best exercised by EOIR before the IJ, considering the many comments showing how USCIS is specially positioned to reconsider a decision even after an IJ has concurred with it, the Departments agree that potential reconsideration by USCIS should continue to be allowed. As such, instead of adopting the revisions to 8 CFR 208.30(g)(1)(i) that were proposed in the NPRM, in this IFR, DHS is retaining language at 8 CFR 208.30(g)(1)(i) recognizing that DHS may, in its discretion, reconsider a negative credible fear finding with which an IJ has concurred.

At the same time, the Departments remain concerned that requests for reconsideration of negative credible fear determinations not be permitted to undermine the present rule's purpose to create a more efficient and streamlined process following a credible fear determination, while ensuring due process. As noted in the preamble to the NPRM, the original changes to 8 CFR 208.30(g) proposed in the NPRM were put forth to be consistent with the statutory scheme of INA 235(b)(1)(B)(iii), 8 U.S.C. 1225(b)(1)(B)(iii), under which IJ review of the credible fear determination serves as the check to ensure individuals are not returned to a country where they have demonstrated a credible fear. The Departments stand by that assertion from the NPRM's preamble and want to emphasize that even though they are recognizing the possibility that USCIS may, in its discretion, reconsider a negative credible fear determination, such an exercise of discretion is not the appropriate primary mechanism for review of a credible fear determination—that credible fear review, per statute, rests with the IJ once jurisdiction is transferred to EOIR. The recognition of USCIS's inherent discretionary authority to potentially reconsider a credible fear determination must not be used to undercut the statutory scheme of expedited removal, including the proper role of the IJ to review USCIS's negative credible fear determination, nor will DHS permit it to obfuscate the purpose of the present rule. Accordingly, while DHS is maintaining the regulatory reference to its inherent discretionary authority to reconsider a negative credible fear determination in the present rule, it is also placing a temporal and numerical limitation on allowances for reconsideration to ensure the exercise of such authority is consistent with the statutory expedited removal and credible fear framework. The present rule provides at 8 CFR 208.30(g)(1)(i) that any request for reconsideration must be received no more than 7 days after the IJ's concurrence with the negative credible fear determination, or prior to the individual's removal, whichever date comes first. This time limit is necessary to ensure the avenue of allowing USCIS reconsideration does not undercut the whole expedited removal process in cases where the applicant has already had an opportunity to present his or her claim before an asylum officer, the asylum officer has made a decision that was

concurred with by an SAO, and an IJ has reviewed the determination in accordance with the statutory scheme. Additionally, for the same reasons, it is necessary to limit any request for reconsideration of a negative credible fear determination before USCIS to one request only, which the Departments have also provided for at 8 CFR 208.30(g)(1)(i). Considering, as mentioned above, that asylum offices report receiving multiple RFRs for a single case and devoting significant resources that could more efficiently be spent adjudicating the cases of applicants who have not yet had any opportunity for their claims to be heard, this numerical limitation is also essential if USCIS is going to continue entertaining such requests. If unlimited requests were allowed, or if there were no limit on the time frame during which such requests may be lodged, the Departments would run the risk of endorsing an ad hoc process that would undermine the very purpose of the statutory scheme of expedited removal laid out by Congress, and indeed also the very purpose of the present rule. The Departments, after careful reflection, instead are providing the best balance to promote both due process and finality, consistent with the statutory scheme of expedited removal, including the statutory language that clearly directs that the IJ is the proper reviewer of any negative credible fear determination made by an asylum officer.

Comments: One commenter expressed support for the Departments' proposal to eliminate the regulatory text that describes USCIS's authority to reconsider negative credible fear determinations that have already been reviewed by a supervisory asylum officer and upheld by an IJ. This commenter agreed with the Departments' assessment that the proposal would increase efficiency, that it more closely aligns with the statutory scheme of section 235 of the Act, 8 U.S.C. 1225, and that it would be necessary to ensure that requests for reconsideration do not frustrate the streamlined process that Congress intended for expedited removal. The commenter asserted that requests for reconsideration have become ''an overwhelmingly popular tactic'' to delay removal among individuals without meritorious fear claims, diverting resources from those with legitimate claims.

Response: The Departments acknowledge the comment related to how the proposed changes align with the statutory scheme governing expedited removal and credible fear. The Departments also agree that resources should be used efficiently and generally should not be diverted from those who have not yet had any interview or determination to those who have already had an opportunity to present their claim and who received a negative credible fear determination made by an asylum officer, reviewed by a supervisory asylum officer, and concurred with by an IJ. For these reasons, while the Departments are not maintaining the exact revisions to 8 CFR 208.30(g) proposed in the NPRM, the Departments are taking this opportunity to clarify that the statutorily-mandated review of any negative credible fear determination must take place by an IJ pursuant to INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III), and that IJ review is the appropriate method by which a negative credible fear determination made by USCIS is reviewed. Following IJ review, pursuant to USCIS's inherent discretionary authority to review its own decisions, USCIS may, as a matter of discretion, reconsider a negative credible fear determination that has already been concurred with by an IJ, 8 CFR 208.30(g), but the Departments agree with the comment that this exercise of discretion cannot be allowed to frustrate the underlying expedited removal process laid out by Congress. Accordingly, DHS is providing for revisions to 8 CFR 208.30(g) that place reasonable limits on when USCIS may entertain a request for reconsideration as a matter of discretion, including that any reconsideration be requested by the noncitizen or their attorney or initiated by USCIS no more than 7 days after the IJ concurrence with the negative credible fear determination, or prior to the noncitizen's removal, whichever date comes first, and that only one such request may be entertained per case. These reasonable limitations are necessary to ensure that USCIS's exercise of discretion in allowing any potential reconsideration of a negative credible fear determination is not inconsistent with Congress's instructions in establishing the expedited removal process and to ensure requests for reconsideration cannot be used as a tactic to delay removal for individuals with non-meritorious claims, which, as the commenter expressed, is a serious issue that diverts resources from USCIS hearing potentially meritorious claims.

d. Removal of Mandatory Bars From Consideration

Comments: A commenter stated that the NPRM did not provide a good enough rationale for rescinding the regulatory change that would require application of the ''mandatory bars'' against asylum claims during credible fear screening. The commenter expressed opposition to ''ignoring'' mandatory bars, such as if the applicant is a criminal, is a danger to the United States, or participated in the persecution of others. A number of commenters supported the Departments' proposal to not apply the mandatory bars to asylum and withholding of removal during the credible fear screening process. One comment stated that application of U.S. law relating to bars to asylum is so complex and often fact-intensive that it is simply not possible to make fair and accurate legal determinations on these issues in the context of credible fear screenings, which do not allow sufficient time to identify the factual information and legal arguments that may need to be raised on these points. Another commenter stated that exclusion from refugee protection is a complex inquiry into factual and legal questions involving not only international refugee law, but in many cases, international human rights, humanitarian law, and international criminal law. The commenter stated that this inquiry cannot be adequately assessed in a screening interview, particularly given truncated timelines, lack of legal assistance, lack of understanding about the procedure, challenges with translation and interpretation, and the prevalence of trauma.

Response: The Departments acknowledge the commenter's invitation to further explain their reasons for recodifying the historical practice of not applying mandatory bars to asylum or statutory withholding of removal at the credible fear screening stage. *See* 8 CFR 208.30(e)(5)(i)(A). As described in Section III.A of this preamble, requiring asylum officers to apply mandatory bars during credible fear screenings would make these screenings less efficient, undermining congressional intent that the expedited removal process be truly expeditious. Because of the complexity of the inquiry required to develop a sufficient record upon which to base a decision to apply a mandatory bar, such a decision is most appropriately made in the context of a full merits hearing, whether before an asylum officer or an IJ, and not in a screening context. Furthermore, due process and fairness considerations counsel against applying mandatory bars during the credible fear screening process. Due to the intricacies of fact finding and legal analysis required to make a determination on the applicability of any mandatory bars,

individuals found to have a credible fear of persecution should be afforded the additional time, procedural protections, and opportunity to further consult with counsel that the Asylum Merits process or section 240 proceedings provide. In light of the need to preserve the efficiency Congress intended in making credible fear screening part of the expedited removal process and to ensure due process for those individuals found to have a significant possibility of establishing eligibility for asylum or statutory withholding of removal but for the potential applicability of a mandatory bar, the Departments have determined that these goals can be accomplished by returning to the historical practice of not applying mandatory bars at the credible fear screening stage.

The commenter's suggestion that the Departments intend through this rulemaking to ignore any mandatory bar is mistaken. On the contrary, asylum officers are trained to gather and analyze information to determine the applicability of mandatory bars in affirmative asylum adjudications, and they are instructed to assess whether certain bars may apply in the credible fear screening context. The latter assessment is designed to flag any mandatory bar issues requiring further exploration in Asylum Merits interviews or section 240 removal proceedings. Asylum officers and IJs will continue to apply the mandatory bars in their adjudications, when justified by the facts and the law. Individuals subject to a mandatory bar will not be found eligible for any immigration benefit foreclosed by the bar.

The Departments agree with these commenters that a complicated process requiring full evidence gathering and determinations to be made on possible bars to eligibility is incompatible with the function of the credible fear interview as a screening mechanism designed to quickly identify potentially meritorious claims deserving of further consideration in a full merits hearing and to facilitate the rapid removal of individuals determined to lack a significant possibility of establishing eligibility for asylum, statutory withholding of removal, or protection under the CAT. As detailed further above, not applying mandatory bars at the credible fear screening stage both preserves the efficiency Congress intended in making credible fear screening part of the expedited removal process and helps ensure a fair process for those individuals found to have a significant possibility of establishing eligibility for asylum or statutory withholding of removal but for the potential applicability of a mandatory bar. The Departments have determined that these goals can be accomplished by returning to the historical practice of not applying mandatory bars at the credible fear screening stage.

Comment: One commenter praised the Departments' proposal to generally not apply the statutory mandatory bars to asylum and withholding of removal during the credible fear screening process but urged the Departments to remove some of the limited exceptions to ensure any additional bars are not applied. The commenter stated that this is a step in the right direction, but the regulatory language should be expanded to eliminate consideration of the bars to asylum resulting from the Presidential Proclamation Bar IFR and TCT Bar rule.

Response: The Departments acknowledge the suggestion and note that they plan to propose to modify or rescind the regulatory changes promulgated in the Presidential Proclamation Bar IFR [71] and the TCT Bar rule [72] in separate rulemakings. These rulemakings contain the bars that the commenter has urged the Departments to remove from consideration within the credible fear process. The Departments note that these two rules are not currently in effect. Federal courts have either vacated or enjoined the Departments from implementing both the TCT Bar IFR and TCT Bar rule as well as the Presidential Proclamation Bar IFR.[73]

Comment: One commenter urged the Departments to implement the Global Asylum rule, including its requirement that USCIS asylum officers apply the mandatory bars to asylum and statutory withholding of removal at the credible fear stage. The commenter cited the Departments' justification for this provision in the preamble to the Global Asylum rule, arguing that it is ''pointless, wasteful, and inefficient to adjudicate claims for relief in section 240 proceedings when it can be determined that an alien is subject to one or more of the mandatory bars to asylum or statutory withholding at the screening stage.''

Response: The Departments note that the Global Asylum rule has been enjoined, so it cannot be implemented at this time.[74] The Departments acknowledge that in the preamble to the Global Asylum rule, they justified the departure from the historic practice of not applying the mandatory bars at the credible fear screening stage by arguing that it would be an inefficient use of an immigration court's resources to conduct full merits hearings on claims of individuals determined at the credible fear stage to be barred from asylum or statutory withholding of removal. However, as detailed further above, the Departments have subsequently determined that the stated goal of promoting administrative efficiency can be better accomplished through the mechanisms established in this rulemaking, rather than through broadly applying mandatory bars at the credible fear stage. The Departments now believe that it is speculative whether, had the Global Asylum rule been implemented, a meaningful portion of the EOIR caseload might have been eliminated because some individuals who were found at the credible fear screening stage to be subject to a mandatory bar would not have been placed into section 240 proceedings. On the other hand, requiring asylum officers to broadly apply the mandatory bars would, in many cases, increase credible fear interview and decision times. While the TCT Bar IFR was in effect, asylum officers were required to spend additional time during interviews determining whether the bar potentially applied, eliciting testimony related to the application of the bar, exploring whether an exception to the bar might have applied, and, if the noncitizen appeared to be barred and did not qualify for an exception to the bar, developing the record to ensure a legally sufficient determination could be made according to the higher reasonable fear standard. As discussed above, these efforts also increased the workload of supervisory asylum officers, Asylum Division Headquarters staff, USCIS

[71] Executive Office of the President, OMB, OIRA, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Noncitizens Subject to a Bar on Entry Under Section 212(f); Procedures for Protection Claims, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC34* (last visited Mar. 14, 2022); Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, Noncitizens Subject to a Bar on Entry Under Section 212(f); Procedures for Protection Claims, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1615-AC34* (last visited Mar. 14, 2022).

[72] *See* Executive Office of the President, OMB, OIRA, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, Bars to Asylum Eligibility and Procedures, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC69* (last visited Mar. 14, 2022); Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, Bars to Asylum Eligibility and Procedures, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1615-AC69* (last visited Mar. 14, 2022).

[73] *See supra* note 4 (discussing recent regulations and their current status).

[74] *See supra* note 4 (discussing recent regulations and their current status).

Office of Chief Counsel attorneys, and IJs. Presently, asylum officers ask questions related to all mandatory bars to develop the record sufficiently to flag potential bars but, since mandatory bars are generally not applied in the credible fear determination, the record does not need to be developed to the level of detail that would be necessary if the issue was outcome determinative for the credible fear determination. If a mandatory bar were outcome determinative, it would be necessary to develop the record sufficiently to make a decision about the mandatory bar such that, in many cases, the interview would go beyond its intended purpose of being a screening for potential eligibility for protection and rather become a decision on the form of protection itself. The level of detailed testimony necessary to make such a decision, in many cases and depending on the facts, would require asylum officers to spend more time carefully developing the record during the interview and conducting additional research following the interview. IJs reviewing negative credible fear determinations where a mandatory bar was applied would similarly face additional factors to consider in their review, depending on the facts, often undermining the efficiency of that process as well.

e. Other Comments on the Proposed Credible Fear Screening Process

Comments: One commenter asserted that the NPRM does not improve efficiencies in adjudication or lead to cost savings when compared to having the asylum adjudication process take place outside of the context of expedited removal and detention. The commenter asserted that, rather than streamlining the process, the NPRM creates a new layer of USCIS adjudication with possibly two reviews by an immigration court. The commenter also asserted that the NPRM fails to adopt a long-suggested solution of allowing for grants of asylum at the credible fear interview stage or eliminating the credible fear screening process so that cases may proceed directly to the merits before USCIS.

Response: The Departments note that the goals of this rulemaking include ensuring that noncitizens placed into the Asylum Merits process receive final decisions on their claims for protection as quickly and efficiently as possible, while also providing ample procedural safeguards designed to ensure due process, respect human dignity, and promote equity. In this rule, the Departments have outlined a process that continues to allow noncitizens to seek IJ review of asylum officers' negative credible fear determinations, as required by statute. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). In addition, following an Asylum Merits interview before an asylum officer, if the asylum officer does not grant asylum, the noncitizen will have the opportunity to have their protection claims considered before an IJ in streamlined section 240 removal proceedings. The Departments expect that this new process will allow protection claims to be adjudicated more quickly—whether granted or not—than they are under the current process (in which all individuals who receive positive credible fear determinations are referred for ordinary section 240 removal proceedings) and will provide procedural safeguards to ensure that noncitizens receive full and fair adjudications of their protection claims.

The Departments have considered the commenter's proposals to eliminate credible fear screenings and adjudicate protection claims outside the context of the expedited removal process, as well as to allow for grants of asylum at the credible fear screening stage. While the Departments acknowledge the proposals, at this time, the Departments decline to adopt these proposals in favor of the approach presented in this rule. The Departments believe that a credible fear screening provides a meaningful opportunity for a noncitizen to provide USCIS asylum officers with valuable information pertaining to their protection claims, and that a subsequent Asylum Merits interview will allow noncitizens to expand on the details and circumstances surrounding their need for protection. On the other hand, the credible fear screening process allows the Departments to assess who may not be eligible for protection and promptly execute removal orders. Overall, the credible fear screening process that the Departments implement, which is consistent with congressional intent, allows for the Departments to identify noncitizens who may or may not be eligible for protection. *See* INA 235(b)(1), 8 U.S.C. 1225(b)(1). As for allowing grants of asylum at the credible fear screening stage, the Departments acknowledge the recommendation but are not addressing the matter in this rulemaking as it falls outside of the scope of this rule.

Comments: Multiple commenters expressed support for the ''clarification'' in the NPRM that only USCIS asylum officers would conduct credible fear interviews. Some of these commenters asserted that CBP officers who had previously performed these screenings were hostile and confrontational and were more likely to make negative credible fear determinations. Another commenter asserted that this ''specification'' is consistent with congressional intent because the INA expressly requires asylum officers, who have professional training in asylum law and interview techniques, to conduct credible fear interviews.

Response: The Departments acknowledge the commenters' support and agree that the rule clarifies that USCIS asylum officers will conduct credible fear interviews, which is consistent with the INA. *See* INA 235(b)(1)(B)(i), 8 U.S.C. 1225(b)(1)(B)(i); 8 CFR 208.30(d). USCIS asylum officers receive training and possess experience in handling asylum and related adjudications; receive regular trainings on asylum-related country conditions and legal issues, as well as nonadversarial interviewing techniques; and have ready access to country conditions experts. The Departments acknowledge the concerns of the commenters regarding the conduct of CBP officers but note that these issues fall outside of the scope of this rulemaking.

Comments: One commenter suggested that the Departments should codify the elimination of the Prompt Asylum Claim Review (''PACR'') and the Humanitarian Asylum Review Process (''HARP'') by regulation, including by imposing enhanced procedural protections for all credible fear interviews, including that they not be conducted while in CBP custody. The commenter believes that, as the Departments revisit their asylum screening procedures, they should take this opportunity to prevent reintroduction of the programs by a future administration.

Response: Pursuant to the E.O. on Migration's directive to cease implementing PACR and HARP, and to consider rescinding any orders, rules, regulations, guidelines, or policies implementing those programs, the Departments have ceased implementing those programs. *See* 86 FR 8270. The Departments acknowledge the recommendation that those changes be codified by regulation, but further consideration and discussion of these programs fall outside of the scope of this rulemaking.

4. Applications for Asylum

a. Written Record of the Credible Fear Determination Created by USCIS, Together With the Service of the Credible Fear Determination, Treated as an Application for Asylum

Comments: A commenter expressed support for the provision requiring

asylum officers to provide a summary of material facts and interview notes to asylum seekers during the credible fear screening process. Various commenters expressed concern about time constraints for asylum seekers to amend or supplement the asylum application. One commenter argued that the 7-day timeline for submitting an amended or supplemented application—10 days if mailed—would be infeasible due to the remote location of many asylum offices and the brief timeline between the interview notice and the scheduled interview. The commenter recommended that the rule impose a requirement that USCIS provide a minimum time frame for applicants prior to the Asylum Merits interview. Another commenter urged that more time be allowed for applicants and attorneys to develop a case. Some commenters argued that the credible fear documentation is often unreliable and that applicants will need adequate time and assistance to make modifications or to supplement the record. Citing the procedural limitations at proposed 8 CFR 208.9(d)(1), many commenters recommended the Departments develop a more robust procedure for the asylum seeker or counsel to make corrections or statements at any stage of the process or during the Asylum Merits interview, while providing additional time to review the hearing transcript following the hearing.

Another commenter suggested that the proposed rule be framed with the expectation that the asylum application will be supplemented, modified, or corrected prior to the hearing. The commenter also recommended the rule include a provision that would require asylum officers to encourage asylum seekers to correct or supplement the record.

Several commenters expressed concern that supplementations, modifications, or corrections to the record would undermine the applicant's credibility and negatively impact the applicant's case outcome. One commenter recommended that the Departments change the rule to explicitly protect applicant credibility with respect to modifications, corrections, or supplementations to the credible fear determination.

Finally, citing proposed 8 CFR 208.3(a)(2) allowing an applicant to amend, correct, or supplement information collected during expedited removal, a commenter stated it was unclear whether this provision would also apply to the asylum officer's credible fear interview notes.

Response: The Departments appreciate comments supporting the treatment of a credible fear determination as an asylum application. In creating this efficiency, the Departments aim as well to reduce potential barriers to protection for eligible applicants. The Departments acknowledge the support for the provision stating that a copy of the application for asylum, including the asylum officer's notes from the interview and basis for the determination, will be provided to the noncitizen at the time that the credible fear determination is served. *See* 8 CFR 208.30(f), (g)(1). The Departments recognize that the initial screening determination may not necessarily capture details that an asylum applicant wishes to include for further consideration of the applicant's eligibility for asylum, statutory withholding of removal, or CAT protection. Therefore, it is important that an applicant be able to modify or supplement the application for asylum. However, given commenters' concerns about credibility, ability to modify credible fear notes, and general concerns with the proposed process, the Departments want to clarify that modifications or supplements should not seek to modify or amend the credible fear determination made by the asylum officer. Under this rule, applicants may modify, amend, or correct the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or alternatively, may supplement the information collected during their credible fear interview. The Departments are making this change to allow for applicants to make corrections or further develop their claim but are making clear that a line-by-line correction of the asylum officers' notes is not necessary or expected for purposes of the process or an assessment of credibility. The Departments do not believe that added protections are needed to protect against potential negative impacts on credibility assessments. Where there are discrepancies or inconsistencies, an applicant may explain such statements in their supplemental materials or at the Asylum Merits interview. As is always the case with any credibility determination made in the context of a nonadversarial asylum interview before USCIS, if a credibility concern arises, such as potential inconsistent testimony, the applicant will be given the opportunity to explain the inconsistency and the concern may be resolved if the applicant provides a reasonable explanation, which in some instances may relate to the nature of the credible fear interview itself if that constitutes such a reasonable explanation in the specific case. In creating a streamlined process, the Departments do not expect the applicant to do a wholesale edit of a credible fear interview record, but rather wish to ensure that biographic and basic information about the fear claim is correct, so that the applicant may further develop the claim at the Asylum Merits interview. The Departments address comments relating to constraints on timeline below in Section IV.D.4.d of this preamble.

Comments: A few commenters warned that the proposal to treat the record of the credible fear determination as an asylum application would create a conflict of interest because the asylum office would create the same record that it would then adjudicate, and the asylum office would develop the record during the credible fear screening and could then not grant asylum based on that record. A commenter asserted that the person preparing the asylum application is not simply writing down what the applicant says and that such person must be a zealous advocate for the applicant, which may include arguing for a novel interpretation of the law. Another commenter said that the NPRM must be revised to promote neutral decision-making based on objective evidence in the record and correct application of U.S. and international law. Another commenter stated that if adjudicators face significant backlogs or certain types of claims are viewed unfavorably, it is possible that asylum officers responsible for preparing and lodging asylum applications may feel pressure or incentivized to file fewer claims (*e.g.,* by issuing a greater number of negative fear determinations) and suggested that robust protections through checks-and-balances (referencing firewalls, where possible, as an example) within USCIS may help alleviate such concerns.

Response: The Departments disagree with the commenters that the asylum officer's role in preparing the asylum application through the creation of the credible fear record represents a conflict of interest with their role in adjudicating the asylum application of an individual found to have a credible fear in the first instance. By deeming the record of the credible fear interview to constitute the asylum application, the Departments ensure that the statements made by the noncitizen, including any arguments for a novel interpretation of the law, become part of the asylum application. Similarly, 8 CFR

208.30(d)(4) provides that counsel for the noncitizen may be present at the credible fear interview and for the asylum officer to permit counsel to make a statement at the end of the interview, which statement may include an argument for a novel interpretation of the law, and which would become part of the record. Furthermore, the rule provides at 8 CFR 208.4(c)(2) that noncitizens who receive a positive credible fear determination that is treated as the asylum application may supplement the information collected during the process that concluded with a positive credible fear determination. It further provides at 8 CFR 208.9(b) that asylum applicants may have counsel or a representative present at an Asylum Merits interview. Such representative will have an opportunity to make a statement or comment on the evidence presented upon completion of the hearing. *See* 8 CFR 208.9(d). Taken together, these provisions ensure that noncitizens and their representatives have ample opportunity to engage in zealous advocacy, including the presentation of arguments for novel interpretations of the law. As neutral fact finders conducting nonadversarial interviews in both the credible fear screening and asylum adjudication contexts, asylum officers are duty-bound to consider the totality of evidence in the record and issue decisions based on the facts and the law. Their role in creating the credible fear record that will be treated as an asylum application thus poses no inherent conflict of interest. Additionally, different asylum officers may be making the credible fear determination and conducting the Asylum Merits interview, thus obviating any perceived appearance of conflict. Furthermore, contrary to the commenter's assertion, nothing in this rule pressures or incentivizes asylum officers to issue negative credible fear determinations that are not warranted by the facts and law applicable to an individual's case. This rule aims to address the backlog of asylum claims before EOIR by providing a more efficient mechanism for processing asylum claims originating in the credible fear screening process while guaranteeing due process and an objective application of the law to the facts in each case, not by pressuring asylum officers toward particular outcomes.

Comments: Some commenters opposed treating the written record of the credible fear interview as an asylum application on the ground that it ''demands that USCIS assume the burden in what should be the non-citizen's role in the asylum application process.'' These commenters stated that this feature of the rule will require the Government to adjudicate more asylum applications.

Response: The Departments disagree that the IFR requires USCIS to assume a burden by treating the written record of the credible fear determination as an asylum application, as USCIS is required to produce this record as part of the credible fear screening process. While this change will mean that a greater percentage of noncitizens receiving a credible fear determination will subsequently receive a decision on the merits of their claims for asylum, statutory withholding of removal, and CAT, it will also mean that a final decision will be made in a more timely fashion than accomplished under the present process. As explained above, ensuring that all noncitizens who receive a positive credible fear determination quickly have an asylum application on file allows cases originating with a credible fear screening to be adjudicated substantially sooner than they otherwise would be—regardless of whether the noncitizen is granted asylum or ordered removed. Under the current process, noncitizens who receive a positive credible fear determination may wait months or years before attending a Master Calendar Hearing, and the IJ may be asked for multiple continuances to any deadline for the noncitizen to file an asylum application. By treating the credible fear documentation as the application for asylum, both the Departments and the noncitizen avoid the burden caused by delays, continuances, and rescheduled hearings sought in order for the noncitizen to file an asylum application. *See supra* Section III.B of this preamble.

b. Date Positive Credible Fear Determination Served as Date of Filing and Receipt

Comments: Multiple commenters supported the general idea that a positive credible fear determination would serve as an asylum application filing for purposes of the one-year filing deadline and to start the clock on employment authorization based on a pending asylum application, thereby helping asylum seekers avoid missing the one-year filing deadline and making it possible for asylum seekers to access employment authorization as quickly as possible. One commenter noted that this provision comports with the underlying policy goals of the one-year filing deadline. Other commenters provided opinions about the one-year filing deadline generally, suggesting that the one-year filing deadline has become a barrier to applicants as many miss the filing deadline through lack of knowledge or notice of the deadline, confusion about the process, believing they already filed, or due to the lack of coordination between DHS and DOJ leading to court proceedings not being timely initiated. One commenter provided examples of personal stories showcasing how many asylum seekers fail to meet the deadline due to trauma, grief, or hope for the possibility of safe return to their home country.

Several commenters further reasoned that the proposed change would save both asylum officers and IJs time in that they will not have to adjudicate whether an asylum application was filed within a year or whether an exception to the filing deadline was established (and, if so, whether the application was filed within a reasonable period of time given the exception). Instead, the commenter suggested that adjudicators will be able to concentrate on the substance of the claim. Some commenters went further, suggesting that Congress eliminate the one-year filing deadline entirely, as the deadline effectively acts as a bar to asylum and has arbitrarily blocked ''tens of thousands of refugees'' with meritorious claims for asylum.

Various commenters supported expedited access to EADs for asylum seekers deemed to have a credible fear of persecution. Commenters expressed strong support for any procedural changes that would make it easier for asylum seekers to obtain EADs as quickly as possible. An individual commenter supported eliminating any delay between a positive credible fear determination and the filing of an application for asylum by treating the written record of the determination by USCIS as an application for asylum and starting the waiting period for employment authorization based on a pending asylum application. The commenter said enabling asylum seekers earlier access to employment could reduce the public burden, reduce the burden on the asylum support network, and benefit asylum seekers in terms of equity, human dignity, and fairness. A few commenters discussed the importance of the employment authorization to asylum seekers, including the ability to build financial security; gain housing and food; pay for competent legal counsel; ensure their home gets heating and electricity; escape situations of abuse; and obtain a form of identification that may allow the individual to get a driver's license, access social benefits, open a bank account, register their child for school,

and enroll in health insurance. Citing research and examples from clients, commenters asserted that employment authorization not only allows asylum seekers to meet their basic daily needs and secure their fundamental rights, but it serves the economic interests of the United States through entrepreneurship, professional expertise, and tax revenue. A commenter argued that asylum seekers who have access to employment authorization would be less reliant on community resources and non-profit services. As expressed by commenters, individuals who experience barriers to employment authorization as a result of erroneous calculations in the starting and stopping of the waiting period for an EAD based on a pending asylum application are forced to work in exploitative situations and cannot support themselves or their families.

Response: The Departments agree that ensuring that asylum seekers promptly have an application for asylum on file and that claims are timely adjudicated can help promote equity and fairness for individuals, including by allowing for earlier employment authorization on the basis of the asylum application or incident to status as an asylee, which in turn may reduce burdens on asylum support networks or the public. These fairness considerations were important factors in the Departments' decision to treat the record underlying the positive credible fear determination as an application for asylum for purposes of meeting the one-year filing deadline and for purposes of beginning the time period applicants must wait before applying for or receiving employment authorization based on a pending asylum application. Instead of placing all individuals with a positive credible fear determination into removal proceedings before EOIR, where they then would have to defensively file a Form I–589, Application for Asylum and for Withholding of Removal (that would also require USCIS Service Center Operations to expend resources intaking the form and scheduling applicants for biometrics), and have them appear for multiple hearings before EOIR (where ICE resources would also be required to represent the Government in proceedings), applicants with a positive credible fear determination who are placed into the Asylum Merits process will have their credible fear record serve as the asylum application without having to expend additional agency resources to perform intake or additional applicant resources to file a new asylum application. This process will ensure applicants can apply for an EAD as soon as possible once either the requisite time period has passed based on the record underlying the positive credible fear determination that serves as the asylum application or their asylum application is granted (making the individual eligible for employment authorization incident to status). Additionally, the rule will promote equity and due process by ensuring that individuals who are allowed to remain in the United States for the express purpose of having their asylum claim adjudicated after receiving a positive credible fear determination do not inadvertently miss the one-year filing deadline.

The Departments also agree that having the record underlying the positive credible fear determination serve as the asylum application will create significant efficiencies in immigration court for noncitizens referred to streamlined section 240 proceedings when USCIS declines to grant asylum. Generally, noncitizens seeking asylum and related protections defensively during removal proceedings must complete and file the Form I–589, Application for Asylum and for Withholding of Removal. IJs must often grant continuances and delay hearings to allow noncitizens to complete the application. When a noncitizen files an asylum application defensively beyond the one-year filing deadline, the IJ and the parties must devote resources and time to resolving the issue of whether any exception to the one-year bar has been established and whether the application was thereafter filed within a reasonable period of time. However, this rule will increase efficiency during immigration court proceedings for certain cases originating from the credible fear process by reducing or eliminating the need for IJs to delay hearings for noncitizens to prepare the asylum applications and by obviating the need for IJs and the parties to spend time addressing issues related to the one-year filing deadline.

Additionally, while the Departments agree that the issue of the one-year filing deadline for asylum is an important one, the comments related generally to the one-year filing deadline go outside the scope of the present rulemaking. The one-year filing deadline (including exceptions to the deadline) is set by Congress, INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B).

Comments: Some commenters offered general opinions about EADs for asylum seekers and expressed concern that any waiting period for employment authorization is too long. A commenter stated that DHS should rescind employment authorization rules issued by the prior Administration because they were issued by agency officials in violation of the APA. The commenter said this Administration should immediately restore the 150-day waiting period and 30-day processing time requirement for asylum seekers. Another commenter concluded that the proposed rule ''sidesteps'' rescinding the timeline that leaves asylum seekers without the basic means to provide for themselves and urged DHS to enable applicants to seek employment authorization based on a grant of parole under 8 CFR 274a.12(c)(11). This commenter stated that paroling asylum seekers without employment authorization simply ensures their exploitation and destitution.

Response: The Departments acknowledge the comments related generally to EADs based on a pending asylum application, often referred to as ''(c)(8)'' EADs because of the regulatory provision under which USCIS may grant such EADs, 8 CFR 274a.12(c)(8). The ''(c)(11)'' EADs referred to by the commenter relate to another subsection of that same provision, 8 CFR 274a.12(c)(11), which authorizes USCIS to grant an EAD to a noncitizen paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit. The eligibility criteria for EADs based on a pending asylum application are beyond the scope of the present rule. The present rule contains no substantive changes to EAD eligibility based on a pending asylum application or the requisite waiting period for applying for an EAD based on a pending asylum application. In the 2020 Asylum EAD Rule,[75] DHS clarified that noncitizens who have been paroled into the United States after being found to have a credible fear or reasonable fear of persecution or torture may not apply under 8 CFR 274a.12(c)(11) (parole-related EADs), but may apply for employment authorization under 8 CFR 274a.12(c)(8) if they apply for asylum in accordance with the rules for (c)(8) EADs and are otherwise eligible. *See* 85 FR 38536. Those eligibility criteria are beyond the scope of the present rule. DHS welcomes comments related to these topics in separate, future rulemaking projects, as provided in the Spring and Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions.

[75] Asylum Application, Interview, and Employment Authorization for Applicants, 85 FR 38532 (June 26, 2020). On February 7, 2022, in *AsylumWorks* v. *Mayorkas,* No. 20–cv–3815, 2022 WL 355213, at *12 (D.D.C. Feb. 7, 2022), the United States District Court for the District of Columbia vacated the 2020 Asylum EAD rule.

c. Inclusion of Applicant's Spouse and Children

Comments: Several commenters asserted that the rule should permit asylum applicants to add a spouse and children or supplement family information at any point during the application process. A few commenters suggested that the proposed rule's inflexibility with regard to changes to family information makes it more restrictive than the current rule, undermines the Departments' goal of efficiency, and contradicts the Administration's promise to keep families together. Other commenters reasoned that applicants may fail to discuss relevant family members during the credible fear process due to stress, trauma, fear, confusion regarding the asylum process and law, or because the asylum officer fails to inquire about family members. One commenter added that individuals should not be forced to choose between their own safety and reuniting with family members.

One commenter stated that the proposed rule fails to consider how the provision of a credible fear decision automatically constituting the filing of an asylum application would affect the many asylum seekers who do not cross the border with their family members (*e.g.,* different times and places, in groups or alone) and are thereby unable to join their claims. The commenter stated that the rule may result in family separations when some family members' asylum cases are approved and others are not, where they could have otherwise been joined. One commenter concluded that requiring spouses and children to arrive concurrently with the principal applicant wrongly deprives asylum seekers of protection for their spouse or children and is furthermore inefficient as USCIS will have to adjudicate a Form I–730, Refugee/Asylee Relative Petition, for family members who do not make it into the credible fear case. Another commenter described the Form I–730 process and remarked that the adjudicatory burden on USCIS will continue for years as more forms come into play instead of USCIS adjudicating the whole family's adjustment applications all at once. A commenter also requested information about what will be the filing date in situations where multiple family members name each other as dependents and what will happen to dependents if the principal applicant is not granted asylum.

Response: The Departments acknowledge comments related to dependents on an asylum application for individuals placed in the Asylum Merits process after receiving a positive credible fear determination. The spouse or child (unmarried, under 21 years old) of a principal asylee may derive asylum status from their spouse or parent. The derivative asylee may be included on the original application for asylum, or, if not included as a dependent on the application, the principal asylee may petition for their relatives by filing a Form I–730, Refugee/Asylee Relative Petition, within two years of the grant of asylum. Like affirmative and defensive asylum applications, a grant of asylum to the principal asylum applicant following an Asylum Merits interview will confer asylum status on their spouse or children if they are included as dependents in the application and not subject to any mandatory bars to asylum applicable to dependents. Principal applicants will be allowed to include dependents on their application in the new process if the dependents also entered the United States concurrently with the principal applicant and are on the same credible fear case, or, in the alternative, if the spouse or child already has a pending application under this new Asylum Merits process before USCIS. Additionally, a principal asylee may file a Form I–730, Refugee/Asylee Relative Petition, on behalf of any of their qualifying derivative family members after they are granted asylum. The Departments are cognizant of the concerns expressed by commenters about the need for flexibility in allowing dependents to be added to an asylum case under the new Asylum Merits process and contend that the procedures for dependents outlined in the IFR are as flexible as possible, while still ensuring the process can run smoothly and efficiently. The Departments would like to highlight that, in the credible fear process, applicants are specifically asked about all of their family members, and this information is recorded in the Form I–870, Record of Determination/Credible Fear Worksheet. If the applicant receives a positive credible fear determination and is placed in the new Asylum Merits process, they will be allowed another opportunity to review and correct the information in their Form I–870. Accordingly, applicants will have ample opportunity to ensure that the information related to their family members is accurately reflected in their application under the new process. And if there are any qualifying family members that entered with the applicant or are already in the United States and also have an asylum application pending with USCIS after a positive credible fear finding, the principal applicant is free to include them in his or her application. If for any reason a principal applicant fails to add a dependent to their initial asylum application, the principal applicant is not prevented from having that family member derive asylee status because the principal applicant is free to petition for that family member if and when the principal applicant is granted asylum, either by USCIS or by EOIR. With this IFR, the Departments are now establishing a procedure under which the principal applicant will receive a decision on the principal applicant's case before USCIS and, if the principal applicant is not granted asylum, the principal applicant and any dependents on the case who are not in lawful status will be served with an NTA in immigration court and placed into streamlined section 240 removal proceedings before an IJ. In streamlined section 240 proceedings, the principal applicant may still be granted asylum and, if so, may confer that asylum status upon all of the qualifying dependents on the case. If the principal applicant is not granted asylum, then the principal applicant will be considered for statutory withholding of removal or withholding or deferral of removal under the CAT, and the IJ will also consider claims of the dependents that were elicited by the asylum officer during the Asylum Merits interview to determine if they are eligible for asylum or any other form of relief or protection.

In response to the questions presented by commenters, the filing date will reflect the filing of the principal applicant. If a spouse or child is a dependent on an application under the new Asylum Merits process and also files as a principal applicant themselves, then the filing date for the dependent spouse or child's application will be either (1) the date the dependent spouse or child's Form I–589 was filed or (2) the date of service of the positive credible fear determination on their spouse or parent, whichever date is earlier. Additionally, if the principal applicant is not granted asylum, then the principal applicant and any dependents who are not in lawful status will be issued an NTA and placed in streamlined section 240 proceedings. *See* 8 CFR 208.14(c)(1). If there is a dependent under the new process who also has a pending affirmative asylum application before USCIS, then USCIS will adjudicate that asylum application on its own before placing that individual in section 240 proceedings and, if that individual is eligible for asylum as a principal applicant, the

individual would not be referred to immigration court.

Additionally, under the revised 8 CFR 208.16, for cases under the jurisdiction of USCIS following a positive credible fear determination, if USCIS found the principal applicant ineligible for asylum, though USCIS cannot grant withholding or deferral of removal, the asylum officer is authorized to make a determination on the principal applicant's eligibility for statutory withholding of removal or withholding or deferral of removal under the CAT if the principal applicant shows eligibility for such relief based on the record before USCIS. If USCIS determines that the principal applicant has shown eligibility for withholding or deferral of removal based on the record before USCIS, that determination will be given effect by the IJ if the IJ finds the principal applicant ineligible for asylum and issues a final order of removal, unless DHS demonstrates that evidence or testimony specifically pertaining to the respondent and not included in the record of proceedings for the USCIS Asylum Merits interview establishes that the respondent is not eligible for such protection(s), pursuant to the new 8 CFR 1240.17(i)(2). As described in 8 CFR 1240.17(i), once in section 240 proceedings, under the new process, the IJ will conduct a de novo review of the principal applicant's eligibility for asylum, and if the principal applicant is not granted asylum, will consider de novo the principal applicant's eligibility for statutory withholding of removal and withholding or deferral of removal under the CAT in cases where USCIS did not determine that the respondent was eligible for such relief. In cases where the principal applicant is not granted asylum by the IJ, the IJ will also review asylum eligibility for all other family members and if one family member is found eligible for asylum by EOIR and the others can receive asylum as derivative asylees, it will not be necessary for the IJ to evaluate the remaining family members' eligibility for asylum or withholding or deferral of removal. If a respondent is not granted asylum and cannot otherwise derive asylum from a family member, then the IJ will review each respondent's eligibility for statutory withholding of removal and withholding or deferral of removal under the CAT.

Comments: One commenter requested the regulatory language be amended to define ''accompanying family members'' in 8 CFR 208.30, including by specifying what family members are included (*e.g.,* siblings, cousins, etc.) and what including the family members on the form would accomplish.

Response: The Departments acknowledge the comment related to who may be included as an accompanying family member in a credible fear determination, but fully specifying the details of that process is beyond the scope of this rulemaking. In most cases, however, the Departments understand an ''accompanying family member[ ]'' to include a parent or sibling.

Comments: A commenter warned that the proposed inclusion of an applicant's spouse and children in the request for asylum conflicts with existing regulations. The commenter described what they called ''riders,'' or those individuals who previously filed affirmative applications and are already in the country and remarked that existing regulations require riders not originating from a credible fear claim to receive NTAs and be referred to immigration court for section 240 removal proceedings (8 CFR 208.14(c)(1)). The commenter argued that the proposed rule does not address this or how this circumstance would work procedurally and asserted that riders cannot be included in grants of statutory withholding of removal or protection under the CAT.

Response: The Departments acknowledge the comments related to so-called ''riders.'' The present rulemaking does not change the governing law with respect to who may derive asylum from a principal applicant granted asylum in the United States. INA 208(b)(3), 8 U.S.C. 1158(b)(3). Further, the present rulemaking is not changing the status quo governing withholding of removal or deferral of removal with respect to an individual—both forms of relief or protection are individual in nature and a dependent cannot derive any status from a family member's grant of withholding or deferral of removal. The present rulemaking is not changing anything about the nature of withholding or deferral of removal in that neither confer any type of status to a dependent. If a principal applicant is not granted asylum by USCIS under the new Asylum Merits process, then the principal applicant and all dependents included in the request for asylum who are not in lawful status will be issued an NTA and placed in streamlined section 240 proceedings, as described above. If one of the dependents does have a pending affirmative asylum application before USCIS, then that application will be adjudicated as well, but if that individual is not found eligible for asylum on their own, then they will also be issued an NTA and placed in section 240 proceedings if they are not otherwise in lawful status. Accordingly, the concerns expressed by the commenter related to ''riders'' appear to be unfounded, as anyone without legal status who is found ineligible for asylum by USCIS, whether in the affirmative asylum process or under this new Asylum Merits process, will be issued an NTA and placed in section 240 proceedings before an IJ.

d. Due Process in Asylum Applications

Comments: Some commenters emphasized the importance of formal hearings and a presentation of all available evidence in a court setting to, in their opinion, ensure due process. A few commenters argued that it was important for asylum claims to be heard before an independent, impartial judiciary.

Response: The Departments disagree that a court setting or independent judiciary is necessary or otherwise required to allow for due process. *See, e.g.,* 16D C.J.S., Constitutional Law sec. 2010 (2022) (''Due process always stands as a constitutionally grounded procedural safety net in administrative proceedings[.]''). Moreover, transfer of authority to the Judiciary is outside the Departments' authority and beyond the scope of this rulemaking. The Departments only have the authority to promulgate rulemaking with respect to the authority already delegated to them by statute. Congress has expressly recognized the unique and specialized role of asylum officers in making credible fear determinations and in adjudicating the merits of asylum applications. Congress explicitly designated that ''asylum officers'' are responsible for conducting credible fear interviews and making credible fear determinations. INA 235(b)(1), 8 U.S.C. 1225(b)(1). Further, an ''asylum officer'' is defined by statute at INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E), as an immigration officer who: (1) ''has had professional training in country conditions, asylum law, and interview techniques comparable to that provided to full-time adjudicators of applications under'' INA 208, 8 U.S.C. 1158, and (2) ''is supervised by an officer who meets the condition described in clause (i) and has had substantial experience adjudicating asylum applications.'' Thus, Congress specifically contemplated that asylum officers act as full-time adjudicators of asylum applications and have specialized training to conduct such adjudications. Moreover, in addition to laying out the required background and role of asylum officers who both conduct credible fear determinations and adjudicate applications for asylum under INA 208,

8 U.S.C. 1158, Congress emphasized the important role of asylum officers in adjudicating asylum applications filed by even the most vulnerable applicants. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Public Law 110–457, 122 Stat. 5044, Congress provided that asylum officers have initial jurisdiction over any asylum application filed by an unaccompanied child, and therefore asylum officers are specifically empowered to take all necessary steps to render a decision on an affirmative asylum case filed by a UAC. INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C). Accordingly, Congress has repeatedly recognized the vital role of asylum officers in various contexts related to asylum applications.

Under the INA, asylum officers are authorized to make initial credible fear determinations and are also the only adjudicators authorized to conduct the initial interview of the most vulnerable asylum applicants, unaccompanied children, even where those children may have already been placed into section 240 removal proceedings before EOIR. In addition to these very particular roles that Congress assigned to asylum officers, asylum officers are also recognized as full-time adjudicators of asylum claims under INA 208, 8 U.S.C. 1158. Asylum officers receive extensive training in substantive law and procedure, nonadversarial interview techniques and record development, decision writing, research skills, working with interpreters, and interviewing vulnerable individuals, including children; lesbian, gay, bisexual, transgender, queer, and intersex (''LGBTQI'') persons; survivors of gender-based violence; and survivors of torture and trauma. The extensive and well-rounded training asylum officers receive is designed to enable them to conduct nonadversarial interviews in a fair and sensitive manner. Indeed, Congress recognized the special role of asylum officers when it vested asylum officers, not IJs, with initial jurisdiction over asylum applications submitted by unaccompanied children even where they have already been placed in section 240 removal proceedings before EOIR. The present rulemaking builds on the already existing role of asylum officers in adjudicating affirmative asylum applications to have asylum officers also adjudicate asylum applications of individuals retained by or referred to USCIS for further consideration through an Asylum Merits interview following a positive credible fear determination. Additionally, after considering comments and adjusting the present rule such that asylum officers will no longer issue removal orders under the framework of this rule as described above and below, USCIS will not be issuing orders related to statutory withholding of removal or withholding or deferral of removal under the CAT. In those cases in which the asylum officer finds that an individual is not eligible for asylum, the asylum officer will determine whether the individual is nonetheless eligible for withholding of removal under 8 CFR 208.16(b) or (c) or deferral of removal under 8 CFR 208.17. As proposed in the NPRM, asylum officers will determine applicants' eligibility for withholding of removal, thereby maintaining the due process protections that already exist within affirmative asylum interviews conducted by USCIS asylum officers. *See* 8 CFR 208.9. While the Departments appreciate the concerns expressed by commenters concerned with protecting the due process rights of asylum applicants, the Departments are confident that those rights will be preserved through the nonadversarial interview process conducted by highly trained and specialized asylum officers, with a de novo review of the asylum claim by an IJ if USCIS finds the applicant ineligible for asylum. The IJ will also review any claim to statutory withholding of removal or withholding or deferral of removal under the CAT and any other potential form of relief or protection if the applicant is not granted asylum. Moreover, the rule does not contemplate any change to the noncitizen's ability to appeal an IJ's decision.

Comments: Various commenters expressed concern that the proposed rule does not establish a minimum amount of time between the positive credible fear determination and the Asylum Merits interview for asylum seekers to obtain counsel and prepare before the hearing. One commenter asserted that the rule seeks to ''unreasonably shorten'' asylum seekers' timeline for finding representation and gathering evidence—both time consuming processes that may require additional steps such as translation or mail services. Another commenter argued that the lack of ''meaningful temporal space'' between the credible fear determination and the asylum hearing would wrongly favor an efficient administrative process over a reasoned and fair decision of law. Another commenter suggested that provisions to expedite and replace the existing application process would go against congressional intent to identify and protect the rights of genuine asylum seekers to due process. Similarly, another commenter expressed concern that the rule's silence on the timeline between the credible fear determination and the hearing before an asylum officer may frustrate the statutory right of access to counsel. While the rule would clarify the right to representation during the hearing, some commenters expressed the concern that asylum seekers would not be able to secure counsel in practice. They argued that the time between the credible fear determination and the hearing before an asylum officer is short and would not account for applicants with limited resources and language barriers.

Several commenters expressed concern that applicants would encounter difficulties in meeting the evidentiary requirements for the asylum hearing due to trauma, time restraints, detention, and other compounding factors. Specifically, commenters argued that survivors of trauma are often most likely to have trouble gathering sufficient evidence to support their application due to time restraints, the unavailability of documentary evidence and services, intimidation, and unawareness of available resources. One commenter expressed concern that the new credible fear process would not provide enough time for survivors of trauma or torture to recover and adequately prepare for interviews. One commenter claimed that any proposal to amend the rule that overlooks the intersection of trauma and the outcome of an asylum application will ''result in systematic refoulement.'' Similarly, another commenter argued that some individuals—including those with low levels of literacy, those with language access issues, and those who have suffered from trauma—may require additional time and assistance to complete or amend their applications.

Many commenters recommended that the rule ensure meaningful opportunities for asylum seekers to find counsel and gather evidence by establishing an adequate timeline between the credible fear determination and the Asylum Merits interview before an asylum officer. One commenter recommended that the rule should provide a minimum 90-day timeline to submit evidence to USCIS between the credible fear determination and the Asylum Merits interview.

Response: The Departments acknowledge concerns raised related to the amount of time provided between service of the positive credible fear determination and the Asylum Merits interview before USCIS. The Departments understand that applicants

will need time to review their applications and supporting documentation, consult with representatives, and prepare for their Asylum Merits interview. At the same time, the underlying purpose of the present rule is to make the process more efficient by streamlining proceedings that heretofore have been drawn out for months or even years. To balance the efficiency goals of the present rule with the due process concerns raised by commenters and shared by the Departments, DHS is clarifying at 8 CFR 208.9(a)(1) that there will be a minimum of 21 days between the service of the positive credible fear determination on the applicant and the date of the scheduled Asylum Merits interview. While recognizing that affirmative asylum applicants often spend a greater amount of time preparing their asylum application in advance of filing and have more time inside the United States to procure and consult with counsel, the Departments also must consider that delaying the Asylum Merits interview for any considerable length of time to allow applicants in the Asylum Merits process a similar amount of time would undermine the basic purpose of this rule: To more expeditiously determine whether an individual is eligible or ineligible for asylum. Accordingly, the Departments must weigh the benefits associated with more expeditiously hearing and deciding claims originating in the context of expedited removal and the credible fear screening process with the challenge applicants and representatives may face in preparing for the Asylum Merits interview during a limited time period, including where language barriers and other challenges raised in the comments are present. Thus, after careful consideration, the Departments have determined that a 21-day minimum time frame between service of the positive credible fear determination and the Asylum Merits interview is the most reasonable option. This 21-day minimum time frame will strike an appropriate balance between achieving operational efficiency and still ensuring fairness by providing applicants and their representatives time to prepare for the Asylum Merits interview.

Comments: Citing research, commenters also suggested that the location of the asylum interview, in addition to the timeline, affects asylum seekers' ability to gather evidence and find counsel, including where such asylum seekers are survivors of trauma with scarce resources. A commenter suggested that the ability to access counsel and have a legal representative present at the Asylum Merits interview would only be meaningful if the hearing takes place in an accessible location and if the applicants have sufficient opportunity to gather evidence and prepare. Considering the importance of location in assessing due process concerns, one commenter urged the Departments to provide more clarity on the location of the nonadversarial Asylum Merits interviews to ensure meaningful access to legal representation and adequate opportunities to meet evidentiary requirements. A commenter also suggested the rule include a two-hour limit on the distance between the location of the scheduled interview and the applicant's location and provide an automatic mechanism for changing the location if a person moves within the United States. Another commenter recommended that this rulemaking provide a right to seek a change of venue to avoid the risk of an ''unfair burden'' on asylum seekers who move after being released from detention. A commenter suggested that the Asylum Merits interview occur with USCIS at the asylum seeker's initial destination outside of the expedited removal process.

Response: The Departments acknowledge the comments related to location of the Asylum Merits interview and potential changes in the location of the interview. Under the present rule, following the positive credible fear determination where the applicant is placed into the Asylum Merits process, the applicant's interview will be scheduled with the asylum office with jurisdiction over their case. Just like affirmative asylum cases, sometimes the asylum office with jurisdiction over the case may be distant from the applicant's residence. Unfortunately, because USCIS has limited asylum offices and office space, it would be impossible to always ensure an applicant only has to travel two hours or less to appear at an interview, but USCIS makes every reasonable effort to schedule applicants in a convenient location, including by orchestrating asylum interviews at circuit ride locations (*i.e.,* locations other than an asylum office, such as a USCIS field office, where USCIS conducts asylum interviews) throughout the United States when possible and practicable. As for the comments recommending that the hearing should take place at the asylum applicant's initial destination outside of the expedited removal process, USCIS agrees that this is the appropriate venue when the applicant has been paroled, and that is why the asylum office with jurisdiction over the applicant's place of residence following the positive credible fear determination will be the office with jurisdiction over the applicant's case. Additionally, if an applicant changes residence prior to an Asylum Merits interview and notifies USCIS of the change, just as with an affirmative asylum interview, USCIS will attempt to reschedule the applicant's interview to occur at the office with jurisdiction over the applicant's new residence location. USCIS also appreciates the comments related to applicants securing access to counsel for their Asylum Merits interview. Just as with affirmative asylum interviews, USCIS will make reasonable efforts to ensure applicants are scheduled for their Asylum Merits interview in a time and place that ensures their representatives of record can attend and meaningfully participate in the interview.

Comments: Some commenters suggested that requests for adjournment or continuances should be assessed more liberally where the delay sought is to find an attorney or gather supporting evidence. One commenter recommended that the rule decouple the proposed definition of ''filing'' a claim from the time periods specified in the INA, including the 45 days required for initial consideration and 180 days for completion.

Response: The Departments acknowledge the comments related to the timeline for applications and potential continuances. The Departments cannot change the statutory procedures governing asylum under INA 208, 8 U.S.C. 1158, including the procedures set out in INA 208(d)(5)(A), 8 U.S.C. 1158(d)(5)(A), related to security checks and the general framework indicating that in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence no later than 45 days after the date an application is filed, and in the absence of exceptional circumstances, the administrative adjudication of the application, not including administrative appeal, shall be completed within 180 days of the filing date. Accordingly, it is not within the Departments' authority to decouple the filing date from the timeline for adjudicating the asylum application. Regarding requests to reschedule, applicants should follow the instructions on the USCIS website and their appointment notices, just as they do with affirmative asylum interviews.

Comments: Various commenters expressed concern about time constraints for asylum seekers to amend

or supplement the asylum application. One commenter argued that the 7-day timeline for submitting an amended or supplemented application—10 days if mailed—would be infeasible due to the remote location of many asylum offices and the brief timeline between the interview notice and the scheduled interview. The commenter recommended that the rule impose a requirement that USCIS provide at least six weeks' notice to applicants prior to the asylum hearing.

Response: As mentioned in the response to comments related to what form the application for asylum will take under the new rule and how it may be supplemented or modified, the Departments recognize that the initial credible fear screening determination may potentially include errors or misunderstandings and may not necessarily capture every detail an applicant would like to provide. The Departments agree with commenters that it is important for applicants to be able to modify or supplement their applications for asylum to account for such misunderstandings or errors or to add nuance. However, also as mentioned in the earlier response, the Departments note that modifications or supplements should only take the form of correcting the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or providing additional evidence beyond that collected during the credible fear interview. The credible fear determination and the notes collected by the asylum officer are part of the record of determination and form the basis for establishing a credible fear of persecution or torture, but it would not be practical or possible to expect the applicant to review the entirety of the asylum officer's notes or the asylum officer's own work product in making the credible fear determination and make modifications to those items.

As further explained in the response to previous comments on the topic of what form amendments may take, in creating a streamlined process, the Departments do not expect the applicant to do a wholesale edit of a credible fear interview, but rather wish to ensure that biographic and basic information about the fear claim is correct, so that the applicant may further develop the claim at the Asylum Merits interview. Accordingly, while the Departments appreciate commenters' concerns about the time frame under which applicants may be expected to make corrections or provide supplemental evidence, the Departments believe that the provided time frame achieves the best possible balance between allowing applicants sufficient time to present their evidence and achieving a streamlined process. The six-week notice time frame suggested by one commenter would be twice as long as the notice provided to affirmative asylum applicants for their interviews. While the commenter might consider six weeks an ideal time frame to prepare for an asylum interview, it would not be practical or achieve the goals of operational efficiency to wait six weeks for the interview to take place in every case. As mentioned above, however, there will be a minimum time frame between the positive credible fear determination and the Asylum Merits interview of 21 days. Also, as described above, USCIS believes this time frame best reaches the goals of providing applicants in this new process with adequate time to prepare for their Asylum Merits interviews and allowing expeditious adjudications. As for the time frame for submitting additional evidence, USCIS is providing applicants in the Asylum Merits process with evidentiary submission requirements that also reflect that careful balance. It would be impractical for USCIS to require all evidence to be submitted at the credible fear stage, and USCIS recognizes that applicants may need time to collect some additional evidence. Moreover, while the burden of proof is on the applicant to establish eligibility for asylum, as always with any asylum case, documentary evidence is not required to sustain the applicant's burden of proof in establishing asylum eligibility; testimony alone may be sufficient where it is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. INA 208(b)(1)(B)(i), (ii), 8 U.S.C. 1158(b)(1)(B)(i), (ii). When applicants seek to provide documentary evidence to sustain their burden of proof, USCIS welcomes that evidence but also must place some limit on the time for submission to allow asylum officers to meaningfully engage with the evidence. Asylum officers must review each case file, including the evidence the applicant has submitted in support of the applicant's claim, sufficiently in advance of the Asylum Merits interview to begin to assess its probative value, conduct additional research if needed, and prepare to elicit testimony from the applicant about such evidence. The Departments agree with commenters that applicants need time to locate and submit such evidence, but asylum officers also need time to review and examine such evidence in advance of the interview if the evidence is to be meaningfully explored. Accordingly, the Departments consider that requiring additional evidence be submitted at least 7 days in advance of the interview if submitted in person, or postmarked 10 days in advance if mailed, is a reasonable time given the various interests at play in setting up such a time frame. While DHS appreciates the specific comment related to the challenge of submitting evidence in person, that is precisely why DHS is allowing an additional 3 days for mailing if evidence is submitted via mail. This time frame allows for asylum offices to receive and properly file the evidence and for asylum officers to review submissions as they prepare for Asylum Merits interviews. This time frame also preserves the time available during the Asylum Merits interview to meaningfully elicit testimony from an applicant and allow representatives time to ask follow-up questions or provide additional statements if needed, instead of taking up that time with the asylum officer's review of just-submitted evidence. Notably, this time frame for the Asylum Merits interview is more generous to applicants than the time frame provided at current 8 CFR 208.9, which requires evidence to be submitted at least 14 days in advance of the interview. Given the realities of the COVID–19 pandemic, current operational practice is to require evidence to be submitted 7 days in advance of an affirmative asylum interview if submitted in person, and 10 days if submitted via mail. Moreover, if there is evidence that the applicant was unable to procure during the required time frame and that the applicant believes is highly material or essential to the applicant's case, the asylum officer has discretion to allow the applicant a brief extension to provide such evidence. Likewise, if an asylum officer identifies a piece of evidence that is essential, such as evidence necessary to establish a derivative relationship for a member of the case, the asylum officer will issue a request for evidence to the applicant and provide a reasonable time to respond. And as mentioned above, documentary evidence is not required to sustain the applicant's burden of proof in establishing asylum eligibility—testimony alone may be sufficient where it is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. INA 208(b)(1)(B)(i), (ii), 8 U.S.C. 1158(b)(1)(B)(i), (ii). Furthermore, even in cases where the asylum officer determines that the applicant should provide evidence that corroborates otherwise credible testimony, if the applicant does not have the evidence

and cannot reasonably obtain the evidence, it is not required to be provided. *Id.* Thus, even where the applicant may wish to provide additional documentary evidence, but it is not reasonably available in the time frame provided, the applicant may still meet the burden of establishing asylum eligibility.

Comments: Several commenters asserted that applicants must be allowed adequate representation when preparing an asylum application; one commenter explained that such representation is necessary to ''make an effective submission'' while ''meet[ing] the standards of modern corroboration requirements'' in adjudication. Commenters argued that asylum seekers may not understand what nuances in the record could affect their case due to the complex, politicized, and evolving nature of asylum standards. Therefore, as one commenter asserted, the opportunity to amend or correct the credible fear interview record would only be meaningful if applicants have access to adequate interpretation and legal services. Similarly, another commenter stated that correcting or supplementing a credible fear interview record could be ''difficult or impossible'' without legal counsel. A commenter added that a lack of resources, poor knowledge of systems, and obstacles associated with detention intensify the need for counsel in the asylum application process. Considering these challenges, the commenter recommended that agencies inform asylum seekers—in their own language—of their right to counsel, to present additional evidence, and to expand the grounds of the asylum claim. Additionally, the commenter recommended that agencies clarify the higher standards at the asylum interview compared with the credible fear interview and provide a contact list of local legal services providers.

Response: The Departments acknowledge the comments related to the role of counsel for applicants who are placed in the Asylum Merits interview process. As mentioned above in response to comments about amending or supplementing the application, the Departments do not expect the applicant to conduct a word-by-word, line-by-line review of the asylum officer's credible fear interview and make corrections to the notes or the asylum officer's work product. Instead, the Departments would welcome any corrections to the applicant's biographic information, clarifications the applicant would like to make to the Form I–870, or any additional evidence the applicant would like to provide in support of the application. In any event, the Departments agree with commenters that information related to the process in which the applicant is placed and access to counsel are of utmost importance. That is why the Departments plan to ensure that when an individual is placed in the Asylum Merits process, the individual is provided with a fact sheet explaining the process, including the relevant standards, and a contact list of free or low-cost legal service providers similar to that which applicants would receive in section 240 removal proceedings before EOIR.

Comments: Many commenters reiterated the challenges asylum seekers experience in obtaining access to adequate counsel and developing their asylum claims, particularly while in detention or during expedited processes. One commenter argued that noncitizens must be given an opportunity to amend their credible-fear interview record with representation because, in the context of detention, DHS is ''not currently capable of carrying out a proper fact-finding proceeding.'' Another commenter additionally claimed that adequate interpretation and legal services are ''nearly impossible'' to find when the applicant is detained. A commenter added that the proposed rule only allows for legal representation at no expense to the Government in the application process, compounding difficulties for asylum seekers who are ineligible to apply for employment authorization. Several commenters proposed that the Government fund legal representation programs for asylum seekers in the credible fear and Asylum Merits stages. Additionally, a commenter suggested the rule provide more information on access to counsel, legal orientation programs, and education for pro se applicants and applicants with cognitive, mental, or physical impairments.

Response: The Departments acknowledge the comments related to access to counsel while in expedited removal; however, such comments are outside the scope of the present rulemaking, as they relate to the expedited removal process generally. This rulemaking is not altering the expedited removal process itself but rather introducing an alternative procedure for ''further consideration'' of the asylum claims of individuals who receive a positive credible fear determination. The rule preserves applicants' ability to retain and access counsel within the new Asylum Merits process before USCIS. Further, while the Departments appreciate comments suggesting the possibility of Government-funded attorneys in the credible fear process and for the asylum application, those comments are also outside the purview of this rulemaking. The Departments agree that it is important to, whenever feasible, provide applicants with information on access to counsel and provide education for pro se applicants. That is why such information, including an advisal of the right to be represented during the interview and of information related to the nature of the interview, is provided to applicants at various stages during the credible fear interview, including during the interview itself. Further, the Departments plan to provide information about the Asylum Merits process, as well as information related to free or low-cost legal service providers, along with service of the positive credible fear determination. The Departments take commenters' concerns about applicants with cognitive, mental, or physical impairments very seriously. DHS already has a practice of placing individuals in section 240 removal proceedings when they are unable to testify on their own behalf due to possible cognitive or mental impairments, physical disability, or other factors that impede them from effectively testifying in the context of a credible fear interview. In section 240 proceedings, IJs consider whether applicants demonstrate indicia of incompetency and, if so, which safeguards are appropriate. *See, e.g., Matter of M–A–M–,* 25 I&N Dec. 474 (BIA 2011). Accordingly, applicants with indicia of incompetency will continue to have their claims considered in ordinary section 240 proceedings.

Comments: Commenters asserted that the NPRM's estimated 90-day case completion timeline would be ''unrealistic,'' ''troubling,'' and ''could prejudice the rights of asylum seekers.'' One of these commenters argued that the expedited timeline would affect due process, in part because asylum seekers often have limited resources, physical and emotional needs, and barriers to preparing their cases, including difficulty finding counsel. Similarly, a commenter expressed concern that the proposed rule at 8 CFR 208.3(a)(2) would maintain the 45-day timeline for consideration and 180-day requirement for completion. Another commenter argued that the 45-day timeline for completing adjudications for new arrivals would ''require extraordinary resources,'' contribute to the USCIS

backlog, and exacerbate due process concerns.

Response: The Departments acknowledge commenters' concerns regarding the timeline of case processing. As mentioned above with respect to the comments related to the processing timeline from positive credible fear determination to Asylum Merits interview, it is not within the Departments' authority to change the 45-day timeline for interviews and the 180-day timeline for adjudications set by Congress in INA 208(d)(5)(A), 8 U.S.C. 1158(d)(5)(A), absent exceptional circumstances. In this IFR, the Departments changed the rule language from that proposed in the NPRM to acknowledge that Asylum Merits decisions would generally be issued within 60 days of service of the positive credible fear determination absent exigent circumstances. *See* 8 CFR 208.9(e)(2).

Comments: A commenter argued that the proposal to remove the application requirement for noncitizens apprehended at the border gives such noncitizens procedural protections not afforded to asylum seekers who already reside in the United States. The commenter opposed the possibility that, under the proposed provisions, asylum seekers with strong ties to the United States would still be required to complete and submit Form I–589 in a timely fashion, while individuals seeking admission at the border would have rights beyond what existing statutes provide. The commenter added that the lack of an asylum application requirement would complicate the review of cases.

Response: The Departments acknowledge the comments related to the form of application created by this rule, but the present rule is not eliminating the requirement that there be an application for asylum from the principal applicants in the new process. Instead of affirmatively filing a Form I–589, as is required for individuals in the United States who have not been placed into section 240 removal proceedings and seek to file for asylum affirmatively before USCIS, or defensively filing a Form I–589, as is required for individuals in the United States who have already been placed into section 240 removal proceedings (either following a positive credible fear determination or otherwise), applicants in the process established by this IFR will be considered to have filed their asylum application in the form of the documented testimony provided under oath to an asylum officer during the credible fear interview and included as part of their positive credible fear determination. 8 CFR 208.3(a). The Departments are streamlining the requirement for individuals who are already in the credible fear process such that the information collected in the credible fear determination itself becomes the basis of an application for asylum. To require such individuals to subsequently submit a paper I–589 asylum application in order to seek asylum would be unnecessarily repetitive. Treating the credible fear determination as the asylum application eliminates duplicative collection of information for individuals who have already been found to have a credible fear of persecution or torture. These individuals are still subject to the one-year filing deadline and the other statutory bars to filing for asylum, the same requirements to appear for an interview, the same consequences for a failure to appear before USCIS, and the same requirements for EAD eligibility as other applicants. Moreover, the underlying procedures related to attorney participation remain the same as those for affirmative asylum applicants before USCIS. Most fundamentally, the eligibility standards governing adjudication of asylum applications are identical for applicants in the new process as they are for affirmative asylum applicants.

In addition, the Departments will provide ample procedural safeguards to noncitizens throughout the new process established in this rule, including in the Asylum Merits interview itself, such as the following: (1) A verbatim transcript of the interview will be included in any referral package to the immigration judge, 8 CFR 208.9(f)(2); (2) an asylum officer will arrange for the assistance of an interpreter if the applicant is unable to proceed effectively in English, and if an interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purpose of eligibility for employment authorization, 8 CFR 208.9(g)(2); and (3) an asylum officer will, when not granting asylum, also consider an applicant's eligibility for statutory withholding of removal or CAT protection within the context of the Asylum Merits interview. Thus, if the asylum application is not approved, the asylum officer will determine whether the noncitizen is eligible for statutory withholding or CAT protection under 8 CFR 208.16(b) or (c). *See* 8 CFR 208.16(a), 208.17(a). Even if the asylum officer determines that the applicant has established eligibility for statutory withholding of removal or CAT protection, the asylum officer shall proceed with referring the asylum application to the IJ for a hearing pursuant to 8 CFR 208.14(c)(1). *See* 8 CFR 208.16(a).

The Departments acknowledge the commenter's concern about appellate review. As indicated above, this rulemaking does not eliminate the application requirement for principal asylum applicants. Rather, it changes the form of application for those individuals who receive a positive credible fear determination. As is the case for BIA review of asylum claims originating in the affirmative asylum process before USCIS, where an applicant has filed a Form I–589, the records created and evidence considered by asylum officers and IJs under the new process will go well beyond the application itself to include the testimony of the principal and derivative applicants, the results of background, identity, and security checks, and identity documents. They may also include affidavits and testimony from witnesses, country of origin information, civil documents, law enforcement records, medical records, court documents, and numerous other forms of evidence. By the time a case reaches the BIA, a robust record is available for the Board's consideration, only a small portion of which is the asylum application itself. Therefore, the Departments are confident that the records created before USCIS and IJs will enable the BIA to conduct a proper review under the appropriate legal standards of any cases on appeal arising out of the new processes created by this rulemaking.

e. Other Comments on Proposed Provisions on Applications for Asylum

Comments: A commenter supported the proposed change to allow the Asylum Office to rely on biometric information collected during the expedited removal process rather than requiring covered noncitizens to report to an Application Support Center (''ASC'') for new fingerprinting. The commenter reasoned that elimination of duplicative biometric collection prevents asylum seekers from having to take time off from work or find childcare, and eliminates the risk for adverse consequences (*e.g.,* stopping the asylum EAD clock or failure to appear at an ASC appointment). The commenter went on to state that the Government would also save time and money by not requiring the capture of biometric data that DHS has already collected previously.

Response: The Departments acknowledge the commenter's support for using the biometrics already captured during the expedited removal process for the asylum application, for

the reasons outlined by the commenter. It is these very concerns expressed by the commenter that weighed in favor of allowing DHS to use the biometrics already captured in the expedited removal process for purposes of the asylum application as well. USCIS may still have to require applicants to attend an ASC appointment or otherwise obtain their biometrics in support of the asylum application following a positive credible fear determination but is working to obtain the ability to reuse the biometrics already captured by other DHS entities for the asylum application before USCIS.

Comments: One commenter believed that, because the asylum applicant has the right to seek review of an asylum officer's decision not to grant asylum before an IJ, all denied claims will end up in our judicial system. Moreover, the commenter stated, because the rule seeks to reduce the immigration court backlog, adjudicators will be instructed to approve or grant asylum claims of individuals arriving at the border.

Response: The Departments disagree that the rule's aim to reduce the immigration court backlog sends signals to adjudicators that they must grant non-meritorious cases. Each adjudication is based on specific, individualized facts, and, in the case of asylum, the grant of asylum status further requires not only a finding of substantive eligibility, but also a favorable exercise of discretion. If an asylum officer does not grant asylum, the noncitizen will be placed into streamlined section 240 removal proceedings. After being placed in streamlined removal proceedings and having the asylum claim reviewed de novo by the IJ, if the IJ denies asylum, the noncitizen may (as now in ordinary section 240 proceedings) appeal the IJ's decision to the BIA. And, as with BIA decisions in ordinary section 240 proceedings, the noncitizen may then seek judicial review before the appropriate U.S. Court of Appeals. *See* INA 242(a), 8 U.S.C. 1252(a). Judicial review serves as an important mechanism to ensure fairness and due process. Further, this rule leaves in place the statutory process by which the cases of noncitizens determined to have no credible fear of persecution or torture are resolved quickly, and creates a framework that also allows clearly grantable asylum cases to also be resolved quickly. Nevertheless, nothing in the rule suggests or requires that complex cases will be rushed or essential parts of the analysis or required vetting and security checks will be ignored, as there are no changes to substantive asylum eligibility. The Departments recognize that some cases may take longer to complete due to, for instance, particularly complex issues.

5. Adjudication of Applications for Asylum for Noncitizens With Credible Fear

a. DHS Interpretation of Statute in Creating a New Adjudication Process

Comments: A commenter expressed concern with the NPRM's proposal to authorize asylum officers to issue removal orders, including in cases where an asylum-seeker fails to appear for a merits hearing before USCIS. The commenter contends that this new authority would put asylum officers in an enforcement-oriented or adversarial role, which could undermine the nonadversarial proceeding. The commenter asked that ICE or IJs instead be tasked with issuing removal orders. Furthermore, the commenter stated that an applicant who may have missed a hearing inadvertently should have an opportunity to remedy the situation before a removal order is issued. The commenter urged the Government to consider nonadversarial first-instance asylum hearings in a context that corresponds with international standards on detention and affords asylum-seekers sufficient time and opportunity to recover from trauma, gather information about their cases, and have access to legal advice, assistance, and representation.

Response: The Departments have carefully considered the comments received in response to the NPRM regarding an asylum officer's authority to issue a removal order. As discussed elsewhere, the Departments have decided not to adopt that proposal. Instead, under the IFR, an asylum officer will issue an NTA when not granting an application for asylum and refer the case for streamlined section 240 proceedings before an IJ. Given this choice of process in the IFR, the Departments find it is unnecessary to further respond to the comments regarding an asylum officer's authority to issue a removal order, as the Departments believe the concerns of those comments are now addressed.

b. Review of Asylum Claim by an Asylum Officer, Rather Than by an Immigration Judge, in Section 240 Removal Proceedings

Comments: Several commenters expressed support for the proposal to have asylum officers adjudicate asylum applications in the first instance, noting that asylum officers are trained in assessing country conditions, conducting interviews, and handling sensitive information. One commenter stated that having USCIS adjudicate asylum applications would allow for a fast yet equitable process. One commenter noted that the proposed process would encourage asylum seekers to speak openly about their fears, and stated that asylum officers are better equipped than IJs to adjudicate protection-related claims. Another commenter asked DHS to clarify what types of trainings will be offered to asylum officers and suggested such training should emphasize cultural competence.

Response: The Departments agree that a nonadversarial process is well-suited to adjudicating claims for asylum and related protection. The Departments concur with commenters who make specific reference to the trainings that all asylum officers undergo before they may work with vulnerable populations. The Departments note that asylum officers are trained in asylum and refugee law, interviewing techniques, country of origin information, decision-making, interviewing survivors of torture, fraud identification and evaluation techniques, and addressing national security concerns. *See e.g.,* USCIS, Asylum Division Training Programs, *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/asylum-division-training-programs.* Cultural competence is an integral part of many of these trainings, and the Departments acknowledge the commenter's suggestion that trainings should emphasize this skill.

Comments: Many commenters opposed the proposal to have asylum officers adjudicate asylum applications in the first instance, generally stating that only IJs should grant asylum. Other commenters argued that only IJs have the requisite training or that claims should not be adjudicated by ''bureaucrats.'' One commenter remarked that the proposal to have asylum officers adjudicate asylum claims would introduce the potential of ''political abuse,'' and some commenters argued that asylum claim adjudication must be conducted by IJs to prevent undue bias or corruption. A few form letter campaigns expressed concern that the proposal would make asylum officers ''the most powerful immigration officials in the country.'' One commenter expressed concern that the proposal would circumvent the careful analysis asylum applications demand and recommended increasing funding and hiring additional IJs to process the immigration backlog. Another commenter opposed allowing asylum officers to adjudicate asylum claims and suggested Federal judges should be

placed in courts near the border to handle asylum claims expediently. A commenter asked how DHS will ensure that only qualified asylum officers will adjudicate asylum claims and remarked that such qualifications are part of the legal definition of an IJ.

Response: The Departments strongly disagree with statements asserting or suggesting that asylum officers, who are career Government employees selected based on merit as explained earlier in Section IV.B.2.a of this preamble, are biased or otherwise politically motivated. As noted above in Section III.C of this preamble, USCIS asylum officers already must undergo ''special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles.'' 8 CFR 208.1(b). USCIS asylum officers already adjudicate asylum applications as part of their duties, and this fact will not be affected by the rule. Also, as noted above in Section IV.B.2.a of this preamble, no individual may be granted asylum or withholding of removal until certain vetting and identity checks have been conducted. INA 208(d)(5)(A)(i), 8 U.S.C. 1158(d)(5)(A)(i). Additionally, while the Departments believe that commenters' statements are grounded in misinformation, the Departments also note that Government officials are entitled to the presumption of official regularity in the manner in which they conduct their duties. *United States* v. *Chem. Found., Inc.,* 272 U.S. 1, 14–15 (1926). Commenters failed to provide any examples of what they incorrectly posit to be concerns with bureaucratic ''power[ ]'' or bias on part of asylum officers. The Departments believe that such concerns stem from a fundamental misunderstanding of the United States' immigration system as well as the respective roles of IJs and asylum officers. Additionally, the comments lack any meaningful explanation or evidentiary basis; such baseless accusations against public officials are ''easy to allege and hard to disprove.'' *Crawford-El* v. *Britton,* 523 U.S. 574, 585 (1998) (quotation marks omitted); *see also Nat'l Archives & Records Admin.* v. *Favish,* 541 U.S. 157, 174 (2004) (requiring the production of evidence rather than ''bare suspicion'' that ''responsible officials acted negligently or otherwise improperly in the performance of their duties'').

Comments: Referencing the NPRM's preamble, several commenters stated that the prior Administration's border strategy has led to a significant increase in the number of backlogged asylum cases. These commenters stated that authorizing border cases to be handled not only by immigration courts but also by the USCIS Asylum Division will increase efficiency by eliminating redundancy. These commenters stated that permitting asylum officers to maintain jurisdiction throughout the life of a case capitalizes on the work and time already invested in each case during credible fear screenings, which will alleviate pressure on the immigration courts and eventually lead to a much more efficient immigration system. Other commenters likewise supported the proposed rule and stated that, while the number of IJs has doubled, the number of pending cases has tripled and outstripped the hiring of IJs. These commenters also stated that the immigration procedures contemplated in IIRIRA are inadequate for the number of applicants now seeking asylum in the United States. Two commenters stated that IJs can adjudicate asylum cases efficiently but that they must be provided more resources.

A commenter indicated that there is no evidence that asylum officer interviews are more efficient than IJ adjudications. The commenter added that backlogs may in fact expand as a result of reallocating funding to cases under the proposed system, stating that the asylum offices do not have room for the proposed additional hires and that asylum officers may leave their jobs. The commenter stated that asylum officers typically conduct only two interviews a day while IJs conduct multiple hearings and that the latter are more efficient because IJs and counsel are more competent in immigration law. A commenter agreed that the proposed rule would extend the backlog by extending the appeals process for asylum seekers. Another commenter stated that the proposed rule could not seriously address backlogs because credible fear determinations and asylum applications only make up a small portion of immigration court dockets. A commenter also expressed doubt that the new process would alleviate backlogs because of startup costs for the new process.

However, two commenters stated that, under the current system, outcomes of an asylum case can depend almost as much on luck as on the merits of an asylum application. The commenters cited a source indicating that approval rates by individual IJs can vary from 0.9 percent of all cases to 96.7 percent. One of the commenters stated that such disparity causes unnecessary stress for individuals and also indicates the absence of clear, uniform standards used by IJs to adjudicate cases. The commenter stated that, conversely, the Asylum Division uses rigorous quality assurance processes and requires supervisory review of all cases and similar statutory definitions and policy guidance used by refugee officers in USCIS will also be applied to the work of asylum officers. The commenter concluded by stating that, under the new rule, the unpredictability and variance that characterize the current immigration court system will be replaced by greater consistency and clarity in the decision-making process across all asylum offices.

Other commenters asserted that the rule would not create a more expeditious process and that limiting the rights of asylum seekers in expedited removal would better streamline immigration. Commenters also stated that it would be problematic for asylum seekers to have the right to an attorney but not to grant ''the American people'' the ''right to be represented by an ICE attorney.''

Response: The Departments agree that allowing USCIS to adjudicate these cases will alleviate pressure on the immigration courts and eventually lead to a much more efficient immigration system. Further, the Departments understand comments relating to reallocation of resources affecting the backlog of cases, the hiring, potential loss, and retention of asylum officers, and concerns for delay as the USCIS Asylum Division takes on this new caseload. It is on this basis that the Departments are phasing in implementation of this rule. The graduated steps involved will allow for the Departments to address concerns that arise and learn how implementation can be better operationalized. In comparing adjudications between USCIS and IJs, the specialized role of asylum officers coupled with ownership of a case from screening to adjudication allows for efficiency gains. Further, the USCIS Asylum Division has steps in place to ensure consistency in adjudications, and safeguards will continue as USCIS adjudicates applications pursuant to this rule. The Departments disagree that an adversarial process is required to adjudicate the merits of an asylum application. However, as noted above in Section III.D of this preamble, this IFR will provide for a streamlined section 240 removal proceeding in the event that an asylum officer does not grant asylum. The United States Government will be represented by ICE in those adversarial proceedings in accordance with 6 U.S.C. 252(c).

c. Requirements for USCIS Asylum Merits Adjudication

Comments: A commenter expressed concern that the procedural safeguards for hearings before asylum officers will fall short of due process requirements. The commenter suggested that all procedural safeguards available in immigration court proceedings be included in hearings before an asylum officer to ensure fairness. Meanwhile, another commenter stated that the provisions of 8 CFR 208.9(d) alone would not violate the due process rights of noncitizens, citing the right to a de novo hearing in immigration courts under proposed § 1003.48(e)(1). The commenter cautioned, however, that the combination of 8 CFR 208.9(d) and 1003.48(e)(1) will deny noncitizens the chance to explain the circumstances of their persecution or well-founded fear of persecution in a complete and orderly way, and that the rule is inconsistent with 8 U.S.C. 1229(a)(4)(b) and due process guaranteed by the Fifth Amendment.

Another commenter recommended asylum officers be required to introduce relevant country-conditions evidence—including evidence on gender-based violence, gang violence, and any recognized efforts to combat the aforementioned—when the applicant has not presented such evidence during the hearing before an asylum officer. Similarly, another commenter explained that having more complete knowledge of a country's conditions would allow asylum officers to properly elicit full testimony from asylum seekers. One commenter suggested additional procedural safeguards to promote ''a less traumatic procedure,'' such as trauma survivors being given an opportunity to request interviewers of a specific gender.

Response: The Departments acknowledge the concerns of the commenters regarding the procedural safeguards in Asylum Merits interviews before USCIS asylum officers and disagree that such safeguards will fall short of due process requirements. As explained earlier in this IFR, the Departments are making several modifications to the process proposed in the NPRM in response to comments, including referring noncitizens who are not granted asylum by an asylum officer to an IJ for streamlined section 240 removal proceedings. DHS will provide ample procedural safeguards to noncitizens throughout the Asylum Merits process, including in the Asylum Merits interview itself, such as the following: (1) The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence, 8 CFR 208.9(b); (2) the applicant or applicant's representative will have an opportunity to make a statement or comment on the evidence presented, and the representative will also have the opportunity to ask follow-up questions, 8 CFR 208.9(d)(1); (3) a verbatim transcript of the interview will be included in any referral package to the IJ, 8 CFR 208.9(f)(2); (4) an asylum officer will arrange for the assistance of an interpreter if the applicant is unable to proceed effectively in English, and if an interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purposes of eligibility for employment authorization, 8 CFR 208.9(g)(2); and (5) the failure of a noncitizen to appear for an interview may result in the referral of the noncitizen to ordinary section 240 removal proceedings before an IJ, unless USCIS, in its own discretion, excuses the failure to appear, *see* 8 CFR 208.10(b)(1). Furthermore, as explained earlier, if an asylum officer does not grant asylum to an applicant, the asylum officer will determine whether the applicant is eligible for statutory withholding and CAT protection before referring the case to streamlined section 240 removal proceedings before an IJ. The Departments believe that these procedures will give applicants a fair opportunity to present their claims, as well as have their claims heard and properly decided in an efficient manner.

As for requiring asylum officers to introduce country conditions evidence, the Departments decline to impose such a requirement. Asylum officers receive extensive country conditions training, have ready access to country conditions experts, and regularly consider country conditions when making decisions as a matter of course. In addition, current affirmative asylum interview procedures allow for applicants to request interviewers of a specific gender. These same procedures will apply in the context of Asylum Merits interviews.

Comments: Several commenters requested clarifications and modifications to procedures for merits hearings before asylum officers, including opportunities to present details and evidence pertaining to the case. A commenter explained that communication plays a crucial role in the interview process and asserted that the rule does not provide sufficient opportunity for legal advocates to call witnesses, present additional information, or prompt their clients to speak on their own behalf. Some commenters argued that the NPRM empowers asylum officers to present evidence, but does not allow applicants or their counsels to frame and present their cases, or to examine or challenge any evidence introduced. Likewise, one commenter remarked that the structure of the hearing before asylum officers reverses the ''normal order of adjudication,'' thus giving minimal opportunity to asylum seekers, who have the ''burden of proof,'' to make statements and be directly examined.

Several commenters asserted that asylum officers provide limited to no opportunity for counsel to cross-examine applicants and present witness testimonies during interviews, which causes stress to applicants and limits the protections otherwise provided to them in section 240 removal proceedings. A few commenters asserted that limiting counsel's ability to make a statement or ask questions would jeopardize due process rights and reduce counsel's ability to properly advocate for the asylum seeker. Several commenters stated that more robust and meaningful participation by counsel during the hearing would help address the due process concerns arising from the revised provisions in 8 CFR 208.9, while reducing confusion or the need for appeals. Some commenters proposed that the rule include at least one continuance for the purpose of seeking counsel to advance equity within the adjudication process. Several commenters asserted that without access to counsel, asylum seekers would lack meaningful representation necessary for a successful hearing.

Some commenters recommended that 8 CFR 208.9 be revised to allow representatives to make an opening statement, elicit testimony from the applicant during the hearing, and provide a closing statement. Similarly, from an efficiency and due process standpoint, a commenter recommended that the asylum seeker's counsel—rather than an asylum officer with limited time to review ''the often voluminous case file''—ask questions during the hearing. The commenter suggested that 8 CFR 208.9(d) be further amended to provide that the representative will also have the opportunity to ask follow-up questions during the interview or hearing. One commenter urged USCIS to consider consulting with lawyers who appear in immigration courts to receive feedback on the effects of the rule.

Response: The Departments acknowledge the concerns of the commenters regarding procedures for USCIS Asylum Merits adjudication, including the role of counsel in Asylum Merits interviews. As provided in 8 CFR 208.9(b), the purpose of the Asylum Merits interview will be to elicit all

relevant and useful information bearing on the applicant's eligibility for asylum. USCIS asylum officers have experience with (and receive extensive training on) eliciting testimony from applicants and witnesses, engaging with counsel, and providing applicants the opportunity to present, in their own words, information bearing on eligibility for asylum. Asylum officers also are trained to give applicants the opportunity to provide additional information that may not already be in the record so that the asylum officer has a complete understanding of the events that form the basis for the application. Noncitizens who are placed in the Asylum Merits process will have multiple opportunities to provide information relevant to their claims before USCIS asylum officers in nonadversarial settings, as well as the opportunity for an IJ to review or consider their claims. If an IJ ultimately denies protection to an applicant, BIA review will be available.

Within the context of Asylum Merits interviews, noncitizens retain the ability to access and secure counsel. *See* 8 CFR 208.9(b). As in the affirmative asylum interview context, USCIS will make every reasonable effort to ensure applicants are scheduled for their hearing in a time and place that ensures their representatives of record can attend and meaningfully participate in their interview. Applicants may request rescheduling of Asylum Merits interviews by following the instructions set forth on the USCIS website and in appointment notices. At the Asylum Merits interview, the applicant may present witnesses and may submit affidavits and other evidence. *See id.* At the completion of the Asylum Merits interview, the applicant or the applicant's representative will have an opportunity to make a statement or comment on the evidence presented. The representative will also have the opportunity to ask follow-up questions. *See* 8 CFR 208.9(d)(1). The Departments recognize the importance of the role of counsel in advising and assisting noncitizens with presenting their claims and believe that this rule provides counsel the opportunity to do so within the context of Asylum Merits interviews. As a result, the Departments decline to make further changes in response to these comments. As for the suggestion to consult with legal practitioners appearing before the immigrant courts, the Departments note that the NPRM provided the opportunity for any and all members of the public, including legal practitioners, to offer feedback on the rule, and in this IFR the Departments are including another request for public comments.

Comments: Citing the impact of legal representation on asylum case outcomes, a commenter indicated that the NPRM increases access to legal representation. The commenter noted that the NPRM allows representatives with DOJ EOIR accreditation, including individuals with partial accreditation, to represent clients seeking statutory withholding of removal and CAT protection before USCIS. The commenter noted that by allowing statutory withholding of removal and CAT protection claims to proceed before USCIS, applicants would have greater access to free or low-cost legal representation from DOJ-accredited representatives. Another commenter recommended that the rule permit USCIS to appoint counsel in cases where counsel is needed, allow asylum seekers and their counsel to record objections and request the record reflect nonverbal activity, and create a procedure to report misconduct following hearings before asylum officers in the event that asylum officers mishandle such hearings.

Response: The Departments acknowledge the feedback on the impact that the rule may have on access to legal representation. Given the Departments' decision to have asylum officers issue final decisions solely as to the asylum claims, rather than also issuing final decisions regarding statutory withholding and CAT protection claims as proposed in the NPRM or otherwise issuing removal orders, the commenter's note about individuals with partial accreditation is no longer relevant. While the Departments appreciate comments suggesting that USCIS appoint counsel to noncitizens in certain instances, those comments are outside the purview of this rulemaking. The Departments note that asylum seekers and counsel will have the opportunity to make a statement or comment on the evidence presented at Asylum Merits interviews, which may include raising objections and requesting that the record reflect nonverbal activity. As for reporting asylum officer misconduct, USCIS will follow existing agency-wide procedures on receiving and responding to complaints and misconduct, which are available on the USCIS website.

Comments: Several commenters expressed support for the provision in the NPRM requiring asylum officers to record and transcribe hearings. A commenter noted that the provision allows noncitizens to receive a recording and transcript of their hearing before an asylum officer, which they believe would place the noncitizen on equal footing with the DHS attorney. Some commenters added that the recordings and transcriptions of hearings would allow for accurate documentation of the proceedings and align with transparency and accessibility priorities. One commenter requested that DHS also clarify how asylum seekers will be able to access their hearing transcripts because it would allow noncitizens to determine whether they require help from counsel. The commenter also asked that the Departments address the possibility of widening the scope of the provision so that asylum seekers may access transcripts from IJ proceedings. Another commenter expressed concern about the inability of records to capture non-verbal cues and reactions during the hearing. This commenter suggested that a human communications specialist be consulted to determine how to incorporate non-verbal cues into hearing records.

One commenter noted that the requirement to record or transcribe the hearing may not be feasible and argued that this requirement would pose challenges for IJs conducting de novo reviews of hearings before asylum officers. Another commenter similarly urged USCIS to clarify how the review of hearing records would be conducted and the impact on the due process rights of asylum seekers. The commenter stated that full recordings of hearings would be hours long and claimed that generating transcripts would lengthen the time needed to issue decisions. Considering these issues, the commenter recommended that USCIS identify who would be reviewing the records and determine whether asylum officers would take notes in conjunction with the hearing recordings.

Another commenter suggested that all interviews, regardless of their nature, be recorded. They specified that all questions and answers be documented in the language they were initially spoken in and later interpreted. The commenter also recommended that the Departments provide adjudication documents in the asylum seeker's language, and that, in the case of literacy limitations, an interpreter read the records to an asylum seeker. Finally, in cases where the asylum seeker is detained, the commenter recommended the agencies ensure privacy to review the records.

Response: The Departments acknowledge the support for recording and transcribing Asylum Merits interviews. The Asylum Merits interview will be recorded so that a transcript of the interview can be

created. A verbatim transcript of the interview will be included in the referral package to the IJ. *See* 8 CFR 208.9(f)(2). A copy of that transcript will also be provided to the noncitizen. In addition, asylum officers will take notes during Asylum Merits interviews. As for nonverbal cues or reactions, asylum officers may make note of such matters as appropriate.[76] The Departments do not anticipate that these procedures will lead to significant delays in the adjudication of the noncitizen's asylum claim before USCIS. The Departments recognize one commenter's concern that there may be logistical challenges associated with implementing recording or transcription of interviews before asylum officers. However, the Departments are taking a phased approach to implementation in part to address this concern. The rule does make changes to long-standing practices, and as implementation progresses, the Departments will work to ameliorate any challenges that arise as the process is put into practice. Also, allowing for robust independent review of asylum officers' decisions to not grant asylum is an important feature that ensures administrative fairness over and above due process minimums.

In addition, USCIS will arrange for an interpreter when an applicant is unable to proceed with an Asylum Merits interview in English, and if an interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purposes of eligibility for employment authorization. *See* 8 CFR 208.9(g)(2). At the Asylum Merits interview, the asylum officer will provide information about the hearing to the applicant, which will be interpreted for the applicant. While the Departments acknowledge the recommendation that questions and answers be documented in the language in which they were initially spoken and that adjudication documents be provided in the language spoken by the applicant, the Departments note that Asylum Merits interviews will be recorded and transcribed, and that notice of decisions will be provided to applicants in writing. The Departments believe that these various procedural safeguards sufficiently allow for applicants to access their Asylum Merits interview records and remain informed of the reasons for any decisions not to grant asylum. Thus, further documentation or explanation requirements are not warranted in this IFR.

The comments recommending that DHS arrange a private setting for detained individuals to review their records fall outside of the scope of this rulemaking, and thus are not being addressed. The Departments believe that receipt of the transcript from the asylum officer's Asylum Merits interview will benefit the IJ and the noncitizen by providing a clear, precise, and accurate record of the basis for the adjudication. The Departments acknowledge the suggestion related to widening the scope of availability of transcripts from proceedings before IJs; however, this suggestion is beyond the scope of this IFR. Upon appeal of a decision by an IJ to the BIA, the hearing, where appropriate, is transcribed by the BIA and sent to both parties. *See EOIR Policy Manual,* Part II, Ch. 4.10(b), Part III, Ch. 4.2(f). Further, immigration hearings before the IJ are recorded. *See* 8 CFR 1240.9. If either party would like a recording of the proceedings before the IJ, an audio recording is available by making arrangements with the immigration court staff. *See EOIR Policy Manual,* Part II, Ch. 4.10(a).

Comments: Several commenters expressed support for the provision in the NPRM at 8 CFR 208.9(g) that would require USCIS to provide an interpreter for the hearing before an asylum officer, reasoning that such a requirement would promote fairness and accuracy in adjudication. Conversely, one commenter expressed concern that the provision in the NPRM, paired with other provisions in the NPRM, would ''disproportionately harm vulnerable, minority populations'' in the event that an Asylum Office cannot find an interpreter. Some commenters asserted that language barriers would result in mistakes in the record and complicate the appeal process. To address language access concerns, two commenters suggested this provision be extended to all asylum officer interviews, with some changes. The commenters suggested the agency provide specifications of the interpreter's qualifications and make Government-provided interpretation non-obligatory, asserting that these modifications would enhance asylum applicants' access to competent interpretation during the hearing.

One commenter, in support of the use of interpreters during hearings before asylum officers, urged USCIS to implement additional safeguards to combat the systemic problems associated with language access. The commenter suggested that the safeguards include a mandate for interpretation throughout the full hearing in the asylum seeker's native language and incorporate specifications on the use of telephonic and video interpretations, and suggested that telephonic and video interpretation be used in cases where no qualified in-person interpreter is available. A commenter also suggested that the rule require everything said in any language during the interview process be part of the record to curtail the possibility of error and omission. Lastly, the commenter recommended a routine screening of interpreters to ensure consistency and accuracy in hearing records.

Response: As explained earlier, USCIS will provide an interpreter for Asylum Merits interviews when an applicant is unable to proceed with the hearing in English, and if an interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purposes of eligibility for employment authorization. *See* 8 CFR 208.9(g)(2). The Departments acknowledge the commenters' support for the provision and disagree with the commenters who assert that this requirement will disproportionately harm vulnerable, minority populations. USCIS has existing contracts with telephonic interpreters to provide interpretation for credible fear screening and affirmative asylum interviews, and thus has extensive experience providing contract interpreter services.

Per contractual requirements, the USCIS contract interpreters are carefully vetted and tested. They must pass rigorous background checks as well as demonstrate fluency in reading and speaking English as well as the language of interpretation. The USCIS contractor must test and certify the proficiency of each interpreter as part of their quality control plan. The USCIS contractor also must provide interpreters capable of accurately interpreting the intended meaning of statements made by the asylum officer, applicant, representative, and witnesses during interviews or hearings. The USCIS contractor will provide interpreters who are fluent in reading and speaking English and one or more other languages. The one exception to the English fluency requirement involves the use of relay interpreters in limited circumstances at USCIS's discretion. A relay interpreter is used when an interpreter does not speak both English and the language the applicant speaks, such as a rare language or dialect.

In addition, USCIS contractor-provided telephonic interpreters must be at least 18 years of age and pass a security and background investigation

[76] Asylum officers conducting Asylum Merits interviews will continue to follow the guidance on note-taking they receive during their basic training. *See* USCIS, RAIO Combined Training Program: Note-Taking Training Module (Dec. 20, 2019), *https://www.uscis.gov/sites/default/files/document/foia/Interviewing_-_Note_Taking_LP_RAIO.pdf.*

by the USCIS Office of Security and Integrity. They cannot be the applicant's attorney or representative of record; a witness testifying on the applicant's behalf; a representative or employee of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence; a person who prepares an Application for Asylum and for Withholding of Removal or Refugee/Asylee Petition for a fee, or who works for such a preparer or attorney; or a person with a close relationship to the applicant, as deemed by the Asylum Office, such as a family member. All contract interpreters must be located within the United States and its territories (*i.e.,* Puerto Rico, Guam, etc.). Additionally, under the International Religious Freedom Act of 1998, USCIS must ensure that ''persons with potential biases against individuals on the grounds of religion, race, nationality, membership in a particular social group, or political opinion . . . shall not in any manner be used to interpret conversations between aliens and inspection or asylum officers.'' 22 U.S.C. 6473(a). In light of these requirements, the Departments are confident that USCIS will be able to ensure that communication among all parties is clear and accurate.

The Departments acknowledge that current interpreter contracts cannot absorb the expected increase in the need for interpretation services. DHS anticipates that it will need to both increase funding on existing contracts and procure new contracts for interpretation services. As a result of this IFR, the need for interpretation services will increase as the number of Asylum Merits interviews USCIS performs rises, which is further discussed in Section VI of this preamble. DHS declines to make modifications in this rule related to the commenters' recommendation to extend the USCIS-provided interpreter provision to all asylum interviews before USCIS as changes to USCIS's affirmative asylum process are outside the scope of this rulemaking.[77]

[77] On September 17, 2021, DHS published a temporary final rule that extends and modifies the requirement for certain asylum applicants to use a USCIS-provided telephonic contract interpreter to keep the USCIS workforce and applicants safe during the COVID–19 public health emergency. *See* Asylum Interview Interpreter Requirement Modification Due to COVID–19, 86 FR 51781 (Sept. 17, 2021). The rule is effective until March 16, 2023. *See* 87 FR 14757 (Mar. 16, 2022) (extending temporary final rule); *see also* 85 FR 59655 (Sept. 23, 2020) (original temporary final rule); 86 FR 15072 (Mar. 22, 2021) (first extension of temporary final rule).

d. Failure To Appear

Comments: Various commenters opposed the proposed revisions that would allow an asylum officer to issue an order of removal when a noncitizen fails to appear for a scheduled hearing. Some of these commenters asserted that there are many reasons an asylum seeker might miss an interview that are not reasonably attributable to the applicant. Other commenters opposed this aspect of the proposal, arguing that the proposed rule offers fewer protections for asylum seekers than provided by the regulations governing in-absentia removal hearings before an IJ. Commenters argued that, unlike in section 240 removal proceedings, the proposed regulation does not contemplate safeguards to ensure that the asylum officer has provided the required evidence of inadmissibility and correctly issued the removal order. Because DHS is required to establish ''by clear, unequivocal, and convincing evidence'' that the noncitizen is removable and received written notice of the time and place of proceedings before a judge will issue an in-absentia removal order, these commenters asserted that the proposed rule requires the asylum officer to act as both the adjudicator and the prosecutor when it comes to issuing the removal order. These commenters opposed this aspect of the proposal because the proposed regulations do not include a process through which the noncitizen would seek rescission and reopening after receiving an in-absentia removal order from an asylum officer. Finally, other commenters opposed this part of the proposal because it does not include a provision that requires heightened notice of asylum hearings for children under 14, as exists in the regulations governing section 240 removal proceedings. Some commenters expressed concern about this aspect of the proposal because it would permit an asylum officer to issue a removal order without previously issuing a notice of failure to appear, which one of these commenters stated would provide an important safeguard preventing the issuance of a removal order against an individual who did not attend their hearing through no fault of their own. Commenters asserted that the agencies did not provide any rationale for the decision not to provide notice to asylum seekers of their failure to appear and that this lack of notice of failure to appear offends due process.

Also expressing due process concerns, a commenter suggested that the final rule must establish clear and fair notice procedures before any removal order is allowed. For example, the commenter expressed concern that the proposed rule does not have a requirement that the asylum officer issue a notice of further consideration hearing that would be comparable to the procedure under current 8 CFR 208.30(f), under which the officer issues an NTA for full consideration of the asylum and withholding of removal claims in section 240 removal proceedings.

Asserting that due process requires notice and an opportunity to be heard, commenters argued that the proposed regulation would violate due process by not providing an effective remedy for lack of notice and providing only a discretionary opportunity to be heard. While acknowledging that the proposed rule would provide that USCIS may excuse the failure to appear if the applicant demonstrated ''exceptional circumstances,'' the commenter argued that it is unclear whether this language would permit USCIS to rescind a removal order that had already been issued. Moreover, the commenter stated that this language keeps the decision to excuse the failure to appear entirely discretionary, unlike the statutory right to petition the immigration court to reopen in section 240 proceedings. Nor would this language, according to the commenter, provide applicants with a right to petition for reopening their cases due to lack of notice, a right they would have in section 240 removal proceedings.

One commenter argued that granting asylum officers authority to issue in-absentia removal orders as proposed would violate asylum seekers' due process rights, citing uncertainties surrounding reasonable access to legal representation in the proposed rule and the extreme consequences of an inabsentia removal order. Citing due process concerns, another commenter objected to this aspect of the proposed rule because it would not provide a mechanism for requesting postponement, aside from the discretionary ''brief extension of time'' or for requesting a change of venue. A commenter expressed concern that the proposed rule provides authority to issue a removal order for failing to appear for biometrics appointments without incorporating the limited safeguards required for in-absentia orders of removal by IJs.

Commenters recommended that the final rule include, either directly or by reference, the same or higher protections as an individual would receive in immigration court proceedings. A commenter suggested that, if the final rule adopts the NPRM's proposal, it should include provisions

that allow applicants to ask USCIS to rescind the removal order and reopen their cases where the applicant can show a due process violation or exceptional circumstances that excuse a failure to appear. Instead of allowing asylum officers to issue in-absentia removal orders, a commenter urged the Departments to require that cases be referred to immigration court when asylum seekers fail to appear for their interviews. Another commenter asserted that authorizing asylum officers to issue in-absentia removal orders would have a disproportionate and unfair impact on applicants with disabilities as well as asylum seekers who speak languages of lesser diffusion, who are less likely to receive notice of such appointments in a language they can understand.

Response: The Departments have considered the comments related to the possibility of asylum officers issuing in-absentia removal orders as outlined in the NPRM and, after careful consideration, have opted not to include that proposal in this IFR. Under the present rule as revised, asylum officers will not be issuing removal orders following the Asylum Merits interview. Consistent with the Departments' determination that final orders of removal for individuals whose asylum claims are being adjudicated under the framework of this IFR will only be issued by IJs, asylum officers also will not issue removal orders if an applicant fails to comply with biometrics requirements or fails to appear for the hearing. Instead, failure to appear for hearings or to comply with biometrics requirements will result in applicants not having their asylum claims considered through the process established by this IFR. In those circumstances, noncitizens will be issued an NTA and placed in ordinary section 240 proceedings before EOIR. In those ordinary section 240 proceedings, noncitizens would not be considered to have asylum applications pending but would have the opportunity to file a Form I–589.

e. Process for USCIS To Deny an Application for Asylum or Other Protection and Issue a Removal Order

Comments: A commenter provided a lengthy background analysis of the CAT, its implementation in the FARRA, and the authority of asylum officers to order the removal of asylum seekers. The commenter stated that the proposed rulemaking correctly does not amend the provision in 8 CFR 1208.16(f) for statutory withholding and CAT protection. Furthermore, the commenter asserted that the only statutory authority asylum officers have to order that asylum seekers be removed is expedited removal under section 235(b)(1)(B)(iii)(I) of the INA. The commenter argued that asylum officers therefore lack authority to issue an order of removal after not granting a noncitizen's asylum claim and therefore also lack authority to adjudicate claims for statutory withholding of removal or CAT protection. Citing text from the NPRM's preamble, the commenter reasoned that the Departments incorrectly relied on a ''vestigial'' provision of INA regarding ''orders of deportation'' that were replaced by IIRIRA ''orders of removal.'' The commenter also argued that the Departments cannot rely on *Mitondo* v. *Mukasey,* 523 F.3d 784 (7th Cir. 2008), reasoning that that case cannot be applied in the context of expedited removals because it turned on vague statutory language related to the Visa Waiver Program whereas, the commenter argued, the statutory language on asylum officers' powers of removal in section 235(b)(1) is more explicit.

Response: The Departments have carefully considered the comments received in response to the NPRM regarding an asylum officer's authority to issue a removal order. As discussed elsewhere, under this IFR, asylum officers will not issue removal orders. The Departments agree that an asylum officer should issue an NTA when not granting an application for asylum and refer the case for streamlined 240 proceedings before an IJ. Given this process, the Departments find it is unnecessary to further respond to the comments regarding an asylum officer's authority to issue a removal order.

f. Other Comments on Proposed Adjudication of Applications for Asylum

Comments: One commenter recommended several actions to address delays in the USCIS affirmative asylum adjudication process, including to reduce or eliminate the diversion of asylum office staff to conduct credible fear screenings and instead refer asylum seekers for full asylum interviews, create a new streamlined process to refer new requests for asylum originating at the U.S. border to USCIS asylum offices, ramp up hiring of asylum office staff, modernize the interview scheduling and filing systems, create an application route for cancellation of removal cases, and resolve more cases at the USCIS asylum offices in lieu of actions that typically occur in immigration courts, such as termination of immigration court proceedings for individuals who have filed an asylum application. The commenter also urged USCIS to address the occurrence of asylum granted by an immigration court but not initially granted by USCIS.

Response: The Departments acknowledge the recommendations to address delays in the affirmative asylum adjudication process, but further consideration and discussion of the affirmative asylum adjudication process and different outcomes between affirmative asylum office adjudications and immigration court decisions fall outside of the scope of this rulemaking. The provisions of this rule respond to the problem of delay and backlogs for individuals encountered at the border who seek asylum or related protection by establishing a streamlined and simplified adjudication process. As discussed, the principal purpose of this IFR is to simultaneously increase the promptness, efficiency, and procedural fairness of the expedited removal process for individuals who have been found to have a credible fear of persecution or torture.

Comments: A commenter requested that the Departments further clarify adjudicatory timelines and processes so that stakeholders can fully evaluate the fairness, feasibility, and potential efficiencies of the rule. For example, the commenter stated that the proposed rule does not establish a timeline for the submission of evidence and does not provide for continuances but, rather, only extensions of undefined length and purpose. This commenter also requested that the Departments address the anticipated timeline and process for the adjudication of asylum claims for individuals who are released from detention following a positive credible fear determination but prior to the adjudication of their claim by an asylum officer, stating the proposed rule seemed to focus on asylum claim adjudication for detained noncitizens.

Response: The Departments acknowledge the request to clarify adjudicatory timelines and processes. DHS is clarifying at 8 CFR 208.9(a)(1) that there will be a minimum of 21 days between the service of the positive credible fear determination on the applicant and the date of the scheduled Asylum Merits interview, unless the applicant requests in writing that an interview be scheduled sooner.

DOJ is also clarifying the timeline for adjudications before the immigration court should the proceedings be referred to EOIR pursuant to new 8 CFR 1240.17(a) and (b). Notably, applicants will not appear for a master calendar hearing until at least 30 days after DHS serves the NTA, as set forth at new 8 CFR 1240.17(b). Applicants will then be

provided the opportunity to elect to testify and submit additional documentary evidence, as well as to identify errors in the record of proceedings before the asylum officer, including the asylum officer's decision. 8 CFR 1240.17(e). At this stage, parties may elect to proceed on the documentary record or may request a final merits hearing. 8 CFR 1240.17(f)(1). Based on an independent evaluation of the record, the IJ will then determine whether to decide the application on the documentary record or to hold a merits hearing. 8 CFR 1240.17(f)(2). If deemed necessary, the merits hearing generally will be scheduled 60 to 70 days after the initial master calendar hearing. Proceedings may be continued and filing deadlines may be extended, subject to certain requirements previously discussed in Section III.D of this preamble. In general, the Departments expect that the initial merits proceedings will be completed within 135 days from the first master calendar hearing before an IJ, and often substantially sooner. Having provided additional clarity regarding adjudicating timelines in the IFR, the Departments invite further comments.

Comments: A commenter recommended that the Departments allow asylum seekers with a positive credible fear determination to proceed as affirmative asylum applicants before USCIS, with referral to an immigration court occurring after the asylum interview, as necessary. The commenter stated that this approach would reduce the burden on immigration courts and allow for efficient processing of meritorious claims in a nonadversarial system.

Response: The Departments acknowledge the recommendation. The IFR provides for a nonadversarial asylum officer interview and adjudication with referral to an immigration court if the applicant is not granted asylum, through a streamlined section 240 proceeding with special procedures that will appropriately introduce efficiencies made possible by the asylum officer's record and determinations.

6. Application Review Proceedings Before an Immigration Judge

Comments: A majority of commenters who discussed the proposed IJ review proceedings expressed due process, procedural, constitutional, and other concerns about the creation of new IJ review proceedings and argued that applicants not granted asylum by the asylum officer should instead be referred to section 240 removal proceedings.

Commenters stated that many asylum seekers with strong and straightforward claims would benefit from the chance to be granted asylum after an interview with an asylum officer. Oner commenter stated that the initial interview with an asylum officer is ''theoretically a good idea'' but would ultimately depend on implementation. However, commenters were concerned that the NPRM's IJ review proceedings would disproportionately affect applicants with more complex cases. Thus, commenters supported referral to an IJ for a full evidentiary hearing if an applicant's case was initially not granted by an asylum officer. Commenters expressed significant concern about the possibility of a noncitizen being returned to a country where he or she fears persecution or torture without receiving a full adversarial hearing.

Several commenters remarked that they would be more supportive of the NPRM's provisions regarding initial asylum officer adjudication if the NPRM retained all asylum seekers' rights to full merits hearings in immigration court.

On the other hand, some commenters were supportive of the NPRM's provisions that would have allowed a noncitizen whose application was not granted to submit additional evidence for IJ review.

Response: Upon careful consideration, the Departments have revised the process set forth in the NPRM so that individuals will be placed in streamlined section 240 proceedings rather than the NPRM's proposal for non-section 240 proceedings, as described in new 8 CFR 1240.17, if an asylum officer does not grant asylum after an initial adjudication. As a general matter, the Departments agree with commenters that section 240 proceedings provide a better alternative than the proceedings proposed in the NPRM. IJs, DHS attorneys, and immigration counsel are familiar and experienced with the rules and procedures that apply to section 240 proceedings because those proceedings are the most common type conducted by IJs. The statute and regulations provide detailed standards and consistent rules for the conduct of section 240 hearings and noncitizens' rights during such proceedings, *see* 8 U.S.C. 1229a *et seq.,* 8 CFR 1240.1 through 1240.19. Currently, asylum and protection applications filed by noncitizens whose cases originate from the credible fear process are adjudicated in section 240 proceedings. In contrast, the NPRM would have created a new process and would have imposed new evidentiary standards and limitations. *See* 86 FR 46946. The Departments believe that the NPRM process could have resulted in efficiencies while still ensuring a fair process, *see, e.g., id.* at 46906; however, as commenters claim, the NPRM process may also have resulted in increased immigration court and appellate litigation surrounding the interpretation and application of the new standards and evidentiary limitations. To avoid those complications, the Departments have decided not to adopt the NPRM's approach at this time and have instead decided to place noncitizens in streamlined section 240 proceedings if an asylum officer does not approve the noncitizen's application. This process will not employ the novel evidentiary restrictions proposed in the NPRM, but will instead apply largely the same long-standing rules and standards governing the submission of evidence that apply in ordinary section 240 proceedings. However, in keeping with the NPRM's purpose to increase efficiency and procedural fairness of the expedited removal process for individuals who have been found to have a credible fear of persecution or torture, 86 FR 46909, and in light of the efficiencies gained by initial adjudication before and creation of a record by the asylum officer, these streamlined section 240 proceedings will be subject to particular procedural requirements that ensure they are completed in an expeditious manner while still preserving fairness to noncitizens.[78]

The Departments agree with the commenters' assertions that noncitizens and the overall immigration adjudication system will benefit from this rulemaking in part by authorizing asylum officers to grant asylum to noncitizens determined to have a credible fear of persecution or torture. 8 CFR 208.2(a)(1)(ii). Asylum officers receive extensive training and possess expertise, *see supra* Section III.C of this preamble; INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E); 8 CFR 208.1(b), and the Departments are confident in asylum officers' ability to carry out their duties in accordance with all applicable

[78] Streamlined section 240 proceedings are conducted in accordance with section 240 of the INA, 8 U.S.C. 1229a, but with particular procedural requirements laid out in new 8 CFR 1240.17, as described above in Section III of this preamble. EOIR has made other such procedural changes, including the recent procedural requirements imposed on cases subject to case flow processing under *Policy Memorandum* (''PM'') *21–18, Revised Case Flow Processing before the Immigration Courts* (Apr. 2, 2021). Generally, that PM eliminates the master calendar hearing for represented non-detained cases, but those cases are still conducted pursuant to section 240 of the INA, 8 U.S.C. 1229a.

statutes and regulations and in an efficient, fair manner.

The Departments have amended their respective regulations in this IFR to provide certain procedural protections that address commenters' concerns about the process that applies if an asylum officer does not grant asylum after an initial adjudication. For example, all noncitizens not granted asylum by asylum officers after an initial adjudication will be issued an NTA and referred to streamlined section 240 proceedings, as described in new 8 CFR 1240.17. Because, under this IFR, such noncitizens will be referred for streamlined section 240 proceedings, 8 U.S.C. 1229a, the applicable evidentiary standard is consistent with the longstanding evidentiary standard for section 240 proceedings—evidence is admissible unless the IJ determines it is untimely, not relevant or probative, or that its use is fundamentally unfair. 8 CFR 1240.17(g); 8 CFR 1240.7(a); *Nyama,* 357 F.3d at 816 (''The traditional rules of evidence do not apply to immigration proceedings. . . . 'The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.' '' (quoting *Espinoza,* 45 F.3d at 310)); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 505 (1980) (holding that evidence must be ''relevant and probative and its use must not be fundamentally unfair'').

As part of the streamlined section 240 proceedings adopted by DOJ in this IFR at new 8 CFR 1240.17, noncitizens may elect to testify or present additional evidence that meets this evidentiary standard. 8 CFR 1240.17(g). If the noncitizen timely requests to testify, the IJ must schedule a hearing unless the IJ determines that the application can be granted without live testimony and DHS has not requested to present testimony or cross-examine the noncitizen, as described at new 8 CFR 1240.17(f)(4)(ii). Given these protections, among others, the Departments are confident that the procedures are sufficient to ensure that noncitizens will not be removed to a country where they fear persecution or torture without the opportunity for a hearing before an IJ.

The Departments acknowledge those commenters who expressed support for the NPRM's evidentiary procedures, but the new process established by this IFR at new 8 CFR 1240.17(g), and as described above in Section III of this preamble, maintains the noncitizen's ability to submit evidence to asylum officers and IJs, albeit in accordance with a broadened evidentiary standard consistent with section 240 proceedings. The new process further includes rules governing continuances, procedures for prehearing conferences, and the requirement of submissions by the parties. The Departments believe that the revisions, including (1) transmission of the asylum office record, (2) requirements that the IJ not hold a hearing unless requested by a party or if necessary, and (3) the deadlines imposed, will prevent time-consuming evidentiary hearings and increase the overall efficiencies and effectiveness in all cases.

a. Creation of New Limited Proceedings in Lieu of Section 240 Removal Proceedings and Limitation on Relief to Asylum, Statutory Withholding of Removal, and Convention Against Torture Review Only

Comments: Several commenters expressed opposition to the NPRM's procedures proposing that applicants who are not granted asylum or are found ineligible for statutory withholding of removal or CAT protection by an asylum officer must affirmatively request further review by an IJ. Overall, these commenters suggested that, if the Departments move forward with the NPRM's new hearing process, these applicants should be automatically referred to the IJ for a hearing, ideally in section 240 proceedings.

Multiple commenters compared this process to the procedures for credible fear review in which applicants who neither affirmatively request IJ review nor waive review are referred to the IJ. *See* 8 CFR 208.30(g)(1).[79] Commenters stated that it was unclear why the Departments would not apply the same presumption to the NPRM's process for people who are not granted asylum by asylum officers since, commenters explained, the new hearing process is essentially an extension of the credible fear interview process at issue in 8 CFR 208.30(g)(1). In other words, commenters urged the Departments to automatically refer asylum officers' decisions to not grant asylum to the IJ for section 240 proceedings unless the asylum seeker affirmatively states or files a notice waiving IJ review (*i.e.,* ''opts out'').

Commenters expressed concern that requiring an applicant to affirmatively seek further review may result in some applicants not receiving further IJ review due to the applicant's confusion or the complexity of the process, and not due to a lack of desire for further review. For example, commenters noted that many asylum seekers who receive a negative credible fear finding may not know that they can seek a ''de novo review'' or may not understand the consequences of failing to seek review. In addition, there may be problems for applicants with the translation of documents informing them about the appeal process into a language they can read, or with applicants understanding the gravity of the process. Finally, commenters explained that automatic referral to an IJ is preferable to requiring an affirmative election because the applicant may receive an asylum officer's decision not to grant asylum through the mail, which triggers a short time to respond and other mail difficulties.

Commenters expressed concern that the 30-day period to request review by the IJ is too short and recommended extending the time period in which a noncitizen must respond after receiving a denial in the mail from 30 to 60 days.

Some commenters compared the IJ referral procedures in the NPRM to those for applicants who have affirmatively applied before USCIS. *See* 8 CFR 208.14(c)(1) (instructing the asylum officer to refer the application of an applicant who is inadmissible or deportable for adjudication in section 240 proceedings). Commenters were concerned that the difference in the procedures would create confusion in immigrant communities and lead many asylum seekers in the NPRM process to mistakenly believe that their cases would be automatically referred to the immigration court. Similarly, commenters were concerned that having two different paths may also create confusion potentially for the asylum office itself.

Some commenters said that substituting an ''appeal'' for a ''referral'' for IJ review is confusing and potentially deceptive, especially for applicants who appear pro se at an asylum officer interview. Commenters said that such applicants will likely have difficulty understanding paperwork that explains the contours of these IJ review hearings, as well as the obligation to file a notice of appeal, thereby potentially foreclosing further administrative and judicial review. Commenters further expressed concern that additional categories of applicants would be particularly affected by the requirement to affirmatively request IJ review, including non-English speakers, individuals with mental health disabilities, trauma victims, and individuals in detention.

Commenters noted that language barriers, effects of trauma, and the detrimental effects of detention all

[79] This citation refers to 8 CFR 208.30(g)(1) prior to publication of the Global Asylum rule, which amended 8 CFR 208.30(g), *see* 85 FR 80392, but which has since been enjoined, *see supra* note 4 (discussing recent regulations and their current status).

negatively impact an asylum seeker's ability to affirmatively request review. In addition, commenters noted that the noncitizens who would be placed in proceedings before EOIR will have already had an asylum officer determine that the claim is credible and, therefore, not frivolous. Thus, commenters explained, such asylum seekers would be unlikely to request review, resulting in the waiver of meritorious claims.

Response: This IFR does not implement the NPRM's proposal for IJ review proceedings, and instead adopts streamlined section 240 proceedings, as described above in Section III of this preamble. Specifically, as described in new 8 CFR 1240.17, DHS will file an NTA and place the noncitizen in these streamlined section 240 proceedings in all cases where the noncitizen was found to have a credible fear of persecution or torture, but the asylum officer subsequently did not grant the asylum application.

The Departments believe that providing streamlined section 240 proceedings addresses nearly all of the commenters' concerns and requests on this topic. Applicants will not be required to affirmatively request review by an IJ, and applicants will not be referred to the limited IJ proceedings proposed in the NPRM. Instead, applicants will be referred to streamlined section 240 proceedings that incorporate various procedural measures to enhance efficiency, consistent with the streamlined nature of these proceedings, while still ensuring fairness to noncitizens. Proceedings under this IFR are conducted under section 240 of the Act, 8 U.S.C. 1229a, and the streamlined proceedings will advance more expeditiously than ordinary section 240 proceedings generally proceed because the IJ will have the benefit of the full asylum officer record and the IJ and the parties will be subject to timelines that ensure the proceedings are adjudicated promptly. The streamlined 240 proceedings will also ensure that the intent of the NPRM to streamline IJ review is preserved.

Nevertheless, the Departments believe that these additional procedural measures will not create confusion for noncitizens, as section 240 proceedings are the most common type of immigration proceeding, and these new, straightforward procedural requirements will be directly communicated to noncitizens. Moreover, the new procedural timelines in the IFR are responsive to commenters' concerns that noncitizens need longer than 30 days to identify errors in the asylum officer's decision. Notably, under the IFR, as set forth at new 8 CFR 1240.17(b), the master calendar hearing will be held 30 days after the NTA is served, or, if a hearing cannot be held on that date, on the next available date no later than 35 days after the date of service. At the conclusion of the initial master calendar hearing, the IJ will schedule a status conference 30 days after the master calendar hearing or, if a status conference cannot be held on that date, on the next available date no later than 35 days after the master calendar hearing, as described at new 8 CFR 1240.17(f)(1). At status conferences provided for at new 8 CFR 1240.17(f)(2), noncitizens will indicate orally or in writing whether they intend to contest removal or seek any protections for which an asylum officer did not determine a noncitizen eligible, and if seeking protections, noncitizens will indicate whether they intend to testify before the immigration court, identify any witnesses they intend to call, and provide any additional documentation. 8 CFR 1240.17(f)(2)(i). Where a noncitizen is represented by counsel, the noncitizen shall further describe any alleged errors or omissions in the asylum officer's decision or the record of proceedings, articulate any additional bases for asylum and related protections, and state any additional requested forms of relief. *Id.* The IFR also provides specifically for continuances and filing extensions in streamlined section 240 proceedings, which allows appropriate flexibility with regard to the established timelines. *See* 8 CFR 1240.17(h). If a noncitizen needs additional time beyond these timelines, as commenters suggested, new 8 CFR 1240.17(h)(2) provides for respondent-requested continuances and filing extensions. Thus, these timelines are clear, streamlined, and reasonable, allowing noncitizens the opportunity to reasonably present their cases while maintaining the overall efficiencies of the NPRM.

In addition to established evidentiary standards, section 240 proceedings—including the streamlined section 240 proceedings addressed in this IFR—provide a number of procedural protections established by statute and regulation, such as the right to representation, ''a reasonable opportunity to examine the evidence against the [noncitizen], to present evidence on the [noncitizen's] own behalf, and to cross-examine witnesses,'' and the creation of a complete record of the proceedings. INA 240(b)(4), 8 U.S.C. 1229a(b)(4). Additionally, the Act and the regulations establish that the IJ should play a robust role in proceedings. *See* INA 240(b)(1), 8 U.S.C. 1229a(b)(1) (requiring IJs to ''administer oaths, receive evidence, and interrogate, examine, and cross-examine the alien and any witnesses''); 8 CFR 1003.10(b) (same and requiring IJs to take other actions that are ''appropriate and necessary for the disposition of'' each case); 8 CFR 1240.10(a) (requiring IJs to, inter alia, advise noncitizens of certain rights in section 240 proceedings and to explain factual allegations and legal charges in the NTA in non-technical language); 8 CFR 1240.11(a)(2) (requiring IJs to inform noncitizens of ''apparent eligibility to apply for any of the benefits enumerated in this chapter''); 8 CFR 1240.1(a)(1)(iv) (authorizing IJs to ''take any other action consistent with applicable law and regulations as may be appropriate'' in a section 240 proceeding). Additionally, section 240 proceedings provide for special consideration for noncitizens who may present with competency issues. *See* INA 240(b)(3), 8 U.S.C. 1229a(b)(3); *Matter of M–A–M–,* 25 I&N Dec. at 479–84 (stating that where a noncitizen shows indicia of incompetency, the IJ must inquire further and establish safeguards where appropriate). In addition, the IFR carves out a specific exception to the general timeline and procedures in the streamlined 240 proceedings for a noncitizen who has exhibited indicia of incompetency at new 8 CFR 1240.17(k)(6).

The Departments note that the IFR does not permit noncitizens to ''opt-out'' of or decline further proceedings before an IJ because section 240 of the Act, 8 U.S.C. 1229a, requires an IJ, as opposed to the asylum officer, to issue the order of removal in cases where asylum is denied. The IFR does, however, allow a noncitizen to indicate that the noncitizen does not wish to contest removal or seek any protections for which the asylum officer did not find the noncitizen eligible, as set forth in new 8 CFR 1240.17(f)(2)(i)(B). In such a case, if the asylum officer determined the noncitizen eligible for withholding of removal or protection under the CAT, the IJ will give effect to that protection as determined by the asylum officer unless DHS makes a prima facie showing through new evidence or testimony that specifically pertains to the respondent and that was not included in the record of proceeding for the USCIS Asylum Merits interview that the respondent is not eligible for such protection. In addition, if a noncitizen fails to appear for the IJ proceedings, the IJ will generally be required to issue an in-absentia removal order pursuant to

existing regulations, but will similarly give effect to the asylum officer's determination, if any, that the noncitizen is eligible for withholding of removal or protection under the CAT, unless DHS demonstrates that the respondent is not eligible for such protection, as provided in new 8 CFR 1240.17(d).

Comments: Commenters expressed concerns that the NPRM's proposed IJ review proceedings lacked procedural protections and due process safeguards. Commenters stated that placing applicants whose cases are not granted by the asylum officer in these limited, asylum-only-type proceedings limits critical and well-established due process protections for applicants. In other words, commenters generally supported placing applicants in section 240 proceedings, to include the broader evidentiary standard applied in 240 proceedings, rather than a new limited proceeding tethered to the asylum interview record, and imposing a narrow evidentiary standard.

Commenters stated that the NPRM's proposed IJ review proceedings would erase the procedural guarantees and protections of full removal hearings and inappropriately limit immigration court consideration of asylum officer decisions. For instance, under the NPRM, an applicant would be unable to submit applications for other forms of relief without submitting additional motions, and would be unable to submit additional evidence unless an IJ deems it ''necessary'' and ''not duplicative.'' Commenters stated that IJs would be expected to rule in these ''reviews'' without holding evidentiary hearings. Similarly, commenters expressed concern that the proceedings would effectively be limited to review of only the asylum officer's notes, which would deprive the applicant of the right to present testimonial and documentary evidence, cross-examine adverse witnesses, and review and rebut all evidence considered by the adjudicator. Commenters expressed concern that the procedures in the NPRM's proposed IJ review, as compared to section 240 proceedings, could deprive applicants of a true opportunity to be heard. Commenters stated that the evidentiary provisions of the IJ review process could not cure the absence of these procedural protections. Commenters said the evidentiary procedures proposed by the NPRM during IJ review are vague and inadequate, and the NPRM's articulated rationales for a truncated hearing rather than full section 240 proceedings are arbitrary and capricious.

Commenters expressed concern about the nature of the record before the IJ in the review proceedings proposed by the NPRM—more specifically, that the NPRM gives a disproportionate amount of deference to asylum officer decisions while simultaneously limiting IJ adjudication to a mere review of the asylum officer-created record, rather than providing for a full de novo merits hearing. Commenters believed the NPRM would allow credible fear interview notes to be the sole basis of the asylum application, and that proposed 8 CFR 208.14(c) would allow asylum applications to be the sole piece of evidence reviewed by the IJ. Commenters also believed that relying on the asylum officer to adequately develop the record falls far short of due process standards. Commenters expressed concern that the asylum officer's notes may not explain why certain types of evidence were not allowed to be presented. Given these concerns, commenters said that this would create a chain of reliance on limited and often incomplete credible fear interview notes, would limit the ability of counsel to effectively supplement the record where necessary, and would prejudice clients who were not able to fully present their claims during the credible fear interview because of incapacity, trauma, or an improper setting for the interview.

Commenters stated that the NPRM does not explicitly guarantee the applicant a right to receive a decision from the IJ that lays out the reasons for their decision. Commenters reasoned that these decisions are critical for BIA and judicial review and thus, at a minimum, the NPRM should include the same standard of requiring an IJ to explain the reasoning underlying the court's decision as in section 240 proceedings.

Commenters expressed concern that the proposed IJ review procedure would provide insufficient review in light of the nature of the asylum officers' adjudications and decisions. Commenters stated that, in the context of asylum officers' adjudications of affirmative asylum applications or those filed by unaccompanied children, applicants receive a one-page notice explaining the decision with limited legal explanation. Assuming the decisions by asylum officers in the new procedures under the NPRM would be similar, commenters expressed concern that the NPRM does not provide the same safeguard of section 240 proceedings that is provided to these other applicants. Commenters stated that asylum officers do not always adequately review the entire record and make referrals to the immigration court for complex cases. Commenters stated that the NPRM's proposed IJ review proceedings would not ensure that any errors or omissions by the asylum officer are uncovered, particularly where the IJ rejected additional evidence or testimony that might support the protection claim.

Commenters stated that full section 240 proceedings are necessary because many applicants who currently are referred to removal hearings by asylum officers are granted asylum by an IJ. Commenters stated that reasons for the high number of cases granted after referral to EOIR, in the current section 240 referral process, include insufficiency or inaccuracy of credible fear interview notes as a sole measure of credibility, the structure of the asylum officer's interview, access to counsel, and access to evidentiary material and witness testimony. In contrast, commenters said the standard for considering admissible evidence in section 240 proceedings is relevance and fundamental fairness, and that immigration proceedings favor broad evidentiary admissibility. Commenters said the reason for the large disparity in outcomes was the right to a full de novo court hearing, where attorneys were free to offer documents, briefs, and testimony.

Commenters also took issue with the NPRM's statement that a noncitizen would have a ''full opportunity to challenge'' an asylum officer's decision to not grant asylum through an IJ's review of the asylum interview record. Commenters stated that, statistically, a large number of asylum applicants are unsuccessful in making a strong case for themselves at their hearings before asylum officers, citing impacts of trauma on presenting claims and difficulties with providing documentary evidence on short notice. Thus, commenters asserted, it is not realistic or fair to expect that the record of the hearing before an asylum officer, on which the IJ would rely during their review, would be sufficient to ensure that applicants have the opportunity to adequately make their case.

Commenters stated that the availability of section 240 proceedings for some applicants and only limited proceedings under the NPRM for other asylum applicants is not rationally connected to (1) whether a noncitizen has been or may be persecuted or tortured in the country the noncitizen left behind, and (2) the noncitizen's ability to articulate the claim or timely obtain evidence. Therefore, commenters urged that any final rule preserve the right to full adversarial proceedings before an IJ for those applicants who

have not had their applications granted by an asylum officer.

Commenters stated that the NPRM is not clear as to what extent applicants who do not receive a grant of asylum by the asylum officer will be negatively impacted if placed in affirmative proceedings without a guarantee of full section 240 proceedings. Commenters stated that if the NPRM decreased due process protections of applicants by denying the benefit of full section 240 proceedings, it may reduce access to the asylum process. Commenters said the NPRM raises transparency concerns regarding how the Departments will handle cases after review by an asylum officer.

Commenters said the Departments must not enact a faster process at the expense of due process protections and one commenter expressed concern that the NPRM's limited review proceedings would result in the creation of a de facto ''rocket docket'' that would place asylum seekers at risk of summary deportations. Absent clarification on the potential impact of these provisions, the commenters said they had been denied an opportunity to meaningfully comment on the NPRM.

Response: As described above in Section III of this preamble, the Departments have determined that a noncitizen whose asylum claim is not granted by an asylum officer after an initial adjudication will be issued an NTA and referred to an IJ for streamlined section 240 removal proceedings, and the Departments have decided not to implement the IJ review proceedings originally proposed in the NPRM. Section 240 proceedings follow issuance of a notice of charges of inadmissibility or removability against a noncitizen, INA 239(a)(1), 8 U.S.C. 1229(a)(1); INA 240(a), 8 U.S.C. 1229a(a), and provide an opportunity for the noncitizen to make a case to an IJ, INA 240(a), (b), 8 U.S.C. 1229a(a), (b). Accordingly, the use of section 240 proceedings provides notice and an opportunity to be heard, which satisfies due process. *See, e.g., LaChance* v. *Erickson,* 522 U.S. 262, 266 (1998) (''The core of due process is the right to notice and a meaningful opportunity to be heard.'').

The Departments' decision not to implement the NPRM's proposal for limited review proceedings for applications not granted by the asylum officer and instead to refer noncitizens to streamlined section 240 removal proceedings addresses commenters' concerns that the NPRM's proposed proceedings were overly restrictive. In response to commenters' concerns regarding the nature of the record created by the asylum officer, the Departments note that while the written record of the positive credible fear determination will be considered a complete asylum application, applicants may subsequently amend or correct the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or supplement the information collected during the process that concluded with a positive credible fear determination. 8 CFR 208.4(b)(2). Also, because the IFR is consistent with the evidentiary standard for section 240 proceedings, noncitizens may review and present evidence that is relevant and probative, which eliminates the NPRM's limited evidentiary standard of ''necessary'' and ''not duplicative'' and ensures noncitizens have the opportunity to supplement the record for IJ review. 8 CFR 1240.17(g). Upon conclusion of the streamlined section 240 proceedings, the DOJ regulations provide that an IJ will issue a decision considering the full record before the IJ, as set forth at new 8 CFR 1240.17(f)(5), and noncitizens will have an opportunity for appeal. 8 CFR 1240.13, 1240.15. The IJ has a duty to provide a decision orally or in writing. *See Matter of Kelly,* 24 I&N Dec. 446, 447 (BIA 2008) (holding that the IJ has a responsibility ''to insure [sic] that the decision in the record is complete''); 8 CFR 1003.37. Specifically, the IJ ''shall decide whether an alien is removable from the United States. The determination of the [IJ] shall be based only on the evidence produced at the hearing.'' INA 240(c)(1)(A), 8 U.S.C. 1229a(c)(1)(A). These provisions ensure that noncitizens receive a meaningful opportunity to be heard and afford procedural protections and due process safeguards. Moreover, under the IFR, noncitizens will not need to engage in additional motions practice—as they would have under the NPRM—should they wish to seek other forms of relief beyond the applications previously considered by the asylum officer. Further, IJs will conduct hearings for noncitizens who request to present live testimony, unless the application can be granted without a hearing, as indicated at new 8 CFR 1240.17(f)(4). The Departments find that the process set forth in this IFR addresses commenters' concerns that the NPRM provided undue deference to asylum officers while limiting the IJ's role in the proposed application review proceedings. While the Departments recognize that commenters stated they prefer ''full'' section 240 proceedings over those proposed in the NPRM, the Departments believe that the streamlined procedures set forth in this rule are necessary and appropriate for furthering efficiency interests while still ensuring fair adjudication of claims. In addition, the transcription of the hearing before an asylum officer, along with the additional timelines for completing cases that are included in this IFR, address commenters' concerns about transparency as to how the Departments will handle cases.

Comments: Commenters similarly stated that the NPRM does not permit procedures provided in section 240 proceedings, specifically in regard to continuances. Commenters explained that in section 240 proceedings, noncitizens are first scheduled for master calendar hearings where, among other things, IJs ask if they need a continuance to secure representation. Commenters stated that continuances are routine throughout the course of a case in immigration court. However, if proceedings are transferred to the asylum office, commenters were concerned that noncitizens will have less freedom to request their interview be rescheduled because DHS only allows for continuances of asylum officer proceedings in ''exceptional circumstances.''

Commenters also pointed out that 8 CFR 1003.48(e) as proposed in the NPRM did not adequately contemplate the legitimate needs for which an extension may be necessary (*e.g.,* to obtain representation by counsel). Commenters reasoned that applications for continuances should be fully documented, setting forth the steps already taken to secure an attorney or to obtain supporting evidence. Commenters believed that requests should be granted to allow for additional time, within reasonable limits, if applicants establish that they have been diligent and thorough with their search.

Response: At new 8 CFR 1240.17(h), the IFR explicitly provides for continuances in the context of streamlined section 240 proceedings. As specifically relevant to commenters' concerns, the IJ may grant initial continuances, including continuances to allow the noncitizen time to secure representation. These initial continuance standards will be governed by the long-standing, traditional ''good cause'' standard, as described at new 8 CFR 1240.17(h)(2)(i). *See* 8 CFR 1003.29.

As discussed above in Section III of this preamble, and as found at new 8 CFR 1240.17(h)(2)(ii) and (iii), the IFR also allows additional continuances beyond the initial 30-day ''good cause'' period, but the standards for additional

continuances beyond the initial 30-day ''good cause'' period will be increasingly restrictive as the noncitizen's requested continuances increase the aggregate delay of the proceedings. The IFR provides heightened standards for consideration when the merits hearing has been delayed for more than 90 days past the initial master calendar hearing due to continuances granted to the noncitizen. Nevertheless, the IFR preserves the opportunity for continuances as necessary to ensure a fair proceeding or to prevent a violation of statutory or constitutional rights, including the statutory right to counsel, as set forth at new 8 CFR 1240.17(h)(2)(ii)–(iii).

Comments: Commenters explained that the NPRM's proposed ''prohibition'' on immigration court consideration on the issue of removability may violate due process and result in wrongful removals. For example, commenters described a situation in which an IJ properly probed for facts and discovered that the noncitizen facing removal was in fact a U.S. citizen. However, commenters explained, if IJs are not permitted to make a ruling on admissibility or removability, there is no incentive for them to inquire to determine if the applicant before them has undiscovered legal status. To ensure that noncitizens are not removed by mistake and to avoid unnecessary hearings for those who are not removable, the commenters said that IJs should be permitted to inquire and make determinations regarding removability.

Response: The IFR resolves commenters' concerns with issues of removability and admissibility. In the streamlined section 240 removal proceedings introduced by this IFR, as in all section 240 proceedings, the IJ must make a determination regarding whether the noncitizen is subject to removal as charged. 8 CFR 1240.17(f)(2)(i), (k)(3); 8 CFR 1240.10(c), (d). The IFR includes an exception to the timelines in the streamlined proceedings for cases in which the noncitizen makes a prima facie showing that the noncitizen is not subject to removability and the IJ determines that the challenge cannot be resolved simultaneously with the adjudication of the noncitizen's applications for asylum, statutory withholding of removal, or withholding or deferral of removal under the CAT. Instead, these noncitizens will be subject to ordinary section 240 proceedings, as described at new 8 CFR 1240.17(k)(3).

Comments: Commenters disagreed with the NPRM's statement that ''requiring a full evidentiary hearing before an IJ after an asylum officer's denial would lead to inefficiencies without adding additional value or procedural protections.'' 86 FR 46918. Commenters argued that this ignores the reality of the asylum process by assuming that applicants will be able to develop a full evidentiary record before the asylum officer, demonstrates a misunderstanding of how difficult it is to be granted asylum, and could hinder due process. Commenters said that nonadversarial hearings with asylum officers are not faster and fairer than immigration court hearings with represented applicants, especially if attorneys on both sides agree to narrow issues in dispute before the IJ. At least one commenter believed that, under the NPRM, an IJ's decision regarding rejecting or admitting evidence would not be reviewable by the BIA or a U.S. Court of Appeals because the NPRM did not require the judge to provide a reasoned decision. Therefore, commenters explained, the NPRM's proposed IJ review could deny a noncitizen the opportunity to relate clearly and completely the circumstances of persecution or a well-founded fear of persecution to either an asylum officer or IJ. Commenters anticipated that the NPRM, if it had been promulgated in that form, would be vacated because it is inconsistent with due process guaranteed by the Fifth Amendment as well as INA 240(b)(4)(B), 8 U.S.C. 1229a(b)(4)(B), which provides that noncitizens shall have a reasonable opportunity to examine the evidence against them, to present evidence on their own behalf, and to cross-examine witnesses presented by the Government.

Response: The Departments disagree with commenters' concerns that the initial asylum officer adjudication of claims would not provide further efficiencies over the current expedited removal credible fear screening process. Although this IFR revises the process as proposed by the NPRM for reviewing applications that an asylum officer does not grant, the Departments maintain that having an Asylum Merits interview with an asylum officer for noncitizens with positive credible fear determinations, as both the IFR and NPRM provide, will be more expeditious than the current process of referring all noncitizens with positive credible fear determinations to section 240 proceedings before the immigration court. As described in the NPRM, immigration courts are experiencing large and growing backlogs and subsequent adjudication delays. 86 FR 46907. Asylum officers are well trained and experienced with asylum adjudications, and each case that is granted by USCIS is a direct reduction in cases that would have been before EOIR. *See id.* The threshold asylum officer hearing proposed in the NPRM also will ensure that cases referred to immigration court will include a well-developed record. Where cases are referred with such a record, IJs will not have to grant continuances for respondents to file applications for asylum and related protection. Even though parties will be able to file additional evidence, the asylum officer record will help IJs to narrow issues. For both these reasons, USCIS adjudication of claims will promote efficiency before EOIR.

In addition, the IFR does not adopt the NPRM's proposal for broad limits on introducing new evidence. Instead, the IFR provides at new 8 CFR 1240.17(g)(1) that IJs may exclude documentary evidence or witness testimony ''only if it is not relevant or probative; if its use is fundamentally unfair; or if the documentary evidence is not submitted or the testimony is not requested by the applicable deadline, absent a timely request for a continuance or filing extension that is granted.'' The Departments believe the IFR's evidentiary standard addresses the commenters' concerns regarding the need for a full evidentiary hearing. Further, the Departments believe that, overall, the IFR's streamlined section 240 proceedings will be equally effective, if not more so, than the NPRM's proposed proceedings in enhancing efficient adjudication and replacing time-consuming evidentiary hearings. For example, the IFR provides that the asylum officer's record will be automatically transmitted upon DHS's issuance of an NTA, which will enable the parties to narrow the issues and assist the IJ's review of the case. The IFR also provides that if neither party requests to present testimony, or if the IJ determines that the asylum application can be granted without hearing testimony and DHS does not request to present testimony or evidence, the IJ can decide the case without a hearing. The IFR also provides various deadlines for the scheduling of hearings and the issuance of the IJ decision. These measures enhance efficiency by precluding the need for a full evidentiary hearing in some cases and by facilitating a more efficient hearing when one is necessary.

Finally, in response to commenters' concerns regarding administrative and judicial review of IJ decisions regarding the admission of evidence, the Departments emphasize that there is not a substantive difference regarding IJs'

decisions on the admission of evidence in these streamlined section 240 proceedings and standard 240 proceedings. Either party may challenge the IJ's decision during a subsequent appeal to the BIA, which will be reviewed pursuant to the same standards of review as for appeals from ordinary section 240 proceedings. *See* 8 CFR 1003.1; INA 242, 8 U.S.C. 1252. A noncitizen who receives an adverse decision from the BIA may file a petition for review subject to the requirements of section 242 of the INA, 8 U.S.C. 1252, and nothing in this rule affects that statutory provision.

Comments: Commenters expressed concerns that IJs would serve a ''pseudo-appellate'' role by reviewing decisions by asylum officers. The commenters characterized the current IJ review process of negative credible fear interviews as ''deficient'' and explained that expanding this aspect of the IJ's duty will amplify due process concerns and result in erroneous removals. Therefore, commenters urged that, if the NPRM is not withdrawn, the Departments should at least automatically refer claims not granted by asylum officers for full section 240 proceedings.

Response: The Departments find that the decision to place individuals whose applications are not granted by the asylum officer into streamlined 240 proceedings, rather than the NPRM's proposed IJ review proceedings, addresses commenters' concerns that the new procedures would have been akin to a credible fear review rather than an adjudication in removal proceedings. As commenters point out, section 240 proceedings allow noncitizens a fuller opportunity to present evidence and testimony to develop the record, secure and work with counsel if they have not yet done so, and participate in additional hearings as needed. *See generally* 8 CFR part 1240. The IFR includes additional procedural requirements to ensure that proceedings will proceed more expeditiously, but will still give noncitizens a full opportunity to develop the record and obtain a de novo determination as to asylum eligibility from the IJ, thus obviating commenters' concerns. When conducting these streamlined 240 proceedings, IJs will exercise independent judgment and discretion in reviewing the claims before them for adjudication. *See* 8 CFR 1003.10(b); *see generally* EOIR, *Ethics and Professionalism Guide for Immigration Judges* (Jan. 2011), *https://www.justice.gov/eoir/sibpages/IJConduct/EthicsandProfessionalismGuideforIJs.pdf* (*IJ Ethics and Professionalism Guide*) (requiring IJs to, inter alia, be faithful to the law, maintain professional competence in the law, act impartially, and avoid actions that would create the appearance of violations of the law or applicable ethical standards). The Departments believe the protections provided in section 240 proceedings are appropriate to provide a sufficient record for appeal.

Nevertheless, the Departments also clarify that, contrary to commenters' conclusory statements, IJs' current credible fear review process is not ''deficient'' and does not violate due process. The IFR maintains the NPRM's approach of restoring the credible fear screening standards that were in effect prior to the regulatory changes made between 2018 and 2020. *See* 86 FR 46911. None of those regulations has gone into effect, as all are delayed, vacated, or enjoined. *See id.* at 46909 n.24. The Departments believe that returning the regulations to the framework in place prior to the changes made between 2018 and 2020 will ensure the process is more efficient, effective, and consistent with congressional intent. *Id.* at 46914. The Supreme Court has emphasized that noncitizens who are encountered in close vicinity to and immediately after crossing the border and placed in expedited removal proceedings, which include the credible fear screening process, have ''only those rights regarding admission that Congress has provided by statute.'' *Thuraissigiam,* 140 S. Ct. at 1983. Congress provided the right to a determination whether the noncitizen has a ''significant possibility'' of establishing eligibility for asylum under INA 208, 8 U.S.C. 1158. *See also* INA 235(b)(1)(B)(ii), (v), 8 U.S.C. 1225(b)(1)(B)(ii), (v). Because the regulations reestablish the ''significant possibility'' standard, consistent with the statute, it does not infringe on noncitizens' rights. *See Thuraissigiam,* 140 S. Ct. at 1983. In addition, despite the Departments' disagreement with the commenters' characterization of the credible fear review process, the Departments find that this IFR addresses commenters' concerns as IJs will continue to have the traditional adjudicator authorities in 240 proceedings.

Comments: Commenters stated that the reports by the U.S. Commission on International Religious Freedom (''USCIRF''), the Administrative Conference of the United States (''ACUS''), and the Migration Policy Institute (''MPI'') cited in the NPRM as support for asylum officers adjudicating defensive claims do not suggest eliminating full evidentiary IJ hearings of defensive asylum claims, which commenters believed the NPRM implied. 86 FR 46917–18. Commenters stated that requiring the applicant to petition the IJ for consideration of additional evidence would curtail due process beyond the procedure recommended by USCIRF whereby asylum officers would either grant asylum cases immediately after the credible fear interview or, in more complicated cases, refer the applicant to full proceedings before an IJ.

Response: The NPRM's references to reports by the USCIRF, ACUS, and MPI were not meant to imply support for the NPRM's proposed process, as commenters alleged. Rather, the NPRM clearly stated that those reports ''assumed that individuals denied asylum by a USCIS asylum officer would be issued an NTA and placed into section 240 removal proceedings before an IJ, where the noncitizen would have a second, full evidentiary hearing on the asylum application with a different decision-maker. *This proposed rule would not adopt that approach* . . . .'' 86 FR 46918 (emphasis added). Nevertheless, for the reasons discussed thus far and above in Section III of this preamble, this IFR replaces the NPRM's proposed IJ review procedure with streamlined section 240 removal proceedings.

Comments: Commenters raised concerns that the NPRM's procedures distinct from section 240 IJ review could have a negative impact on those applicants who are unrepresented by counsel, non-English speakers, or trauma survivors. Accordingly, commenters recommended that asylum seekers instead be given an opportunity to obtain counsel and present all evidence in support of their claims in section 240 merits hearings before IJs. Commenters asserted that only such a hearing would ensure that pro se applicants are not wrongfully returned to danger in violation of the United States' nonrefoulement obligations.

Commenters generally argued that issues related to lack of access to counsel stem from the fact that noncitizens appearing before the immigration courts have no right to Government-appointed counsel. Commenters urged the Departments to consider that, while many asylum seekers do not have access to legal representation at any stage of immigration proceedings, they are particularly unlikely to have legal representation at early stages of presenting their claims. Other commenters believed that the majority of asylum applicants do not have

representation. Commenters expressed concerns that, under the NPRM, unrepresented asylum seekers would not be able to adequately present their asylum claims before the asylum officer, and that these initial deficiencies would later pose significant challenges to legitimate claims, even with the assistance of counsel, once asylum seekers are before the immigration court. Commenters also raised concerns that unrepresented applicants, many of whom are unfamiliar with the complexities of immigration law and do not speak English, would be unable to adequately draft filings, fill out forms, and present their claims at all, particularly within the time constraints presented by the NPRM. Commenters noted that these concerns are further exacerbated by the fact that many applicants suffer from post-traumatic stress disorder or other mental health ailments.

Commenters stated that the NPRM would negatively impact trauma survivors' ability to present their claims because they may not be able to immediately disclose all relevant facts pertaining to their claims to their asylum officers or even their own counsel. Commenters stated that it is common for asylum seekers to disclose only limited information about their past persecution in early statements and then to provide greater detail when later questioned by an IJ. Commenters stated that it may take several meetings with an advocate before asylum seekers are comfortable enough to share the details of their persecution. Commenters asserted that the NPRM would increase the likelihood that such applicants may face erroneous adverse credibility determinations, and that the expedited process would be generally detrimental to a full exploration of claims. Commenters particularly argued that more robust procedural safeguards are critically important to guaranteeing LGBTQ+ asylum seekers the opportunity to present their claims. Commenters cited *Matter of M–A–M–,* 25 I&N Dec. 474, as an example of a case that recognized the important procedural protections available in section 240 removal proceedings. In *Matter of M–A–M–,* the BIA recognized the right for applicants who may lack mental capacity to present expert testimony to demonstrate that their mental health conditions impacted their claims. *Id.* at 479.

Moreover, commenters believed that asylum officers are not in the best position to probe an applicant on the reasons for inconsistencies in a claim, particularly when the asylum seeker acted pro se or received ineffective assistance of counsel before the Asylum Office. Commenters anecdotally stated that they have witnessed circumstances where asylum officers failed to thoroughly probe the reasons for inconsistencies, but where applicants later resolved inconsistencies during direct examination in immigration court. Without the ability to testify live on the same issues in a truly de novo proceeding, one commenter said, many traumatized asylum seekers would not have the opportunity to present critical evidence that would prove their claims.

Response: The IFR addresses commenter concerns about the rule's impact on vulnerable populations, including individuals with post-traumatic stress disorder, individuals who face language barriers, and individuals who are unrepresented, by providing that noncitizens whose applications are not granted by the asylum officer will be placed in streamlined section 240 proceedings rather than finalizing the IJ review procedure proposed in the NPRM. The Departments have included procedural rules to ensure the efficient disposition of these cases, and noncitizens in these streamlined 240 proceedings will receive all of the procedural protections required by section 240 of the Act, 8 U.S.C. 1229a, which commenters were concerned were lacking in the NPRM. *See* INA 240(b)(4), 8 U.S.C. 1229a(b)(4) (setting forth noncitizen's rights in proceedings); *see also Matter of M–A–M–,* 25 I&N Dec. at 479–83 (stating that where a noncitizen has indicia of incompetency, the IJ must inquire further and establish safeguards where appropriate). The Departments believe that these measures are sufficient to ensure that all noncitizens, including vulnerable noncitizens, have adequate time to prepare and present their claims. Moreover, the IFR explicitly exempts certain categories of noncitizens, including juveniles and mentally incompetent individuals, from the streamlined procedures created by this IFR, as described at new 8 CFR 1240.17(k).

With respect to commenters' concerns about noncitizens not having adequate access to or time to obtain counsel, the Departments recognize the ''immense value of legal representation in immigration proceedings, both to the individuals that come before [EOIR] and to the efficiency of [its] hearings.'' *Director's Memo* (''DM'') *22–01: Encouraging and Facilitating Pro Bono Legal Services* 1 (Nov. 5, 2021), *https://www.justice.gov/eoir/book/file/1446651/download.* As with all noncitizens in section 240 removal proceedings, the individuals subject to the IFR have a right to representation at no cost to the Government. INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A).[80] Additionally, resources are available for pro se noncitizens in immigration court. *See, e.g.,* EOIR, Pro Bono Legal Service Providers, *https://probono.eoir.justice.gov;* EOIR, Immigration Court Online Resource, *https://icor.eoir.justice.gov/en/;cf.* EOIR, Press Release, EOIR Announces ''Access EOIR'' Initiative (Sept. 28, 2021) (aiming to increase representation before EOIR), *https://www.justice.gov/eoir/pr/eoir-announces-access-eoir-initiative;* EOIR, Press Release, EOIR Launches Resources to Increase Information and Representation (Oct. 1, 2020), *https://www.justice.gov/eoir/pr/eoir-launches-resources-increase-information-and-representation.*

In addition, because noncitizens in section 240 removal proceedings, including the streamlined section 240 proceedings set forth in the IFR, have the right to provide testimony and evidence in support of their applications, the Departments find that placing noncitizens whose applications are not granted by the asylum officer in streamlined section 240 proceedings rather the NPRM's proposed distinct proceedings addresses commenters' concerns about the effect of a lack of representation early in the expedited removal or asylum application process. In other words, noncitizens who fail to provide evidence or testimony on relevant parts of their claims before asylum officers due to a lack of representation will have the ability to submit additional evidence or testimony to the IJ during subsequent streamlined section 240 proceedings, as described above in Section III of this preamble. Further, noncitizens in these streamlined section 240 proceedings will have opportunities to obtain

[80] The Departments strive to improve access to counsel, as evidenced through other policies and rulemakings, and recognize that increasing access to counsel will, in turn, further the efficiency of all of the Departments' operations, including those set forth in this rulemaking. *See DM 22–01: Encouraging and Facilitating Pro Bono Legal Services* (Nov. 5, 2021) (''Competent legal representation provides the court with a clearer record and can save hearing time through more focused testimony and evidence, which in turn allows the judge to make better-informed and more expeditious rulings.''); *see generally* Executive Order 14012, 86 FR 8277, 8277 (Feb. 2, 2021) (directing Attorney General and Secretary to ''identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers, as appropriate and consistent with applicable law''). Nevertheless, recommendations from commenters calling for noncitizens to have access to appointed counsel in section 240 removal proceedings are beyond the scope of this rulemaking.

representation even before removal proceedings are initiated as they may be represented during the initial adjudication conducted by the asylum officer. *See* 8 CFR 208.9.

The Departments believe that commenters' concerns that the procedures proposed in the NPRM would negatively impact individuals whose claims develop over time or who need additional time and testimony to explain inconsistencies and aspects of their claim that they do not feel were adequately addressed during the interview are ameliorated by the IFR, which does not contain the NPRM's restrictions on the introduction of new testimony or documentary evidence. Instead, the IFR incorporates evidentiary standards consistent with those in section 240 proceedings—evidence must be relevant, probative, and fundamentally fair, as described at 8 CFR 1240.17(g)(1). *See* INA 240(b)(4)(B), 8 U.S.C. 1229a(b)(4)(B) (noncitizens must have a ''reasonable opportunity'' to present evidence on their behalf); 8 CFR 1240.7(a); *see also Nyama,* 357 F.3d at 816 (''The traditional rules of evidence do not apply to immigration proceedings . . . . 'The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.' '' (quoting *Espinoza,* 45 F.3d at 310)). Noncitizens may also request to provide additional testimony where they believe that it is necessary, as described above in Section III of this preamble.

Comments: Commenters expressed concerns that, by relying solely on the record before the asylum officer, the NPRM would effectively result in IJs ''rubber-stamping'' asylum officer decisions without providing meaningful review and oversight. Commenters stated that full evidentiary hearings before an IJ provide an essential check on errors during the credible fear interview and affirmative interview processes.

Commenters stated that the NPRM does not mandate that IJs have the same obligations regarding evidence and the record that are set forth in the INA for section 240 proceedings, such as an obligation to ''administer oaths, receive evidence, and interrogate, examine, and cross-examine the [noncitizen] and any witnesses.'' INA 240(b)(1), 8 U.S.C. 1229a(b)(1). Instead, commenters stated that the NPRM would create a presumption against holding immigration court hearings and against the presentation of additional evidence or testimony. Commenters were concerned that, as a result, IJs would pretermit claims and affirm decisions not granting asylum without first conducting a hearing in person.

Commenters urged that a fuller review is necessary to prevent a negative use of the asylum officer's increased authority under the NPRM in the future. Similarly, commenters also expressed concern that future IJ performance metrics could exacerbate these issues by encouraging overly cursory reviews.

Response: As an initial matter, the decision to place noncitizens whose applications are adjudicated but not granted by the asylum officer in streamlined section 240 proceedings, rather than the NPRM's proposed IJ review proceedings, addresses commenters' concerns that limited proceedings would not allow for meaningful review and oversight by the IJ. In particular, the switch to streamlined section 240 proceedings will ensure that the IJ's review is meaningful and not a ''rubber-stamp'' of the asylum officer's decision. The streamlined section 240 proceedings established by the IFR will allow noncitizens to submit additional testimony or evidence, if they deem it necessary, as described at new 8 CFR 1240.17(e), (f). Accordingly, commenters' concerns—that the IJ could deny an application based solely on the record before the asylum officer without allowing the noncitizen to testify or provide evidence—are no longer applicable.

The Departments believe that the procedures in this IFR also ameliorate commenters' concerns over statements in the NPRM that IJs could decide whether to accept additional evidence or make a determination based solely on the asylum officer's record. In addition to applying the statutory procedures regarding evidence and maintenance of the record set forth in section 240 of the Act, 8 U.S.C. 1229a, the IFR permits noncitizens to request to provide additional testimony where necessary and only permits the IJ to deny such requests where the IJ concludes there is sufficient evidence in the record to grant the asylum application without hearing additional testimony. The Departments further believe that the detailed review procedures set forth in the IFR alleviate commenters' concerns about IJs adjudicating applications without adequately reviewing asylum officer decisions. Because the IFR ameliorates the commenters' concerns on these points, the IFR also addresses the commenters' related concern that future IJ performance metrics could exacerbate these issues.[81]

Comments: Commenters disputed the NPRM's justification that the limited review proceedings would increase efficiency in the asylum adjudication process. For example, commenters stated that IJs would have to divert resources from substantive adjudications to address a large number of motions or appeals resulting from confusion over the requirement that the applicant affirmatively request further IJ review within a short time period. Commenters suggested that this provision may also spark litigation and diversion of resources to correct injustices that would otherwise lead the United States to return refugees to persecution, in violation of nonrefoulement principles.

Commenters also remarked that the NPRM did not adequately explain why establishing an entirely separate process through the Asylum Office and courts would serve efficiency interests when those same officials would continue to be tasked with their current functions and duties. Commenters said that the Departments did not provide a meaningful rationale for why a separate procedure apart from section 240 proceedings was necessary to carry out efficient, just results for asylum seekers. Commenters suggested that it would be more efficient to place all applicants in section 240 proceedings, instead of the NPRM's IJ review procedure, because the novel proceedings would give rise to prolonged disputes about the introduction of new evidence to supplement the asylum officer's record or support prima facie eligibility for alternative relief. Commenters argued that motions that would increase under the NPRM would include motions to file additional evidence; motions to vacate the limited asylum-, withholding-, and CAT-only proceedings to pursue other relief or protection; and the inevitable cross-motions, motions to reconsider, interlocutory appeals to the BIA, motions to reopen, and petitions for review by U.S. Courts of Appeals. Commenters also asserted, generally, that challenges to expedited removal cases are already compounding the backlog of cases.

[81] EOIR no longer reviews IJ performance through individual IJ performance metrics. IJs are held to high ethical standards, in part, to avoid impropriety or the appearance of impropriety, which would include deciding cases consistent with performance metrics rather than applicable law and regulations. *See IJ Ethics and Professionalism Guide* (providing that IJs must be faithful to the law, maintain professional competence in the law, act impartially, and avoid actions that would create the appearance that the IJ is violating the law or applicable ethical standards); *see also EOIR Policy Manual,* Part II, ch. 1.3(c) (stating that IJs ''strive to act honorably, fairly, and in accordance with the highest ethical standards'').

Response: The IFR addresses nearly all of the commenters' concerns by providing that noncitizens whose applications are adjudicated but not granted by the asylum officer will now be placed in streamlined proceedings under section 240 of the Act, 8 U.S.C. 1229a.

The Departments emphasize that section 240 proceedings are the default, most common type of removal proceeding. This familiar framework safeguards due process interests by ensuring that noncitizens have certain rights and protections in such proceedings. *See* INA 240(b)(4), 8 U.S.C. 1229a(b)(4). The Departments believe that adhering to this statutory framework, but establishing procedural case-processing measures specific to this category of cases, will further the Departments' efficiency interests without undermining fairness in proceedings. Further, noncitizens in streamlined section 240 proceedings may apply for other forms of relief or protection without the need to first submit a motion to the IJ to vacate the asylum officer's order of removal, which would have been the case under the NPRM at 8 CFR 1003.48(d) (proposed). *See* 86 FR 46920. The IFR provides, at new 8 CFR 1240.17(k)(2), that a noncitizen will not be subject to the streamlined procedures if the noncitizen produces evidence of prima facie eligibility and the noncitizen is seeking to apply for, or has applied for, such relief or protection other than asylum, statutory withholding of removal, withholding or deferral of removal under the CAT, and voluntary departure.

Comments: Commenters asserted that the NPRM's IJ review procedure would violate the Act or is otherwise contrary to congressional intent.

First, commenters asserted that the Act requires that individuals in expedited removal who seek review of asylum officers' decisions not to grant asylum be placed in full section 240 removal proceedings. Commenters further stated that none of the statutory sections on which the NPRM relied displaces the statutory presumption of section 240 removal proceedings. Commenters stated that nothing in the Act suggests that Congress exempted from section 240 removal proceedings noncitizens seeking asylum who are determined to have credible fear, or any subset of that population.

Commenters argued that the Departments' statutory interpretation erroneously rests on the negative inference that section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), permits proceedings other than section 240 proceedings because that section does not explicitly require section 240 proceedings, as compared with section 235(b)(2) of the Act, 8 U.S.C. 1225(b)(2), which explicitly requires section 240 proceedings. Commenters asserted that reading is erroneous because section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), establishes a general rule that applicants for admission must be placed in section 240 removal proceedings. Commenters believe that section 235(b)(2)(B)(ii) of the Act, 8 U.S.C.1225(b)(2)(B)(ii), then creates an exception to that automatic entitlement for those defined as ''arriving'' in section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1), because such individuals are placed in expedited removal. In sum, commenters generally assert that DHS screens 8 U.S.C. 1225(b)(1) applicants to determine which of the two statutorily established methods of removal will apply: Expedited removal for those without credible fear, or standard removal proceedings for those who establish credible fear. Commenters asserted that the statute has never been and cannot now reasonably be understood to exclude all (b)(1) applicants from a full removal hearing once they are no longer subject to the expedited removal process.

Commenters also disputed the Departments' interpretation of section 235(b)(2)(A) of the Act, 8 U.S.C. 1225(b)(2)(A), and statement that ''noncitizens whom DHS has elected to process into the United States using the expedited removal procedure are expressly excluded from the class of noncitizens who are statutorily guaranteed section 240 removal proceedings.'' 86 FR 46917. Commenters argue that a credible fear screening creates an exit from expedited removal proceedings, and, by design, those who establish credible fear are no longer subject to expedited removal. Thus, commenters concluded, the Departments' view that people seeking asylum can be forced into lesser proceedings in immigration court is contrary to law.

Commenters also believe that the legislative history of expedited removal demonstrates that Congress intended for all noncitizens found to possess a credible fear of persecution or torture to be afforded section 240 proceedings. Commenters stated that, in drafting the asylum statute and significantly amending the Act through IIRIRA, it is clear that Congress contemplated that asylum seekers would be afforded an opportunity to defend against deportation before an IJ in full section 240 proceedings, which include various procedural and due process safeguards. Specifically, commenters cited the congressional record in support of their position. *See, e.g.,* 142 Cong. Rec. S4461 (1996) (statement of Sen. Alan Simpson) (''[T]he bill provides very clearly an opportunity for every single person[, even those] without documents, or with fraudulent documents . . . to seek asylum.'').

Commenters further argued that IIRIRA includes three levels of screening to ensure that asylum seekers are clearly identified so that genuine asylum seekers are not subject to the expedited procedures that apply to non-asylum seekers. In support, commenters referenced statements by the chief drafters of the law explaining that asylum seekers can be ordered removed only after full section 240 proceedings where they can submit evidence, call witnesses, and testify. *See, e.g.,* 142 Cong. Rec. S4492 (1996) (statement of Sen. Alan Simpson) (''If [asylum seekers] have credible fear, they get a full hearing without any question.''). Commenters also suggested that other provisions in the Act demonstrate congressional intent to place such applicants in section 240 removal proceedings. For example, commenters stated that at the same time Congress enacted expedited removal, Congress gave asylum seekers a full year to submit an initial application in recognition that asylum cases take time to prepare. Accordingly, commenters said that the NPRM contravened congressional intent by precluding access to section 240 removal proceedings for applicants not granted asylum following a positive credible fear interview.

On the other hand, some commenters objected to the NPRM on the basis that it would extend the credible fear and review process further than Congress intended. Specifically, these commenters asserted that the additional review by the asylum officers and within USCIS undermined congressional intent for the expedited removal process to be truly expedited. In support, commenters cited Congress's statutory scheme to limit the administrative review of expedited removal orders and limit judicial review of determinations made during the expedited removal process. *See* INA 242, 8 U.S.C. 1252. Commenters concluded that creating additional levels of review would slow the credible fear process, waste administrative resources, and run counter to Congress's legislative aims.

Commenters stated that the restrictions on IJs in the NPRM's limited proceedings would conflict with the IJ's role to develop the record before the

court. Commenters stated that the Act and its implementing regulations require IJs to take an active role in section 240 removal proceedings to develop the record and ensure that applicants are advised of the nature of the proceedings, as well as their rights and responsibilities therein. *See, e.g., Abdurakhmanov* v. *Holder,* 735 F.3d 341, 346 n.4 (6th Cir. 2012) (''An IJ has . . . an obligation[ ] to ask questions of the [noncitizen] during the hearing to establish a full record . . . . [The questioning] should be designed to elicit testimony relevant to the fair resolution of the [noncitizen's] applications.''); *Toure* v. *Att'y Gen.,* 443 F.3d 310, 325 (3d Cir. 2006) (''[A]n IJ has a duty to develop an applicant's testimony, especially regarding an issue that she may find dispositive . . . .'' (citing *Matter of S–M–J–,* 21 I&N Dec. at 723–26)). Commenters stated that this duty differentiates IJs from Article III judges but is consistent with other types of administrative proceedings. Commenters explained that in the immigration context, courts have recognized that unique features of immigration court proceedings require IJs to fill this role to ensure fair and accurate adjudications.

In addition, commenters stated that the NPRM's IJ review procedure would conflict with the United States' international obligations, including nonrefoulement, because it would diminish the significance of immigration court review as a safeguard. On the other hand, commenters stated that the protections afforded to applicants in section 240 proceedings comport with UNHCR guidance emphasizing that the asylum adjudicator's role is to ''ensure that the applicant presents his case as fully as possible and with all available evidence.'' *See* UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* ¶ 205(b)(1) (2019), *https://www.unhcr.org/en-us/publications/legal/5ddfcdc47/handbook-procedures-criteria-determining-refugee-status-under-1951-convention.html* (last visited Mar. 5, 2022). Commenters also expressed concerns that the NPRM would effectively penalize asylum seekers based on their manner of entry—in violation of Article 31 of the Refugee Convention—as the NPRM would apply only to persons who have sought asylum at or after recently crossing the border.

Response: The Departments have considered commenters' concerns that the NPRM's proposal that noncitizens not granted asylum by the asylum officer would immediately be ordered removed, with the opportunity to seek IJ review through a newly created proceeding, would violate congressional intent, the Act, and international obligations. Through this IFR, noncitizens not granted asylum by the asylum officer instead will be referred to streamlined section 240 proceedings before an IJ. While the Departments are establishing procedural steps to ensure the efficient disposition of these cases, noncitizens in streamlined section 240 proceedings established by the IFR are entitled to the same general rights and protections as noncitizens in section 240 proceedings. *See, e.g.,* INA 240(b)(4), 8 U.S.C. 1229a(b)(4) (setting forth noncitizens' rights in proceedings). This shift generally resolves the commenters' concerns on these points by returning to the use of section 240 proceedings and affirming the role of the IJ as the adjudicator, while still ensuring that the proceedings are completed expeditiously.

The Departments disagree, however, with commenters' argument that the NPRM violates congressional intent to create an efficient expedited removal process by proposing an additional layer of adjudication and review by the asylum officer. Specifically, the Departments believe that the commenters' concerns erroneously conflate expedited removal of noncitizens who have not demonstrated a credible fear of persecution or torture with the separate process that occurs for noncitizens who have established a credible fear of persecution or torture. The Act makes clear that most noncitizens who are arriving in the United States, if inadmissible under certain provisions of the Act, will be removed ''without further hearing or review.'' INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i). The Act carves out one exception to this general rule: If the noncitizen indicates a fear of persecution or torture or an intention to apply for asylum, rather than face immediate removal, the noncitizen will instead be interviewed by an asylum officer to determine whether the noncitizen has a credible fear of persecution. INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). If, during the interview, the noncitizen does not demonstrate a credible fear, the Act again calls for the noncitizen's immediate removal ''without further hearing or review.'' INA 235(b)(1)(B)(iii)(I), 8 U.S.C. 1225(b)(1)(B)(iii)(I).[82] This IFR does not make any significant changes to the implementing regulations for these statutory provisions.

Although the initial screening process is intended to be expedited, once a noncitizen is determined to have a credible fear of persecution or torture, the Act no longer calls for the noncitizen's removal without further hearing or review. Rather, it establishes that the noncitizen's application for asylum shall be given ''further consideration.'' INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii).[83] The Act does not specify the contours of or the appropriate speed at which such further consideration should occur before a noncitizen receives a final adjudication.

The Departments believe that the ''further consideration'' directed by Congress reasonably encompasses establishing a procedure under which an asylum officer adjudicates the asylum application in the first instance and, if the application is not granted, refers the noncitizen to streamlined section 240 proceedings. The Departments believe that this procedure will be more efficient than the current lengthy process in which noncitizens are referred directly to section 240 proceedings, both because cases that can readily be granted by the asylum officer will be removed from the docket, and because cases referred to the immigration court will arrive in immigration court with the benefit of a record assembled by the asylum officer that enables these section 240 proceedings to be substantially streamlined, as outlined above in Section III of this preamble.

Commenters' references to provisions of the Act that limit judicial review of decisions made during the initial screening process—*i.e.,* whether there is expressed or established credible fear of persecution or torture—are inapposite because those provisions only limit judicial review of decisions made during that initial screening process. The Departments' view is that Congress did not eliminate or limit judicial review in cases involving noncitizens determined to have credible fear just because they were initially screened as possible candidates for expedited removal. *See Thuraissigiam,* 140 S. Ct. at 1965 (''Applicants can avoid

[82] Although the Act states that, under these circumstances, the noncitizen will be removed without further hearing or review, the Act also provides for a very limited IJ review of the asylum officer's determination that the noncitizen does not have a credible fear of persecution or torture. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). The IJ's decision reviewing the asylum officer's credible fear determination is final and not subject to reconsideration or appeal. 8 CFR 1208.30(g)(2)(iv)(A).

[83] For further discussion regarding the legal authority for the NPRM, see Section II.B of this preamble.

expedited removal by claiming asylum . . . . If the asylum officer finds an applicant's asserted fear to be credible, the applicant will receive 'full consideration' of his asylum claim in a standard removal hearing.'' (footnotes omitted)).

Comments: Commenters emphasized the importance of judicial review for adjudicating applications for asylum or protection, particularly for marginalized groups, and expressed concern that the NPRM would not sufficiently protect the right to judicial review.

Commenters suggested placing applicants whose claims are adjudicated but not granted by an asylum officer in section 240 proceedings rather than a new proceeding to ensure judicial review and avoid potential future litigation about the Federal courts' jurisdiction over these cases. While commenters primarily advocated for section 240 proceedings, they also recommended additional ways to improve the NPRM's proceedings to ensure adequate judicial review, such as, for example, amending the rule so that the IJ, not the asylum officer, would issue a removal order. The noncitizen could then appeal the IJ's decision to the BIA and seek judicial review of the BIA's decision.

In contrast, other commenters disagreed that further changes are needed to protect judicial review and emphasized that the NPRM does not alter any current safeguards for individuals seeking asylum or protection. The commenters reiterated that those who are not granted asylum, withholding of removal, or protection under the CAT by an asylum officer would still have the option to have their cases heard by the immigration court, which would be a second level of review.

Response: The Departments agree with commenters that the Departments' procedures must ensure the right to judicial review of adjudications of applications for asylum or protection. Judicial review ensures fairness and accuracy in immigration proceedings, and Congress specifically sought to ensure review remained available for asylum applications while otherwise limiting review over other types of decisions. *See* INA 242(a)(2)(B)(ii), 8 U.S.C. 1252(a)(2)(B)(ii) (Congress limiting judicial review of agency decisions regarding discretionary forms of relief ''other than the granting of relief under [INA 208(a),] section 1158(a) of this title.'').

Regarding commenters' concerns that the procedure proposed in the NPRM might not allow for further judicial review, the Departments disagree with that view and, in any case, emphasize that the process has been revised as described above in Section III of this preamble so that noncitizens whose applications are adjudicated but not granted by the asylum officer will be issued an NTA and placed in streamlined section 240 proceedings. As with all section 240 removal proceedings, a noncitizen may first appeal the IJ's decision to the BIA, 8 CFR 1240.15, and then appeal the BIA's decision to a Federal circuit court, INA 242, 8 U.S.C. 1252. In addition, under the IFR, the IJ issues the removal order, if applicable, rather than the asylum officer, consistent with some commenters' suggestions. The changes under this IFR demonstrate the Departments' continued commitment to fair adjudications, and address commenters' concerns regarding the need to ensure the availability of judicial review.

The Departments are committed to maintaining longstanding procedural protections inherent in section 240 proceedings for noncitizens subject to the expedited removal process and subsequently determined to have a credible fear of persecution or torture. The Departments acknowledge that some commenters supported the NPRM's approach, and the Departments believe that the IFR will maintain the efficiencies and benefits provided for in the NPRM through the implementation of the new streamlined 240 removal proceedings.

b. De Novo Review of Full Asylum Hearing Record and Consideration of Additional Testimony and Evidence

Comments: Commenters disputed the NPRM's characterization of the proposed IJ review proceedings as ''de novo,'' stated that use of the term ''de novo'' is ''paradoxical'' and ''misleading,'' and said that the proposed IJ review process may violate asylum seekers' due process rights. Commenters said that any standard of review other than a true de novo review would be inconsistent with the challenges associated with the effects of trauma, gathering evidence, and the asylum officers' previous role in granting or referring cases, not denying applications for asylum.

Commenters stated that, while 8 CFR 1003.48(e) as proposed in the NPRM referred to the review by the IJ as ''de novo,'' the use of the phrase ''de novo'' appears to be misplaced. Commenters further stated that the current review proceedings for affirmative asylum applicants referred to immigration court, in which the IJ holds a new hearing and issues a decision independent from the asylum officer, are considered de novo review. On the other hand, commenters noted that, while the NPRM calls the new proceedings de novo, the IJ would not be required to conduct a new hearing independent of the asylum officer's decision. The commenters said a ''de novo'' hearing would typically treat a case as if it were being heard for the first time, but the NPRM limits the scope of ''de novo'' hearings by imposing evidentiary restrictions and limiting the IJ review to the transcript of the interview. Similarly, commenters also opposed the NPRM's use of the term ''shall'' when directing the IJ to review the asylum officer's decision and use of the term ''may'' when directing the IJ to consider additional evidence. Commenters explained that such terms impute an improper deference to the asylum officer's decision and limit the applicant's ability to supplement the record.

At least one commenter expressed concern that the IJ's review of the asylum officer's decision would become similar to IJ review of asylum officers' credible fear interview decisions, which commenters disputed was a de novo review.

Response: First, the Departments clarify that de novo review is a ''court's nondeferential review of an administrative decision, usu[ally] through a review of the administrative record plus any additional evidence the parties present.'' *Review, de novo review,* Black's Law Dictionary (11th ed. 2019). De novo review does not mean, as some commenters suggested, that proceedings must begin anew without reference to the underlying decision (indeed, this construction would undermine the entire concept of a review) or with unlimited opportunities to submit new record evidence. *Id.* (''[N]ondeferential review of an administrative decision'' usually involves review of the ''administrative record'' and ''additional evidence'' presented by the parties.).

For example, the BIA conducts de novo review of legal questions, even though it generally may not consider new record evidence. *See* 8 CFR 1003.1(d)(3)(ii) (''The Board may review questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges de novo.''). The de novo review standard permits the BIA to draw legal conclusions without deference to the IJ's decision, based upon the record before it. By contrast, the BIA may only overturn an IJ's finding of fact where, based upon the existing record, the IJ's

finding was ''clearly erroneous.'' *See* 8 CFR 1003.1(d)(3)(i).

In sum, the distinction between de novo review and other standards of review, such as clear error, is not based upon whether parties may submit additional record evidence, but rather how much deference the adjudicator must give to the underlying determinations based upon the existing record evidence. Accordingly, commenters' implications that a credible fear review under 8 CFR 1208.30(g) is not a de novo review are inaccurate. De novo review is a widely used standard of review in immigration proceedings and, under the IFR, IJs will conduct de novo review of asylum officer decisions as described at new 8 CFR 1240.17(i).

Second, the Departments emphasize that commenters' concerns regarding the submission of evidence under the NPRM are ameliorated by the IFR's shift from the limited review proceedings to streamlined 240 proceedings as discussed above in Section III of this preamble. Specifically, under the IFR, either party may submit record evidence and request to present testimony, pursuant to new 8 CFR 1240.17(f)(2)(i) and (ii). The IFR directs IJs to review an asylum officer's decision de novo, *see* new 8 CFR 1240.17(i), and the admission of evidence is governed by an evidentiary standard consistent with that currently used in section 240 proceedings. Given the shift to that evidentiary standard, the IFR does not contain the language stating that the IJ ''may'' accept additional evidence.

Comments: Multiple commenters expressed due process concerns associated with the NPRM's proposed de novo review proceedings before an IJ, in particular with the limitations that any additional testimony or documentation reviewed by the IJ must be ''necessary'' and ''not duplicative.'' Overall, commenters stated that the NPRM seemed to eliminate or dilute longstanding procedural rights that noncitizens have had in section 240 removal proceedings. Commenters stated that the NPRM would deprive many asylum seekers of a meaningful opportunity to present their full story because a full examination would not occur before asylum officers, and evidentiary hearings before an IJ would generally be foreclosed. Commenters explained that this outcome is particularly inappropriate in situations where an IJ denies an application on the basis of an adverse credibility finding.

Some commenters stated that the Departments appeared to contemplate that the asylum seeker would not ever appear before the IJ in most cases because the IJ would simply issue a decision based on the IJ's review of the asylum officer's record. Commenters compared this alleged limitation to EOIR's Case Flow Processing policy, which commenters stated limits master calendar hearings. Commenters explained that this hearing limitation essentially gives the IJ an appellate review role but deprives the asylum seeker's counsel from providing briefing to the IJ. One commenter stated that depriving asylum seekers of an evidentiary hearing would be ''overkill'' because the new proceedings outside of section 240 proceedings already would save significant time for IJs by narrowing the legal issues to be decided and shrinking the scope of relief or protection.

Commenters stated that the nature of the hearings before the IJ would exacerbate rather than correct issues that may arise in the proceedings before the asylum officer because the hearing before the IJ is one in which the IJ reviews the record already created by USCIS. For example, commenters claimed the record would be sparse and unlikely to reflect a full accounting of the harm, persecution, or torture the asylum seeker experienced. Commenters alleged that the cumulative effect of this limitation as well as the evidentiary limitation would be to extend summary removal from the stage of threshold contact through the period when the claim is disposed of on the merits. At a minimum, commenters urged that the NPRM be revised to permit the taking of fresh testimony and the submission of new evidence to the IJ upon a proper showing.

Further, commenters disputed that the NPRM's proposed procedure would result in a ''complete'' record. One commenter alleged that the proposed nonadversarial procedures would relegate attorneys to ''passive observer status'' and prevent them from developing ''critical elements'' of a record, usually developed through presenting testimony, calling witnesses, or submitting documentary evidence.

Also, regarding the evidentiary rules in the application review proceedings before the IJ, commenters said it is unclear whether an IJ would be required to give notice and an opportunity to provide additional evidence before summarily affirming the asylum officer's decision. Commenters said the Ninth Circuit has long held that the IJ must give the asylum applicant notice of the evidence required and an opportunity to provide it if the IJ believes further corroborating evidence is required to support an otherwise credible application. However, the commenters continued, there is no similar process for asylum interviews, which generally occur in one day, with all evidence required to be submitted prior to the interview.

Commenters said that IJs would need additional training in order to preserve fairness and due process, given the distinct nature of reviewing interview transcripts. Commenters expressed concern that the NPRM did not adequately consider what this training may involve, but commenters urged the Departments to develop this training before enacting a final rule.

Commenters said it is reasonable to expect that many asylum seekers would want to provide supplemental evidence and recommended that the Departments provide further assurances that asylum seekers would be able to do so and are entitled to a comprehensive review of their case before an IJ.

To comport with due process and minimize the risk of refoulement, commenters asserted that the NPRM should prohibit pretermission by IJs based solely on the asylum officer's record and should instead specify a presumption of admissibility of new evidence and eliminate the requirement that parties must file motions to supplement the record.

Response: As described above, the Departments have decided to refer all noncitizens whose applications are adjudicated but not granted by the asylum officer to streamlined section 240 removal proceedings rather than implementing the IJ review procedure proposed in the NPRM. As part of the streamlined section 240 removal proceedings, the Departments are not proposing to apply a novel evidentiary standard, and, instead, will adopt an evidentiary standard consistent with that used in section 240 removal proceedings. Parties to proceedings are familiar with this standard, and IJs have experience in its application. Further, while streamlined section 240 removal proceedings under this IFR include certain procedural requirements to maintain the expedited nature of the overall process, noncitizens will be assured the longstanding due process rights inherent in section 240 removal proceedings.

The Departments emphasize that this decision not to adopt the NPRM's proposed evidentiary restrictions will not reduce the efficiencies the Departments sought in the NPRM. In fact, as previously explained, the Departments believe that the IFR's streamlined section 240 removal proceedings will be equally as effective as the NPRM's proposed IJ review proceedings in enhancing efficient

adjudication and replacing time-consuming evidentiary hearings. For example, the IFR provides that the asylum officer's record will be automatically transmitted upon DHS's issuance of an NTA, which will expedite the parties' ability to narrow the issues and assist the IJ's review of the case. The IFR also provides that if neither party requests to present testimony, or if the IJ determines that the asylum application can be granted without hearing testimony, and DHS does not request to present evidence or witnesses or to cross-examine the noncitizen, the IJ can decide the case without a hearing. The IFR also provides various deadlines and procedural measures to ensure efficient processing that preclude the need to conduct a full evidentiary hearing or otherwise facilitate a more efficient hearing.

The Departments disagree with commenters that noncitizens will be deprived a meaningful opportunity to present their claims to asylum officers. Asylum officers conduct interviews with the purpose of ''elicit[ing] all relevant and useful information bearing on the applicant's eligibility for asylum.'' 8 CFR 208.9(b). Asylum officers receive specialized training and information in order to carry out their duties with professionalism and competence. *See* 8 CFR 208.1(b). Asylum officers have experience with (and receive extensive training on) eliciting testimony from applicants and witnesses, engaging with counsel, and providing applicants the opportunity to present, in their own words, information bearing on eligibility for asylum. As described in the NPRM, asylum officers will ''develop[ ] and consider[ ] the noncitizen's claim fully, including by taking testimony and accepting evidence, during the nonadversarial proceeding.'' 86 FR 46918. Asylum officers also are trained to give applicants the opportunity to provide additional information that may not already be in the record so that the asylum officer has a complete understanding of the events that form the basis for the application. Thus, the hearing before the asylum officer functions as an evidentiary hearing, as the applicant is required to ''provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and may be required to register this identity.'' 8 CFR 208.9(b). Further, the noncitizen may have counsel or a representative present, present witnesses, and submit affidavits of witnesses and other evidence. *Id.* Noncitizens who are placed in the new process established by this IFR will have multiple opportunities to provide information relevant to their claims before USCIS asylum officers in nonadversarial settings, and at different stages will have the opportunity for an IJ to review or consider their asylum claim de novo.

Further, the Departments disagree with commenters that IJs need special training to review transcripts. IJs regularly review hearing notes and records from USCIS, transcripts of hearings that indicate a criminal conviction, and transcripts of oral decisions that are appealed to the BIA. *See, e.g.,* 8 CFR 1003.5(a) (transcripts for the BIA); 8 CFR 1003.41(a)(4) (criminal hearing transcripts); *see also EOIR Policy Manual,* Part VIII, Ch. VIII.3.A: Uniform Docketing System Manual (providing process under which IJs must review oral decisions and transcripts through eTranscription); *Operating Policies and Procedures Memorandum* (''OPPM'') *84–9: Processing Hearing Transcriptions* (Oct. 17, 1984) (transcripts from USCIS). In light of established DOJ guidance, as well as the general presumption of administrative regularity, the Departments are confident that IJs will continue their work with professionalism and competency. *See Chem. Found.,* 272 U.S. at 14–15; *see also IJ Ethics and Professionalism Guide.*

Regarding comments on pretermission—that is, the practice of denying applications on the papers without hearing an applicant's testimony because the IJ concludes that the applicant has not made a prima facie case for the relief or protection sought—to the extent that commenters refer to pretermission of asylum applications under the separate Global Asylum rule, that rule is currently enjoined.[84] The NPRM and this IFR do not rely on or involve that rule's discussion of pretermission of asylum applications. If commenters are alleging that the NPRM's IJ review proceedings would effectively result in pretermission, the Departments disagree but emphasize that, as described above in Section III of this preamble, this IFR revises the NPRM to provide streamlined section 240 proceedings with certain procedural requirements in new 8 CFR 1240.17 that include, in part, the submission of additional evidence. In addition, as provided in new 8 CFR 1240.17(f)(4)(i)–(ii), an IJ may not determine the noncitizen's eligibility for relief in these proceedings without a hearing unless the noncitizen does not wish to testify or the IJ determines that the application can be granted. Accordingly, the Departments find that commenters' concerns with pretermission under the Global Asylum rule, which would have allowed an IJ to pretermit and deny an application, are addressed by the procedures set out in the IFR. The IFR does not disturb the evidentiary standard applicable in section 240 removal proceedings.

Comments: One commenter stated that the criteria for a noncitizen to supplement the record before the IJ—whether evidence is ''duplicative'' or ''necessary''—is a ''fuzzy concept'' and others argued that the standard may implicate due process violations or cause delay. Commenters urged the Departments to describe clearly what evidence and testimony is ''necessary'' and ''not duplicative'' to develop the factual record and to specify that the threshold to meet these standards is low.

For example, one commenter explained that ''duplicative'' can mean ''effectively identical,'' and it can mean ''involving duplication'' to some lesser degree. In the latter sense, the commenter explained that it means ''*unnecessarily* doubled or repeated,'' which would likely be subjective. The commenter said the NPRM provides no basis for determining what is ''duplicative.''

Likewise, commenters stated that the NPRM provides no guidance on what new testimony or documentation may be ''necessary.'' For example, one commenter stated that much evidence that is relevant or critical can be seen as not ''necessary'' to ''a reasoned decision.'' Moreover, commenters alleged that a strict reading of the ''necessity'' requirement could be mandated by future decisions of the Attorneys General and would turn IJs into reviewers of a record created by the asylum officer. Thus, commenters explained, the NPRM threatens to turn an immigration court proceeding in this context into one that is adversarial in name only, with a concomitant loss of faith in the integrity of the process.

Commenters stated that, given that the rules of evidence do not apply in immigration court, the interpretation of the evidentiary standards would be left to each individual IJ. Commenters stated that, based on their experience, IJs would have widely different interpretations, leading to inconsistent application and confusion among applicants and counsel. Other commenters explained that the NPRM creates a new, unknown standard in immigration court proceedings rather

[84] *See supra* note 4 (discussing recent regulations and their current status).

than relying on the longstanding discretionary authority of IJs to conduct and control the nature of the proceedings. One commenter found ''enormous discrepancies'' among IJs' handling of discretionary motions.

At least one commenter alleged that many courts along the Southwest border would be antagonistic to a discretionary motion like that contemplated by the NPRM. The commenter said the pressure, volume of cases, and speed required of IJs along the border make it far less likely that the IJs would look upon these motions favorably.

Commenters stated that pro se individuals, in particular, may hesitate to submit additional evidence out of fear that it will be rejected as duplicative or unnecessary.

Commenters stated that the NPRM lacked guidance for adjudicators on these terms and would lead to further delay because the parties would litigate the issue of admissibility of evidence. Commenters further stated that this litigation would also make judicial review of the determination to exclude evidence virtually impossible.

Commenters stated that the NPRM does not specify what an asylum officer's decision must contain, such that an incomplete or undeveloped asylum application record might pass muster at the IJ level. One commenter stated that it is unclear how IJs ''will explain in court the standards for submitting additional testimony and documentation'' if IJs merely conduct a paper review ''solely on the basis of the record before the asylum officer.'' Thus, commenters urged the Departments to specify when and how IJs would provide this explanation to noncitizens and mandate that the IJ explain the standard in all cases, rather than on a discretionary basis.

Response: As described above in Section III of this preamble, the Departments have decided to refer noncitizens whose applications for asylum are not granted by the asylum officer to streamlined section 240 removal proceedings rather than implementing the IJ review proceedings proposed in the NPRM. As part of the streamlined section 240 proceedings, the Departments are no longer proposing to apply the NPRM's evidentiary standard, but, instead, as provided in new 8 CFR 1240.17(g)(1), will apply an evidentiary standard consistent with that applied in section 240 proceedings. *See* 8 CFR 1240.7(a); *see also Matter of D–R–,* 25 I&N Dec. 445, 458 (BIA 2011) (''In immigration proceedings, the sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.'' (quotation marks and citation omitted)); *Matter of Interiano-Rosa,* 25 I&N Dec. 264, 265 (BIA 2010) (''[IJs] have broad discretion to conduct and control immigration proceedings and to admit and consider relevant and probative evidence.'').

Parties to proceedings are familiar with this standard, and IJs have experience in its application. Accordingly, the Departments find that this change addresses commenters' concerns with the NPRM's evidentiary standard, including the potential for its inconsistent application, negative impacts on pro se individuals, the need for corresponding guidance for adjudicators, and the need for clarity regarding how noncitizens would be informed of the new standard. The IFR does not disturb the current evidentiary standard for section 240 removal proceedings.

Nevertheless, in response to commenters' concerns about IJs' inconsistent application of evidentiary standards and discretionary motions determinations, the Departments emphasize that IJs exercise independent judgment and discretion in adjudicating cases before them. *See* 8 CFR 1003.10(b); *see generally IJ Ethics and Professionalism Guide* (requiring IJs to, inter alia, be faithful to the law, maintain professional competence in the law, act impartially, and avoid actions that would create the appearance of violations of the law or applicable ethical standards). IJs will continue to interpret and apply applicable law and regulations, regardless of geographic location or caseload.

In response to comments that the NPRM could result in the adjudication of allegedly incomplete or undeveloped asylum applications, the Departments first emphasize that asylum officers receive thorough training and regularly adjudicate affirmative applications for asylum. *See* 8 CFR 208.1(b), 208.14. Every case presents a unique set of facts, but asylum officers are trained to elicit ''all relevant and useful information bearing on whether the [noncitizen] can establish credible fear'' of persecution or a reasonable possibility of torture during the interview, which forms the basis of the decision. 8 CFR 208.30(d). Under the IFR in new 8 CFR 1240.17(c), asylum officers also provide numerous documents to the IJ. Also, under the IFR, in credible fear determinations, the asylum officer must provide to the IJ a written record of the determination, including copies of the asylum officer's notes, a summary of the material facts as stated by the applicant, any additional facts relied on by the asylum officer, and the asylum officer's determination of whether, in light of such facts, the noncitizen established a credible fear of persecution or torture. 8 CFR 208.30(e)(1), (f), (g). Under new 8 CFR 1240.17(c) and (e), and 8 CFR 208.9(f), from the Asylum Merits interviews, the asylum officer must provide to the IJ all supporting information provided by the noncitizen, any comments submitted by the Department of State or DHS, any other unclassified information considered by the asylum officer in the written decision, and a verbatim transcript of the interview. Notwithstanding these requirements, under the IFR in new 8 CFR 1240.17(f)(2)(i)(A), and (g), the noncitizen may submit additional evidence or testimony, consistent with the applicable evidentiary standard, to supplement the record during any subsequent IJ review. Considering all this information, the Departments disagree with the assertion that an IJ would make a decision based on an ''incomplete'' or ''undeveloped'' record, as commenters alleged.

Comments: Multiple commenters said that the NPRM's process and evidentiary standards would allow IJs to review an interview transcript and concur with asylum officers' decisions to not grant asylum with little due process (so-called ''rubber-stamping'') and without meaningful participation by asylum seekers' counsel. Commenters alleged that the requirement that litigants make an initial showing that evidence is new and not duplicative would allow IJs to ''rubber-stamp'' the asylum officer's negative determination. One commenter was especially concerned that the IJ decisions would be based on ''severely truncated hearings,'' where asylum seekers do not have a right to counsel, are not allowed to present testimony or evidence, and where asylum officers take often incomplete and incorrect notes. Commenters stated that the NPRM contained no provision by which an applicant may challenge a negative decision by the IJ to exclude additional evidence, which could lead to a ''rubber-stamp'' of the underlying asylum officer's decision to not grant asylum. Similarly, one commenter said that the NPRM would essentially allow the alleged current ''disturbing practice'' of IJs ''rubber stamping'' credible fear reviews to ''bleed over'' into the merits process.

Commenters stated that if the IJ listened to the recording of the interview before the asylum officer rather than waiting for a transcript of the interview, the entire process could be completed within a few days or

weeks of the asylum seeker's arrival in the United States, similar to other procedures under the prior Administration. Some commenters alleged that nothing in the NPRM would require an IJ who rejects testimony or other evidence to give a reasoned explanation for that decision, which could allow IJs who may have a propensity to deny claims the procedural opportunity to do so. Commenters said that IJs would have little incentive under the NPRM to permit inclusion of additional evidence and may opt to exclude evidence if there are any indicia that the facts were already in the administrative record. Commenters remarked that, as the NPRM acknowledges, IJs are overburdened with overflowing dockets. As a result, commenters argued, IJs would be inclined to deny requests for submission of additional evidence or testimony on even a vague finding that the submissions would be duplicative or unnecessary. One commenter said the NPRM would thus perpetuate what the commenter characterized as the deterioration of the immigration court system as a ''rubber-stamping tool'' for removal orders issued by DHS and upend the purpose of the courts.

Commenters stated that applicants with additional evidence should not be hindered by evidentiary limitations, especially given that, as alleged by commenters, case completion quotas provide IJs with incentives to adjudicate claims as quickly as possible. Likewise, commenters said that IJ performance metrics compound concerns that IJs would have a disincentive to find a need for evidentiary hearings when asylum cases are not granted. Commenters said the performance metrics are deeply problematic because they create financial incentives for IJs to prize speed over fairness. Commenters stated that over 40 percent of IJs have been on the bench for fewer than five years, and many have backgrounds in criminal prosecution or the military and need to learn the increasingly complex procedural and substantive immigration rules on the job. The commenters said these relatively new IJs would be placed in a role of appellate review of decisions rendered by asylum officers who also will have been newly hired. This combination of fewer due process rights in eliciting testimony by new asylum officers with appellate-type review by relatively new IJs would not provide adequate protection to asylum seekers.

Commenters stated that some IJs depart markedly from the average asylum grant rates in their own courts, rejecting more than 90 percent of asylum claims in non-detained cases. In addition, those commenters explained that IJs' asylum grant rates are significantly influenced by factors other than the merits of the cases, such as the gender and prior prosecutorial experience of the IJ. Commenters were therefore concerned that some IJs may likewise summarily or arbitrarily deny asylum applicants the opportunity to testify, thereby pretermitting their appeals.

Commenters asserted that the evidentiary restrictions during IJ review are particularly problematic in light of alleged problems, based on political influence, with the country conditions information available to the asylum officers who would be tasked with making the record the IJ would review. In other words, at least one commenter stated, if applicants are denied a full and fair opportunity to present evidence that challenges the country conditions information underlying the asylum officer's decision to not grant asylum or protection, IJs may ''rubber-stamp'' decisions that are based on inaccurate information resulting from impermissible political considerations.

Response: As described above, the IFR, in new 8 CFR 1240.17, revises the process so that noncitizens whose applications for asylum are not granted following the Asylum Merits interview are referred to streamlined section 240 removal proceedings, rather than implementing the novel IJ review procedure proposed by the NPRM. As part of this change, the Departments are no longer proposing evidentiary standards like those in the NPRM. *See* 8 CFR 1003.48(e)(1) (proposed); 86 FR 46911, 46920. Rather, the IFR adopts an approach consistent with the current evidentiary standard for section 240 removal proceedings; subject to the applicable deadline in streamlined section 240 proceedings, IJs may exclude additional evidence only if it is not relevant, probative, or timely or if its use is fundamentally unfair. In other words, unlike the NPRM, the IFR does not require the IJ to make a novel threshold determination regarding the need for the evidence. In addition, the noncitizen will have the privilege of being represented by counsel at no expense to the Government during proceedings before the IJ if the noncitizen chooses. INA 292, 8 U.S.C. 1362.[85] Further, unlike the NPRM, this IFR specifically contemplates that the IJ will, if necessary, conduct hearings to narrow the issues and take testimony or further evidence, as provided in new 8 CFR 1240.17(f)(4). These features of streamlined section 240 removal proceedings preclude the possibility that an IJ would simply ''rubber-stamp'' an asylum officer's asylum decision, as commenters alleged.

Regarding commenters' concerns with the process of IJs' credible fear reviews, the IFR returns the credible fear screening process to that which was in effect prior to the regulatory changes made between 2018 and 2020. *See generally* 8 CFR 208.30. The DOJ regulations at 8 CFR 1003.42 and 1208.30(g)(2) provide an extensive process through which an IJ reviews a negative credible fear determination. IJs exercise independent judgment and discretion and follow applicable laws and regulations in credible fear reviews, and they would continue to do so under this rule. *See, e.g., IJ Ethics and Professionalism Guide* (requiring IJs to, inter alia, be faithful to the law, maintain professional competence in the law, act impartially, and avoid actions that would create the appearance of violations of the law or applicable ethical standards).

More specifically, the Departments reject commenters' contentions that IJs currently ''rubber-stamp'' asylum officer's negative credible fear determinations and that such practice would carry over into an IJ's review of an asylum officer's decisions under the NPRM or the IFR. Under 8 CFR 208.30(d)(4) of DHS's regulations, which the NPRM did not propose to amend, noncitizens may consult with a person or persons of their choosing before the interview, contrary to commenters' allegations that noncitizens have no right to counsel. Upon an exercise of USCIS's discretion, that person or persons may be present at the interview and may present a statement at the end of the interview. 8 CFR 208.30(d)(4). Further, noncitizens may ''present other evidence, if available,'' *see id.,* contrary to commenters' allegations that noncitizens may not present testimony or evidence. The Departments also disagree with commenters' allegations that asylum officers take ''often incomplete'' or ''incorrect'' notes. Asylum officers receive extensive training and possess expertise, *see* 8 CFR 208.1(b); INA 235(b)(1)(E), 8 U.S.C. 1225(b)(1)(E), and the Departments are confident in the asylum officers' ability to carry out their duties in accordance with all applicable statutes and regulations. Further, this IFR provides that the record from the Asylum Merits interview will include a verbatim transcript of the interview before the asylum officer, obviating the need for IJs

[85] To be sure, the NPRM proposed that noncitizens would have the same privilege. *See* 8 CFR 1003.12 (proposed), 1003.16; *see also* 86 FR 46919.

to rely exclusively on asylum officers' notes.

The Departments also disagree with commenters who recommended IJs review recordings of the Asylum Merits interviews instead of verbatim transcripts as a way to increase efficiency. The Departments prefer the review of transcripts considering their clarity, ease of use, and increased specificity in citations. Further, the Departments disagree that listening to a recording would save a significant amount of time compared to reviewing a transcript. For these reasons, the IFR includes the transcript alone in the record that is referred to the IJ for use in subsequent streamlined 240 removal proceedings.[86]

Although the Departments believe that this IFR addresses commenters' concerns about ''rubber-stamping'' because it provides for streamlined section 240 removal proceedings rather than the NPRM's IJ review procedure and associated standard for the submission of evidence, the Departments dispute commenters' allegations that IJs would reject evidence or refuse to hold an evidentiary hearing based on performance metrics or other bases unrelated to the specifics of an individual proceeding. IJs independently adjudicate each case by applying applicable law and regulations, not by considering performance metrics. 8 CFR 1003.10(b) (providing that IJs ''may take any action consistent with their authorities under the Act and regulations that is appropriate and necessary for the disposition of such cases''). In addition, EOIR no longer reviews IJ performance through individual judge performance metrics. IJs are held to high ethical standards in part to avoid impropriety or the appearance of impropriety, which would include deciding cases consistent with performance metrics rather than applicable law and regulations. *See also IJ Ethics and Professionalism Guide* (providing that IJs must be faithful to the law, maintain professional competence in the law, act impartially, and avoid actions that would create the appearance that the IJ is violating the law or applicable ethical standards); *see also EOIR Policy Manual,* Part II, ch. 1.3(c) (stating that IJs ''strive to act honorably, fairly, and in accordance with the highest ethical standards''). Likewise, the Departments do not share the commenters' concerns with IJs' professional experience or diverse backgrounds. IJs are selected on merit with baseline qualifications, including possession of a J.D., LL.M., or LL.B. degree; active membership in a State bar; and seven years of experience as a licensed attorney working in litigation or administrative law. IJs receive extensive training upon entry on duty, annual training, and periodic training on specialized topics as necessary. IJs are also expected to maintain professionalism and competence in the law.[87] Likewise, the Departments reject commenters' implications that newly hired asylum officers are less competent or professional than IJs. As explained earlier in Section IV.B.2.a of this preamble, asylum officers are selected based on merit, receive extensive training, and possess expertise in determining eligibility for protection. The Departments are confident in asylum officers' ability to carry out their duties in accordance with all applicable statutes and regulations.

The Departments disagree with commenters' use of asylum grant rates to imply that IJs with low grant rates make arbitrary decisions or are influenced by factors outside of the merits of the case. An individual IJ's grant rate may be affected by factors outside the IJ's control. For example, an IJ assigned to a detained docket will generally have a higher percentage of applicants who are ineligible for asylum due to criminal convictions compared with an IJ who is assigned to a nondetained docket. The Departments reiterate the ethical and professional standards to which IJs are held, discussed above, which would preclude arbitrarily or summarily denying noncitizens the opportunity to testify or considering improper factors in a case, as commenters alleged. IJs are required to adjudicate cases in an impartial manner based on their independent judgment and discretion, applying applicable law and regulations. 8 CFR 1003.10(b).

Overall, commenters' accusations of bias or impropriety that would lead to due process violations are insufficient to ''overcome a presumption of honesty and integrity in those serving as adjudicators.'' *Withrow* v. *Larkin,* 421 U.S. 35, 47 (1975). The Departments are confident in the competency, integrity, and professionalism of IJs and asylum officers in providing due process of law to all noncitizens before them. Further, if a noncitizen believes that an IJ has acted improperly or otherwise prejudiced the proceeding, the noncitizen may appeal the IJ's decision to the BIA, 8 CFR 1240.15, and in turn appeal the BIA's decision to a Federal circuit court, INA 242, 8 U.S.C. 1252. *See also Avendano-Hernandez* v. *Lynch,* 800 F.3d 1072, 1075 (9th Cir. 2015) (remanding the case and stating that the IJ ''exhibit[ed] some of the same misconceptions about the transgender community that [the noncitizen] faced in her home country'' by failing ''to recognize the difference between gender identity and sexual orientation,'' and refusing to allow the use of female pronouns); *see also Shahinaj* v. *Gonzales,* 481 F.3d 1027, 1029 (8th Cir. 2007) (remanding the IJ's adverse credibility finding that was based in part on ''the IJ's personal and improper opinion [that the noncitizen] did not dress or speak like or exhibit the mannerisms of a homosexual''). In addition, individuals who believe that an IJ has engaged in judicial misconduct may submit a complaint to EOIR's Judicial Conduct and Professionalism Unit:

> Executive Office for Immigration Review, attn.: Judicial Conduct and Professionalism Unit, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, *judicial.conduct@usdoj.gov.*

The Departments disagree with commenters who broadly asserted that noncitizens should not be ''hindered'' by evidentiary limitations. Although the IFR does not adopt the NPRM's proposed evidentiary standard, the IFR includes an evidentiary standard consistent with that currently used in section 240 proceedings. *See Nyama,* 357 F.3d at 816 (''The traditional rules of evidence do not apply to immigration proceedings . . . . 'The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.' '' (quoting *Espinoza,* 45 F.3d at 310)); *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 505 (holding that evidence must be ''relevant and probative and its use must not be fundamentally unfair''). The IFR further provides, in new 8 CFR 1240.17(g)(2), that evidence filed after the applicable deadline may be considered if it could not reasonably have been obtained and presented before the deadline through the exercise of due diligence. While the bar for admitting evidence in immigration proceedings is relatively low, noncitizens have never had a wholly unrestricted right to present any and all evidence or testimony.

Finally, the Departments also disagree with commenters' allegations that

[86] While USCIS will have to record the USCIS interview in order to create a transcript of the interview, the Departments did not intend to imply in the NPRM that EOIR would receive a recording with the record in every case. The receipt of the recording would be redundant with the transcript and, as noted, more time consuming to review than a transcript.

[87] *See IJ Ethics and Professionalism Guide.*

country conditions information available to asylum officers is inaccurate, inappropriately politically influenced, or otherwise problematic. Federal Government country conditions reports, such as the U.S. Department of State country conditions reports, are longstanding, credible sources of information. *See, e.g., Sowe* v. *Mukasey,* 538 F.3d 1281, 1285 (9th Cir. 2008) (''U.S. Department of State country reports are the most appropriate and perhaps the best resource for information on political situations in foreign nations.'' (quotation marks omitted)); *Xiao Ji Chen* v. *U.S. Dep't of Justice,* 471 F.3d 315, 341 (2d Cir. 2006) (State Department country reports are ''usually the best available source of information on country conditions'' (quotation marks omitted)). Commenters have provided no reasoning beyond conclusory allegations that the country conditions information available to asylum officers is inaccurate or inappropriately politically influenced. Further, under the IFR, IJs will consider all relevant and probative evidence, consistent with the evidentiary standards in section 240 proceedings and subject to the applicable deadline. Thus, IJs may consider country conditions information in accordance with its probative value, which will vary by case, as well as evidence submitted by the noncitizen that challenges such country conditions information.

Comments: Multiple commenters expressed concerns that limiting an asylum seeker's oral testimony to items that are not duplicative of the written application, on the belief that the written record would suffice for deciding the applicant's veracity, would violate the asylum seeker's due process rights.

Commenters stated that it would be difficult for IJs to assess credibility issues through a transcript or videos, and commenters disagreed that IJs could review credibility issues de novo absent additional testimony. Instead, commenters asserted that live, in-person testimony is required to assess an applicant's demeanor, candor, and responsiveness to questions. Further, commenters cited *Goldberg* v. *Kelly,* 397 U.S. 254, 269 (1970), for the proposition that the right to present one's testimony is crucial ''where credibility and veracity are at issue.'' One commenter noted that, in such instances, *Goldberg* v. *Kelly* provides that a person ''must be allowed to state his position orally'' and ''written submissions are a wholly unsatisfactory basis for decision.'' *Id.* at 369. Accordingly, commenters stated that, to comport with due process, it is critical that IJs provide applicants with ample opportunity to present their case, including the chance to explain any perceived omissions or inconsistencies, before making credibility findings.

Additionally, commenters emphasized that IJs have a duty to develop the record in immigration proceedings, for which the ability to personally examine the applicant is a crucial tool.

Relatedly, commenters stated that, if represented, the applicant's counsel should be allowed to present and guide relevant, probative testimony because this form of examination most effectively elicits the noncitizen's factual basis for relief or protection. The commenters said that records from asylum interviews do not present all of the relevant facts as coherently as a direct examination by counsel who is familiar with the case. Moreover, commenters stated that during the course of testimony, a question from counsel or from the IJ could elicit an answer that unexpectedly gives rise to a new line of questioning or even a new legal theory of the case.

Response: As discussed above in Section III of this preamble, the IFR provides that noncitizens whose applications are not granted by the asylum officer will be placed in streamlined section 240 removal proceedings instead of implementing the NPRM's IJ review procedure. In streamlined section 240 proceedings, the noncitizen is entitled to testify before the IJ if the noncitizen timely requests the opportunity to do so, unless the IJ determines that asylum may be granted without the need to hear additional testimony. However, under new 8 CFR 1240.17(f)(2), and (f)(4)(i)–(ii), the IJ may forego a hearing and decide the case on the documentary record if (1) neither the noncitizen nor DHS has timely requested to present testimony under the pre-hearing procedures and DHS has not requested to cross-examine the noncitizen, or (2) the noncitizen elected to testify or provide evidence but the IJ determines that relief or protection may be granted without further proceedings and DHS has not requested to cross-examine the noncitizen. Additionally, noncitizens will have the privilege of representation at no expense to the Government, and, if the noncitizen is represented, the noncitizen's representative will be able to shape the course of direct examination. INA 240(b)(4), 8 U.S.C. 1229a(b)(4). Moreover, IJs will continue to have the authority to ''interrogate, examine, and cross-examine the [noncitizen] and any witnesses,'' thereby maintaining the IJ's ability to develop the record. INA 240(b)(1), 8 U.S.C. 1229a(b)(1). Further, IJs will continue to assess a noncitizen's credibility, as set forth in section 240(c)(4)(C) of the Act, 8 U.S.C. 1229a(c)(4)(C). Thus, the Departments believe that the changes made in this IFR, provided generally in new 8 CFR 1240.17, address commenters' concerns by preserving noncitizens' ability to testify before an IJ in support of their claims, while at the same time maintaining the efficiencies highlighted in the NPRM by establishing expedited procedural requirements for the timely resolution of noncitizens' proceedings.

Comments: Commenters also stated that applicants must be given the opportunity to submit evidence, as needed, to develop their claims in the IJ review stage because the ability to present additional evidence before the IJ is crucial to ensuring due process for immigrants seeking protection.

First, several commenters said that duplicative evidence is sometimes necessary to persuade an IJ. For example, commenters indicated that multiple reports of the same phenomena might persuade an IJ of the prevalence of an issue. Likewise, commenters said that some IJs may not be persuaded by a single piece of evidence, but duplicative evidence may satisfy the IJ or increase the evidentiary weight an IJ gives to an applicant's testimony.

Similarly, several commenters said that the law accords greater deference to Government sources, such as State Department reports, and IJs may find other or contradictory evidence deserving of little evidentiary weight. Thus, commenters explained, while duplicative in a strict sense, filing several reports from different sources that similarly rebut the State Department's conclusions can be necessary to making a successful claim. However, under the NPRM, commenters asserted that IJs can exclude this evidence merely because it is facially duplicative without ever reaching the question as to whether it is necessary.

Additionally, commenters pointed out that corroborating accounts of persecution, such as declarations from multiple witnesses about the same event, can often assist in showing the applicant's credibility and the severity of the persecution they suffered. Commenters also indicated that asylum adjudications may hinge on considering evidence in the aggregate, such as whether a series of incidents rises to the level of persecution, or whether evidence of similarly situated cases and country conditions cumulatively establish a likelihood of future harm to the applicant. Thus, commenters stated

that the NPRM creates the risk that IJs may erroneously reject evidence as ''duplicative'' when it is in fact critical to a cumulative analysis, noting that for the IJ, it is precisely the overwhelming nature of the evidence pointing toward one conclusion that makes it persuasive. Accordingly, commenters argued that the NPRM's restriction on duplicative evidence would make it impossible to prove, to the satisfaction of the adjudicator, many meritorious claims.

Commenters also stated that, in some instances, an IJ may not be able to determine if new evidence or testimony is ''duplicative'' and ''necessary'' until the hearing is concluded. According to commenters, questioning from counsel or from an IJ during seemingly duplicative testimony may elicit new information relevant to an asylum seeker's claim. Thus, commenters expressed concern that while the need for duplicative evidence might not become apparent until the hearing is concluded, the decision to exclude additional testimony and documentary evidence will have been made at the outset of the proceeding. As it is not always possible to predict what will be a central issue in a case, and as duplicative evidence can actually be necessary to meet the applicant's burden of proof, commenters believed that permitting duplicative evidence would not be ''inefficient.''

Response: As discussed above in Section III of this preamble, the IFR provides that individuals whose applications are not granted by the asylum officer will be placed in streamlined section 240 removal proceedings rather than the NPRM's proposed IJ review procedure. As part of those streamlined section 240 proceedings, noncitizens may submit additional evidence before the IJ in support of their claims. Because these removal proceedings are governed by section 240 of the Act, 8 U.S.C. 1229a—subject to specific procedural requirements and timelines, as described above in Section III—noncitizens will be able to submit evidence in these proceedings, as provided in new 8 CFR 1240.17(g)(1), and the IJ will only exclude such evidence if the IJ determines that the evidence is untimely, that it is not relevant or probative, or that its use is fundamentally unfair. *See* 8 CFR 1240.7(a); *see also Matter of D–R–,* 25 I&N Dec. at 458 (''In immigration proceedings, the sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.'' (quotation marks omitted)); *Matter of Interiano-Rosa,* 25 I&N Dec. 264, 265 (BIA 2010) (''[IJs] have broad discretion to conduct and control immigration proceedings and to admit and consider relevant and probative evidence.''). In other words, the ability of noncitizens in these proceedings to introduce evidence or testimony will not hinge on the IJ's analysis of whether or not the evidence is duplicative of the record from the noncitizen's hearing before the asylum officer. Consistent with currently applicable evidentiary rules in section 240 proceedings, noncitizens may instead submit evidence that commenters noted would otherwise be duplicative. Given the above, commenters' concerns about the evidentiary restrictions in the NPRM's proposed limited IJ proceedings are moot.

Comments: Commenters expressed concerns that the NPRM would harm applicants who face unique hurdles during proceedings, including individuals who were unable to provide a complete record before the asylum officer due to trauma, lack an understanding of the process, are unrepresented, have language barriers, or are members of a vulnerable or marginalized population. Specifically, commenters were concerned with the NPRM's limitation that IJs only review the record created by the asylum officer and the NPRM's evidentiary standard that applicants can only submit ''non-duplicative'' evidence to the IJ. With so much at stake, commenters believed that these applicants should not be hindered by rules that limit their ability to fully present their claims.

Commenters provided a wide range of reasons that the NPRM's evidentiary standards would particularly disadvantage pro se applicants. Commenters speculated that pro se individuals, particularly those without English language proficiency, may not be aware of the full scope of evidence they can provide before the asylum officer and that USCIS's traditional use of broad, open-ended questions may not be sufficient to elicit relevant information for the adjudication of an asylum claim. Similarly, commenters explained that those applicants who do not retain a lawyer prior to the Asylum Merits interview may lose their opportunity to develop the facts and law in their claim. Commenters also indicated that detained applicants frequently need time to contact family to support their legal claims; thus, commenters believed that the NPRM disproportionately disadvantages those without counsel in detention.

Commenters also believed the NPRM would make it difficult for unrepresented, noncitizens without English language proficiency to examine the record and make their case to the IJ during the review process. According to one commenter, the record forwarded by the Asylum Office to the IJ for review will ''undoubtedly be in English,'' making it effectively impossible for applicants who are not represented and who do not read English to ascertain what is in the record, to make arguments about how the asylum officer erred, and to determine what additional information or evidence they possess and could provide to support their claim.

Additionally, commenters stated that the NPRM did not account for language access issues, noting that when an applicant speaks a rare language or dialect, the Asylum Office frequently cannot find an interpreter, and this language gap frequently results in mistakes in the record. Given the heightened evidentiary standard for introducing new evidence into the record, commenters expressed concern that interpretation mistakes would be difficult to correct through the appeal process proposed by the NPRM.

Commenters stated that the NPRM's evidentiary restrictions in IJ review proceedings would prejudice many unrepresented applicants because pro se individuals would be unable to comply with the pre-trial procedures requiring detailed justifications for the admission of proposed evidence. One commenter did not believe that having an IJ explain ''restrictive and vague standards'' to pro se applicants in court would be sufficient to apprise those applicants of the procedures they should follow to provide further relevant evidence to the court. Commenters argued that most applicants cannot be expected to meet these additional procedural burdens to submit evidence. Further, commenters stated that demanding that applicants meet additional evidentiary burdens before the IJ—especially if the applicant was not adequately represented when presenting the claim to the asylum officer—does not advance the fairness of the system. Moreover, commenters indicated that if the IJ needs to make a decision to admit new evidence or to allow further testimony based on a review of the evidence the applicant seeks to present, the NPRM added what is, in effect, a motion to reopen to every asylum claim, which may overly burden the finite legal services available to applicants.

Additionally, commenters noted that some applicants suffer from cognitive or emotional issues that may prevent them from testifying effectively before the asylum officer or without a lengthy interview over the course of multiple

days or weeks. Commenters also noted that the ability to present new evidence is crucial in cases involving applicants who are members of the LGBTQ+ community because some applicants may not have ''come out'' yet to themselves or to their families when they arrive in the United States, or at the time of an asylum interview, given that the way an individual identifies may evolve over time. Similarly, commenters indicated that IJs may need more educational evidence about asylum claims for transgender and gender nonconforming applicants or applicants who are living with HIV, stating that the time to acquire evidence, to obtain legal representation, and to present testimony, including expert testimony, are particularly crucial in such cases.

Response: As discussed above in Section III of this preamble, the IFR provides that noncitizens whose asylum applications are not granted by an asylum officer will be placed in streamlined section 240 removal proceedings rather than finalizing the NPRM's proposed IJ review procedure. Because section 240 proceedings provide noncitizens with procedural safeguards, including the right to counsel at no expense to the Government and the ability to reasonably present their case, the Departments believe that this shift largely addresses commenters' concerns with the NPRM's effect on underrepresented, non-English speaking, traumatized, and other marginalized noncitizens. In response to commenters' concerns related to unrepresented individuals appearing before an asylum officer for an Asylum Merits interview, the Departments note that, as explained earlier in this IFR, USCIS asylum officers have experience with (and receive extensive training on) eliciting testimony from applicants and witnesses and providing applicants the opportunity to present, in their own words, information bearing on eligibility for asylum. Asylum officers also are trained to give applicants the opportunity to provide additional information that may not already be in the record so that the asylum officer has a complete understanding of the events that form the basis for the application. *See supra* Section IV.D.5 of this preamble. With respect to commenters' concerns about interpreters for Asylum Merits interviews, the Departments note that USCIS has existing contracts with telephonic interpreters to provide interpretation for credible fear screening and affirmative asylum interviews, and thus has extensive experience providing contract interpreter services. USCIS contractors must provide interpreters capable of accurately interpreting the intended meaning of statements made by the asylum officer, applicant, representative, and witnesses during interviews or hearings. The USCIS contractor will provide interpreters who are fluent in reading and speaking English and one or more other languages. The one exception to the English fluency requirement involves the use of relay interpreters in limited circumstances at USCIS's discretion. A relay interpreter is used when an interpreter does not speak both English and the language the applicant speaks, such as a rare language or dialect. *See supra* Section IV.D.5 of this preamble. As explained earlier in this IFR, USCIS will arrange for the assistance of an interpreter in conducting the Asylum Merits interview, and if an interpreter is unavailable, will attribute any delays to USCIS for the purpose of employment authorization eligibility, as described in new 8 CFR 208.9(g)(2). Thus, USCIS will ensure that there is clear communication among the various individuals participating in any Asylum Merits interview.

The Departments recognize that unrepresented noncitizens may have difficulties identifying errors in the asylum officer's decision as well as making legal arguments before the IJ regarding those errors. Accordingly, under the IFR, unrepresented noncitizens are not required to submit a written statement to the IJ identifying errors in the asylum officer's decision; instead, under new 8 CFR 1240.17(f)(2), the IJ will conduct a status conference to narrow the issues, determine the noncitizen's position, and ascertain whether a merits hearing will be needed. At this status conference, the noncitizen will state whether the noncitizen intends to testify, identify any witnesses the noncitizen intends to call in support of the noncitizen's application, and provide any additional documentation in support of the noncitizen's application. *Id.* In addition, individuals who speak a language other than English will be provided an interpreter.

Further, should any noncitizen—including unrepresented or other vulnerable noncitizens—wish to provide additional testimony and evidence before the IJ, the respondent may do so under the IFR, as provided in new 8 CFR 1240.17(f)(2)(i), without needing to satisfy the kind of threshold requirements proposed in the NPRM. As previously stated, the only limitation on the admission of evidence in the IFR's streamlined section 240 proceedings is that the IJ must exclude evidence if it is untimely, not relevant or probative, or if its use is fundamentally unfair, which is consistent with the standard evidentiary rules in all other section 240 proceedings. *Matter of D–R–,* 25 I&N Dec. at 458 (''In immigration proceedings, the sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair.'' (quotation marks omitted)).

Finally, regarding commenters' concerns over the ability of noncitizens with competency concerns to testify effectively in a short time period, the Departments note that the IFR, in new 8 CFR 1240.17(k)(6), excepts noncitizens who have exhibited indicia of incompetency. These noncitizens would instead be placed in ordinary section 240 removal proceedings.[88]

Thus, the Departments believe that the IFR adequately responds to commenters' concerns by placing all applicants who are not granted asylum following an Asylum Merits interview into streamlined section 240 removal proceedings, thereby providing additional procedural protections and safeguards, and ensuring due process. *See Hussain* v. *Rosen,* 985 F.3d 634, 644 (9th Cir. 2021) (''[D]ue process has been provided whenever a[noncitizen] is given a full and fair opportunity to be represented by counsel, to prepare an application for . . . relief, and to present testimony and other evidence in support of the application.'' (quotation marks omitted)).

Comments: Commenters stated that, contrary to the Departments' goals, the NPRM's proposed evidentiary requirements would result in a less efficient and more burdensome adjudicatory system. For example, commenters stated that, in addition to providing evidence, applicants and counsel would have to proffer each piece of evidence, which would increase the time and cost of proceedings. Commenters stated that, although the NPRM provides for the possibility of supplementing the record, the NPRM frames it as the exception for the sake of judicial efficiency and places a new burden on the applicant to prove that any new evidence is necessary for the case.

Commenters said it would be impossible to gather the relevant evidence needed and to prepare clients for testimony in such a short time frame. Commenters said applicants often need

[88] In addition, EOIR will provide a qualified representative through the EOIR National Qualified Representative Program (''NQRP'') to a respondent who is found to be incompetent to represent themselves in immigration proceedings and who is both unrepresented and detained.

to gather evidence from their home countries, which could not be obtained in only a few weeks, especially for clients who are detained. Some commenters similarly said it is well established under U.S. law that asylum seekers often flee for their lives without the ability to first collect documentation to support their claims, and it can be difficult, if not impossible, for asylum seekers or their representatives to gather evidence from family and friends in their country of origin. It is thus unreasonable to expect that asylum seekers will present all their evidence at a streamlined hearing before an asylum officer, thus leading to an incomplete record for IJ review. Commenters stated that, to fulfill their ethical duties to their clients, legal advocates would have to immediately seek to fill the inevitable evidentiary gaps in the record, and then prepare written motions seeking to admit that evidence and seeking a full individual merits hearing.

Commenters said the NPRM's evidentiary restrictions would add challenges for an IJ to conduct meaningful de novo review of an appeal. Commenters stated IJs could instead conduct their review directly in court, without relying on proceedings with the asylum officer, and with better results because the IJ would be able to make a credibility assessment of the applicant, as well as any witnesses. Some commenters remarked that the majority of claims not granted by an asylum officer would end up in immigration court, and, under the NPRM, IJs would be flooded with requests to present new evidence and to grant individual hearings.

Commenters wrote that, if the IJ were to grant a motion to allow testimony and additional evidence, the proposed regulation would have failed to save any time or expense either to noncitizens or EOIR, because the case would then proceed in immigration court just as an affirmative case that is referred to court does now. On the other hand, if the IJ were to reject an applicant's additional testimony or other evidence, then the applicants would almost certainly file an appeal.

Commenters expressed concern that judicial review of the NPRM's evidentiary restrictions could be limited and inefficient in practice. For example, if the IJ does not provide a reasoned explanation for the rejection (which the proposed NPRM does not require), a court of appeals would be highly likely to remand the case to the BIA, with a further remand to the IJ, because judicial review of the IJ's action would be nearly impossible without such an explanation. Commenters similarly stated that a decision by the IJ to reject additional testimony or documents would not require specific reasons, making judicial review of the determination that the evidence is not necessary or would be duplicative virtually impossible. Commenters stated that denials of requests to present additional evidence would lead to an increase in interlocutory appeals to the BIA and could lead to additional rounds of Federal circuit court appeals as asylum seekers challenge the sufficiency of the immigration court record. In addition, commenters stated, many Federal courts place onerous exhaustion requirements on petitions for review of BIA decisions, and some courts even suggest that noncitizens must seek reconsideration to point out ignored arguments or improper legal approaches before having those arguments considered on appeal. As a result, commenters stated that the NPRM's procedures, which were designed to be efficient, would cause significant inefficiencies on the back end by forcing applicants to file motions to reconsider before the immigration court and the BIA.

Response: As described above in Section III of this preamble, the IFR revises the process in new 8 CFR 1240.17(a) and (b), so that noncitizens whose applications for asylum are adjudicated but not granted by an asylum officer are referred to streamlined 240 proceedings through the issuance of an NTA, rather than seeking IJ review through the procedure proposed by the NPRM. As part of this change, the Departments are also removing the evidentiary standards proposed by the NPRM. *See* 8 CFR 1003.48(e)(1) (proposed); 86 FR 46911, 46920. Instead, as provided in new 8 CFR 1240.17(g)(1), the IFR affirms that noncitizens in the streamlined 240 proceedings may submit additional evidence to the IJ consistent with the traditional evidentiary standard applied in 240 proceedings. With this change, the IFR does not include those procedural requirements that commenters were concerned would create inefficiencies.

Specifically, unlike what was proposed in the NPRM, the IFR does not require the noncitizen to demonstrate that any desired new evidence or testimony is non-duplicative and necessary or require the IJ to make a threshold determination that the evidence satisfies that standard. Because the noncitizen may submit evidence during streamlined section 240 proceedings, any delay in the availability of evidence during the asylum officer review, and any corresponding gap in the record, may be addressed before the IJ. The lack of an additional, novel evidentiary standard reduces the likelihood of appeals and subsequent litigation, identified by the commenters, surrounding the submission of evidence.

In addition, given that the IFR is consistent with the longstanding evidence standard used in section 240 proceedings, the Departments do not believe that the IFR will have a chilling effect on the availability of judicial review regarding an IJ's evidentiary determinations. The IFR does not amend a noncitizen's right to appeal a decision, in accordance with the statutes and regulations. *See* 8 CFR 1003.3, 1003.38.

Comments: Commenters stated that while the NPRM's proposed ''non-duplicative'' and ''necessary'' standard for the submission of new evidence may create more efficiency, it is inappropriate because it (1) reverses Congress's original intent to protect asylum seekers from expedited removal and give them sufficient time after their initial arrival in the United States to prepare an asylum application; (2) violates international obligations to prevent the refoulement of genuine refugees; and (3) undermines the United States' commitment to asylum protection and the preservation of human rights. Commenters stated that the proposed restriction on new evidence in the proposed IJ review proceedings would be fundamentally unfair and violate both U.S. asylum law and the Refugee Convention and Protocol. Similarly, commenters stated that the NPRM's evidentiary restrictions, if adopted, conflict with the statutory and regulatory affirmative duty of IJs to fully develop the record.

Response: As described above in Section III of this preamble, the IFR revises the process in new 8 CFR 1240.17(a) and (b) to provide that noncitizens whose applications for asylum are not granted by an asylum officer are referred to streamlined section 240 removal proceedings through the issuance of an NTA, rather than seeking IJ review through the procedure proposed by the NPRM. As part of this change, the Departments are also removing the ''non-duplicative'' and ''necessary'' evidentiary standards proposed by the NPRM. *See* 8 CFR 1003.48(e)(1) (proposed); 86 FR 46911, 46920. Instead, the IFR affirms that noncitizens in streamlined section 240 removal proceedings may submit additional evidence to the IJ, as provided in new 8 CFR 1240.17(g)(1), consistent with the traditional evidentiary standard application in 240

proceedings. This change addresses commenters' concerns that the NPRM's evidentiary standard violates congressional intent and the United States' international obligations.

Similarly, the IFR's changes address commenters' concerns regarding IJs' duty to develop the record. Unlike the proposal in the NPRM, the IFR specifically contemplates, in new 8 CFR 1240.17(f)(1) and (2), the IJ conducting a master calendar hearing in all cases, followed by a status conference to discuss the noncitizen's claim and narrow the issues. Overall, IJs will continue to exercise independent judgment and discretion in accordance with the case law, statutes, and regulations to decide each case before them. *See* 8 CFR 1003.10(b).

Comments: Commenters suggested numerous alternative formulations regarding the NPRM's proposed evidentiary standard for IJ review proceedings. Some commenters proposed that the standard for introduction of new evidence before the IJ should be lower, stating that a low threshold will ensure that newly-developed evidence and any evidence the asylum officer erroneously failed to include in the record is considered in immigration court. Commenters stated that lowering the evidentiary threshold would still provide improved efficiency because IJs would still only hear new evidence, decreasing the amount of time spent reviewing each case and helping to stem the growth of EOIR's case backlog.

Other commenters similarly argued that, if the proposed process cannot be amended to guarantee section 240 removal proceedings for asylum seekers, the Departments should allow applicants to freely present evidence and testimony during the IJ review proceedings.

Commenters also suggested changes that they stated would better align the procedures for these review proceedings with international law and international procedures. First, commenters stated that the Departments could follow the example set by the United Nations Committee Against Torture and require an explanation for late submission, with a presumption in favor of accepting the explanation and admitting the evidence. Second, commenters stated that the UNHCR urges states to consider all available evidence to meet their obligations under international law. Commenters noted that a more lenient evidentiary standard would better align with the United States' obligations under the Refugee Protocol, including ensuring that adjudicators consider all evidence that could support a claim, even when only submitted on appeal, and that the unique realities implicated in adjudicating international protection claims require flexibility.

Response: As explained above in Section III of this preamble, under the IFR in new 8 CFR 1240.17(a) and (b), if the application for asylum is adjudicated but not granted by the asylum officer, DHS will issue an NTA and refer the applicant to streamlined section 240 removal proceedings before an IJ. Because the Departments are not pursuing the proposed IJ review procedure, including the proposed limitations on new evidence, the Departments need not further respond directly to commenters' suggestions for how those proceedings could have been improved. Further, the Departments believe that the change in the IFR to streamlined 240 proceedings ultimately addresses commenters' concerns, as noncitizens will have the opportunity to address any perceived errors in the asylum officer's written decision, submit new evidence without regard to the evidentiary limitations proposed in the NPRM, and testify before the IJ.

Comments: Commenters expressed concern that the NPRM would essentially give the IJ an appellate review role but would not provide rights for noncitizens or their counsel to address any errors in the asylum officer's decision. Specifically, commenters stated, the NPRM does not contain any information about whether the IJ would issue a briefing schedule, whether the parties would appear before the IJ for a hearing, or whether it would be incumbent on the noncitizen to convince the IJ that further legal argument is necessary in the case. Other commenters were concerned that the NPRM did not provide sufficient guidance as to the structure of the hearing before an IJ.

Response: As part of the shift from the NPRM's proposed IJ review procedure to streamlined section 240 removal proceedings, this IFR contains detailed instructions regarding the mechanics of these proceedings before the IJ, including a requirement that IJs hold a status conference and afford the parties an opportunity to make additional legal argument. These provisions are designed to ensure that these proceedings are adjudicated efficiently while at the same time responding to commenters' interest in having more procedural details specified in the regulation. Specifically, under new 8 CFR 1240.17(b) and (f), the IJ will conduct at least an initial master calendar hearing in all cases and will also conduct a status conference and possibly receive written statements to narrow the issues. Under new 8 CFR 1240.17(f)(2), the noncitizen shall describe any alleged errors or omissions in the asylum officer's decision or the record of proceedings before the asylum officer and provide any additional documentation in support of the applications. *See* 8 CFR 1240.17(f)(2)(i)(A)(*1*)(*ii*)–(*iii*). If, under new 8 CFR 1240.17(f)(4), the IJ determines that the application cannot be granted on the documentary record and the noncitizen has elected to testify or DHS has elected to cross-examine the noncitizen or present testimony or evidence, the IJ will hold an evidentiary hearing.

Comments: Commenters further indicated that the NPRM does not require the Departments to inform the noncitizen or their counsel that the case is being reviewed by an IJ.

Response: The Departments disagree with commenters' concerns on this point because, under the NPRM, the case would only be reviewed by an IJ if the noncitizen or their counsel first requested such review. Nevertheless, the Departments emphasize that any concerns about the provision of notice regarding the IJ review are addressed by this IFR. Under new 8 CFR 1240.17(b), a noncitizen whose application for asylum is not granted following an Asylum Merits interview will receive notice about the IJ proceedings, because DHS will serve an NTA on all such individuals in order to initiate the section 240 removal proceedings. *See also* INA 239(a)(1), 8 U.S.C. 1229(a)(1).

Comments: Commenters stated that, while a verbatim transcript of the Asylum Merits interview will be provided to the IJ, there is no indication that the noncitizen will have access to the audio recording of proceedings with the asylum officer to review for interpretation errors.

Response: The Departments intend to make available a process by which parties to EOIR proceedings under 8 CFR 1240.17 will be able to timely review, upon request, the recording of the USCIS Asylum Merits interview. In addition, noncitizens should follow EOIR's procedures to obtain access and copies of their immigration records after cases have been docketed with the immigration courts.

Comment: Another commenter stated that the NPRM is silent as to whether a noncitizen's motion to present further evidence to the IJ will be considered applicant-caused delay for purposes of the EAD clock and urged the Departments not to penalize noncitizens in this way for moving to include further evidence that would be

necessary to a fair adjudication of their claim.

Response: The Departments understand asylum applicants' desire to obtain EADs, but neither the NPRM nor this IFR amends DHS's procedures pertaining to the issuance of EADs. Accordingly, any delay attributable to an applicant, including a continuance to obtain evidence sought in immigration court, will be considered an applicant-caused delay for purposes of EAD eligibility just as it would under the status quo.

Comments: Commenters also expressed concerns that the NPRM ''ties the hands'' of the Government and that these asylum adjudications will be susceptible to fraudulent and frivolous claims. Commenters pointed out that the NPRM requires DHS to proffer evidence or testimony for an admissibility ruling but does not provide a clear opportunity for DHS to cross-examine noncitizens regarding evidence the noncitizens may have relied on during their interviews with asylum officers.

Response: The Departments disagree with any allegation that this rule would increase fraudulent asylum applications. First, all asylum applications submitted to USCIS for initial adjudication by the asylum officer will be subject to the consequences of filing a frivolous application. 8 CFR 208.3(c); *see also* INA 208(d)(4), 8 U.S.C. 1158(d)(4). Second, although the NPRM would have required both parties to make new threshold evidentiary showings in order to submit additional testimony or evidence before the IJ, the IFR, in new 8 CFR 1240.17(f)(2)(ii) and (f)(3), provides DHS with an explicit opportunity in all cases to respond to any new argument or evidence by the noncitizen, call witnesses, and submit additional documentation, including documentation for rebuttal or impeachment purposes. In addition, both the NPRM and IFR in 8 CFR 208.9(c) provide DHS the opportunity to address credibility concerns with the applicant during the asylum officer hearing. Although the hearing before the asylum officer is nonadversarial, the asylum officer, a DHS employee, has the authority to ''present evidence, receive evidence, and question the applicant and any witnesses'' during the interview. *Id.* Accordingly, the IFR maintains certain procedures proposed in the NPRM and provides additional procedures that are responsive to commenters' concerns.

c. Immigration Judge's Discretion To Vacate Asylum Officer's Removal Order

As discussed below, commenters opposed the limitation on noncitizens' ability to seek other forms of relief or protection beyond asylum, withholding of removal, or protection under the CAT in the proposed IJ review proceedings unless the noncitizen files a motion to vacate the removal order entered by the asylum officer and the IJ grants that motion as a matter of discretion. *See* 8 CFR 1003.48(d) (proposed).

Comments: Commenters opposed the limitation on noncitizens' ability to seek other forms of relief or protection beyond asylum, withholding of removal, or protection under the CAT in the proposed IJ review proceedings unless the noncitizen files a motion to vacate the removal order entered by the asylum officer and the IJ grants that motion as a matter of discretion. *See* 8 CFR 1003.48(d) (proposed).

Commenters pointed out that noncitizens frequently apply for other forms of immigration relief, such as Special Immigrant Juvenile classification, T nonimmigrant status, or U nonimmigrant status concurrently with their applications for asylum, withholding, and protection under the CAT, and expressed a range of concerns that the rule would limit the ability of noncitizens to pursue these types of statutorily-available statuses in the proposed limited IJ review proceedings, which commenters stated was contrary to congressional intent to provide other forms of relief or protection.

First, commenters said that the NPRM's proposed procedure for a discretionary motion to vacate a removal order and transfer the noncitizen to section 240 proceedings is insufficient and that the NPRM would effectively cut off access to these remedies for vulnerable applicants. For example, commenters speculated that unrepresented or child applicants would be unable to meet the procedural requirements for filing the proposed motion, such as a showing of prima facie eligibility. Commenters also noted that some forms of relief are much harder to seek if the applicant is removed than they would be if the applicant could have sought them during the proceedings before the IJ. For example, it could be difficult to confer with an attorney with the relevant expertise while abroad.

Second, commenters found the discretionary motion requirement inefficient. Commenters noted that applicants who seek collateral relief before USCIS, such as T or U nonimmigrant status, often seek administrative closure or termination of the immigration court proceedings while those applications are adjudicated. Because these cases are then off the IJ's docket, administrative closure or termination in these cases serves the stated goal of efficiency in immigration proceedings, but the NPRM would not allow for this efficiency.

Third, commenters noted that the rule would effectively prevent individuals who become eligible for other relief during appeal from seeking it because they would not have sought to have the case transferred to section 240 proceedings in a timely manner. Commenters asserted that the NPRM provides no justification for this punitive and burdensome change in opportunity for an asylum applicant whose case originated in credible fear screening to seek other relief for which they may become eligible while the case is on appeal.

Finally, commenters further stated that limiting or denying access to all forms of complementary protection conflicts with international standards.

Response: As explained above in Section III of this preamble, the Departments are not adopting the IJ review procedure proposed in the NPRM; instead, this IFR provides that noncitizens whose applications for asylum are not granted by an asylum officer will be issued an NTA and referred to an IJ for further review of their applications in a streamlined section 240 removal proceeding. Under the new 8 CFR 1240.17(k)(2), noncitizens who provide evidence of prima facie eligibility for forms of relief or protection other than asylum, withholding of removal, protection under the CAT, and voluntary departure and who either seek to apply or have applied for such relief or protection will be exempted from the timelines applicable in these streamlined proceedings. The IJ will then consider the noncitizen's eligibility for relief as in section 240 proceedings generally. *See, e.g.,* 8 CFR 1240.1(a)(1)(ii) (providing the IJ with the authority to determine a wide range of applications for relief or protection). Further, there will no longer be an intervening requirement for the noncitizen to file a discretionary motion to vacate the asylum officer's removal order and for the IJ to grant such a motion before the noncitizen may seek additional forms of relief or protection. Instead, under new 8 CFR 1240.17(k)(2), noncitizens who produce evidence of prima facie eligibility and submit or intend to submit an application or petition for another form of relief or protection will be exempt from the streamlined

procedure set out in the IFR. Accordingly, the shift to streamlined section 240 proceedings addresses commenters' concerns about the motion process and limitation on the available forms of relief or protection for noncitizens in these proceedings.

Comments: Commenters were concerned that the proposal to require a motion for the IJ to vacate the removal order is a new process that will waste Government resources by adding another motion for IJs to review and that it would likely generate additional rounds of appeals. Commenters stated that it would be more efficient to instead allow an IJ to decide the entire matter in front of them without being forced to ignore or exclude other information that would show removal is unwarranted.

Similarly, rather than a process that requires the applicant to identify other grounds of immigration eligibility beyond the three enumerated in 8 CFR 1003.48(a), as set out in the NPRM, commenters argued that it would be fairer and more efficient if the asylum officer and the IJ could inquire about all possible grounds during their respective hearings. Commenters further suggested that the Departments revise the NPRM to have the asylum office refer all cases not granted asylum to section 240 removal proceedings.

Response: The Departments believe that these commenter concerns will be addressed by this IFR, which establishes that noncitizens who are not granted asylum after an Asylum Merits interview will be placed into streamlined section 240 removal proceedings, rather than the IJ review proceedings proposed by the NPRM. Under the IFR, asylum officers will not issue removal orders that would need to be vacated by the IJ. Rather, a noncitizen will not be ordered removed until after the IJ has reviewed the asylum officer's decision and concluded that the noncitizen does not warrant asylum.[89] Additionally, the noncitizen need not affirmatively request or seek review of the asylum officer's decision. Rather, under new 8 CFR 1240.17(a) and (b), if the asylum officer does not grant asylum, DHS will serve the applicant with an NTA and initiate a streamlined section 240 removal proceeding by filing the NTA with the immigration court. Further, just as in all proceedings governed by section 240 of the Act, 8 U.S.C. 1229a, noncitizens may seek other forms of relief or protection, and the IJ will consider additional possible grounds for relief or protection beyond asylum, withholding of removal, and protection under the CAT. *See* 8 CFR 1240.11(a)(2) (''The immigration judge shall inform the [noncitizen] of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the [noncitizen] an opportunity to make application during the hearing . . . .''). Further, under new 8 CFR 1240.17(k)(2), the proceedings for noncitizens who apply for other forms of relief or protection and produce evidence of prima facie eligibility will not be subject to the same expedited procedures detailed in this IFR for these proceedings generally.

Comments: Commenters expressed concerns that the NPRM's requirement for applicants to file a motion before they may seek additional forms of relief or protection would prejudice noncitizens who are without counsel or do not speak English because these noncitizens would likely be unaware of their eligibility for additional forms of relief or protection, would be unaware of the option to file a motion for vacatur, or would not realistically be able to file such motions. Specifically, at least one commenter argued that the NPRM would lead to due process violations by denying noncitizens the right to seek relief or protection for which they might be eligible. Similarly, commenters argued that the NPRM's time and number limitations on motions for section 240 removal proceedings raise due process concerns for noncitizens with disabilities or PTSD, or those who speak rare languages.

Commenters further expressed concern that pro se individuals would be particularly harmed by the NPRM's rules for the motion to vacate. For example, one commenter noted that a pro se noncitizen who previously moved unsuccessfully to vacate with insufficient evidence or argument would be precluded from filing any additional evidence or an additional motion, even if the noncitizen later obtained the help of an attorney or representative who is able to show prima facie eligibility for asylum or protection. Instead, commenters suggested that asylum applicants should be allowed to make more than one motion to show they are eligible for a different form of relief or protection. Commenters asserted that this change will not significantly impact the efficiency of IJ review because most asylum seekers requesting further review do not usually have a claim to a different form of relief from removal.

Response: The IFR's changes from the NPRM address commenter concerns about the impact of the motion to vacate requirement on pro se and non-English speaking noncitizens. Specifically, as discussed elsewhere, the IFR establishes that USCIS will affirmatively refer all applicants whose applications are not granted by the asylum officer to streamlined section 240 removal proceedings for adjudication by an IJ. Adjudication by the IJ is automatic upon DHS's filing of the NTA with the immigration court. Additionally, as in all proceedings governed by section 240 of the Act, DOJ's regulations allow noncitizens to seek other forms of relief or protection, without first filing a motion, and the IJ will consider additional possible grounds for relief or protection beyond asylum, withholding of removal, and protection under the CAT. *See* 8 CFR 1240.11(a)(2) (''The immigration judge shall inform the [noncitizen] of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the [noncitizen] an opportunity to make application during the hearing . . . .''); *see also Quintero,* 998 F.3d at 623–24 (collecting cases discussing an IJ's affirmative duty to develop the record). Further, pursuant to new 8 CFR 1240.17(k)(2), the proceedings for noncitizens who apply for other forms of relief or protection and produce evidence of prima facie eligibility will not be subject to the same expedited timeline procedures detailed in this IFR for these expedited proceedings generally. No motion is necessary to demonstrate prima facie eligibility because the IJ could make such determination based on oral representations or information otherwise provided to the IJ.

In addition, as noted above, the IFR, as provided in new 8 CFR 1240.17(k)(6), excepts respondents who have exhibited indicia of incompetency from these streamlined section 240 proceedings. These respondents would instead be placed in ordinary section 240 proceedings.

Comments: Commenters disagreed with the NPRM's approach that applicants who may be eligible to seek some other form of relief or protection beyond asylum, withholding of removal, and protection under the CAT would be able to do so only after the completion

[89] A respondent who fails to appear for their hearing, however, may be ordered removed in absentia for failure to appear. *See* INA 240(b)(5)(A), 8 U.S.C. 1229a(b)(5)(A). As discussed above in Section III of this preamble, under new 8 CFR 1240.17(d), if the asylum officer had determined that a respondent who fails to appear before the IJ was eligible for statutory withholding of removal or protection under the CAT, the IJ will issue an in-absentia removal order and generally will give effect to protection for which the asylum officer found the respondent eligible, unless DHS makes a prima facie showing, through evidence that specifically pertains to the respondent and was not in the record of proceedings for the USCIS Asylum Merits interview, that the respondent is not eligible for such protection.

of a full asylum application and interview. Commenters explained that this approach would force applicants to relive and testify in depth about traumatic events in their lives relevant to their asylum claims, even if they have alternative avenues to relief—such as T nonimmigrant status or SIJ classification—that do not require in-person hearings and would not lead to possible re-traumatization.

At least one commenter disagreed with the NPRM's lack of a provision regarding continuances for a noncitizen to obtain evidence of the additional relief or protection for which they may be eligible. The commenter noted that it often takes months to obtain relevant evidence, but under the NPRM, noncitizens may be forced to go forward with IJ review before this process is complete. Additionally, commenters objected to the proposed limitations providing for only one motion for vacatur and requiring that the filing would have to precede a determination on the merits of the protection claim. Commenters argued that these limitations would effectively force applicants to choose which remedy they wish to seek before their appellate rights are exhausted with respect to the asylum, statutory withholding, and CAT claims. Commenters stated that requiring the motion to be filed prior to the IJ's decision on eligibility for asylum or related protection undermines the Departments' goal of balancing fairness and efficiency.

Commenters suggested that there should be exceptions to the time and numerical limitations on the proposed motion for vacatur to account for scenarios such as those in which (1) the noncitizen receives ineffective assistance of counsel, (2) new facts exist that give rise to new fears and forms of relief or protection, (3) updates to immigration laws are made, or (4) other unusual circumstances arise.

Response: The IFR's changes from the NPRM, as discussed above in Section III of this preamble, address commenters' concerns with the NPRM's proposals related to the timing and number limits for motions to vacate the asylum officer's removal order. Specifically, because asylum officers will not be issuing removal orders and applicants instead will be placed in streamlined section 240 removal proceedings, noncitizens may seek other forms of relief or protection beyond asylum, withholding of removal, and protection under the CAT, without an intervening motion or other threshold requirement like that set out by the NPRM. *See* 8 CFR 1240.11(a)(2) (''The immigration judge shall inform the [noncitizen] of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the [noncitizen] an opportunity to make application during the hearing[.]''). Should noncitizens request a continuance to obtain evidence of prima facie eligibility for other forms of relief or protection, the base standard for continuances in streamlined section 240 proceedings will continue to be good cause, as provided in new 8 CFR 1240.17(h)(2)(i). However, as discussed above in Section III of this preamble, the aggregate length of continuances for good cause is capped at 30 days, as provided in new 8 CFR 1240.17(h)(2)(i) and (h)(3). Additional continuances beyond 30 days will require a heightened showing, as provided in new 8 CFR 1240.17(h)(2)(ii)–(iii).

Further, under new 8 CFR 1240.17(k)(2), the proceedings for noncitizens who apply for other forms of relief or protection and produce evidence of prima facie eligibility will not be subject to the same streamlined procedures detailed in this IFR. In addition, for such cases, IJs may utilize the same common docket-management tools as those generally used in section 240 removal proceedings, such as continuances and administrative closure, in appropriate cases where a noncitizen may be eligible for alternative forms of relief, such as adjustment of status under section 245 of the Act, 8 U.S.C. 1255.

With respect to commenters who expressed concern about the possible trauma that noncitizens might endure from testifying, the Departments note that the IFR does not require noncitizens to testify before the IJ. Rather, it gives noncitizens the opportunity to provide further testimony should they wish to do so. Thus, as provided in new 8 CFR 1240.17(f)(2)(i), if noncitizens feel that they have had adequate opportunity to articulate the nature of their claims before the asylum officer, they need not elect to further testify and may rest on the record of proceedings before the asylum officer. Additionally, the IFR provides in new 8 CFR 1240.17(f)(2) that the parties will engage in a status conference prior to the merits hearing during which the parties will narrow the issues in dispute. In some instances, the IJ may determine that the application can be decided on the documentary record without additional testimony from the noncitizen. *Id.* Further, under new 8 CFR 1240.17(f)(2)(ii), DHS may decide not to contest certain issues, and noncitizens need not testify about sensitive issues that DHS does not contest. The Departments also note that both asylum officers and IJs undergo ongoing training and support to promote the quality of adjudications and to prepare them to address sensitive claims. Asylum officers who conduct interviews are required by regulation to undergo ''special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles.'' 8 CFR 208.1(b). Asylum officers are also required to determine that noncitizens are able to participate effectively in their interviews before proceeding. 8 CFR 208.30(d)(1), (5). These DHS regulations are intended to recognize and accommodate the sensitive nature of fear-based claims and to foster an environment in which noncitizens may express their claims to an asylum officer. Similarly, IJs must undergo comprehensive, ongoing training, as provided in DOJ's existing regulations. 8 CFR 1003.0(b)(1)(vii). IJs are further directed to conduct hearings in a manner that would not discourage a noncitizen from presenting testimony on difficult subject matter. *See OPPM 17–03: Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children* 3 (Dec. 20, 2017) (''Every [IJ] should employ age-appropriate procedures whenever a juvenile noncitizen or witness is present in the courtroom.''); *Matter of J–R–R–A–*, 26 I&N Dec. 609, 612 (BIA 2015) (''[W]here a mental health concern may be affecting the reliability of the applicant's testimony, the [IJ] should, as a safeguard, generally accept that the applicant believes what he has presented, even though his account may not be believable to others or otherwise sufficient to support the claim.''); *Matter of Y–S–L–C–,* 26 I&N Dec. 688, 690–91 (BIA 2015) (''Conduct by an [IJ] that can be perceived as bullying or hostile can have a chilling effect on a [noncitizen's] testimony and thereby limit his or her ability to fully develop the facts of the claim . . . . [S]uch treatment of any [noncitizen] is never appropriate[.]''). DHS retains the option to issue an NTA to place the noncitizen in ordinary section 240 removal proceedings prior to the Asylum Merits interview, and it could do so if the applicant appears to have a strong claim for a form of relief or protection that the asylum officer cannot grant. This procedure would be another means of preventing the applicant from having to testify twice.

Comments: Several commenters expressed concern that the proposed motion to vacate removal orders would be left to the discretion of the IJ, even if the applicant had established prima

facie eligibility for a different form of relief from removal. In particular, commenters stated that the NPRM did not make clear how that discretion should be exercised. Commenters argued that the ability to appeal such denials to the BIA would not be a sufficient safeguard because of the complexity of filing an appeal for some applicants. Commenters asserted that the discretionary nature of the motion would result in the wrongful removal of noncitizens with available relief, which would run afoul of due-process obligations. Further, some commenters worried that DHS could exercise discretion not to refer an applicant to section 240 removal proceedings even if an IJ were to grant a motion to vacate.

Response: The IFR's changes from the NPRM, as discussed above in Section III of this preamble, address commenters' concerns with the NPRM's proposed framework under which both the IJ and DHS would make discretionary determinations in the context of a motion to vacate. First, under the IFR, when an asylum officer does not grant asylum, DHS will serve an applicant with an NTA and initiate streamlined section 240 removal proceedings by filing the NTA with the immigration court. *See* 8 CFR 208.14(c). Second, as recognized in new 8 CFR 1240.17(k)(2), because applicants will be referred to streamlined section 240 removal proceedings, they may seek other forms of relief or protection beyond asylum, withholding of removal, and protection under the CAT, without an intervening motion or other threshold requirement like that set out by the NPRM. *See also* 8 CFR 1240.11(a)(2) (''The [IJ] shall inform the [noncitizen] of his or her apparent eligibility to apply for any of the benefits enumerated in this chapter and shall afford the [noncitizen] an opportunity to make application during the hearing[.]''). Finally, as provided in new 8 CFR 1240.17(k)(2), noncitizens who produce evidence of prima facie eligibility for relief or protection other than asylum, withholding of removal, protection under the CAT, or voluntary departure and indicate an intent to apply for, or who have applied for, such form of relief or protection will be excepted from these streamlined section 240 proceedings and have their cases adjudicated under the standard processes. Accordingly, noncitizens who are eligible to seek forms of relief or protection other than asylum, withholding of removal, and protection under the CAT do not have to receive a favorable discretionary grant in order to do so.

Comments: Commenters asserted that the NPRM's proposed differing treatment of various categories of asylum seekers is unfairly arbitrary. For example, commenters feared that the eligibility of asylum seekers to apply for any form of relief or protection—rather than just asylum, statutory withholding of removal, and protection under the CAT—would be based solely on how CBP and ICE have exercised discretion to process noncitizens on a given day.

Commenters argued that the Departments should allow IJs to grant motions to vacate removal orders both where the noncitizen would be eligible to apply for relief or protection if in a section 240 proceeding and where the noncitizen would be eligible to apply for collateral relief adjudicated by USCIS because it did not appear that an IJ would have the authority to terminate a case under the NPRM.

Commenters also urged that a noncitizen should be allowed to file an interlocutory appeal to the BIA if an IJ denied a motion to vacate under the NPRM.

Finally, commenters requested a clarification and rationale for the NPRM's prohibition on a motion to vacate premised on an application for voluntary departure. Commenters expressed concern that, if neither USCIS nor EOIR can grant voluntary departure, individuals could be separated from their families or otherwise negatively affected.

Response: The IFR's changes from the NPRM, as discussed above in Section III.D of this preamble, address commenters' concerns with the NPRM's motion to vacate framework. First, under the IFR, any applicant not granted asylum by an asylum officer after an Asylum Merits interview will be served with an NTA and placed in streamlined section 240 removal proceedings without the need to request an IJ's review.[90] Accordingly, individuals in streamlined section 240 proceedings will be able to apply for all forms of relief or protection for which they may be eligible, including voluntary departure, thus addressing commenters' concerns on this issue.

[90] To the extent that commenters' concerns relate to the general discretion of DHS to determine whether to place an applicant for admission in expedited removal under section 235 of the Act, 8 U.S.C. 1235, or to issue an NTA and refer the applicant to section 240 proceedings, commenters' concerns are beyond the scope of this rule. *See, e.g., Matter of M–S–,* 27 I&N Dec. 509, 510 (A.G. 2019) (''[I]f the [noncitizen] is inadmissible on one of two specified grounds and meets certain additional criteria, DHS may place him in either expedited or full proceedings.'').

d. Immigration Judge's Authority To Review All Asylum Officer Decisions

Comments: Commenters stated that asylum applicants who were not granted asylum but were granted withholding of removal or CAT protection may be deterred from seeking IJ review because of the possibility of being denied all relief or protection and removed. Commenters stated that such deterrence is particularly inappropriate for individuals granted withholding of removal or CAT protection because they are unable to travel abroad or petition for relatives to follow to the United States. Commenters also stated that the proposed rule would leave those granted withholding of removal or CAT protection by the asylum officer with a difficult choice of seeking review and potentially being removed to their country of feared harm or facing permanent separation from family members. Overall, commenters expressed concern that the proposal could have a chilling effect on the decision to seek review of an asylum officer's decision to not grant asylum where doing so would require risking the loss of already-issued protection, citing international treaty obligations to not return refugees to countries where they might suffer persecution or torture. Other commenters were concerned that an asylum applicant would not receive notice that seeking review of an asylum officer's decision to not grant asylum could also result in IJ review of granted protections.

Some commenters asserted that requiring IJs to review grants of protection is contrary to the rule's stated goals of improving efficiency and addressing the immigration court backlog. Commenters argued that it is inefficient to require an IJ to revisit portions of the asylum officer's decision that neither party has requested the IJ review and observed that granted cases can and will be reviewed upon the asylee's application for permanent residence. Other commenters stated that an IJ's unilateral decision to reverse protections that were granted by an asylum officer would undercut the IJ's role as a neutral arbiter.

Commenters asserted that allowing IJs to review grants of protection is inconsistent with the principles of adversarial adjudication. Commenters noted that the proposed rule would have DHS (as the adverse party to an asylum seeker in immigration court) argue that a benefit was wrongfully granted by another DHS component (USCIS) and asserted that it would be irrational for ICE to argue in this manner before EOIR that another component of

DHS erred in its decision-making. Similarly, commenters argued that the executive branch cannot contest a decision also issued by the executive branch, asserting that the same reasoning has long applied to the prohibition on DHS seeking judicial review of BIA decisions in Federal court. According to commenters, this aspect of the rule would discourage cooperation between the parties to narrow the issues or stipulate to relief, resulting in unnecessary court battles and delay.

Commenters argued that it would be inequitable for DHS to obtain automatic review of a grant of withholding of removal or CAT protection when noncitizens do not obtain automatic review of denials. Some commenters also worried that authorizing, but not requiring, IJs to review withholding of removal and CAT decisions risks inconsistent revocation of these benefits if some IJs decide to conduct this review and others do not, arguing that the risk of arbitrarily and permanently separating families outweighs any efficiency concerns.

Commenters also asserted that ''mixed cases'' could create confusion for noncitizens attempting to request review of their case before U.S. Courts of Appeals. For example, commenters stated that IJs could reverse the denial of withholding of removal but leave the asylum denial and order of removal on the basis of prior grounds of inadmissibility undisturbed. Commenters worried that, in such cases, noncitizens requesting review before courts of appeal would likely exceed the ''mandatory and jurisdictional'' 30-day limit to review their asylum denial and accompanying removal order. Finally, commenters asserted that these procedural hurdles would deter pro bono attorneys from taking cases.

Response: As described above in Section III of this preamble, this IFR does not adopt the NPRM's proposed IJ review procedure and instead implements streamlined section 240 removal proceedings in new 8 CFR 1240.17. One consequence of this change from the NPRM, which the Departments emphasize was requested by the majority of those who commented on this aspect of the NPRM, is that the asylum officer will not issue orders of removal or grant withholding of removal or protection under the CAT. Rather, because the IJ will issue orders of removal, the IJ will also grant or deny withholding of removal and protection under the CAT. *See Matter of I–S– & C–S–,* 24 I&N Dec. 432, 434 (BIA 2008) (''[W]hen an [IJ] decides to grant withholding of removal, an explicit order of removal must be included in the decision.'').

Nevertheless, asylum officers will continue to consider the applicant's eligibility for withholding of removal and protection under the CAT during the Asylum Merits interviews and, if they do not grant the application for asylum, will indicate whether the applicant has demonstrated eligibility for withholding of removal or protection under the CAT based on the record before USCIS. *See* 8 CFR 208.14(c)(1); 8 CFR 208.16(a). Upon an asylum officer's decision to not grant asylum, the noncitizen is placed in streamlined section 240 removal proceedings. The IFR provides that the IJ will schedule a status conference where the noncitizen will indicate whether the noncitizen intends to contest removal or seek any protections for which the asylum officer did not determine that the noncitizen was eligible. If the noncitizen does not intend to contest removal or seek any protections for which the asylum officer did not determine that the noncitizen was eligible, the IJ will order the noncitizen removed. If the asylum officer determined that the noncitizen was eligible for withholding of removal or protection under the CAT, the IJ will give effect to the protection for which the asylum officer determined that the noncitizen was eligible, subject to the ability of DHS to present new evidence establishing that the applicant is not eligible for protection.

However, the noncitizen can elect to contest removal or seek protections that were not granted by the asylum officer. Where the asylum officer did not grant the application for asylum and determined that the applicant is not eligible for statutory withholding of removal or withholding or deferral of removal under the CAT, the IJ will review each of the applications de novo as provided in new 8 CFR 1240.17(i)(1). Where the asylum officer did not grant asylum but determined that the applicant was eligible for statutory withholding of removal or protection under the CAT, the IJ will adjudicate the application for asylum de novo, as provided in new 8 CFR 1240.17(i)(2). Further, under new 8 CFR 1240.17(i)(2), if the IJ denies asylum and enters an order of removal, the IJ will also issue an order giving effect to the protections for which the asylum officer determined that the noncitizen was eligible, unless DHS affirmatively demonstrates through evidence or testimony that specifically pertains to the respondent and that was not included in the record of proceedings for the USCIS Asylum Merits interview that the noncitizen is not eligible for such protection. The IJ will grant any protections for which the IJ finds the noncitizen eligible.

The Departments believe that these procedures outlined in the IFR address many concerns of the commenters while also promoting efficiency in governmental processes. First, the IFR does not allow the IJ to reconsider sua sponte relief or protection for which the asylum officer determined the noncitizen was eligible. Instead, under new 8 CFR 1240.17(i)(2), if the noncitizen elects to contest removability or the asylum officer's determination, the burden shifts to DHS to present evidence showing that evidence or testimony not included in the asylum officer record and specifically pertaining to the noncitizen establishes that the noncitizen is not eligible for the relief or protection. The Departments believe it is necessary for DHS to be able to revisit the issue of eligibility in special circumstances, such as when there may be evidence of fraud or new derogatory information affecting eligibility. As explained above, the Departments believe that, without a process for DHS to address such issues in the streamlined section 240 removal proceedings, DHS would otherwise have to follow the procedures in 8 CFR 208.17(d) and 208.24(f) in instances where overturning the asylum officer's eligibility determination is justified.

e. Appeal of Immigration Judge's Decision to the Board of Immigration Appeals

Comments: Some commenters expressed support for the appeal procedures in the NPRM.

Other commenters expressed concern that, without a traditional immigration court hearing transcript to review, BIA and Federal court review would be cursory. Similarly, commenters asserted that the BIA and Federal court review under the NPRM would be meaningless because they believed such review would be conducted on the basis of a partial, incomplete record and that, in many cases, there would be initial rounds of litigation regarding application of the NPRM's limitations on the introduction of evidence.

Response: As discussed above in Section III of this preamble, under this IFR, applicants not granted asylum by the asylum officer after an Asylum Merits interview will be referred to streamlined section 240 removal proceedings before the immigration court. This change from the NPRM addresses commenters' concerns about the effect of the nature of the IJ review proceedings set out in the NPRM on any subsequent BIA or appellate review. Under the IFR, in new 8 CFR 1240.17(a)

and (g)(1), noncitizens will be afforded longstanding procedural protections and due process safeguards inherent in section 240 proceedings, including the right to representation at no cost to the Government and the rights to present evidence and testimony. *See* INA 240(b)(4)(A)–(B), 8 U.S.C. 1229a(b)(4)(A)–(B). More specifically, under new 8 CFR 1240.17(a), noncitizens will have the opportunity to be heard at scheduled hearings and the ability to develop the record by presenting evidence that is timely submitted, relevant, probative, and not fundamentally unfair. Furthermore, under new 8 CFR 1240.17(g)(2), IJs may consider late-filed evidence that is filed before the IJ issues a decision in the case if it could not reasonably have been obtained and presented before the deadline through the exercise of due diligence. A complete record of all evidence and testimony will be kept in accordance with the standard procedures for section 240 proceedings. INA 240(b)(4)(C), 8 U.S.C. 1229a(b)(4)(C). This includes but is not limited to: (1) The record of proceedings before the asylum office, as outlined in 8 CFR 208.9(f); (2) a written statement, if any, from the noncitizen describing any alleged errors and omissions in the asylum officer's decision or the record of proceedings before the asylum office; and (3) documentation and testimony in support of the application for relief or protection. The Departments believe that this requirement will alleviate procedural concerns and ensure that the BIA will have a full record on appeal and that U.S. Courts of Appeals will have a full record in a petition for review.

f. Other Comments on Proposed Application Review Proceedings Before Immigration Judges

Comments: Commenters urged the Departments to remove the regulatory language that would permit the immigration court to reject an asylum application if proof of payment of the fee, if required, is not submitted, citing proposed 8 CFR 1208.3(a)(2). Commenters asserted that asylum applications should never require a fee because seeking safety from persecution is a fundamental human right and refusing asylum applicants for the inability to pay would effectively cause the United States to abrogate its international obligations. Stating that the prior Administration's fee rule is enjoined, commenters suggested that the Departments should not leave open the possibility for future administrations by explicitly including the possibility of an asylum application fee in this proposed regulation.

Response: As noted in the NPRM, the Departments published numerous rules in recent years that have been vacated, enjoined, or otherwise delayed. 86 FR 46909 n.24. Two such rules are final rules regarding application fees issued by DHS and DOJ, respectively. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 85 FR 46788 (Aug. 3, 2020) (enjoined by *Immigrant Legal Res. Ctr.* v. *Wolf,* 491 F. Supp. 3d 520 (N.D. Cal. 2020), and *Nw. Immigrant Rts. Project* v. *United States Citizenship & Immigr. Servs.,* 496 F. Supp. 3d 31 (D.D.C. 2020), *appeal dismissed,* No. 20–5369, 2021 WL 161666 (DC Cir. Jan. 12, 2021)); Executive Office for Immigration Review; Fee Review, 85 FR 82750 (Dec. 18, 2020) (partially enjoined by *Cath. Legal Immigr. Network, Inc.* v. *Exec. Off. for Immigr. Rev.,* 513 F. Supp. 3d 154 (D.D.C. 2021)).

Language regarding the submission of an application fee, if any, for applications for asylum was included in the latter rule. 8 CFR 1208.3(c)(3); *see also* 85 FR 82765–69 (discussing commenters' concerns regarding an application fee for asylum applications). The NPRM proposed to amend the regulations only as necessary to effectuate the changes related to the credible fear and asylum adjudication processes as explained in the NPRM and this IFR. *See, e.g.,* 86 FR 46914 n.38. As a result, the NPRM did not include any proposed edits regarding the asylum application fee-related language in § 1208.3(c)(3).[91] The language related to the payment of an asylum application fee, if any, was included simply as surrounding regulatory text that was reprinted to ensure correct amendments to the language related to the credible fear and asylum adjudication processes.

DOJ, however, will be considering additional changes to the regulations regarding the applicable fees for applications and motions during EOIR proceedings. *See* Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202110&RIN=1125-AB19* (last visited Mar. 9, 2022).

Comments: Commenters urged the Departments to rescind the provisions of the Global Asylum rule that expressly permit pretermission of asylum claims and to enact a broad regulatory bar on the practice. At a minimum, commenters asked the Departments to expressly prohibit IJs from pretermitting asylum applications upon review from asylum officers' decisions to not grant asylum, arguing that allowing IJs to do so under the proposed system of minimal process would violate the Constitution.

Response: As stated above, the NPRM only proposed to amend provisions of prior rulemakings to the extent necessary to implement the proposed changes related to the credible fear and asylum adjudication processes. *See, e.g.,* 86 FR 46914 n.38. The provisions referenced by commenters at 8 CFR 1208.13(e) regarding pretermission of applications were added by the Departments as part of a separate rulemaking known as the Global Asylum rule. *See* 85 FR 80274. Because this provision is beyond the scope of the changes needed to effectuate the credible fear and application review processes included in the NPRM, the Departments are not including any changes to this provision at this point. However, the Departments will consider whether to modify or rescind 8 CFR 1208.13(e) and the other remaining portions of the regulations affected by enjoined regulations in future rulemakings. *See, e.g.,* Executive Office of the President, OMB, OIRA, Fall 2021 Unified Agenda: Department of Justice, *https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=1100&csrf_token=1F5E59171165D9C756F8D13DB0280F16BF4E61995A08C2DA5251225495FD83335EE930292724E7EF24BEB50141CF0AC59747* (last visited Mar. 1, 2022).

Comments: Commenters urged the Departments to preserve Federal court review of asylum cases in any asylum process, stressing that judicial review protects refugees from politicized policies, rushed administrative decision-making, or discriminatory factual and legal interpretations and provides judicial oversight of administrative adjudications with life-or-death consequences. Some commenters argued that the proposed rule does not provide adequate appellate protections for asylum seekers, explaining that the provision of the NPRM subjecting asylum seekers to expedited removal under INA 235(b)(1), 8 U.S.C. 1225(b)(1), unless and until they are granted asylum, could be found by courts to trigger the INA's jurisdiction-stripping provision relating

[91] The commenter is incorrect that the Department included language regarding an application fee for applications for asylum at 8 CFR 1208.3(a)(2).

to expedited removal. *See* INA 242(a)(2)(A), 8 U.S.C. 1252(a)(2)(A).

Specifically, commenters expressed concern that some courts might view a challenge to the denial of an asylum application that affirms an expedited order of removal and denies all relief or protection as asking the court ''to review . . . any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to [INA 235(b)(1), 8 U.S.C. 1225(b)(1)],'' claims for which the statute bars jurisdiction. *See* INA 242(a)(2)(A), 8 U.S.C. 1252(a)(2)(A). Commenters asserted that the statute authorizes only two processes for the issuance of a removal order: (1) An expedited removal order under INA 235(b)(1), 8 U.S.C. 1225(b)(1), for which judicial review is barred; and (2) a removal order entered in proceedings under INA 240, 8 U.S.C. 1229a, for which judicial review is available but which the NPRM expressly proposed not to use. As such, according to commenters, the Departments' simultaneous assertion that INA 235(b)(1), 8 U.S.C. 1225(b)(1) provides the authority to create the proposed procedures while at the same time stating that an order of removal issued pursuant to those procedures is not ''an order of removal pursuant to [INA 235(b)(1), 8 U.S.C. 1225(b)(1)]'' could raise questions about the availability of judicial review.

Commenters also expressed concern that, even if this Administration is committed to interpreting the proposed rule as allowing for judicial review, a future administration could advise counsel at ICE and DOJ to interpret the rule more narrowly and argue that judicial review is not available. According to commenters, the possibility that the proposed rule could inadvertently deprive asylum seekers of judicial review is another reason to ensure that those not granted asylum by an asylum officer after passing a credible fear screen are referred to proceedings under INA 240, 8 U.S.C. 1229a.

Finally, some commenters questioned what items the Federal courts would review, even if there is no jurisdictional hurdle to review by a U.S. Court of Appeals. Asserting that the circuit courts of appeals are used to reviewing records that include full immigration court hearing transcripts, commenters expressed concern that, under the proposed rule, courts of appeals would review a written decision of the BIA, which reviewed an IJ's review of an asylum officer's decision. Although the record likely would include a transcript of the asylum officer interview, commenters worried that the transcript would be two levels removed from the Federal court review and would not be in the formal format that Federal courts are accustomed to reviewing.

Response: As explained above in Section III of this preamble, the Departments are not adopting the IJ review procedure proposed in the NPRM; instead, under this IFR, noncitizens whose applications for asylum are adjudicated but not granted by an asylum officer will be issued an NTA and referred to an IJ for further review of their applications in streamlined section 240 removal proceedings. If the IJ in turn denies the noncitizen's application for asylum, the IJ will issue an order of removal, and the noncitizen may appeal that decision under the generally applicable procedures, first to the BIA and then in a petition for review to the appropriate U.S. Court of Appeals. 8 CFR 1003.24; INA 242, 8 U.S.C. 1252. Accordingly, this change addresses commenters' concerns regarding the availability of judicial review.

Regarding commenters' concerns about the record for judicial review, the Departments do not agree that the nature of the record presents concerns. As stated in the NPRM, USCIS will transcribe the Asylum Merits interview before the asylum officer, and that verbatim transcript will be included in the referral package sent to the immigration court, as finalized in 8 CFR 208.9(f). Because the Departments will ensure that the transcripts of these hearings are in a format that is appropriate for the IJ's review of the record, commenters' concerns that the transcript will not be sufficiently formal or otherwise helpful for BIA or Federal court review is simply speculative. The noncitizen may then supplement the record from the hearing by the asylum officer during the noncitizen's proceedings before an IJ, including by providing statements or evidence regarding any alleged insufficiency during the Asylum Merits proceedings. Further, if the noncitizen appeals the IJ's decision, all hearings conducted by the IJ will be transcribed under standard EOIR procedures. *See* 8 CFR 1003.5(a) (2020).[92]

Comments: Some commenters stated that, although they suggested changes to strengthen due process protections with respect to the proposed IJ review proceedings, the Departments are on track to usher in a modernized U.S. asylum system that is orderly, efficient, and fair.

Another commenter called attention to what it said is ''the fundamental defect in our immigration adjudication system that gives rise to the technocratic changes proposed'' in the NPRM: The lack of an independent immigration court. The commenter suggested that the Departments adopt a ''new model'' in which an independent court, presided over by independent judges, would assertedly ''make rational decisions based on the facts and the law of the cases it hears.''

Commenters also expressed concern that the proposed appeal process seems vague, among other flaws, leaving it unclear what will happen to someone where an IJ on appeal rules in contradiction of the lower authority.

Response: Commenters' assertions regarding problems with the immigration court system as a whole are beyond the scope of this rulemaking. Nonetheless, the Departments emphasize that IJs exercise ''independent judgment and discretion'' in deciding cases, 8 CFR 1003.1(d)(1)(ii) and 1003.10(b), and are prohibited from considering political influences in their decision-making, *IJ Ethics and Professionalism Guide* (''An Immigration Judge should not be swayed by partisan interests or public clamor.'').

Moreover, as noted above and in Section III of this preamble, the Departments have not adopted the IJ review procedure proposed in the NPRM and instead are providing that if an asylum officer adjudicates but does not grant asylum, the noncitizen will be issued an NTA in streamlined section 240 removal proceedings. Because new 8 CFR 1240.17(a) provides that the same rules and procedures governing proceedings under 8 CFR, part 1240, subpart A, apply unless otherwise noted, if the IJ in turn denies relief or protection, a noncitizen may appeal the IJ's decision to the BIA under the DOJ regulations at 8 CFR 1240.15 and may further petition for review of the BIA's decision by a Federal circuit court. The Departments believe that this revision addresses commenters' concerns about

[92] DOJ amended 8 CFR 1003.5 in 2020 as part of a final rule that affected EOIR procedures related to the processing of BIA appeals. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (Dec. 16, 2020). On March 10, 2021, the United States District Court for the Northern District of California granted a nationwide preliminary injunction barring the Department from implementing or enforcing the 2020 rule or any portion thereof and stayed the effectiveness of the rule. *Centro Legal de La Raza* v. *Exec. Off. for Immigr. Rev.,* No. 21–CV–00463–SI, 2021 WL 916804, at *1 (N.D. Cal. Mar. 10, 2021). Accordingly, the Departments cite to the regulations in effect prior to publication of the December 16, 2020 rule.

the alleged vagueness and unfairness of the proposed appeal process in the NPRM by providing a clear process for appeal and incorporating longstanding protections that ensure fairness in immigration proceedings.

Comments: Commenters urged the Departments to ensure that all noncitizens have access to motions to reopen protections, asserting that the NPRM is unclear about whether there would be an opportunity for the noncitizen to move to reopen if not physically removed following a removal order.

Response: As noted above and in Section III of this preamble, the Departments have decided not to adopt the IJ review procedure proposed in the NPRM and instead are providing that if an asylum officer adjudicated but did not grant asylum, the noncitizen will be issued an NTA in streamlined section 240 removal proceedings. The standard rules governing motions to reopen will continue to apply in those section 240 proceedings. *See* INA 240(b)(5)(C), (c)(7), 8 U.S.C. 1229a(b)(5)(C), (c)(7); 8 CFR 1003.2, 1003.23. The Departments believe this change addresses commenters' concerns about the clarity of rules governing access to motions to reopen in the NPRM.

Comments: Commenters urged the Departments to generally end the practice of expedited removal, particularly in the case of asylum seekers, and grant applicants a full hearing before an IJ when requesting an appeal on a negative decision by an asylum officer.

Response: Commenter recommendations to eliminate expedited removal are beyond the scope of this rulemaking. Nevertheless, the Departments note that expedited removal is a statutorily provided procedure. INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i) (''If an immigration officer determines that [a noncitizen] . . . who is arriving in the United States . . . is inadmissible . . . the officer shall order the [noncitizen] removed from the United States without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum . . . or a fear of persecution.''); INA 235(b)(1)(B)(iii)(I), 8 U.S.C. 1225(b)(1)(B)(iii)(I) (''[I]f the officer determines that [a noncitizen] does not have a credible fear of persecution, the officer shall order the [noncitizen] removed from the United States without further hearing or review.'').

Comments: Commenters suggested ways to ensure timely, effective, and fair immigration court decisions: (1) Formalize IJ authority to use administrative closure to manage their dockets; (2) establish formal pre-hearing conferences for DHS attorneys and noncitizens' counsel to confer and identify issues in dispute prior to trial, stipulate to issues where there is no dispute, or agree that asylum or protection is grantable based on the written submissions; (3) clarify the IJ's authority to terminate section 240 removal proceedings to allow a noncitizen to pursue applications for permanent status before USCIS if the noncitizen establishes prima facie eligibility for such status; and (4) create a formal mechanism for asylum seekers and other immigrants to advance immigration court hearing dates to ensure that their cases are timely heard and that hearing slots do not go unused.

Response: Comments suggesting improvements for immigration court proceedings generally are outside the scope of this rulemaking. However, the Departments briefly explain the current legal scheme and how it may relate to this IFR.

First, regarding commenters' request that IJs be able to utilize administrative closure to manage their dockets, the Attorney General recently issued *Matter of Cruz-Valdez,* 28 I&N Dec. 326 (A.G. 2021), finding that, while the process of rulemaking proceeds, the current standard for administrative closure is set out in *Matter of Avetisyan,* 25 I&N Dec. 688 (BIA 2012), and *Matter of W–Y–U–,* 27 I&N Dec. 17 (BIA 2017). Parties should refer to the current case law until further rulemaking is completed. *See* Director Memorandum's (DM) 22–03, *Administrative Closure* (Nov. 22, 2021).

Second, regarding the commenters' request for a formal pre-hearing conference, the IFR, in new 8 CFR 1240.17(f), provides that the IJ will hold a prehearing status conference to narrow the issues and otherwise simplify the case.

Third, commenters' request that the Departments clarify general IJ authority to terminate proceedings to allow a noncitizen to pursue other relief or protection before USCIS is beyond the scope of this rulemaking. This IFR specifically addresses procedures for noncitizens subject to the expedited removal process; it does not involve general IJ authority to terminate proceedings. Regarding IJs' general authority to terminate proceedings, relevant case law provides that an IJ may dismiss or terminate section 240 removal proceedings only under the circumstances identified in the regulations. *See Matter of S–O–G– & F–D–B–,* 27 I&N Dec. 462 (BIA 2018). Further, parties may agree to dismiss proceedings for the noncitizen to pursue other relief or protection before USCIS. *See Matter of Kagumbas,* 28 I&N Dec. 400, 401 n.2 (BIA 2021) (noting that parties are not prohibited ''from agreeing to dismiss proceedings so that a respondent may pursue adjustment of status before . . . USCIS''). Fourth, regarding commenters' request for EOIR to create a formal mechanism for noncitizens to file a motion to advance hearing dates, the Immigration Court Practice Manual provides formal instructions for requests to advance a hearing date. *See EOIR Policy Manual,* Part II.5.10(b). Moreover, EOIR maintains a formal policy to ensure that all available blocks of immigration court time are utilized to the maximum extent practicable. *See* EOIR, *PM 19–11, No Dark Courtrooms* (May 1, 2019), *https://www.justice.gov/eoir/file/1149286/download.*

E. Other Issues Related to the Proposed Rulemaking

1. Public and Stakeholder Input

Comments: Several commenters requested a comment period extension for various reasons, such as unclear deadline instructions, insufficient time to comment, and impacts of the COVID–19 pandemic. One commenter stated that commenting on this rule is difficult without understanding its interaction with other proposed rulemakings relating to the asylum system.

Additionally, two commenters requested that the proposed rule be rescinded, revised, and reposted for another comment period opportunity. One of these commenters said the agency should reissue a new NPRM after providing asylum seekers meaningful opportunities to present their own recommendations for reforming the asylum system.

Response: Although the APA does not require a specific time period for public comments, Executive Orders 12866, 58 FR 51735 (Sept. 30, 1993), and 13563, 76 FR 3821 (Jan. 18, 2011), recommend a comment period of at least 60 days. Here, the Departments have a provided a 60-day comment period that allowed for adequate notice, evinced by the over 5200 comments received and addressed in this rule. In addition, the Departments are issuing this rulemaking as an IFR with a request for comment, thus allowing the public a further chance to provide input. The Departments consequently do not agree with the need for an extension. Additionally, suggestions to rescind, revise, and republish the rule upend the rulemaking process. The NPRM is designed to provided fair notice and

allow for public input. Engaging in continual reworking of such a notice because of public comment undermines the methodology of informal rulemaking under the APA.

Comments: Several commenters urged USCIS to engage with stakeholders like immigration advocates, non-governmental organizations, and asylum seekers to improve existing processes prior to publishing the rule. One commenter provided specific feedback from its members about improving the efficiency and accessibility of the asylum system.

Another commenter similarly requested that, before any further steps are taken to finalize the rule, additional consultations take place. The commenter ''remind[ed]'' the Departments that, in response to a rule proposed by the prior Administration, UNHCR emphasized that it was prepared to offer technical assistance, and the asylum officers' union observed that the current Administration ''must make sure that the individuals tasked with implementing policy have a voice in crafting new regulations.'' The commenter stated that, by Executive order, the President has mandated that Federal Departments ''shall promptly begin consultation and planning with international and non-governmental organizations to develop policies and procedures for the safe and orderly processing of asylum claims at United States land borders.'' If the Departments choose not to engage in such consultation and planning with experts, the commenter requested an explanation of why not.

Response: The Departments acknowledge commenters' requests for further engagement and their suggestions to improve the asylum program. Here, the Departments provided a 60-day comment period in the NPRM, which provided the opportunity for members of the public, including the commenters, public employee unions, and other stakeholders, to offer feedback on the rule. In addition, in this IFR, the Departments are including another request for public comments. Furthermore, the Departments regularly engage experts from non-governmental and intergovernmental organizations to supplement the extensive training provided to their personnel. The Departments also note that they regularly hold public engagement sessions with stakeholders, allowing further opportunity for the consultations the commenters have requested. The Departments are continually seeking ways to improve the manner in which they carry out their duties in service to the public and take into account stakeholder feedback when doing so.

Comments: Some commenters requested a more specific definition of ''particular social group'' to better understand the proposed rule and provide feedback. Similarly, several commenters requested a delay in implementation of the rule until the ''particular social group'' rule is issued so that Congress has the opportunity to comment and, if necessary, to legislate on who is eligible for asylum.

Response: The Departments acknowledge the commenters' interest in the forthcoming rulemaking addressing, among other things, the definition of the term ''particular social group'' as used in the INA.[93] However, the Departments disagree that the implementation of this IFR should be delayed until the ''particular social group'' rule is issued. The Departments do note, however, that in issuing this rulemaking as an IFR, they are soliciting further comment on its provisions. This rulemaking does not change any of the criteria for asylum eligibility, but rather addresses the procedures and mechanisms by which the asylum claims of individuals subject to expedited removal are considered and processed. By contrast, the ''particular social group'' rulemaking would codify the Departments' interpretations of certain Federal statutes they are charged with implementing. The Administrator of the Office of Information and Regulatory Affairs within the Office of Management of Budget has determined that this IFR is a ''major rule'' within the meaning of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), 5 U.S.C. 804(2). Accordingly, this IFR is effective 60 days after publication, thus allowing additional time for congressional review. If Congress deems it necessary to legislate on asylum eligibility or any other topic within its authority under the United States Constitution, it may certainly do so without regard to any regulations promulgated by Executive departments. The Departments will faithfully execute any laws enacted by Congress and signed by the President.

2. Severability

Comments: A commenter expressed concern that, if certain protective provisions in the proposed rule are severed, then it ''would fall short of international standards for fair and efficient processing of asylum applications.''

Response: The Departments acknowledge the commenter's concern. The Departments are committed to ensuring that the process afforded applicants meets the requirements of due process even if certain aspects of the IFR are enjoined by a court. With this consideration in mind, the Departments reiterate the statement on severability set forth in the NPRM. 86 FR 46921. That is, to the extent that any portion of the IFR is stayed, enjoined, not implemented, or otherwise held invalid by a court, the Departments intend for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect. Thus, even if a judicial decision invalidating a portion of the IFR results in a partial reversion to the current regulations or to the statutory language itself, the Departments intend that the rest of the IFR continue to operate in tandem with the reverted provisions, if at all possible, and subject to the discretion permitting USCIS to decide to issue individuals NTAs and refer noncitizens to ordinary section 240 removal proceedings.

3. Discretion and Phased Implementation

a. Discretion

Comments: One commenter expressed concern about providing DHS with discretion to determine whether noncitizens who receive a positive credible fear determination are issued NTAs and referred directly to section 240 removal proceedings or instead have their cases retained by USCIS for Asylum Merits interviews. The commenter urged DHS to eliminate the discretion to place noncitizens in section 240 removal proceedings rather than in the new process. This commenter believes that such discretion is arbitrary, inconsistent, and will ''exacerbate negative bias'' in the decision-making process. Another commenter urged the Departments to reconsider the use of discretion because the commenter believes there is a high risk of inconsistent treatment among asylum seekers subject to the new process and asylum seekers who are placed in section 240 removal proceedings in the first instance.

Response: The Departments acknowledge the commenters' concerns but disagree that permitting DHS to continue to exercise its discretion to place noncitizens who establish a credible fear of persecution or torture directly into ordinary section 240

[93] *See* Executive Office of the President, OMB, OIRA, Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202104&RIN=1615-AC65* (last visited Feb. 27, 2022).

removal proceedings before an IJ, as finalized in new 8 CFR 208.30(b), is arbitrary, inconsistent, or will exacerbate negative bias. Such discretion is needed because there may be circumstances in which it may be more appropriate for a noncitizen's protection claims to be heard and considered in the adversarial process before an IJ in the first instance (for example, in cases where a noncitizen may have committed significant criminal acts, engaged in past acts of harm to others, or created a public safety or national security threat). In addition, the Departments anticipate that DHS will also need to continue to place many noncitizens receiving a positive credible fear determination into ordinary section 240 removal proceedings while USCIS takes steps needed to allow for full implementation of the new process. Noncitizens who are placed into section 240 removal proceedings in the first instance will have access to the same procedural protections that have been in place for asylum adjudications for many years. Such exercise of discretion is similar to and in line with DHS's recognized prosecutorial discretion to issue an NTA to a covered noncitizen in expedited removal proceedings at any time after the covered noncitizen is referred to USCIS for a credible fear determination. *See Matter of E–R–M– & L–R–M–,* 25 I&N Dec. at 523. Moreover, USCIS asylum officers have experience with exercising discretion in various contexts, including in the adjudication of the asylum application itself, and, thus, will be well suited to exercise discretion in this context.

b. Phased Implementation

Comments: Some commenters expressed opposition to the phased rule implementation approach. One commenter asserted that a Federal district court has found that the practice of expediting cases for a particular subset of individuals may violate their rights, citing *Las Americas Immigrant Advocacy Center* v. *Trump,* 475 F. Supp. 3d 1194 (D. Or. 2020). Another commenter asserted that there is no justification for what the commenter viewed as the rule's preferential treatment for non-detained families over detained individuals and single adult women and men. Another commenter suggested a detailed plan for USCIS to conduct a pilot project allowing asylum seekers to opt into the new process and then have USCIS collect evidence about the fairness and expeditiousness of the rule before it becomes final. Alternatively, the commenter suggested providing a preliminary period during which the rule would be in effect followed by a ''stay'' of the regulatory changes to ensure that the new process is producing fair and expeditious decisions.

Response: As discussed in greater detail in the costs and benefits analysis of this rule and its impacts on USCIS, as required under Executive Orders 12866 and 13563, USCIS has estimated that it will need to hire new employees and spend additional funds to fully implement the new Asylum Merits process. If the number of noncitizens placed into expedited removal and making successful fear claims increases, the cost to implement the rule with staffing levels sufficient to handle the additional cases in a timely fashion would be substantially higher. Until USCIS can support full implementation, USCIS will need to continue to place a large percentage of individuals receiving a positive credible fear determination into ordinary section 240 removal proceedings in the first instance.

Current resource constraints will prevent the Departments from immediately achieving their ultimate goal of having the protection claims of nearly all individuals who receive a positive credible fear determination adjudicated by an asylum officer in the first instance. The Departments are also accounting for existing and emerging priorities impacting the workload of the USCIS Asylum Division, such as the affirmative asylum caseload and the streamlined asylum application processing of certain Afghan parolees as described in section 2502(a) of the Extending Government Funding and Delivering Emergency Assistance Act.[94] The Departments believe that, to fully implement the rule, additional resources will be required. The Departments therefore will expand use of the new Asylum Merits process in phases, as the necessary staffing and resources are put into place.

While the Departments acknowledge the commenters' recommendations that the Departments proceed with a pilot project or have regulatory changes take effect for a limited time, the Departments believe that the phased implementation approach is better suited for this new process. A phased implementation will allow the Departments to begin employing the new process in an orderly and controlled manner and for a limited number of cases, giving USCIS the opportunity to work through operational challenges and ensure that each noncitizen placed into the process is given a full and fair opportunity to have protection claims presented, heard, and properly adjudicated in full conformance with the law. Phased implementation will also have an immediately positive impact in reducing the number of individuals arriving at the Southwest border who are placed into backlogged immigration court dockets, thus allowing the Departments to more quickly adjudicate some cases. Phased implementation will also ensure that EOIR is able to dedicate IJs to the streamlined section 240 removal proceedings, which will require available docket space to meet these proceedings' scheduling requirements.

Given limited agency resources, the Departments anticipate first implementing this new process for only a limited number of noncitizens who receive a positive credible fear determination after the effective date of this rule. The Departments believe this is necessary because USCIS capacity is currently insufficient to handle all referrals under this new process. The Departments also anticipate limiting referrals under the initial implementation of this rule to noncitizens apprehended in certain Southwest border sectors or stations, as well as based on the noncitizen's final intended destination (*e.g.,* if the noncitizen is within a predetermined distance from the potential interview location). As the USCIS Asylum Division gains resources and builds capacity, the Departments anticipate that additional cases could be considered for processing pursuant to this phased implementation.

The Departments also disagree that the decision in *Las Americas* precludes a phased implementation of the IFR. The relevant part of that decision addressed only whether the adoption of a separate policy constituted ''final agency action'' that could be challenged under the APA. 475 F. Supp. 3d at 1216. The decision did not purport to prohibit agencies from implementing regulatory programs in phases.

Overall, the Departments will work together to ensure that both agencies have capacity as this rule's implementation proceeds. For example, if EOIR does not have additional available docket space, USCIS will not expand the rule's application at that point.

[94] *See* Public Law 117–43, sec. 2502, 135 Stat. 344, 377 (2021); DHS, DHS Announces Fee Exemptions, Streamlined Processing for Afghan Nationals as They Resettle in the U.S. (Nov. 8, 2021), *https://www.dhs.gov/news/2021/11/08/dhs-announces-fee-exemptions-streamlined-processing-afghan-nationals-they-resettle.*

4. Comments on Immigration Court Inefficiencies and Bottlenecks

Comments: Some commenters suggested several ways to address inefficiencies and bottlenecks, such as quickly filling existing positions, surging staffing to the courts, and requesting funding from Congress to increase the number of immigration court interpreters, support staff, IJs, BIA legal and administrative staff, and BIA members. Additionally, these commenters suggested pre-hearing requirements to narrow issues for trial and to create a process to advance cases stuck in the court backlog.

Response: The Departments acknowledge the commenters' suggestions and recommendations to help improve the immigration adjudication process as a whole. The commenters' suggestions regarding the hiring process, staff surges, and increased funding are beyond the scope of this rulemaking. However, DOJ has already implemented or is currently implementing a number of measures referenced by the commenters, as described below. For example, DOJ has reduced the average IJ hiring process from 742 days (over 2 years) in 2017 to 8 to 10 months at present. Upon receipt of qualified applicants from the Office of Personnel Management (''OPM''), DOJ immediately begins assessment of the applicants. DOJ also consistently meets its internal deadlines for this process. As a result of these efforts, as of October 2021, DOJ had hired 65 new IJs in FY 2021, bringing the total number of IJs to 559. *See* EOIR, Adjudication Statistics: Immigration Judge (IJ) Hiring (Jan. 2022), *https://www.justice.gov/eoir/page/file/1242156/download.* DOJ continues to focus on filling all vacancies as expeditiously as possible.

DOJ has consistently requested increased funding for additional authorized positions. In its FY 2022 budget request, DOJ requested an additional 600 authorized positions, to include 300 attorney positions. Of the 300 attorney positions, DOJ anticipates hiring 100 new IJs and support staff. *See* DOJ, FY 2022 Budget and Performance Summary: Executive Office for Immigration Review (Aug. 20, 2021), *https://www.justice.gov/jmd/page/file/1399026/download.* DHS also requested funding appropriations to meet the increased workload in the immigration courts and ameliorate staffing budgetary shortfalls. For FY 2022, DHS requested 100 additional ICE litigator positions to prosecute the removal proceedings initiated by DHS, consistent with 6 U.S.C. 252(c). *See* DHS, ICE Budget Overview: FY2022 Congressional Justification at ICE–O&S–22, *https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf.*

In new 8 CFR 1240.17(f)(1)–(3), the IFR establishes certain pre-hearing requirements for individuals in streamlined section 240 proceedings. Establishing pre-hearing requirements for all cases, however, is beyond the scope of this rulemaking. DOJ reiterates that IJs may issue orders for pre-hearing statements. 8 CFR 1003.21(b), (c). Further, EOIR's case flow processing model, which applies to certain non-detained cases with representation, incorporates short matter hearings or pre-trial conferences for cases that are not yet ready for trial, as appropriate. *See* EOIR, *PM 21–18: Revised Case Flow Processing Before the Immigration Courts* (Apr. 2, 2021), *https://www.justice.gov/eoir/filing-deadlines-non-detained-cases; see also* EOIR, *DM 22–04: Filing Deadlines in Non-Detained Cases* (Dec. 16, 2021), *https://www.justice.gov/eoir/book/file/1456951/download* (amending *PM 21–18*).

F. Statutory and Regulatory Requirements

1. Impacts and Benefits (E.O. 12866 and E.O. 13563)

a. Methodology

Comments: A commenter referenced the NPRM statement that the agencies cannot accurately estimate the benefits to the agencies. Additionally, the commenter referenced several specific cost estimates and case numbers from the NPRM and reasoned that the numbers are now incorrect because more cases have been added since then, causing an increase in cost and resulting in less financial efficiency for the rule.

Response: USCIS acknowledges the increasing backlog and agrees that it can have an impact on credible fear asylum applicants, their families, and support networks. As stated in the NPRM, this rule is expected to slow the growth of EOIR's backlog and allow EOIR to work through its current backlog more quickly. First, the rule will allow DHS to process more noncitizens encountered at or near the border through expedited removal—rather than placing them into section 240 removal proceedings—thereby quickly and efficiently securing removal orders for those who do not make a fear claim or who receive a negative credible fear determination. Second, this rule is estimated to reduce EOIR's overall credible fear workload by at least 15 percent. This estimate is based on the average of EOIR asylum grant data over the past five years for cases originating with a credible fear claim.[95] Under this IFR, grants of asylum for such cases would generally be made by USCIS without involvement by EOIR (setting aside those cases in which asylum is granted after referral to a streamlined section 240 proceeding). Because the Departments expect that USCIS's asylum grant rate will be approximately the same as EOIR's, approximately 15 percent of cases originating in credible fear interviews will no longer contribute to EOIR's workload. Third, the above calculation sets a lower bound on EOIR's expected workload reduction, as it does not account for efficiencies that may be realized in cases that are referred to EOIR for streamlined section 240 proceedings. In these three ways, the rule will enable IJs to focus efforts on other high-priority work, including backlog reduction. Moreover, for noncitizens who are placed into the process established by this IFR, the Departments expect that asylum decisions will be reached faster than if they were to go through the current process with EOIR.

Unfortunately, not all benefits can be quantified at this time, as the Departments acknowledged in the NPRM and affirm in this IFR. Benefits driven by increased efficiency would enable some asylum-seeking individuals to move through the asylum process more expeditiously than through the current process, with timelines potentially decreasing significantly, thus promoting both human dignity and equity. Adjudicative efficiency gains and changes to the regulatory standard for consideration for parole could lead to individuals spending less time in detention, which would benefit the Government, considering its limited resources and inability to detain all those apprehended, as well as the affected individuals, who would be able to continue to prepare for and pursue relief or protection outside the confines of a detention setting.

b. Population

Comments: A commenter asserted that the 75,000 to 300,000 range of

[95] *See supra* note 57 (discussing IJs' and asylum officers' similar approval rates on the merits of the asylum claim). Based on the five-year (FY 2017 through FY 2021) average, an estimated 15 percent of the total number of EOIR asylum cases completed originating from credible fear screening were granted asylum. *See* EOIR, Adjudications Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim (Jan. 19, 2022), *https://www.justice.gov/eoir/page/file/1062976/download.* Calculation: FY 2017 to FY 2021 grant rates (14.02 percent) + (16.48 percent) + (15.38 percent) + (16.60 percent) + 14.32 percent)/5 = 15 percent average (rounded).

people cited in the NPRM who would receive credible fear determination does not include the ''2019 DHS expansion of the expedited removal process to the full extent authorized by statute.''

Response: The Departments disagree that the population cited in the NPRM underestimates the number of people who would receive credible fear determinations. Although there is no way to predict exact future filing volumes, USCIS determined the population expected to be affected by this rule to be the average number of credible fear completions processed annually by USCIS (71,363, *see* Table 3). However, as changes in credible fear cases and asylum in general can be driven by multiple factors that are difficult to predict, USCIS provided estimates for potential populations above and beyond the current number of annual credible fear completions. At present, the estimated lower bound of 75,000 is greater than current annual average of completions, and USCIS has estimated a maximum population of 300,000 people who could be impacted to account for variations and uncertainty in the future population. Although the 2019 DHS expansion of the expedited removal process is currently in place, President Biden, in his E.O. on Migration, has directed DHS to consider whether to modify, revoke, or rescind the expansion. It is unknown when or if the expansion would be rescinded or what other factors outside of this rulemaking may impact the size of this population. Therefore, the Departments have done their best to provide estimates at varying potential population levels.

c. Costs or Transfers

i. Impacts on the Credible Fear Asylum Population and Support Networks

Fees

Comments: Several commenters stated that the United States has a legal obligation to protect those seeking asylum, and some stated that asylum applications should never require a fee. Additionally, many commenters said fee increases disproportionately impact low-income immigrants and vulnerable populations, including gender-based violence survivors. Other commenters stated that increased fees would financially harm noncitizens seeking asylum and create a barrier for many applicants. An individual commenter suggested that the fee-based services of USCIS would endanger the freedoms of U.S. citizens.

Response: USCIS currently does not charge a fee to apply for asylum. This rule is not requiring low-income noncitizens or other vulnerable populations to pay a fee for their asylum application to be adjudicated. Additionally, fee waivers are currently available for an applicant who cannot afford to pay to apply for an immigration benefit that requires a fee. The provisions of this IFR are not expected to impact any applicant who entered the United States legally and is seeking to obtain immigration benefits through the appropriate processes or any natural-born or naturalized U.S. citizen not part of an asylum applicant's support network.

Comments: Several commenters referenced the rule's statement that a significant investment of resources will be necessary to build up the capacity of USCIS to make this new rule fully operational. Several commenters urged DHS to secure the necessary resources from Congress to the extent possible, rather than through increased fees for applicants.

Response: The Departments acknowledge these comments and the concern they show for the funding of this rule. As the commenters state, fees are necessary for USCIS to collect to pay for the work USCIS performs in adjudicating applications and petitions for immigration benefits. USCIS acknowledged in the NPRM that, if this rule were to be funded through a future fee rule, it would increase fees by an estimated weighted average between 13 percent and 26 percent, depending on volume of applicants. 86 FR 46937. This estimated increase would be attributable to the implementation of the asylum officer portions of the proposed rule only. USCIS conducts notice-and-comment rulemaking to raise fees and increase revenue for such staffing actions. Although the substance of the future fee rule is outside of the scope of this rule, USCIS currently does not charge a fee to apply for asylum. USCIS is exploring all options to provide funding for this rule.

Other Impacts

Comments: A commenter expressed concern that the potential for more expedited denials of applications risks making some asylum seekers less likely to receive employment authorization while their cases are pending.

Response: This rule is intended to improve the Departments' ability to consider the asylum claims of individuals encountered at or near the border more promptly while ensuring fundamental fairness. Faster processing will lead to timelier case completions for asylum claims, including both approvals and denials. Employment authorization is a discretionary benefit that USCIS may grant to those who qualify. This rule does not change the requirements for employment authorization or for asylum, but it may change the amount of time some applicants' cases remain pending. Applicants whose asylum claims are approved can work immediately.

Comments: Multiple commenters asserted that the proposed rule will do little to address the backlog of cases or improve efficiency. Other commenters argued that the rule would divert already scarce agency resources away from noncitizens who submit affirmative asylum applications in addition to unaccompanied noncitizen minors, over whose asylum claims USCIS has initial jurisdiction. Another commenter expressed concern that, if USCIS shifted experienced asylum officers into this new role, it would slow down existing caseloads due to less experienced new hires.

Response: The Departments disagree with the criticisms from these commenters. This rule will allow EOIR to focus efforts on high-priority work and will likely contribute to EOIR's efforts to reduce its substantial current backlog over time. Ultimately, EOIR will not see the cases in which USCIS grants asylum, which the Departments estimate as at least a 15 percent reduction in EOIR's overall credible fear workload. Over time, this rule stands to reduce the backlog of cases pending in immigration courts and will enable faster processing of cases originating in credible fear screening—whether asylum is granted or denied—than if they were to go through the current process with EOIR. USCIS has estimated that it will need to hire approximately 800 new employees to fully implement the proposed asylum officer interview and adjudication process to handle approximately 75,000 cases annually. USCIS will not shift asylum officer resources from their current workload to implement this program but has explained how it will hire, train, and deploy staff specifically dedicated to this program in Section IV.B.1.b of this preamble.

Although addressing the affirmative asylum backlog is outside the scope of the rulemaking, the Departments acknowledge the importance of doing so and note that USCIS has taken other actions to address this priority. These include expanding facilities; hiring and training new asylum officers; implementing operational changes to increase interviews and case completions and reduce backlog growth; establishing a centralized vetting center; and working closely with technology partners to develop several tools that

streamline case processing and strengthen integrity of the asylum process.[96] In addition, on September 30, 2021, Congress passed the Extending Government Funding and Delivering Emergency Assistance Act, which provides dedicated backlog elimination funding to USCIS for ''application processing, the reduction of backlogs within asylum, field, and service center offices, and support of the refugee program.'' Public Law 117–43, sec. 132, 135 Stat. at 351.

Comment: A commenter asserted that biometric information collection for both EAD submissions and asylum applications is duplicative, time-consuming, and costly due to the relatively low number of asylum offices throughout the country.

Response: Biometrics information is collected on every individual associated with a Form I–589 filing, and for the Form I–765(c)(8) category, USCIS started collecting biometrics, and the associated $85 biometrics service fee, in October 2020. This rule does not change biometric collection requirements related to Form I–589 or Form I–765. USCIS may still have to require applicants to attend an ASC appointment or otherwise obtain their biometrics in support of the asylum application following a positive credible fear determination but is working to obtain the ability to reuse the biometrics already captured by other DHS entities for the asylum application before USCIS.

Comments: One commenter said that DHS failed to consider the long-term financial and procedural impact on fee-paying legal immigrants who pay USCIS petition fees and that this proposed rule unfairly shifts the financial burden from the U.S. taxpayer (DOJ) to lawful immigrants (USCIS). The commenter asserted that it is in the best interest of those who pay fees to have the money mostly spent on adjudicating their petitions, not on humanitarian interests. The commenter argued that the United States should have funded the operation, not lawful immigrants, and that funding could have been used on projects such as e-filing systems and process improvements instead. The commenter asserted that the proposal harms fee-paying immigrants, such as those with master's and doctoral degrees in the STEM (science, technology, engineering, and mathematics) fields who are needed for the United States' international competitiveness. The commenter suggested that DOJ hire more IJs or that funding should come from Congress or by charging asylum seekers in expedited removal a fee that fully covers the cost to adjudicate their case.

Response: USCIS already performs humanitarian work through credible and reasonable fear screenings, asylum interviews, and refugee processing for which the costs are covered through fees paid by applicants and petitioners. Should this rule be funded through a future fee rule, the financing would be no different. This rule is not requiring fee-paying immigrants with master's and doctoral degrees in the STEM field to take on the full burden of this new program. Although some applicants who fall into these categories may face increased fees under a future fee rule, historically, changes to fees are spread across a variety of applicants and petitioners and are fully outlined in a notice-and-comment rulemaking.

Comment: A commenter asserted that the NPRM would cause significant harm to its mission and programming and to the clients it serves. It stated that it will need to make significant changes in its programming to provide meaningful representation and pro bono services and may have to divert more resources to represent asylum seekers in appeals. Additionally, the commenter asserted, the fast-tracking of interviews and the limitations on attorney representation during the interviews would significantly hinder its ability to provide legal services in a timely and meaningful manner. As a result, it would have a smaller population it could represent in the United States. Without access to counsel, it asserted, asylum seekers would be less likely to prevail on the merits of their claims. The commenter alleged that the consequences of these proposed changes would be devastating for tens of thousands of refugees whom the United States has committed to protecting.

Response: The Departments acknowledge the commenter's concern but disagree that this rule will negatively impact asylum seekers in the manner the commenter predicts. This rule is intended to improve the Departments' ability to consider the asylum claims of individuals encountered at or near the border more promptly while ensuring fundamental fairness. This rule does not change the requirements for asylum applicants or the evaluation criteria that are used during adjudication.

Prompt adjudication of these claims will benefit asylum seekers, the Departments, and the public. The Departments understand that applicants will need time to review their applications and supporting documentation, consult with representatives, and prepare for their Asylum Merits interviews before USCIS asylum officers. At the same time, the underlying purpose of this rulemaking is to establish a process for promptly adjudicating cases that heretofore have been drawn out for months or even years before EOIR. To balance the efficiency goals of the present rule with the fairness and due process concerns raised by commenters and shared by the Departments, the Departments are clarifying at 8 CFR 208.9(a)(1) that there will be a minimum of 21 days between the service of the positive credible fear determination on the applicant and the date of the scheduled Asylum Merits interview. This time frame mirrors the time frame provided to applicants in the affirmative asylum process, where asylum interviews are generally scheduled, and interview notices are mailed to applicants, 21 days in advance of the asylum interview date. This rule does not limit access to counsel for asylum applicants. To the contrary, 8 CFR 208.9(b) provides that ''[t]he applicant may have counsel or a representative present'' at the asylum interview, and 8 CFR 208.9(d)(1) provides the applicant's representative an opportunity to make a statement, comment on the evidence presented, and ask follow-up questions.

Moreover, the Departments are forgoing the IJ review procedure proposed by the NPRM. Rather, applicants who are not granted asylum after a hearing conducted by the asylum officer will be placed in streamlined section 240 removal proceedings. Although these proceedings will be substantially streamlined relative to ordinary section 240 proceedings, the Departments have designed a process that is intended to facilitate and preserve access to counsel and ensure that noncitizens receive a full and fair hearing.

First, noncitizens subject to these procedures who have not secured counsel by the time of their Asylum Merits interview will continue to have a meaningful opportunity to secure counsel during removal proceedings. The IFR provides for a 30-day gap between the asylum officer's decision not to grant asylum and the noncitizen's master calendar hearing in immigration court, during which time the noncitizen may seek counsel. At the master calendar hearing, IJs must advise unrepresented noncitizens of their rights in removal section 240 removal proceedings, including their right to

[96] *See* USCIS, *Backlog Reduction of Pending Affirmative Asylum Cases: Fiscal Year 2021 Report to Congress* (Oct. 20, 2021), *https://www.dhs.gov/sites/default/files/2021-12/USCIS%20-%20Backlog%20Reduction%20of%20Pending%20Affirmative%20Asylum%20Cases.pdf.*

representation and the availability of pro bono legal services, and provide a list of pro bono legal service providers. INA 240(b)(4), 8 U.S.C. 1229a(b)(4); 8 CFR 1240.10. The noncitizen will have an additional 30 days before the status conference to seek counsel without needing to request a continuance. A noncitizen who remains unrepresented at the status conference may request a continuance for good cause shown to secure counsel and may receive such continuances for up to an additional 30 days. *Matter of C–B–,* 25 I&N Dec. at 889 (''In order to meaningfully effectuate the statutory and regulatory privilege of legal representation . . . , the [IJ] must grant a reasonable and realistic period of time to provide a fair opportunity for a respondent to seek, speak with, and retain counsel.''). The IFR permits further continuances to secure counsel in appropriate circumstances even under the rule's heightened continuance requirements, which apply after 30 days of continuances have been granted. *See, e.g., Usubakunov,* 16 F.4th at 1305 (denial of a noncitizen's motion for a continuance to permit his attorney to be present at his merits hearing amounted to violation of his statutory right to counsel). Accordingly, the IFR provides a significant and reasonable amount of time for noncitizens to obtain counsel and allows for continuances to secure representation in appropriate circumstances.

Second, the IFR recognizes that a noncitizen might not obtain counsel before the beginning of proceedings and therefore allows for continuances or extensions of filing deadlines where counsel needs additional time to prepare, so long as counsel demonstrates that the need for the continuance or extension satisfies the applicable standard. The rule also provides flexibility to counsel by allowing noncitizens to file additional documents and supporting evidence after the filing deadline when certain conditions are met.

Third, the rule provides a meaningful opportunity for both represented and unrepresented noncitizens to present their claims during streamlined section 240 removal proceedings. The rule is consistent with IJs' duty to develop the record, and various provisions of the rule particularly enable IJs to do so in cases involving pro se respondents. In cases where the noncitizen is represented, the IFR is designed to streamline proceedings by narrowing the issues to be adjudicated, which the Departments anticipate will benefit all parties and their counsels as well as EOIR.

ii. Impacts on U.S. Workers, Companies, Economy

Approximately five commenters provided specific feedback about the impacts on U.S. workers, companies, and the economy.

Comments: A commenter expressed concern about the fiscal impact on American taxpayers and stated that the proposed rule is not clear about how USCIS will cover the costs related to the rule. Another commenter requested that DHS provide estimates of the proposal's impact on the number of immigrants and asylum seekers intending to enter the country and the costs associated with any increased immigration. The commenter also requested an estimate of how much the humanitarian effort of accepting asylees would cost the average U.S. citizen and expressed concern about immigration's impact on the country's limited financial resources.

Response: The work performed by USCIS is primarily paid for through fees collected from applicants or petitioners requesting immigration or naturalization benefits.[97] USCIS acknowledged in the NPRM that, if this rule were to be funded through a future fee rule, it would increase fees by an estimated weighted average of between 13 percent and 26 percent, depending on volumes of applicants. 86 FR 46937. USCIS conducts notice-and-comment rulemaking to raise fees and increase revenue for such staffing actions. Although speculating on future fees is outside of the scope of this rule, USCIS currently does not charge a fee to apply for asylum. USCIS is exploring all options to provide funding for this rule.

The population expected to be affected by this rule is the average number of credible fear completions processed annually by USCIS (71,363, *see* Table 3), split between an average of 59,280 positive-screen cases and 12,083 negative-screen cases. This can be considered the maximum ''encompassing'' population that could be impacted. However, the Departments take into consideration larger populations to account for variations and uncertainty in the future population. Regarding the costs associated with increased immigration, this rule focuses on the direct costs to USCIS related to staffing needs to absorb the new workload it will take on from EOIR. Further, the Departments recognize the role of support networks, which could include public and private entities and family and personal friends, legal services providers and advisors, religious and charity organizations, State and local public institutions, educational providers, and non-governmental organizations (''NGOs''), but it is not possible to place a monetary value on such support. The rule does not change the substantive eligibility standard for asylum or the evidentiary requirements. Therefore, USCIS has no reason to expect that the rule will have a significant effect on the number of individuals who may be granted asylum. Additionally, individuals whose asylum claims are pending are not provided any special humanitarian aid funded by U.S. taxpayers.

Comments: Several commenters speculated that, in the current economic situation of high inflation and low job-growth, the influx of working-age immigrants may create wage decreases impacting low-wage American workers. Another commenter cited a study and the testimony of a former member of Congress indicating that immigrants with low education and skills may compete with the most vulnerable Americans, which would assertedly lower wages and benefit businesses.

Response: The commenters suggesting that increased immigration, particularly of low-skilled immigrants, to the United States may adversely impact the wages of low-income Americans provide no evidence indicating such an impact would be the most likely outcome of this rulemaking. Furthermore, these comments blur the distinction between legal and illegal immigration and provide little evidence on the impact of asylum seekers in particular on wages.[98]

Faster adjudications for applicants who receive a positive credible fear determination mean they may enter the labor market sooner under this rule than they would currently. Conversely, some asylum seekers that currently enter the labor market with a pending asylum application will no longer enter the labor market under this rule if they receive a negative decision on their asylum claim at an earlier date. Therefore, at this time, it is unknown exactly how this rule will impact employment authorization for this population or what impacts such authorizations would have on the labor market. Because the ''(c)(8)'' EAD does not include or require, at the initial or

[97] *See* USCIS, Budget, Planning and Performance (May 28, 2021), *https://www.uscis.gov/about-us/budget-planning-and-performance.*

[98] Economic research indicates that immigration in general has had little effect on the distribution of wages in the United States in recent decades. *See* Jane G. Gravelle, Cong. Research Serv., R46212, *Wage Inequality and the Stagnation of Earnings of Low-Wage Workers: Contributing Factors and Policy Options* (Feb. 5, 2020), *https://crsreports.congress.gov/product/pdf/R/R46212/3* (last visited Mar. 5, 2022).

renewal stage, any data on employment, and since it does not involve an associated labor condition application, we have no information on wages, occupations, industries, or businesses that may employ such workers. Therefore, USCIS cannot confirm the type of work that asylum seekers obtain or the wages they earn.

The Bureau of Labor Statistics (''BLS'') publishes statistics on employment that can provide insight into the current economic situation. Total nonfarm payroll employment rose by 210,000 in November 2021, while the unemployment rate fell to 4.2 percent and the number of unemployed persons fell by 542,000 to 6.9 million.[99] BLS also publishes job openings, a measure of the unmet demand for labor. In November 2021, there were 10.6 million job openings.[100] Meanwhile, BLS' quarterly employment cost index shows that wages and salaries increased for civilian, private industry, and State and local government workers in September 2021.[101] The arguments that low job growth or the influx of working-age immigrants may create wage decreases impacting low-wage American workers are speculative and not supported by the data.

iii. Impacts on Federal Government

Impacts on U.S. Citizenship and Immigration Services

Approximately 15 submissions provided feedback about the impacts to USCIS.

Comments: Many commenters asserted that the proposed rule will do little to address case backlogs at either EOIR or USCIS and will require extensive resources from USCIS. Several commenters argued that the financial and administrative burden will shift from EOIR to USCIS. Multiple commenters expressed concern that resources will be drawn away from the current process in order to conduct training for and implement the new process, which will increase backlogs. Another commenter suggested that that newly hired asylum officers should be deployed to the existing asylum offices to reduce the already existing backlogs.

Response: EOIR's caseload includes a wide range of immigration and removal cases. Allowing asylum officers to take on cases originating in the credible fear process is expected to reduce delays across all of EOIR's docket, as well as reduce the time it takes to adjudicate these protection claims. By shifting that caseload to USCIS, the rule will enable IJs to focus efforts on other high-priority work.

USCIS acknowledges that it will take time and money to hire and train new asylum officers, but it does not anticipate shifting current resources to do so. Hiring and training asylum officers is already a part of regular USCIS operations. USCIS does not anticipate increased backlogs as a direct result of this rule. As stated in the NPRM and in this IFR, there is the potential for backlogs to be mitigated, though USCIS cannot predict the timing and scope of such potential changes with accuracy. Staffing levels and priorities across the agency are continuously monitored and actions are taken as needed.

Comments: Several commenters asserted that training asylum officers would increase financial burden on USCIS. Additionally, multiple commenters reasoned that, since USCIS funds itself based on fees, and because fees will not be charged for this new process, USCIS will not have enough funding to cover training and implementation of the new rule. Several commenters expressed concern that the proposed rule's economic analysis did not state USCIS's ability to pay for the additional costs or address other impacts to USCIS, such as appeals or accessibility issues due to the limited number of asylum offices and the need for expanded teleconferencing technology for remote hearings.

Response: As outlined in the NPRM and affirmed in this IFR, this rule does have associated costs, but it also has benefits (*see* Table 1). As previously stated, if the medium- and high-volume bands of 150,000 and 300,000 asylum applicants were to be funded through a future fee rule, it would increase fees by an estimated weighted average of 13 percent and 26 percent respectively. This estimated increase would be attributable to the implementation of the asylum officer portions of the proposed rule only. USCIS conducts notice-and-comment rulemaking to raise fees and increase revenue for such staffing actions. USCIS is exploring all options to provide funding for this rule.

The Departments do not expect this rule to result in an increase in appeals or the number of individuals requiring access to an asylum office, but they do recognize that the timing of appeals and asylum interviews may change because of this rule. As part of the estimated USCIS FY 2022 and FY 2023 funding requirements by volume of credible fear referrals (*see* Tables 7 and 8), USCIS included estimated costs associated with needs such as interpreter and transcription services, facilities, IT case management, and other contracts, supplies, and equipment. The Departments agree with the commenters that there will be expanded technology needs to implement this rule.

Comments: A commenter stated that moving the funding type from an appropriations-funded model to a fee-based enterprise model would result in USCIS's dependency on high fees to generate revenue.

Response: USCIS agrees generally that, if funding is sourced to fees, higher fees over time are necessary to generate revenue in line with costs, but disagrees that fee-based funding would generate a harmful dependency. USCIS relies on fees to fund almost all the work the agency performs. USCIS is exploring all options to provide funding for this rule. However, if the rule is to be funded through a future fee rule, it would increase fees by an estimated weighted average between 13 percent and 26 percent, depending on volumes of applicants.

Comments: A commenter stated that the rule does not make an appropriate comparison for the proposed new procedures. Specifically, the NPRM stated that USCIS would have to hire approximately 800 new employees and spend approximately $180 million to handle approximately 75,000 cases per year if the rule was implemented. The commenter said the rule improperly compares whether the proposed rule, backed with $180 million in new funding, would provide more fair and expeditious decisions than the existing system that receives no additional funding. The commenter said the appropriate comparison is whether the proposed rule, backed with $180 million in new funding, would provide more fair and expeditious decisions when compared with the existing system if the existing system were backed with $180 million in new funding.

Response: The Departments have determined that important procedural changes are needed to improve the system of asylum adjudication for cases originating in credible fear screening, and that simply adding more money to the existing procedures would not yield the same benefits in fairness and reduced delays. Implementing these important procedural changes will involve costs for, among other things, personnel and training. It is not possible

[99] BLS, The Employment Situation—November 2021 (Dec. 3, 2021), *https://www.bls.gov/news.release/archives/empsit_12032021.pdf* (last visited Feb. 27, 2022).

[100] BLS, Job Openings and Labor Turnover—November 2021 (Jan. 4, 2022), *https://www.bls.gov/news.release/archives/jolts_01042022.pdf* (last visited Feb. 27, 2022).

[101] BLS, Employment Cost Index—September 2021 (Oct. 29, 2021), *https://www.bls.gov/news.release/archives/eci_10292021.pdf* (last visited Feb. 27, 2022).

to place a monetary value on fairness and expeditiousness in the process of adjudicating the protection claims of noncitizens arriving at the border. However, to the extent that the $180 million amount referenced above would facilitate the implementation of the rule, the Departments believe that it will enable greater benefits in terms of fair and expeditious decisions than the same amount applied to the existing system.

Impacts on the Executive Office for Immigration Review

Approximately four submissions provided feedback about the impacts on EOIR.

Comments: A commenter worried that the proposed rule will do little address case backlogs and will require extensive resources from EOIR. Another commenter asserted that the proposed rule will further burden the immigration courts and create delays. A commenter argued that, although the proposed rule may limit the growth of the IJ docket, it does not offer any relief to IJs, and it merely moves some cases to USCIS, which already has a backlog of cases. A commenter was concerned that there is no reason to believe that conducting interviews in detention centers would be quicker than the EOIR process because doing so does not eliminate duplicative hearings and eliminates access to the courts.

Response: The rule will not directly change how cases that are already pending before EOIR are adjudicated. However, as stated in the NPRM, this rule is expected to slow the growth of EOIR's backlog and allow EOIR to work through its current backlog more quickly. First, the rule will allow DHS to process more noncitizens encountered at or near the border through expedited removal—rather than placing them into section 240 removal proceedings—thereby quickly and efficiently securing removal orders for those who do not make a fear claim or who receive a negative credible fear determination. Second, as explained above at Section IV.F.1.a of this preamble, this rule is estimated to reduce EOIR's overall credible fear workload by at least 15 percent. Third, the calculation described above sets a lower bound on EOIR's expected workload reduction, as it does not account for efficiencies that may be realized in cases that are referred to EOIR for streamlined section 240 proceedings. In these three ways, the rule will enable IJs to focus efforts on other high-priority work, including backlog reduction. The Departments agree that the interviews themselves may not take less time; however, the overall process for asylum applicants to apply, interview, and receive a decision will take less time. Adjudicative efficiency gains and revised parole guidelines for case-by-case consideration could lead to individuals spending less time overall in detention, which would benefit the Government, considering its limited resources and inability to detain all those apprehended, and the affected individuals, who would be able to continue to prepare for and pursue relief or protection outside the confines of a detention setting. Thus, as stated in the NPRM and in this IFR, there is the potential for backlogs to be mitigated, though we cannot predict the timing and scope of such potential changes with accuracy.

Comments: A commenter stated that, in the four months since the NPRM was drafted, the EOIR backlog grew by more than 100,000 cases, which is already larger than the number of cases (75,000) the proposed rule is intended to address. Further, the commenter argued that this expansion of duties would address only 5 percent of the overall immigration backlog and would require 27 percent of EOIR's overall budget.

Response: The Departments recognize the need to address the growing EOIR backlog, which is one of the catalysts for this rule. The NPRM developed three population bounds for credible fear screenings, ranging from 75,000 as a lower bound to 300,000 as an upper bound to account for possible variations in future years. 86 FR 46923. As stated, EOIR would not see the cases in which USCIS grants asylum, which the Departments estimate will result in at least a 15 percent reduction in the number of cases that would normally arrive at EOIR after a positive credible fear determination. Such efficiency improvements, in conjunction with streamlined review, could benefit applicants and the Government, though we cannot make exact predictions germane to these changes.

Other Comments on Impacts on the Federal Government

Approximately four submissions provided other comments on impacts on the Federal Government.

Comments: A commenter asserted that the emphasis on expedited removal and accompanying detention is likely to maintain or increase extremely high levels of unnecessary spending on detention.

Response: As stated in the NPRM and affirmed in this IFR, DHS will consider paroling detained individuals in the expedited removal process, on a case-by-case basis, consistent with the INA and relevant regulations and policies. Having considered all comments received on the issues of detention and parole, the Departments have determined that the current narrow standard should be replaced not with the standard proposed in the NPRM but with the standard of 8 CFR 212.5(b). That provision describes five categories of noncitizens who may meet the parole standard of INA 212(d)(5), 8 U.S.C. 1182(d)(5), based on a case-by-case determination, provided they present neither a security risk nor a risk of absconding: (1) Noncitizens who have serious medical conditions for which continued detention would not be appropriate; (2) women who have been medically certified as pregnant; (3) certain juveniles; (4) noncitizens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; and (5) noncitizens whose continued detention is not in the public interest. Expanding the potential for parole out of custody for this population is expected to improve the Departments' ability to utilize expedited removal for a greater number and more diverse category of noncitizens, mitigate associated detention costs, and promote the dignity of asylum applicants.

iv. Other Comments on Costs or Transfers

Approximately three submissions provided other comments on costs or transfers.

Comments: A commenter stated that the proposed rule will be costly to noncitizens; ICE attorneys; judges and staff of the immigration courts and the BIA; the Office of Immigration Litigation in the Department of Justice, which will have to defend the denials of asylum and protection appeals in Federal courts; and judges and staff of the U.S. Courts of Appeals. Further, the commenter asserted that the proposed rule's economic analysis did not reflect costs to the Federal judiciary.

Response: The Departments do not expect this rule to be the cause of an increase in the number of appeals to the BIA or petitions for review before a U.S. Court of Appeals. Noncitizens who receive a negative credible fear determination may seek a de novo review of that determination by an IJ but otherwise have no opportunity for further appeal. *See* 8 U.S.C. 1225(b)(1)(B)(iii). The IFR does not change that. An applicant whose asylum claim is denied and who is ordered removed may appeal the decision to the BIA and further petition for review by a U.S. Court of Appeals. This rule does not change the current appeals process,

nor is it expected to result in a greater number of BIA appeals or U.S. Court of Appeals petitions for review than would occur otherwise.

Comments: A commenter asserted that the rule would increase costs and time frames for various reasons: interview length will increase; asylum officers will be required to write a justification for the decision in cases where they do not grant asylum; transcripts of hearings will take longer to make; asylum officers will be required to read lengthy transcripts; applicants may unfairly be denied a chance to appeal if they have to understand and file a notice of appeal; IJs will have more paperwork; and counsel will routinely appeal cases in which the IJ denied a motion to allow for additional testimony and evidence.

Response: The Departments estimated the costs of transcription services, which are included in Table 8 as their own line item. USCIS does not currently estimate asylum interview times because each case is unique, and there are a variety of factors outside of this rulemaking that may impact the length of an interview. Asylum officers are already required to review all documentation submitted by and pertinent to an asylum applicant prior to an interview. Likewise, regardless of the decision being made, an asylum officer provides a justification for the decision, which is then reviewed. This rule does not change the requirements for asylum applicants or the evaluation criteria that are used during adjudication.

Comment: Several commenters said the proposed rule would create a ''massive new USCIS infrastructure,'' the cost of which would be borne by other applicants for USCIS benefits.

Response: USCIS has estimated the staffing resources it will need to implement this rule at somewhere between 794 and 4,647 total new positions. USCIS acknowledged in the NPRM that if this rule were to be funded through a future fee rule, it would increase fees by an estimated weighted average between 13 percent and 26 percent, depending on volumes of applicants. USCIS is exploring all options to provide funding for this rule and will consider the overall costs borne by applicants for USCIS benefits in doing so.

Comments: A commenter requested that the proposed rule be funded by taxpayers.

Response: USCIS is exploring all options to provide funding for this rule. USCIS acknowledged in the NPRM that, if this rule were to be funded through a future fee rule, it would increase fees by an estimated weighted average between 13 percent and 26 percent, depending on volumes of applicants. That estimate, however, does not preclude USCIS from considering other sources of funding, such as funding from taxpayers.

d. Other Comments on Impacts and Benefits of the Proposed Rulemaking

Comments: Several commenters said the Departments did not analyze or discuss the likelihood that the proposed rule's revisions to the asylum process would encourage more noncitizens to seek asylum. For example, the Departments considered the administrative efficiencies expected to be gained from the rule and the expected benefits conferred upon non-citizens availing themselves of the asylum process through quicker adjudication timelines. But the Departments allegedly failed to analyze or discuss whether these changes to the asylum process would in fact encourage more noncitizens living abroad to make their way to the United States. The commenters asserted that an increase in noncitizens seeking to enter the United States will further drive up enforcement actions at the Southwest border and increase the statistical likelihood of non-meritorious asylum claims and illegal entry overall. The commenter argued that MPP, for example, achieved concrete results in managing asylum seekers attempting to cross the Southwest border, but claimed it was unclear whether the proposed rule would achieve even remotely the same results because the Departments failed to analyze this issue. At a minimum, the commenter said, the Departments should have addressed with specificity whether the proposed rule would be expected to decrease or increase the number of noncitizens attempting to travel to the United States to seek asylum and explain the basis for their conclusions.

Response: The Departments do not expect this rule to encourage or cause an increase in the number of individuals seeking asylum in the United States. As explained above, this rule is not expected to create any significant new incentives that would drive increased irregular migration. To the contrary, by reducing the amount of time a noncitizen can expect to remain in the United States with a pending asylum claim that originated in credible fear screening, the rule dramatically reduces a critical incentive for noncitizens not in need of protection to exploit the system. Although eligible individuals may be granted asylum sooner, ineligible individuals may be identified and ordered removed more quickly. This rule does not change the substantive standard for asylum eligibility, and commenters have not identified any evident causal mechanism by which the rule as a whole, in context, would systematically and substantially incentivize more individuals to seek to enter the United States and pursue asylum.

2. Paperwork Reduction Act

Comments: A commenter requested eliminating Form I–589 in order to prevent asylum applicants from facing rejection, delays, or missing the deadline because the form was not correctly completed. The commenter argued that Form I–589 is burdensome for applicants to complete because it is technical and is written in and must be completed in English (although most asylum seekers have limited English proficiency). The commenter also stated that many asylum seekers do not have legal representation while filling out the form, often causing applicants to make mistakes and leave required questions blank, which could result in rejection of the application.

Response: The rule addresses the commenter's concern in that applicants with a positive credible fear determination who are placed into the Asylum Merits process will not have to file a Form I–589. Rather, such an applicant's credible fear record will serve as the asylum application. This process will also ensure applicants can apply for an EAD as soon as possible once the requisite time period has been met based on the date of service of a positive credible fear determination that serves as the date of filing of an asylum application. This streamlined process will not only promote efficiency but will also serve the interests of fairness and human dignity while simultaneously reducing the burden on asylum support networks and the public by ensuring asylum seekers have access to employment authorization as quickly as possible. Additionally, the rule will promote equity and due process by ensuring that individuals who are allowed to remain in the United States for the express purpose of having their asylum claims adjudicated after receiving a positive credible fear determination do not inadvertently miss the one-year filing deadline for asylum after being placed into section 240 removal proceedings and failing to defensively file their Form I–589 within the first 12 months. The requirement for affirmative asylum applicants and defensive asylum applicants in traditional section 240 removal

proceedings to submit a Form I–589 is outside the scope of this rulemaking.

3. Other Comments on Statutory and Regulatory Requirements

Approximately four submissions provided other feedback on statutory and regulatory requirements.

National Environmental Policy Act (''NEPA'')

Comments: Two commenters expressed concerns that the Departments have not adequately complied with NEPA, 42 U.S.C. 4321 *et seq.,* by failing to specifically consider certain potential environmental impacts of this rule. The comments focused primarily on population growth impacts. Commenters also raised broader concerns about the adequacy of DHS's NEPA compliance procedures as set forth in the relevant DHS implementing directive and instruction manual.

Response: Even assuming that such impacts are amenable to meaningful analysis in some contexts, any such analysis with respect to this rule would be fundamentally speculative in nature. This rule will not alter immigration eligibility criteria or result in an increase in the number of individuals who may be admitted or paroled into the United States. Rather, this rule changes specific procedures for adjudicating certain asylum claims pursuant to existing standards and shifts certain adjudicative responsibilities from DOJ to DHS. The commenters offered no basis to conclude that such changes would result in environmental impacts susceptible to meaningful analysis. This rule will not result in any major Federal action that will significantly affect the human environment and is not part of a larger action. As discussed in the NPRM and in the NEPA section below, the rule falls squarely within Categorical Exclusions A3(a) and A3(d) in *DHS Instruction Manual 023–01–001–01. See* DHS, *Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act (NEPA) A–1, A–2* (Nov. 6, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf* (*Instruction Manual 023–01*). Commenters' broader concerns about the adequacy of DHS's NEPA compliance procedures are outside the scope of this rulemaking.

Federalism

Comments: Commenters asserted that the proposed rule failed to properly consider and analyze federalism concerns. The commenters stated that, contrary to the Departments' conclusion that the proposed rule insubstantially impacts States and presents no substantial federalism concerns, the proposed rule would have wide-ranging effects on States' finances and resources. Finally, the commenters argued that the Departments should reassess federalism implications and republish the proposed rule.

In contrast, another commenter asserted that the proposed rule does not have sufficient federalism implications to require a federalism summary impact statement. The commenter referenced section 6 of Executive Order 13132 and stated that the proposed rule would not have direct effect on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the different levels of government.

Response: The Departments did consider federalism concerns and determined that the rule would not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. 86 FR 46939. The Departments also determined the rule is within the purview and authority of the Departments and does not directly affect States. *Id.* As detailed above, the rule's primary consequences are to authorize a new procedure by which asylum claims originating in credible fear screening may be adjudicated and to authorize a revision to the regulations governing parole of noncitizens in expedited removal. The latter change will enable DHS to place more noncitizens encountered at or near the border into expedited removal, allowing such noncitizens who do not make a fear claim or who are determined not to have a credible fear of persecution or torture to be ordered removed more swiftly.

The Departments further note that immigration generally is an area of Federal regulation in which the Federal Government, rather than the States, has the preeminent role. *See, e.g., Toll* v. *Moreno,* 458 U.S. 1, 10–12 (1982) (''Our cases have long recognized the preeminent role of the Federal Government with respect to the regulation of aliens within our borders.''); *Truax* v. *Raich,* 239 U.S. 33, 42 (1915) (''The authority to control immigration—to admit or exclude aliens—is vested solely in the Federal government.''); *accord Sure-Tan, Inc.* v. *NLRB,* 467 U.S. 883, 897 (1984) (explaining that third parties lack a cognizable interest ''in procuring enforcement of the immigration laws'' against third parties in particular ways).

Unfunded Mandate Reform Act (''UMRA'')

Comments: Several commenters asserted that the proposed rule failed to analyze whether an unfunded mandate was being imposed on the States. The commenters wrote that the Departments addressed the requirements of the UMRA by denying any impact. However, the commenters raised concerns and provided examples of how States may incur costs associated with undocumented noncitizens or noncitizens who have been granted asylum. Further, the commenters said that, contrary to the requirements of the UMRA, the Departments failed to allow elected leaders in State, local, and Tribal government to provide input on the proposed rule.

Response: The Departments disagree with these comments. The UMRA is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. As stated in the NPRM, although this rule is expected to exceed the $100 million expenditure in any one year when adjusted for inflation ($169.8 million in 2020 dollars based on the Consumer Price Index for All Urban Consumers (''CPI–U'')),[102] the Departments do not believe this rule would impose any unfunded Federal mandates on State, local, or Tribal governments, in the aggregate, or on the private sector. The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6). The term ''Federal intergovernmental mandate'' means, in relevant part, a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2

[102] *See* BLS, Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items, By Month, *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202103.pdf* (last visited Feb. 28, 2022). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the most recent current year available (2020); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2020 – Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(258.811 – 152.383)/152.383] * 100 = (106.428/152.383) *100 = 0.6984 * 100 = 69.84 percent = 69.8 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.698 = $169.8 million in 2020 dollars.

U.S.C. 658(5). The term ''Federal private sector mandate'' means, in relevant part, a provision that would impose an enforceable duty upon the private sector (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See* 2 U.S.C. 658(7).

This rule does not contain such a mandate because it does not impose any enforceable duty upon any other level of government or private-sector entity. Any downstream effects on such entities would arise solely due to their voluntary choices and would not be a consequence of an enforceable duty. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under the UMRA.[103] The requirements of the UMRA, therefore, do not apply to this rule; accordingly, the Departments have not prepared an UMRA statement.

Comments: Several States asserted that States and local communities ''disproportionately bear the social and economic costs of illegal immigration'' because immigrants may arrive with ''little to no warning,'' a criminal record, and little to no resources, with States ultimately bearing the cost of providing assistance for such individuals. Additionally, two commenters stated that noncitizens granted the legal status of asylee are entitled to certain public benefits, such as Social Security Income, Medicaid, welfare, food stamps, employment authorization, a driver's license, education, and healthcare, which Americans rely on.

Response: To the extent that States and local communities bear social or economic costs associated with what the commenters term ''illegal immigration,'' or with noncitizens entering the United States without documentation and seeking asylum, those are not costs associated with this rule. As explained above, this rule is not expected to create any significant new incentives that would drive increased irregular migration. To the contrary, by reducing the amount of time a noncitizen can expect to remain in the United States with a pending asylum claim, the rule dramatically reduces a critical incentive for noncitizens not in need of protection to exploit the system.

Moreover, with regard to the asserted ''social cost,'' commenters cited figures associated with noncitizens within the United States who are taken into ICE custody and thus improperly conflated the characteristics of such noncitizens with the characteristics of noncitizens encountered at or near the border seeking asylum.[104] The commenters' assumptions and generalizations about the characteristics of noncitizens seeking asylum in the United States, including their assumptions about the extent to which this population relies on public services or support rather than private support networks, are not supported by evidence.

With regard to the asserted economic or fiscal cost, commenters referenced public benefits and public services, as well as State expenditures on border security and policing. However, as explained in more detail above, estimating the net fiscal impact of immigration is a complex calculation that requires consideration of not only Government expenditures on public benefits and services but also the various tax contributions the noncitizens in question make to public finances. Commenters did not provide information or data that would allow for a reliable estimation of the net fiscal impact associated with relevant populations or associated with any marginal change in relevant populations.[105]

The Departments have acknowledged the role of support networks in supporting noncitizens affected by this rule. Notably, this rule's reduction in adjudication delays may allow some noncitizens to become eligible for employment authorization—and enter the labor market—sooner under this rule than they currently would, which could lead to less reliance on those support networks. Individuals granted asylum may work immediately.

Executive Order 13990

Comments: A commenter stated that the proposed rule does not mention Executive Order 13990, which requires agencies to use an interim estimate of the social costs of greenhouse gases when monetizing the value of changes regulations. The commenter said it is clear that the Departments did not refer to the Executive order during rulemaking, and that it is arbitrary and capricious for agencies to follow the Executive order only when the Biden Administration dislikes a policy.

Response: Executive Order 13990 seeks to protect public health and the environment and restore science to tackle the climate crisis. The Departments agree with the commenter that they did not mention or refer to E.O. 13990 for this rulemaking. This rule establishes a new procedure by which individuals who receive a positive credible fear determination may have their claims for asylum adjudicated by USCIS in the first instance, rather than EOIR bearing the full responsibility for adjudicating such claims. The changes made through this rule are within the purview and authority of the Departments and do not have any direct or substantial link to greenhouse gas emissions. Moreover, the rule does not otherwise relate to the subject matter of E.O. 13990.[106]

G. Comments Outside of the Scope of This Rulemaking

The Departments received many comments outside of the scope of this rulemaking. Because these comments are outside of the relevant scope, the Departments are not providing responses to these comments or addressing the issues raised in these comments. Comments from the public outside of the scope of this rulemaking concerned the following issues: USCIS maintaining its ''Last In, First Out'' affirmative asylum scheduling process to reduce incentives for applicants to file only for the purpose of obtaining an EAD; termination of the Deferred Action for Childhood Arrivals (''DACA'') program; a recommendation that individuals seeking protection due to climate change should receive positive credible fear determinations and be granted asylum; policies relating to Afghan evacuees; the title 42 order

[103] *See* 2 U.S.C. 1502(1), 658(6).

[104] For example, commenters cited ICE's FY 2020 Enforcement and Removal Operations Report for the proposition that 90 percent of the noncitizens administratively arrested by ICE in FY 2020 had either criminal convictions or criminal charges pending. But, as that report makes clear, in FY 2020, due to the COVID–19 pandemic, ICE ''narrowly focus[ed] enforcement efforts on public safety risks and individuals subject to mandatory detention based on criminal grounds.'' *See* ICE, *U.S. Immigration and Customs Enforcement Fiscal Year 2020 Enforcement and Removal Operations Report* 4 (2020), *https://www.ice.gov/doclib/news/library/reports/annual-report/eroReportFY2020.pdf.*

[105] Much of the information commenters did cite, moreover, was not specific to recently arrived noncitizens pursuing asylum claims but instead attempted to estimate—for example—total education costs associated with students with limited English proficiency, total education costs associated with all children living in a household with an undocumented person, or total costs certain States have incurred for law enforcement agencies conducting public safety and security activities near the Southwest border. *See* Marc Ferris and Spencer Raley, *The Elephant in the Classroom: Mass Immigration's Impact on Education, Federation for American Immigration Reform* 6 (Sept. 2016), *https://www.fairus.org/sites/default/files/2017-08/FAIR-Education-Report-2016.pdf* (last visited Feb. 28, 2022); Matthew O'Brien, Spencer Raley, and Jack Martin, *The Fiscal Burden of Immigration on United States Taxpayers, Federation for American Immigration Reform* 1 (2017), *https://www.fairus.org/sites/default/files/2017-09/Fiscal-Burden-of-Illegal-Immigration-2017.pdf* (last visited Feb. 28, 2022).

[106] In addition, a district court has enjoined certain agencies from implementing Section 5 of E.O. 13990. *See Louisiana* v. *Biden,* No. 2:21–cv–1074, 2022 WL 438313 (W.D. La. Feb. 11, 2022), *appeal filed,* No. 22–30087 (5th Cir. Feb. 19, 2022).

issued by the Centers for Disease Control and Prevention; policies relating to immigration vetting and background checks; and other immigration and border management policies.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The APA generally requires agencies to publish notice of a proposed rulemaking in the **Federal Register** and allow for a period of public comment. 5 U.S.C. 553(b). The Departments published an NPRM on August 20, 2021, and allowed for a 60-day comment period. As detailed previously, in response to comments, the Departments have altered the rule in multiple ways. The Departments are in compliance with the APA's notice-and-comment requirements with respect to these changes because each change is a logical outgrowth of the proposals set forth in the NPRM, or a rule of agency procedure to which the notice-and-comment requirements do not apply, or both.

To satisfy the APA's notice-and-comment requirements, generally, the final rule an agency adopts must either meet an exception to the notice-and-comment requirements or be a logical outgrowth of the NPRM. *Long Island Care at Home, Ltd.* v. *Coke,* 551 U.S. 158, 174 (2007). The logical outgrowth test asks whether the purposes of notice and comment have been adequately served, such that there was ''fair notice.'' *See id.* ''In most cases, if the agency . . . alters its course in response to the comments it receives, little purpose would be served by a second round of comment.'' *Am. Water Works Ass'n* v. *EPA,* 40 F.3d 1266, 1274 (D.C. Cir. 1994). Accordingly, the ''logical outgrowth'' test normally is applied to consider ''whether a new round of notice and comment would provide the first opportunity for interested parties to offer comments that could persuade the agency to modify its rule.'' *Id.* The changes made in this IFR were adopted in response to comments received and build logically on the NPRM. Thus, in these circumstances, ''interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period.'' *CSX Transp., Inc.* v. *Surface Transp. Bd.,* 584 F.3d 1076, 1079–80 (D.C. Cir. 2009) (quotation marks omitted).

Moreover, the APA's notice-and-comment requirements do not apply to ''rules of agency . . . procedure.'' 5 U.S.C. 553(b)(A). A '' 'critical feature' of the procedural exception 'is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.' '' *JEM Broad. Co., Inc.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994) (quoting *Batterton* v. *Marshall,* 648 F.2d 694, 707 (D.C. Cir. 1980)); *cf. Texas* v. *United States,* 809 F.3d 134, 176 (5th Cir. 2015) (holding that a rule is not procedural when it ''modifies substantive rights and interests'' (quoting *U.S. Dep't of Lab.* v. *Kast Metals Corp.,* 744 F.2d 1145, 1153 (5th Cir. 1984)). ''In determining whether a rule is substantive, [a court] must look at [the rule's] effect on those interests ultimately at stake in the agency proceeding.'' *Neighborhood TV Co., Inc.* v. *FCC,* 742 F.2d 629, 637 (D.C. Cir. 1984). ''Hence, agency rules that impose 'derivative,' 'incidental,' or 'mechanical' burdens upon regulated individuals are considered procedural, rather than substantive.'' *Nat'l Sec. Couns.* v. *CIA,* 931 F. Supp. 2d 77, 107 (D.D.C. 2013); *see Am. Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1051 (D.C. Cir. 1987). Moreover, ''an otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties.'' *James V. Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277, 281 (D.C. Cir. 2000). Finally, although a procedural rule generally may not ''encode[ ] a substantive value judgment or put[ ] a stamp of approval or disapproval on a given type of behavior,'' *Bowen,* 834 F.2d at 1047, ''the fact that the agency's decision was based on a value judgment about procedural efficiency does not convert the resulting rule into a substantive one,'' *Glickman,* 229 F.3d at 282.

Notably, many of the revisions to the proposed rule do not alter individuals' rights or interests. *See JEM Broad.,* 22 F.3d at 326. Instead, the revisions relate to the procedure by which such claims shall be presented before the agencies, *see id.,* without encoding a substantive value judgment, *see Bowen,* 834 F.2d at 1047, other than the need for procedural efficiency, *see Glickman,* 229 F.3d at 282; *see also Lamoille Valley R. Co.* v. *I.C.C.,* 711 F.2d 295, 328 (D.C. Cir. 1983) (holding that an order changing the schedule for an adjudication, including when parties were to submit briefing, was a procedural rule); *Elec. Priv. Info. Ctr.* v. *U.S. Dep't of Homeland Sec.,* 653 F.3d 1, 5 (D.C. Cir. 2011) (even ''a rule with a 'substantial impact' upon the persons subject to it is not necessarily a substantive rule'' (citing *Pub. Citizen* v. *Dep't of State,* 276 F.3d 634, 640–41 (D.C. Cir. 2002)); *Ranger* v. *FCC,* 294 F.2d 240, 244 (D.C. Cir. 1961) (while holding that a rule was procedural, noting that ''no substantive rights were actually involved by the regulation itself'' even if ''failure to observe it might cause the loss of substantive rights'').

Although additional notice and comment are not required, the Departments acknowledge that they would benefit from the public's input on the provisions in this IFR as well as the IFR's implementation. However, the Departments also believe that the immigration system would benefit from rapid implementation of the rule, which is lawful given that the rule is a logical outgrowth of the NPRM and because the changes relate to procedural issues. The benefits of rapid implementation include the ability to begin allocating resources to implement the new process, including hiring asylum officers, which can take many months. Further, the benefit of additional public comment alongside practical experience with gradual implementation will aid the Departments in promulgating a future final rule. For these reasons, the Departments have decided to follow the NPRM with this IFR.

B. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, to the extent permitted by law, to proceed only if the benefits justify the costs. They also direct agencies to select regulatory approaches that maximize net benefits while giving consideration, to the extent appropriate and consistent with law, to values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. In particular, E.O. 13563 emphasizes the importance of not only quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility, but also considering equity, fairness, distributive impacts, and human dignity. All of these considerations are relevant here. OIRA within OMB has designated this IFR an economically significant regulatory action under sec. 3(f)(1) of E.O. 12866. Accordingly, OIRA has reviewed this regulation.

1. Summary of the Rule and Its Potential Impacts

As detailed previously, in response to comments, the Departments have

altered the rule in multiple ways from the NPRM. None of the revisions outlined in Section II.C of this preamble has led to revisions in the overall cost benefit analysis, which remains unchanged from the NPRM. However, relative to the NPRM, the changes in this IFR, such as the use of streamlined section 240 removal proceedings in place of the NPRM's IJ review procedure, may result in smaller overall operational efficiencies, as discussed below.

This rule changes and streamlines the overall adjudicatory process for asylum applications arising out of the expedited removal process. By reducing undue delays in the system, and by providing a variety of procedural safeguards, the rule protects equity, human dignity, and fairness.

A central feature of the rule changes the respective roles of an IJ and an asylum officer during proceedings for further consideration of asylum applications after a positive credible fear determination. Notably, IJs will retain their existing authority to review de novo the negative determinations made by asylum officers in a credible fear proceeding. In making credible fear determinations, asylum officers will return to evaluating whether there is a significant possibility that the noncitizen could establish eligibility for asylum, withholding of removal, or CAT protection for possible referral to a full hearing of the claim, and the noncitizen will still be able to seek review of that negative credible fear determination before the IJ.

Asylum officers will take on a new role of adjudicating the merits of protection claims made by some noncitizens who have received a positive credible fear determination, a role previously carried out only by IJs as part of a proceeding under section 240 of the INA. Noncitizens whose claims are not granted by an asylum officer will be referred to an IJ for a streamlined section 240 removal proceeding.

The population of individuals likely to be affected by this rule's provisions are individuals for whom USCIS completes a credible fear screening. The average annual number of credible fear screenings for FY 2016 through 2020 completed by USCIS is broken out as 59,280 positive credible fear determinations and 12,083 negative credible fear determinations, for a total of 71,363 individuals with credible fear determinations. DHS expects that this population will be affected by the rule in a number of ways, which may vary from person to person depending on (1) whether the individual receives a positive credible fear determination, and (2) whether the individual's asylum claim is granted by an asylum officer. In addition, because of data constraints and conceptual and empirical challenges, we can provide only a partial monetization of the impacts on individuals. For example, asylum seekers who establish credible fear may benefit from having their asylum claims adjudicated potentially sooner than they otherwise would. Those who are granted asylum sooner receive humanitarian protection from the persecution they faced in their country of origin on account of their race, religion, nationality, membership in a particular social group, or political opinion, and they have a possible path to citizenship in the United States. These outcomes obviously constitute a benefit in terms of human dignity and equity, but it is a benefit that is not readily monetized. Asylum seekers who establish credible fear may also benefit from cost savings associated with not having to incur filing expenses, as well as earlier labor force entry. The Departments have estimated this impact on a per-person workday basis.

As it relates to the Government and USCIS costs, the planned human resource and information-related expenditures required to implement this rule are monetized as real resource costs. These estimates are developed along three population bounds, ranging from 75,000 to 300,000 credible fear screenings to account for possible variations in future years. Furthermore, the possibility of parole for more individuals—applied on a case-by-case basis—could lower the cost to the Government per person processed. The Departments have also estimated potential employment tax impacts germane to earlier labor force entry, likewise on a per-person workday basis. Such estimates made on a per-person basis reflect a range of wages that the impacted individuals could earn. The per-person per-workday estimates are not extended to broader monetized impacts due to data constraints.

An important caveat for the possible benefits to asylum applicants who establish a credible fear introduced above and discussed more thoroughly in this analysis is that it is expected to take time to implement this rule. Foremost, the Departments expect the resourcing of this rule to be implemented in a phased approach. Further, although up-front expenditures to support the changes from this rule based on planning models are high, the logistical and operational requirements of this rule may take time to fully implement. For instance, once USCIS meets its staffing requirements, time will be required for the new asylum staff to be trained for their positions, which may occur over several months. As a result, the benefits to applicants and the Government may not be realized immediately.

To develop the monetized costs of the rule, the Departments relied on a low, midrange, and high population bound to reflect future uncertainty in the population. In addition, resources are partially phased in over FYs 2022 and 2023, as a full phasing in of resources, potentially up to FY 2026, is not possible at this time because of budget constraints and timing of hiring, and because the Departments do not have fully developed resource projections applicable to this rule stretching past FY 2023. The average annualized cost of this rule ranges from $180.4 million to $1.0 billion, at a 3 percent discount rate, and from $179.5 million to $995.8 million, at a 7 percent discount rate. At a 3 percent discount rate, the total 10-year costs could range from $1.5 billion to $8.6 billion, with a midpoint of $3.9 billion. At a 7 percent discount rate, the total 10-year costs could range from $1.3 billion to $7.0 billion, with a midpoint of $3.2 billion.

A summary of the potential impacts of this IFR are presented in Table 1 and are discussed in more detail more in the following analysis. Where quantitative estimates are provided, they apply to the midpoint figure (applicable to the wage range or the population range).

TABLE 1—SUMMARY OF THE EXPECTED IMPACTS OF THE INTERIM FINAL RULE

Entities impacted	Annual population estimate	Expected impacts
Individuals who receive a positive credible fear determination.	USCIS provides a range from 75,000 to 300,000 total individuals who receive credible fear determinations. In recent years (*see* Table 3), approximately 83.1 percent of individuals screened have received a positive credible fear determination.	• Maximum potential cost-savings to applicants of Form I–589 of $364.86 per person. • Potential cost savings to applicants of Form I–765 of $370.28 per person. • Potential early labor earnings for asylum applicants who obtain an EAD of $225.44 per person per workday. This impact could potentially constitute a transfer from workers in the U.S. labor force to certain asylum applicants. We identified two factors that could drive this impact of early entry to the labor force: (i) More expeditious grants of asylum, thereby authorizing work incident to status; and (ii) a change in timing apropos to the ''start'' time for filing for employment authorization—the ''EAD-clock'' duration is not impacted, but it ''shifts'' to an earlier starting point. On the other hand, some individuals who would have reached the ''EAD-clock'' duration for a pending asylum application and obtained employment authorization under the current regulations may not obtain employment authorization if their asylum claims are promptly denied. • The impacts involving compensation to individuals may be overstated because of potential value of non-paid work such as childcare or housework. • Individuals might not have to wait lengthy times for a decision on their protection claims. This is a benefit in terms of equity, human dignity, and fairness. • Some individuals could benefit from de novo review by an IJ of the asylum officer's decision not to grant their asylum claims.
Individuals who receive a negative credible fear determination.	USCIS provides a range from 75,000 to 300,000 total individuals who receive credible fear determinations. In recent years (*see* Table 3), approximately 16.9 percent of individuals screened have received a negative credible fear determination.	• Some individuals may benefit in terms of human dignity if paroled from detention while awaiting their credible fear interviews and determinations. • Parole may result in more individuals failing to appear for hearings.
DHS–USCIS	N/A	• At a 7 percent discount rate, the resource costs could be $451.2 million annually, based on up-front and continuing expenditures. • It is reasonable to assume that there could be a reduction in Form I–765 filings due to more expeditious adjudication of asylum claims, but there could also be countervailing influences; hence, the volume of Form I–765 filings (writ large or for specific classes related to asylum) could decrease, remain the same, or increase—these reasons are elucidated in the analysis. A net change in Form I–765 volumes overall could impact the incumbent volume of biometrics and biometrics services fees collected; however, based on the structure of the USCIS ASC biometrics processing contract, it would take a significant change in such volumes for a particular service district to generate marginal cost increases or savings per biometrics submission.
EOIR	555 current IJs as well as support staff and other personnel.	• After implementation is fully phased in, EOIR no longer adjudicates asylum claims raised in expedited removal in the first instance. EOIR would conduct streamlined section 240 removal proceedings for individuals not granted asylum. • Allows EOIR to focus efforts on other high-priority work and reduce its substantial current backlog. • There could be non-budget related cost savings if the actual time worked on a credible fear case decreases in the transfer of credible fear cases to USCIS.
Support networks for asylum applicants who receive a positive credible fear determination.	Unknown	• To the extent that some applicants may be able to earn income earlier than they otherwise could currently, burdens on the support network of the applicant may be lessened. This network could include public and private entities and family and personal friends, legal services providers and advisors, religious and charitable organizations, State and local public institutions, educational providers, and NGOs.
Other	Unknown	• There could be familiarization costs associated with this IFR; for example, if attorneys representing each asylum client reviewed the rule, based on average reading speed, the cost would be about $76.3 million, which would potentially be incurred during the first year the rule is effective. • There may be some labor market impacts as some asylum seekers who currently enter the labor market with a pending asylum application would no longer be entering the labor market under this IFR if they receive negative decisions on their asylum claims sooner. Applicants with a positive credible fear determination may enter the labor market sooner under this IFR than they would currently. • Tax impacts: Employees and employers would pay their respective portion of Medicare and Social Security taxes as a result of the earlier entry of some individuals into the labor market. We estimate employment tax impacts could be $34.49 per person on a workday basis.

In addition to the impacts summarized above, and as required by OMB Circular A–4, Table 2 presents the prepared accounting statement showing the costs and benefits associated with this regulation.

TABLE 2—OMB A–4 ACCOUNTING STATEMENT
[$ millions, FY 2020]

Time period: FY 2022 through FY 2031				
Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation
Benefits				
Monetized benefits	Not estimated	Not estimated	Not estimated	
Annualized quantified, but un-monetized, benefits	N/A	N/A	N/A	
Unquantified benefits	Some individuals may benefit from filing cost savings related to Forms I–589 and I–765. Early labor market entry would be beneficial in terms of labor earnings to the applicant, but also because it could reduce burdens on the applicants' support networks. Benefits driven by increased efficiency would enable some asylum-seeking individuals to move through the asylum process more expeditiously than through the current process, with timelines potentially decreasing significantly, thus promoting both human dignity and equity. Adjudicative efficiency gains and expanded possibility of parole on a case-by-case basis could lead to individuals spending less time in detention, which would benefit the Government and the affected individuals. Another, potentially very significant, benefit is that EOIR would not see the cases in which USCIS grants asylum, which we estimate as at least a 15 percent reduction in its overall credible fear workload. This could help mitigate the backlog of cases pending in immigration courts. Additionally, this benefit would extend to individuals granted or not granted asylum faster than if they were to go through the current process with EOIR. Depending on the individual case circumstances, this IFR would mean that such noncitizens would likely not remain in the United States—for years, potentially—pending resolution of their claims, and those who qualify for asylum would be granted asylum several years earlier than under the present process. The anticipated operational efficiencies from this IFR may provide for prompt grant of relief or protection to qualifying noncitizens and ensure that those who do not qualify for relief or protection may be removed sooner than under current rules. Relative to the NPRM, the changes in this IFR may result in smaller operational efficiencies to DHS because the ICE Office of the Principal Legal Advisor will need to play a more significant role because noncitizens not approved for asylum will now be placed into streamlined section 240 removal proceedings.			Regulatory Impact Analysis ("RIA").
Costs				
Annualized monetized costs for 10-year period between 2021 and 2030 (discount rate in parentheses).	(3 percent) $453.8	$180.4	$1,002.4	RIA.
	(7 percent) $451.2	$179.5	$995.8	
Annualized quantified, but un-monetized, costs	• Potential cost-savings applicable to Form I–589 of $338.86 per person.			RIA.
	• Potential cost-savings applicable to Form I–765 of $377.32 per person. • Familiarization costs of about $76.3 million (in 2022). • The transfer of cases from EOIR to USCIS would allow resources at EOIR to be directed to other work, and there is a potential for cost savings to be realized for credible fear processing specifically if the average cost of worktime spent on cases by USCIS asylum officers would be lower than at EOIR currently. These would not be budgetary cost savings, and USCIS has not made a one-to-one time- and cost-specific comparison between worktime actually spent on a case at EOIR and USCIS.			RIA.
Qualitative (unquantified) costs	N/A			

TABLE 2—OMB A–4 ACCOUNTING STATEMENT—Continued
[$ millions, FY 2020]

Time period: FY 2022 through FY 2031				
Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation
Transfers				
Annualized transfers:	Potential transfers include labor earnings that would accrue to credible fear asylum applicants who enter the labor market earlier than they would currently. The impact accruing to labor earnings developed in this rule has the potential to include both distributional effects (which are transfers) and indirect benefits to employers. The distributional impacts would accrue to asylum applicants who enter the U.S. labor force earlier than under current regulations, in the form of increased compensation (wages and benefits) and to the Government in the form of tax impacts. A portion of this compensation gain and tax payment might be transferred to asylum applicants from others who are currently in the U.S. labor force or eligible to work lawfully.			
From whom to whom?	Potential transfers include a distributional economic impact in the form of a transfer to asylum applicants who enter the labor force earlier than they would currently if they take on work performed by others already in the U.S. workforce.			
Miscellaneous analyses/category	N/A			RIA.
Effects on State, local, or Tribal governments	N/A			
Effects on small businesses	This IFR does not directly regulate small entities, but rather individuals.			RFA.
Effects on wages	None			
Effects on growth	None			

2. Background and Purpose of the Rule

The purpose of this rule is to address the rising number of apprehensions at or near the Southwest border and the ability of the U.S. asylum system to fairly and efficiently handle protection claims made by those encountered. The rule streamlines and simplifies the adjudication process for certain individuals who are encountered at or near the border, placed into expedited removal, and determined to have a credible fear of persecution or torture, with the aim of adjudicating applications for asylum, statutory withholding of removal, and CAT protection in a timelier fashion and with appropriate procedural protections against error. A principal feature of the rule is to transfer the initial responsibility for adjudicating asylum, statutory withholding of removal, and CAT protection applications from IJs to USCIS asylum officers for individuals within expedited removal proceedings who receive a positive credible fear determination.

The IFR may broaden the circumstances in which individuals making a fear claim during the expedited removal process could be considered for parole on a case-by-case basis prior to a positive credible fear determination being made. For such individuals, parole could be granted as an exercise of discretion consistent with INA section 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A), when continued detention is not in the public interest.

This rule applies only to recently-arrived individuals who are subject to expedited removal—*i.e.,* adults and families. The rule does not apply to unaccompanied children, as they are statutorily exempt from being placed into expedited removal. It also does not apply to individuals already residing in the United States and whose presence in the United States is outside the coverage of noncitizens designated by the Secretary as subject to expedited removal. The rule also does not apply to (1) stowaways or (2) noncitizens who are physically present in or arriving in the CNMI. Those classes of noncitizens will continue to be referred to asylum/withholding-only hearings before an IJ under 8 CFR 208.2(c). Finally, this rule does not require that a noncitizen amenable to expedited removal after the effective date of the rule be placed in the nonadversarial merits adjudication process described in this IFR. Rather, DHS generally, and USCIS in particular, retain discretion to issue an NTA to a covered noncitizen in expedited removal proceedings to instead place them in ordinary section 240 removal proceedings at any time after they are referred to USCIS for a credible fear determination. *See Matter of E–R–M– & L–R–M–,* 25 I&N Dec. at 523; *see also* 8 CFR 1208.2(c).

In this section we provide some data and information relevant to the ensuing discussion and analysis of the potential impacts of the rule. We first present USCIS data followed by EOIR data. Table 3 shows USCIS data for the Form I–589 and credible fear cases for the five-year span from FY 2016 through FY 2020.

TABLE 3—USCIS FORM I–589, APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL, AND CREDIBLE FEAR DATA

[FY 2016 through FY 2020] [107]

FY	Form I–589 receipts		Credible fear completions			Total credible fear cases [108]
	Initial receipts	Pending receipts	Positive screen	Negative screen	All completions	
2016	115,888	194,986	73,081	9,697	82,778	94,048
2017	142,760	289,835	60,566	8,245	68,811	79,842
2018	106,041	319,202	74,677	9,659	84,336	99,035
2019	96,861	349,158	75,252	16,679	91,931	102,204
2020	93,134	386,014	12,824	16,134	28,958	30,839
5-year Total	554,684	N/A	296,400	60,414	356,814	405,968
5-year Average	110,937	307,839	59,280	12,083	71,363	81,194

Source: USCIS Office of Performance and Quality (''OPQ''), and USCIS Refugee, Asylum, and International Operations (''RAIO'') Directorate, CLAIMS 3 database, global (received May 11, 2021).

As can be seen from Table 3, the Form I–589 pending case number has grown steadily since 2016, and, as of the fourth quarter of FY 2021, was 412,796,[109] which is well above the five-year average of 307,839. Over that same period, the majority, 83.1 percent, of completed credible fear screenings were positive, while 16.9 percent were negative.

In addition to the credible fear case data presented in Table 3, USCIS data and analysis can provide some insight concerning how long it has taken for the credible fear screening process to be completed. As detailed in this preamble, although this rule's primary concern is the length of time before incoming asylum claims are expected to be adjudicated by EOIR, changes to USCIS processes enabled by this rule (including, for example, improved systems for conducting credible fear interviews for individuals who are not in detention facilities) are also expected to reduce processing times for credible fear cases. Table 4 provides credible fear processing durations at USCIS.

TABLE 4—CREDIBLE FEAR TIME DURATIONS FOR DETAINED AND NON-DETAINED CASES

[In average and median days, FY 2016 through FY 2021]

FY	Screen	Detained		Non-detained	
		Average	Median	Average	Median
2016	Positive	23.3	13	290.6	163.0
	Negative	34	26	197.1	80.5
2017	Positive	23.3	13	570.1	407.0
	Negative	34.2	25	496.1	354.0
2018	Positive	22.6	16	816.2	671.0
	Negative	32.3	25	811.7	668.0
2019	Positive	35.6	24	1,230.9	1,082.0
	Negative	44.7	33	1,067.3	959.0
2020	Positive	37.2	20	1,252.7	1,065.0
	Negative	30.3	16	1,311.2	1,247.0
2021	Positive	25.6	15	955.3	919.0
	Negative	29.8	17	1,174.0	1,109.0

Source: Data and analysis provided by USCIS, RAIO Directorate, SAS Predictive Modeling Environment and data-bricks databases, received May 11, 2021. FY 2021 includes partial fiscal year data as of May 2021.

Table 4 reports the ''durations,'' defined as the elapsed days from date of apprehension to forwarding of the credible fear screening process at USCIS, in both averages and medians. USCIS has included data through May 11, 2021. The total time for cases from apprehension to adjudication by EOIR can be found by adding the times in

[107] In FY 2020, the credible fear filings are captured in Form I–870, Record of Determination/Credible Fear Worksheet. As part of the credible fear screening adjudication, USCIS asylum officers prepare Form I–870, Record of Determination/Credible Fear Worksheet. This worksheet includes biographical information about the applicant, including the applicant's name, date of birth, gender, country of birth, nationality, ethnicity, religion, language, and information about the applicant's entry into the United States and place of detention. Additionally, Form I–870 collects sufficient information about the applicant's marital status, spouse, and children to determine whether they may be included in the determination. Form I–870 also documents the interpreter identification number of the interpreter used during the credible fear interview and collects information about relatives or sponsors in the United States, including their relationships to the applicant and contact information. In previous years credible fear filings included Form I–867, Credible Fear Referral. Prior to FY 2020, the USCIS Asylum Division electronically received information about credible fear determinations through referral documentation provided by CBP. The referral documentation includes a form containing information about the applicant: Form I–867, Credible Fear Referral.

[108] The credible fear total receipts are larger than the sum of positive and negative determinations because the latter apply to ''completions,'' referring to cases forwarded to EOIR, and thus exclude cases that were administratively closed.

[109] USCIS, Immigration and Citizenship Data, *https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data* (filter by Asylum Category to search for file ''All USCIS Application and Petition Form Types (Fiscal Year 2021, 4th Qtr, July 1–September 30, 2021) (Dec. 15, 2021)'').

Table 4 with the times in Table 6, below.

The data in Table 4 are not utilized to develop quantitative impacts, but rather are intended to build context and situational awareness. There are several key observations from the information presented. Foremost, there is a substantial difference between durations for the detained and the non-detained populations. The existence of a gap is expected because USCIS can interface with detained individuals rapidly. However, the gap has grown over time; in 2016 the duration for positive-screened processing was 12.5 times greater, but by 2021 it had grown to a factor of nearly 40. Second, and relatedly, there was a substantial duration rise through 2019 for both detained and non-detained screenings, although there has been a recent pullback. Furthermore, the duration for negative screenings is lower across the board than for positive screenings—as of the most recent data point, the duration was about 19 percent lower for negative screened cases. It is also seen that the FY 2021 average durations for detained cases are relatively close to FY 2016 through FY 2018 levels, with this series witnessing a spike in 2019.

Because some of the EOIR data are presented in medians, we note that the median durations are lower than the means for both screened types. This indicates that a small number of cases take an exceptionally long time to resolve, resulting in large outlier data points that skew the mean upwards. For non-detained cases, the gap between median and mean duration is relatively consistent up to FY 2021, but the mean and median converge toward the end of the period; this feature of the data could indicate that fewer outlier durations were represented in the data.

It is possible that the rule may impact the volume and timing of employment authorization applications and approvals. Although we cannot predict the net change in filings for the Form I–765 categories, we present data on initial filings and approvals for three asylum-related categories in Table 5. As a result of the rule, there could be substitutions in Form I–765 categories from the (c)(8), Applicant for Asylum/Pending Asylum, into the (a)(5), Granted Asylum Under Section 208, and (a)(10) Granted Withholding of Removal/243 (H) categories, in Table 5.

TABLE 5—USCIS FORM I–765 APPLICATION FOR EMPLOYMENT AUTHORIZATION INITIAL RECEIPTS AND APPROVALS RELATED TO ASYLEE CATEGORIES

[FY 2016 through FY 2020]

FY	EAD category (a)(5) Granted asylum under section 208		EAD category (c)(8) applicant for asylum/pending asylum		EAD category (a)(10) granted withholding of removal/243 (H)	
	Initial receipts	Approvals	Initial receipts	Approvals	Initial receipts	Approvals
2016	29,887	27,139	169,970	152,269	2,008	1,621
2017	32,673	29,648	261,782	234,053	1,936	1,076
2018	38,743	39,598	262,965	246,525	1,733	1,556
2019	47,761	41,288	216,038	177,520	2,402	2,101
2020	31,931	36,334	233,864	183,820	3,318	2,554
5-year total	180,995	174,007	1,144,619	994,187	11,397	8,908
5-year Average	36,199	34,801	228,924	198,837	2,279	1,782

Source: OPQ, USCIS, Form I–765 Application for Employment Authorization: All Receipts, Approvals, Denials Grouped by Eligibility Category and Filing Type (May 11, 2021), *https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf*.

Across the three relevant employment authorization categories, the total of the averages is 267,402 initial EADs, with a total of 235,420 approved EADs.

Having presented information and data applicable to USCIS specifically, we now turn to EOIR data and information. Table 6 presents average and median processing times for EOIR to complete cases originating from the credible fear screening process, positive and negative, and detained and non-detained. The processing time represents that time between when a case is lodged in EOIR systems and a final decision. Note that the ''initial case completions'' are not directly comparable to USCIS completions (*see* Table 3) in terms of annual volumes for two primary reasons. First, there can be timing differences in terms of when a credible fear case is sent to EOIR and when it is lodged in its processing systems. Second, not all individuals determined to have a credible fear follow up with their cases with EOIR, and some filed cases are administratively closed. Therefore, as a rule, case completions by EOIR would be necessarily lower than ''completions'' at USCIS.

TABLE 6—EOIR TIME DURATION METRICS, DAYS, AND COMPLETIONS FOR CASES WITH A CREDIBLE FEAR ORIGIN

FY	Average processing time	Median processing time	Initial case completions
6A. Average and Median Processing Times (in Days) for Form I–862 Initial Case Completions with a Credible Fear Origin			
2016	413	214	16,794
2017	447	252	26,531
2018	648	512	33,634
2019	669	455	55,404
2020	712	502	33,517
2021–March 31, 2021 (years)	1,078 (2.95)	857 (2.35)	6,646

TABLE 6—EOIR TIME DURATION METRICS, DAYS, AND COMPLETIONS FOR CASES WITH A CREDIBLE FEAR ORIGIN—Continued

FY	Average processing time	Median processing time	Initial case completions
6B. Average and Median Processing Times (in Days) for Form I–862 Initial Case Completions with a Credible Fear Origin and Only an Application for Asylum, Statutory Withholding of Removal, and Withholding and Deferral of Removal Under the CAT			
2016	514	300	7,519
2017	551	378	13,463
2018	787	690	19,293
2019	822	792	30,052
2020	828	678	21,058
2021–March 31, 2021 (years)	1,283 (3.52)	1,316 (3.61)	3,730

Source: EOIR, Planning, Analysis, and Statistics Division (''PASD''), data obtained April 19, 2021. The row for FY 2021 reflects data through March 31, 2021.

The FY 2021 data point reflects data through the start of FY 2021 to March 31, 2021, and we have included the current processing times in years for situational awareness. As Table 6 shows, there was an across-the-board jump in processing times in FY 2018, followed by a leveling off until FY 2021, when the processing times surged again.

3. Population

The population expected to be affected by this rule is the total number of credible fear completions processed annually by USCIS (71,363, *see* Table 3), split between an average of 59,280 positive-screen cases and 12,083 negative-screen cases. This can be considered the maximum, ''encompassing,'' population that could be impacted. However, we take into consideration larger populations to account for variations and uncertainty in the future population.

4. Impacts of the Rule

This section is divided into three subsections. The first (a) focuses on impacts on asylum seekers, presented on a per-person basis. The second (b) discusses costs to the Federal Government, and the third (c) discusses other, possible impacts, including benefits.

a. Impacts on the Credible Fear Asylum Population

Under the new procedure established by this rule, asylum applicants who have established a credible fear of persecution or torture would not be required to file Form I–589 with USCIS. Individuals in this population could accrue cost savings because of this change. There is no filing fee for Form I–589, and the time burden is currently estimated at 12.0 hours per response, including the time for reviewing instructions and completing and submitting the form.[110] Regarding cost savings, DHS believes the minimum wage is appropriate to rely on as a lower bound, as the applicants would be new to the U.S. labor market. The Federal minimum wage is $7.25 per hour; however, in this rule, we rely on the ''effective'' minimum wage of $11.80. As The New York Times reported, ''[t]wenty-nine states and the District of Columbia have state-level minimum hourly wages higher than the federal [minimum wage],'' as do many city and county governments. This New York Times report estimates that ''the effective minimum wage in the United States [was] $11.80 an hour in 2019.'' [111] Therefore, USCIS uses the ''effective'' minimum hourly wage rate of $11.80 to estimate a lower bound. USCIS uses a national average wage rate across occupations of $27.07 [112] to take into consideration the variance in average wages across States as an upper bound.

DHS accounts for worker benefits by calculating a benefits-to-wage multiplier using the most recent BLS report detailing the average employer costs for employee compensation for all civilian workers in major occupational groups and industries. DHS relies on a benefits-to-wage multiplier of 1.45 and, therefore, is able to estimate the full opportunity cost per applicant, including employee wages and salaries and the full cost of benefits such as paid leave, insurance, retirement, and other benefits.[113] The total rate of compensation for the effective minimum hourly wage is $17.11 ($11.80 × benefits burden of 1.45), which is 62.8 percent higher than the Federal minimum wage.[114] The total rate of compensation for the average wage is $39.25 ($27.07 × benefits burden of 1.45).

For applicants who have established a credible fear, the opportunity cost of 12 hours to file Form I–589 at the lower and upper bound wage rates is $205.32 (12 hours × $17.11) and $471.00 (12 hours × $39.25), respectively, with a midrange average of $338.16. In addition, form instructions require a passport-style photograph for each family member associated with the Form I–589 filing. The Departments obtained an estimate of the number of additional family members applicable via data on biometrics collections for the Form I–589. Biometrics information is collected on every individual associated with a Form I–589 filing, and the tracking of collections is captured in the USCIS Customer Profile Management System (''CPMS'') database. A query of this system reveals that for the five-year period of FY 2016 through FY 2020, an average of 296,072 biometrics collections accrued for the Form I–589 annually. Dividing this

[110] *See* USCIS, Form I–589, Application for Asylum and for Withholding of Removal: Instructions, OMB No. 1615–0067, at 14 (expires July 31, 2022), *https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf.*

[111] Ernie Tedeschi, *Americans Are Seeing Highest Minimum Wage in History (Without Federal Help),* The New York Times (Apr. 24, 2019), *https://www.nytimes.com/2019/04/24/upshot/why-america-may-already-have-its-highest-minimum-wage.html* (last visited Mar. 5, 2022). We note that, with the wage level dated to 2019, we do not make an inflationary adjustment because the Federal minimum wage has not changed since then.

[112] For the average wage for all occupations, the Departments rely on BLS statistics. *See* BLS, May 2020 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2020/may/oes_nat.htm#00-0000* (last visited Feb. 28, 2022).

[113] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour)/(Wages and Salaries per hour) ($38.60 Total Employee Compensation per hour)/($26.53 Wages and Salaries per hour) = 1.454957 = 1.45 (rounded). *See* BLS, Employer Cost for Employee Compensation—December 2020, Table 1. Employer Costs for Employee Compensation by Ownership (Dec. 2020), *https://www.bls.gov/news.release/archives/ecec_03182021.pdf* (last visited Feb. 28, 2022).

[114] The Federal minimum wage is $7.25 hourly, which burdened at 1.45 yields $10.51. It follows that: (($17.11 wage − $10.51 wage)/$10.51)) wage = 0.628, which rounded and multiplied by 100 = 62.8 percent.

figure by the same five-year period average of 110,937 initial filings (Table 3) yields a multiplier of 2.67 (rounded).[115] Under the supposition that each photo causes applicants to incur a cost of $10,[116] there could be $26.70 in additional cost-savings at either wage bound.[117] The resulting cost savings per applicant from no longer having to file Form I–589 could range from $232.02 to $497.70, with a midrange of $364.86.[118]

Though these applicants would no longer be required to file Form I–589, DHS recognizes that applicants would likely expend some time and effort to prepare for their asylum interviews and provide documentation for their asylum claims under this rule as well. DHS does not know exactly how long, on average, individuals may spend preparing for their credible fear interviews under the rule, and how that amount of time and effort would compare to the time individuals currently spend preparing for the credible fear interviews. If the increased time were substantial—*i.e.,* above and beyond that currently earmarked for the asylum application process—lower cost savings could result.

Under the rule, asylum applicants who established a credible fear would be able to file for employment authorization via the Form I–765, Application for Employment Authorization (''EAD''), while their asylum applications are being adjudicated. We cannot say, however, whether the volume of Form I–765 EADs filed would increase or decrease in upcoming years due to this rule. Currently, asylum applicants can file for an EAD under the asylum (c)(8) category while their asylum applications are pending. Such applications are subject to a waiting period that commences when their completed Form I–589s are filed. Asylum applicants who establish a credible fear would still be subject to the waiting period.[119] Applicants would still be able to file for their EADs under the (c)(8) category. We analyze the impacts regarding the EAD filing in two steps, explaining first why filing volumes might decline and the impacts related to that decline, and then why countervailing factors might mitigate such a decline.

One result of this rule is that asylum applications for some individuals pursuant to this rule could be granted asylum earlier than they would be under current conditions. Because an asylum approval grants employment authorization incident to status, and because USCIS automatically provides an asylum granted EAD ((a)(5)) after a grant of asylum by USCIS, some applicants may choose not to file for an EAD based on the pending asylum application under the expectation that asylum would be granted earlier than the EAD approval. This could result in cost savings to some applicants.

There is currently no filing fee for the initial (c)(8) EAD Form I–765 application, and the time burden is currently estimated at 4.75 hours, which includes the time associated with submitting two passport-style photos along with the application.[120] As stated earlier, the Department of State estimates that each passport photo costs about $10 each. Submitting two passport photos results in an estimated cost of $20 per Form I–765 application. Because the (c)(8) EAD does not include or require, at the initial or renewal stage, any data on employment, and since it does not involve an associated labor condition application, we have no information on wages, occupations, industries, or businesses that may employ such workers. Hence, we continue to rely on the wage bounds (effective minimum and national average) developed earlier. At the wage bounds relied upon, the opportunity-cost savings are $81.27 (4.75 hours × $17.11 per hour), and $186.44 (4.75 hours × $39.25). When the $20 photo cost is included, the cost savings would be $101.27 and $206.44 per applicant, respectively. However, some might choose to file for an EAD even if they hope that asylum will be granted earlier than the EAD approval because they want to have documentation that reflects that they are employment authorized.

In the discussion of the possible file volume decline for the Form I–589, above, we noted that applicants and family members would continue to submit biometrics as part of their asylum claims, and that, as a result, there would not be changes in costs or cost savings germane to biometrics. For the Form I–765(c)(8) category, USCIS started collecting biometrics, and the associated $85 biometrics service fee, in October 2020.[121]

The submission of biometrics involves travel to an ASC for the biometric services appointment. In past rulemakings, DHS estimated that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours.[122] The cost of travel also includes a mileage charge based on the estimated 50-mile round trip at the 2021 General Services Administration (''GSA'') rate of $0.56 per mile.[123] Because an individual would spend an average of 1 hour and 10 minutes (1.17 hours) at an ASC to submit biometrics,[124] adding the ASC time and travel time yields 3.67 hours. At the low- and high-wage bounds, the opportunity costs of time are $62.79 and $144.05.[125] The travel cost is $28, which is the per mileage reimbursement rate of 0.56 multiplied by 50-mile travel distance. Adding the time-related and travel costs generates a per-person

[115] Calculation: Average Form I–589 biometrics collections 296,072/110,937 average initial Form I–589 filings = 2.67 (rounded). Data were obtained from the USCIS Immigration Records and Identity Services (''IRIS'') Directorate, via the CPMS database (data obtained May 7, 2021).

[116] The U.S. Department of State estimates an average cost of $10 per passport photo in its supporting statement for its Paperwork Reduction Act submission for the Application for a U.S. Passport, OMB #1405–0004 (DS–11) (Feb. 8, 2011), *https://www.reginfo.gov/public/do/*PRAViewDocument?ref_nbr=201102–1405–001 (last visited Feb. 28, 2022) (see question #13 of the Supporting Statement).

[117] Calculation: $10 per photo cost × 2.67 photos per Form I–589 = $26.70.

[118] Calculation: $205.32 + $26.70 = $232.02; $338.16 + $26.70 = $364.86; $471.00 + $26.70 = $497.70.

[119] On February 7, 2022, in *AsylumWorks* v. *Mayorkas,* No. 20-cv-3815 (BAH), 2022 WL 355213, at *12 (D.D.C. Feb. 7, 2022), the U.S. District Court for the District of Columbia vacated two DHS employment authorization-related rules entitled ''Asylum Application, Interview, and Employment Authorization for Applicants,'' 85 FR 38532 (June 26, 2020), and ''Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications,'' 85 FR 37502, (June 22, 2020), that addressed waiting periods. Separately, a partial preliminary injunction was issued on September 11, 2020, in *Casa de Maryland, Inc.* v. *Wolf,* 486 F. Supp. 3d 928, 935 (D. Md. 2020), that exempts certain individuals from a 365-day waiting period and certain other eligibility criteria, but retains a 180-day waiting period. Although the duration of time required for the waiting period varies based on application of these rules and the related vacaturs and injunctions, a required waiting period remains in effect notwithstanding these rules, vacaturs, or injunctions.

[120] *See* USCIS, Instructions for Application for Employment Authorization, OMB No. 1615–0040, at 31 (expires July 31, 2022), *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf.*

[121] USCIS collects biometrics for Form I–765 (c)(8) submissions, but a preliminary injunction in *Casa de Maryland,* 486 F. Supp. at 935, currently exempts members of certain organizations from this biometrics collection.

[122] *See* Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 536, 572 (Jan. 3, 2013).

[123] *See* GSA, POV Mileage Rates (Archived), *https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-mileage-rates/pov-mileage-rates-archived* (last visited Feb. 28, 2022).

[124] *See* USCIS, Instructions for Application for Employment Authorization, OMB No. 1615–0040, at 31 (expires July 31, 2022), *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf.*

[125] Calculations: Total time burden of 3.67 hours × total rate of compensation for the effective wage $17.11 = $62.79; total time burden of 3.67 hours × total rate of compensation for the average wage $39.25 = $144.05.

biometrics submission cost of $90.79, at the low-wage bound and $172.05 at the high-wage bound.[126] Although the biometrics collection includes the $85 service fee, fee waivers and exemptions are granted on a case-by-case basis (across all forms) that are immaterial to this IFR. Accordingly, not all individuals pay the fee. When the opportunity costs of time for filing Form I–765 ($101.27 and $206.44, respectively) are added to the opportunity costs of time and travel for biometrics submissions ($90.79 and 172.05), the total opportunity costs of time to file Form I–765 and submitting biometrics are $192.07 and $378.49, respectively. For those who pay the biometrics service fee, the total costs are $277.07 and $463.49, respectively, with a midpoint of $370.28.[127] These figures represent the maximum per-person cost savings for those who choose not to file for an EAD.[128]

Having developed the cost savings for applicants who do not file for an EAD, we now turn to factors that could counteract a potential decline in Form I–765 volumes. First, applicants will benefit from a timing change relevant to the EAD waiting period as it relates to the ''filing date'' of their asylum applications that will allow an EAD to be filed earlier than it could be currently. USCIS allows for an EAD to be filed under 8 CFR 208.7 and 274a.12(c)(8) when an asylum application is pending and certain other conditions are met. Here, an asylum application would be pending when the credible fear determination is served on the individual as opposed to current practice under which the asylum application is pending when lodged in immigration court. This change in timing could allow some EADs to be approved earlier for those who file for an EAD with a pending asylum application. In this sense, the EAD waiting period remains the same in duration, but the starting point shifts to an earlier position for asylum applicants who will file for an initial EAD under the (c)(8) category.

DHS would begin to consider for parole on a case-by-case basis all noncitizens who have been referred to USCIS for a credible fear screening under the broader standard adopted by this IFR during the relatively short period between being referred to USCIS for a credible fear screening interview and the issuance of a credible fear determination. A parole grant does not constitute employment authorization, however, and the rule provides, in 8 CFR 235.3(b)(2)(iii) and (b)(4)(ii), that noncitizens paroled pending credible fear screening will not be eligible for employment authorization based on that grant of parole from custody. Currently there are two Form I–765 classes, (a)(5), ''Granted Asylum Sec. 208,'' and (a)(10), ''Granted Withholding of Removal/243 (H),'' that could apply to noncitizens whose asylum applications are considered under the procedure established by this IFR. In the past, some parolees under these categories have been able to obtain EADs sooner than they would if they were explicitly subject to the filing clock that applies to a pending Form I–589.

Given the two changes discussed above related to the EAD filings—(1) the change in timing for when an EAD can be filed; and (2) the broadening of the standard under which certain noncitizens placed in expedited removal may be considered for parole before receiving a credible fear determination—some applicants may file for an EAD, even under the expectation that their asylum could be granted earlier, if they expect to receive an (a)(5) asylum granted EAD even sooner. In this sense, the potential for more rapid approvals of an EAD claim may be expected to provide a net pecuniary benefit, even considering a more expeditious asylum claim. Coupled with the expectation that some individuals may seek an EAD for the non-pecuniary benefit associated with its documentary value, we cannot determine if these countervailing influences might limit, or even completely absorb, any reductions in EAD filing for credible fear asylum applicants.

Regardless of whether, under the rule, it is the more expeditious asylum grant or EAD approval that results in employment authorization, individuals who enter the labor force earlier are able to earn income earlier. The assessments of possible impacts rely on the implicit assumption that credible fear asylum seekers who receive employment authorization will enter and be embedded in the U.S. labor force. This assumption is justifiable for those whose labor force entry was effectuated by the EAD approval, as opposed to the grant of asylum. We believe this assumption is justifiable because applicants would generally not have expended the direct costs and opportunity costs of applying for an EAD if they did not expect to recoup an economic benefit. We also take the extra step of assuming these entrants to the labor force are employed. It is possible that some applicants who are eventually denied asylum are currently able to obtain employment authorizations—approved while their asylum application was pending. We do not know what the annual or current scale of this population is, but it is an expected consequence of this IFR that such individuals would not obtain employment authorizations in the future.

The impact is attributable to the difference in days between when asylum would be granted under the rule and the current baseline. USCIS describes this distributional impact in more detail. Since a typical workweek is 5 days, the total day difference (''D'') can be scaled by 0.714 (5 days/7 days) and then multiplied by the average wage (''W'') and the number of hours in a typical workday (8) to obtain the impact, as in the formula: $D \times 0.714 \times W \times 8$. In terms of each actual workday, the daily distributional impacts at the wage bounds are $136.88 ($17.11 × 8 hours) and $314.00 ($39.25 × 8 hours), respectively, on a per-person basis, with a midrange average of $225.44.

USCIS cannot expand the per-person per-day quantified impacts to a broader monetized estimate. Foremost, although Table 5 provides filing volumes for the asylum relevant EADs, we cannot determine how many individuals within this population would be affected. In addition, we cannot determine what the average day difference would be for any individual who could be impacted. To quantify the day difference, the Departments would need to simultaneously analyze the current and future interaction between the asylum grant and EAD approvals. Doing so for the current system is conceptually possible with a significant devotion of time and resources, but it is not possible to conduct a similar analysis for future cases without relying on several assumptions that may not be accurate.

[126] Calculations: Opportunity cost of time, effective wage $62.79 + travel cost of $28 = $90.79; Opportunity cost of time, average wage $144.05 + travel cost of $28 = $172.05.

[127] Calculations: $192.07 + biometrics services fee of $85 = $277.07; $378.49 + biometrics services fee of $85 = $463.49. Although we have the overall count for biometrics for the period from October 1, 2020, through May 1, 2021, we do not know how many biometrics service fees were collected with these biometrics' submissions; the fee data are retained by the USCIS Office of the Chief Financial Officer (''OCFO''), but the Form I–765 fee payments are not captured by eligibility class.

[128] There is a scenario that the Departments have considered, though it is not likely to occur often. Currently, an asylum applicant might file for an EAD and have the EAD approved prior to the grant of asylum. It is possible that, under this rule, asylum may be approved more expeditiously. At the time of the asylum grant, the individual will automatically receive a category (a)(5) EAD based on the grant of asylum; if the applicant did already file for an EAD, then the filing costs associated with the EAD would be sunk costs, since the (c)(8) EAD does not actually provide any benefit over the (a)(5) EAD. Because this scenario is likely to be rare, DHS has not attempted to quantify its impact.

As a result, we cannot extend the per-person cost (in terms of earnings) to an aggregate monetized cost, even if we knew either the population impacted or the day-difference average because an estimate of the costs would require both data points. The impact on labor earnings developed above has the potential to include both distributional effects (which are transfers) and indirect benefits to employers.[129] The distributional impacts would be felt by asylum applicants who enter the U.S. labor force earlier than under current regulations in the form of increased compensation (wages and benefits). A portion of this compensation gain might be transferred to asylum applicants from others who are currently in the U.S. labor force or eligible to work lawfully. Alternatively, employers that need workers in the U.S. labor market may benefit from those asylum applicants who receive their employment authorizations earlier as a result of the IFR, gaining productivity and potential profits that the asylum applicants' earlier starts would provide. Companies may also benefit by not incurring opportunity costs associated with the next-best alternative to the immediate labor the asylum applicant would provide, such as having to pay existing workers to work overtime hours. To the extent that overtime pay could be reduced, some portion of this pay could be transferred from the workers to the companies.

We do not know what the next-best alternative may be for those companies. As a result, the Departments do not know the portion of overall impacts of this IFR that are transfers or benefits, but the Departments estimate the maximum monetized impact of this IFR in terms of a daily, per-person basis compensation. The extent to which the portion of impacts would constitute benefits or transfers is difficult to discern and would depend on multiple labor market factors. However, we think it is reasonable to posit that the portion of impacts attributable to transfers would mainly be benefits, for the following reason: If there are both workers who obtain employment authorization under this rule and other workers who are available for a specific position, an employer would be expected to consider any two candidates to be substitutable to a high degree. There is an important caveat, however. There could be costs involved in hiring asylum seekers that are not captured in this discussion. As the U.S. economy recovers from the effects of the COVID–19 pandemic, there may be structural changes to the general labor market and to specific job positions that could impact the next-best alternatives that employers face. The Departments cannot speculate on how such changes in relation to the earlier labor market entry of some asylum applicants could mitigate the beneficial impacts for employers.

The early possible entry into the labor force of some positive-screened credible fear asylum applicants is not expected to change the composition of the labor market, as it would affect only the timing under which some individuals could enter the market. The Departments do not have reason to believe the overall U.S. labor market would be affected, given the relatively small population that is expected to be impacted. Moreover, some asylum seekers who currently enter the labor market with a pending asylum application may no longer be entering the labor market under this IFR if they receive a negative decision sooner on their asylum claim. Specifically, there could be individuals who receive positive credible fear determinations, but whose asylum applications are ultimately denied within 180 days of filing. Under this rule and the resultant shortened adjudication time frame, these individuals who otherwise would have been eligible to receive (c)(8) EADs no longer will be eligible because their asylum claims will have been adjudicated (and thus their asylum applications will no longer be pending) prior to the expiration of the waiting period required for (c)(8) filings. The lost compensation to these individuals could constitute a transfer to others in the U.S. workforce. Because we cannot predict how many people would be impacted in such a way, we are not able to quantify this impact.

Furthermore, there may be tax impacts for the Government. It is difficult to quantify income tax impacts of earlier entry of some asylum seekers in the labor market because individual tax situations vary widely, but the Departments considered the effect of Social Security and Medicare taxes, which have a combined tax rate of 7.65 percent (6.2 percent and 1.45 percent, respectively), with a portion paid by the employer and the same amount withheld from the employee's wages.[130] With both the employee and employer paying their respective portions of Medicare and Social Security taxes, the total estimated accretion in tax transfer payments from employees and employers to Medicare and Social Security is 15.3 percent.[131] The Departments will rely on this total tax rate where applicable. The Departments are unable to quantify other tax transfer payments, such as for Federal income taxes and State and local taxes. As noted above, the Departments do not know how many individuals with a positive credible fear determination will be affected, and what the average day-difference would be, and therefore the Departments cannot make an informed monetized estimate of the potential impact. It accordingly follows that the Departments cannot monetize the potential tax impacts of the IFR. However, the Departments can provide partial quantitative information by focusing on the workday earnings presented earlier. The workday earnings, at the wage bounds of $136.88 and $314.00, are multiplied by 0.153 to obtain $20.94 and $48.04, respectively, with a midpoint of $34.49. These values represent the daily employment tax impacts per individual. The tax impacts per person would amount to the total day-difference in earnings scaled by 0.714, to reflect a five-day workweek. Conversely, to the extent that this rule prevents a person from obtaining an EAD, there may be losses in tax revenue.

Having developed partial (based on an individual basis) monetized impacts of this IFR, there are two important caveats applicable to the population of asylum applicants who have received a positive credible fear determination. First, as we detail extensively in the following subsection, there will be resource requirements and associated costs needed to make this IFR operational and effective. These changes will not occur instantaneously and may require months or even a year or more to fully implement. Although existing USCIS resources will be able to effectuate changes for some individuals rather quickly, others (and thus the entire population from an average perspective) will face delay in realizing the impacts. These individuals thus may face a delay in realizing benefits such as earlier

[129] Transfer payments are monetary payments from one group to another that do not affect total resources available to society. *See* OMB, Circular A–4 at 14, 38 (Sept. 17, 2003), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf* (last visited Feb. 28, 2022) (providing further discussion of transfer payments and distributional effects).

[130] *See* Internal Revenue Service, *Publication 15 (Circular E), Employer's Tax Guide* (Dec. 16, 2021), *https://www.irs.gov/pub/irs-pdf/p15.pdf* (last visited Feb. 28, 2022); *see also* Market Watch, *More Than 44 Percent of Americans Pay No Federal Income Tax* (Sept. 16, 2018), *https://www.marketwatch.com/story/81-million-americans-wont-pay-any-federal-income-taxes-this-year-heres-why-2018-04-16* (last visited Mar. 5, 2022).

[131] Calculation: (6.2 percent Social Security + 1.45 percent Medicare) × 2 employee and employer losses = 15.3 percent total estimated tax loss to Government.

asylum determinations, income gains, and possible filing cost savings. Second, despite the possibility that some baseline EAD filers may choose not to file in the future, there could be mitigating effects that would reduce the volume decline for Form I–765(c)(8) submissions.

In closing, we have noted that the impacts developed in this section apply to the population that receives a positive credible fear determination. Additionally, for the subset of this population that receives a negative asylum determination from USCIS, the possibility of de novo review of their claims by IJs may benefit some applicants by affording another opportunity for review and approval of their asylum claims.

It is possible that the earnings impact described could overstate the quantified benefits directly attributable to receiving earlier employment authorization. For those who entered the labor market after receiving employment authorization and began to receive paid compensation from an employer, counting the entire amount received by the employer as a benefit may result in an overestimate. Even without working for wages, the time spent by an individual has value. For example, if someone performs childcare, housework, or other activities without paid compensation, that time still has value. Consequently, a more accurate estimate of the net benefits of receiving employment authorization under the proposed rule would attempt to account for the value of time of the individual before receiving employment authorization. For example, the individual and the economy would gain the benefit of the worker entering the workforce and receiving paid compensation but would lose the value of the worker's time spent performing non-paid activities. Due to the wide variety of non-paid activities an individual could pursue without employment authorization, it is difficult to estimate the value of that time. As an example, if 50 percent of wages were a suitable proxy of the value for this non-paid time, the day-impacts per person would be scaled by half accordingly.

b. Impacts to USCIS

i. Total Quantified Estimated Costs of Regulatory Changes

In this subsection, the Departments discuss impacts on the Federal Government. Where possible, cost estimates have been quantified; otherwise they are discussed qualitatively. The total annual costs are provided only for those quantified costs that can be applied to a population.

Costs of Staffing to USCIS

USCIS will need additional staffing to implement the provisions presented in this rule. The staffing requirement will largely depend on the volume of credible fear referrals. In addition to asylum officers, USCIS will require additional supervisory staff and operational personnel commensurate with the number of asylum officers needed. USCIS anticipates an increased need for higher-graded field adjudicators and supervisors to implement the provisions of this IFR. Approximately 92 percent of the field asylum officers are currently employed at the GS–12 pay level or lower.[132] Under this model, USCIS will be assuming work normally performed by an IJ. EOIR data indicate that the weighted average salary was $155,089 in FY 2021 for IJs; $71,925 for Judicial Law Clerks (''JLCs''); $58,394 for Legal Assistants; $132,132 for DHS Attorneys; and $98.51 per hour for interpreters.[133] Notably, entry-level IJs are required to adjudicate a wider array of immigration applications than asylum officers, and their decisions, unlike those of current USCIS asylum officers, are not subject to 100 percent supervisory review. As such, under this IFR, USCIS asylum officers making determinations on statutory withholding of removal and CAT protection cases would be performing work at a GS–13 minimum level, considering they will be conducting adjudications traditionally performed only by IJs.[134] In addition, first-line Supervisory Asylum Officers (''SAOs'') reviewing these decisions would be graded at a GS–14.[135] Currently, not all SAOs are at a grade GS–14. Aligning all first line SAOs to a GS–14 ensures operational flexibility and makes this position consistent with the similar work processes and functions performed by the first-line Supervisory Refugee Officer position.

Currently, USCIS refers all individuals who receive a positive credible fear determination to IJs at EOIR for consideration of the individuals' asylum claims. Based on historical EOIR data on the amount of time required to complete a typical hearing with a credible fear origin and only an application for asylum, the median duration for credible fear merit plus master hearings from FY 2016 through FY 2020 was about 97 minutes, or 1.6 hours. Factoring in the EOIR weighted average salaries for the IJs, JLCs, DHS Attorneys, and interpreters required for EOIR to complete these hearings, we estimate the median cost to be $470.62 [136] per hearing over the same time frame.

USCIS analyzes a range of credible fear cases to estimate staffing requirement costs. At a lower bound volume of 75,000 credible fear cases, USCIS assumes it would receive fewer credible fear cases compared to prior years (apart from FY 2020, which had a lower number of credible fear cases due to the COVID–19 pandemic and resulting border closures). A volume of 300,000 credible fear cases is an upper bound, based on the assumption that nearly all individuals apprehended will be placed into expedited removal for USCIS to process. As shown in Table 3, the lowest number of credible fear cases received for FY 2016 through FY 2019 was 79,842 in FY 2017, while the highest was 102,204 in FY 2019. DHS recognizes that the estimated volume of 300,000 is nearly three times the highest annual number of credible fear cases received, but DHS presents this as an upper bound estimate to reflect the uncertainty concerning an operational limit on how many credible fear cases could be handled by the agency in the future. Inclusion of this unlikely upper bound scenario is intended only to present information concerning the potential costs should the agency consider an intervention at the highest end of the range. USCIS expects volumes to fall within the lower and upper bounds and therefore we also provide a primary estimate of 150,000 credible fear cases.[137]

[132] In 2021, the base salary for a GS–12 ranged from $66,829, at step 1, up to $86,881, at step 10. *See* OPM, Salary Table 2021–GS Incorporating the 1% General Schedule Increase Effective January 2021, *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS.pdf* (last visited Mar. 1, 2022) (''OPM Salary Table'').

[133] Weighted average base salaries across position, FY, and location are drawn from DOJ EOIR PASD analysis. Interpreter wages are presented hourly here because these positions are paid differently and not always on an annual basis. In 2021, the base salary for a GS–15 step 3 was $117,824 and step 4 was $121,506. *See* OPM Salary Table.

[134] In 2021, the base salary for a GS–13 step 1 was $79,468. *See* OPM Salary Table.

[135] In 2021, the base salary for a GS–14 step 1 was $93,907. *See* OPM Salary Table.

[136] Estimate were based on analysis provided by EOIR on May 19, 2021, of median digital audio recording length data from all merits and master asylum hearings between FY 2016 and FY 2020. The five-year average estimated cost of hearings is based on 2,087 assumed hours per year for the IJ, JLC, and DHS attorneys at the annual salaries shown, plus the hourly cost per interpreter. These annual values were multiplied by the respective sums of the annual median lengths of master and merits hearings for corresponding years to produce the five-year average cost per hearing of $470.62.

[137] The primary estimate of 150,000 is not equal to the average of the lower volume of 75,000 credible fear cases and the upper volume of 300,000 credible fear cases. Rather, this primary estimate, based on OCFO modeling, represents the number of cases that the agency may reasonably expect. The

USCIS has estimated the staffing resources it will need to implement this rule. At the three volume levels of credible fear cases, USCIS plans to hire between 794 and 4,647 total new positions, with a primary estimate of 2,035 total new positions.[138] The estimated costs associated with payroll, non-payroll, and other general expenses—including interpreter services, transcription services, facilities, physical security, information technology (''IT'') case management, and other contract, supplies, and equipment—are anticipated to begin in FY 2022.

The costs of this rule are likely to include initial costs associated with the hiring and training of staff, and those costs would continue in future years. Additionally, as was explained in Section G of the NPRM, the Departments expect a phased approach to implementation due to budgetary and logistical factors. 86 FR 46922. The cost estimates developed below focus on three volume bands and are based on initial data and staffing models that captured initial implementation costs accruing to FY 2022 and FY 2023. These estimates therefore partially capture the likely phasing of resourcing and costs, but not the full phasing that could extend into further years. The Departments do not currently have the appropriate data to include an implementation of the IFR in their estimates of quantified resource costs. However, we do not believe a partial implementation significantly skews the expected costs of this rule. We offer some additional comments concerning this phased implementation as it relates to costs at the conclusion of this analysis.

The Departments recognize that initial costs are likely to spill into future years depending on the pace of hiring; employee retention; obtaining and signing contracts (for interpreters, transcription, and facilities); and training. For the remainder of FY 2022, DHS will finalize job descriptions, post new positions, and begin the hiring process to onboard some new Federal employees, and DHS will work to procure new contracts for interpreters, transcription, facilities, and security staff as its current fiscal situation allows. In FY 2022, the implementation costs are expected to range between $179.8 million and $952.4 million with a primary cost estimate of $438.2 million, assuming all staff is hired and corresponding equipment needs are fulfilled in the fiscal year. DHS recognizes that, operationally, it may take more time to attain the necessary staffing and equipment. However, we are not able to reliably predict those timelines due to the uncertain nature of the recruitment and onboarding processes. Any delay in hiring would reduce the first-year costs of implementation, as explained further below. The itemized planned resources are presented in Table 7.

TABLE 7—ESTIMATED USCIS FY 2022 FUNDING REQUIREMENTS BY VOLUME OF CREDIBLE FEAR REFERRALS

[$ in thousands]

	75k cases	150k cases	300k cases
(A) Staffing	$140,507	$355,175	$806,697
Payroll *	113,602	285,983	648,257
Non-Payroll	26,905	69,192	158,440
(B) General Expenses	39,313	83,025	145,682
Interpreter Services	6,615	19,136	44,179
Transcription Services	9,366	26,697	37,362
Facilities	6,635	17,606	40,865
Physical Security	623	1,654	3,839
IT Case Management	12,500	12,500	12,500
Other Contract/Supplies/Equipment	3,574	5,432	6,937
Total	179,820	438,200	952,379

Source: USCIS Analysis from RAIO and USCIS OCFO, May 19, 2021.

In FY 2023, USCIS estimates costs between $164.7 million and $907.4 million, with a primary estimate of $413.6 million, as shown in Table 8. The reductions as compared to FY 2022 are mostly attributable to non-recurring, one-time costs for new staff and upgrades to IT case management systems, although a decline in costs pertaining to other contracts, supplies, and equipment is also expected. The largest expected cost decrease is for IT case management, which is estimated to decline from $12.5 million in FY 2022 down to $4.375 million in FY 2023. Meanwhile, costs for interpreter and transcription services, facilities, and physical security are expected to rise in FY 2023 because of resource cost increases. For FY 2024 through FY 2031 of implementation, DHS expects resource costs to stabilize.

TABLE 8—ESTIMATED USCIS FY 2023 FUNDING REQUIREMENTS BY VOLUME OF CREDIBLE FEAR REFERRALS

[$ in thousands]

	75k cases	150k cases	300k cases
(A) Staffing	$133,427	$337,047	$766,159
Payroll*	122,753	309,758	703,852

OCFO volume levels were developed as a guide for several possible ranges that could be realized in the future, taking into account variations in the populations. The actual volume levels could be above or below these levels.

[138] The primary estimate of 2,035 total new positions is not equal to the average of the lower-794 and upper-bound 4,647 estimates. Rather, this primary estimate, based on a staffing allocation model, represents the number of staff in a mix of occupations at a mix of grade levels that the agency may need to hire to handle the volume of credible fear cases. The staffing is commensurate with OCFO model volume levels, which were developed as a guide for several possible ranges that could be realized in the future, taking into account variations in the populations. Actual volume levels and hence actual staffing levels could be above or below these levels.

TABLE 8—ESTIMATED USCIS FY 2023 FUNDING REQUIREMENTS BY VOLUME OF CREDIBLE FEAR REFERRALS—Continued

[$ in thousands]

	75k cases	150k cases	300k cases
Non-Payroll	10,674	27,289	62,307
(B) General Expenses	31,267	76,554	141,249
Interpreter Services	6,813	19,710	45,504
Transcription Services	9,647	27,498	38,483
Facilities	6,834	18,134	42,091
Physical Security	642	1,704	3,954
IT Case Management	4,375	4,375	4,375
Other Contract/Supplies/Equipment	2,956	5,133	6,842
Total	164,694	413,601	907,408

Source: USCIS Analysis from RAIO and OCFO, May 19, 2021.

To estimate the costs for each category itemized in Tables 7 and 8, USCIS considered the inputs for each. USCIS expects to hire most new staff at the GS–13, step 1 level, on average, and most of those hired will serve as asylum officers. As stated, these officers will be making determinations on statutory withholding of removal and withholding and deferral of removal under the CAT, so their pay will be higher than the current asylum officer pay, which is at a GS–12 level. Additionally, USCIS assumes step 1 because these employees are expected to be new to the position. *See* 5 U.S.C. 5333 (providing that new appointments generally ''shall be made at the minimum rate of the appropriate grade''). Payroll costs also include Government contributions to non-pay benefits, such as healthcare and retirement. Although payroll is the greatest estimated cost to hiring staff, non-payroll costs include training, equipping, and setting staff up with resources such as laptops, cell phones, and office supplies. For example, asylum officers have been required to attend and successfully complete a multi-week residential training at a Federal Law Enforcement Training Center (''FLETC'') as a condition of their continued employment. The estimated cost per student (including FLETC enrollment costs, travel, etc.) was approximately $7,000. However, USCIS is currently engaging a virtual training that is approximately $5,000 per student. Although the training is expected to shift back to in-person training in the future, we currently do not have a projected date for this shift. To fully furnish and equip new employees, USCIS estimates a cost of $3,319 per asylum employee. Costs for new equipment would be largely commensurate with the increase in staffing levels.

In addition to costs associated with hiring new staff, DHS anticipates that it will need to both increase funding on existing contracts and procure new ones. As a result of this IFR, the need for interpretation services will increase as the number of asylum interviews USCIS performs rises. Current interpreter contracts cannot absorb this expected increase. Using current contracts, USCIS applied the current cost model to the estimated increase in case volumes in order to estimate costs. The facilities and physical security estimates were similarly based on current cost models that were expanded to account for additional employees. Additional contract support will also be needed for transcription services to create a written record of the asylum hearing because such staff are not currently employed by USCIS. To create transcription service estimates, USCIS applied EOIR's current cost model to USCIS's estimated increase in case volumes. DHS also anticipates costs associated with general expenses associated with miscellaneous contract, supplies, and equipment commensurate with the increase in staff. The timing of these costs will depend on the hiring timeline but are expected to commence in the first year. DHS recognizes that if it takes more than one year to hire and equip asylum employees, costs may instead be experienced in later years.

Costs of IT Upgrades for USCIS

DHS is planning upgrades to internal management systems and databases as a requirement to implement this IFR. The estimated cost of these upgrades in FY 2022 is a one-time cost of $12.5 million that will impact virtually all processing and record-keeping systems at USCIS. This cost embodies funds for enhancements and refurbishment to the USCIS global case management system that would support features such as ensuring transition of positive credible fear screening cases to the hearing process currently provided for affirmative asylum cases; support for withholding of removal and CAT adjudication features; non-detained scheduling enhancements; and capabilities to accept and provide review for electronic documents. The one-time cost also includes funds earmarked for teams that support integrations with other internal and external-facing systems, such as record-keeping; identity management and matching; reporting and analytics; applicant-facing interfaces; and other key USCIS systems, as well as external systems at ICE, CBP, and DOJ.[139]

Included in these $12.5 million in costs are the costs to pay staff to make these upgrades. DHS estimates between 30 and 40 individuals, with a little over half being contract personnel and the rest being Federal employees, would be involved (either part- or full-time) in the implementation of these enhancements through FY 2022. The Federal personnel would mainly comprise GS–14 and GS–15 level personnel and supervisory and management staff.

IT costs are expected to decline in FY 2023 and remain flat into the future at $4.375 million. This amount accounts for ongoing operations and maintenance costs. New features or upgrades are not expected at this time, but if they were to be needed in the future, those enhancements would result in additional costs not included here.

At present, DHS does not envision its planned IT upgrades requiring new facilities or additional structures.

[139] Although this plan tracks the FY 2022 time frame, variations in the pace of Federal and contractor hiring and retention during the performance period, unforeseen legal or other policy challenges to any electronic process, and the ability of relevant offices to truly operationalize minimal functionality given their own staffing constraints to handle manually any additional process automations, could delay some implementation into FY 2023.

Importantly, DHS's upgrades are expected to coincide with the first electronic processing of the Form I–589. Since this will be a significant change for processing asylum applications, unexpected errors or system changes could have impacts on this project as well. Completion of the upgrades is also dependent on the availability of ICE, CBP, and DOJ systems to integrate with USCIS systems to provide for streamlined implementation. However, because this plan was developed outside the scope of this rule, we do not attribute costs to it.

As described earlier in this analysis, we expect no net change regarding biometrics collection germane to asylum applications for individuals with a positive credible fear determination. We also detailed how factors concomitant to more expeditious EAD approvals make it impossible to estimate the magnitude or even direction of the net change in Form I–765 filing volumes (related to asylum or withholding of removal), and, hence, commensurate biometrics collections (and fee payments).

Given the parameters of this rule, however, any net change in biometrics would not impose new costs on the Federal Government. The maximum monthly volume of biometrics submissions allowed by the current ASC contract is 1,633,968 and the maximum annual volume is 19,607,616.[140] The average number of individuals that submitted biometrics annually across all USCIS forms for the period FY 2016 through FY 2020 was 3,911,857.[141] Given that the average positive-screened credible fear population is 59,280 (Table 3), which is 1.52 percent of the biometrics volume, a volume change would not encroach on the ASC contract bounds.

To better illustrate the limited impact of biometrics collection on USCIS, one scenario that we do account for relates to costs for a particular USCIS–ASC district. The DHS–ASC contract was designed to be flexible to reflect variations in benefit request volumes. The pricing mechanism within this contract embodies such flexibility. Specifically, the ASC contract is aggregated by USCIS district, and each district has five volume bands with its pricing mechanism. The incumbent pricing strategy takes advantage of economies of scale because larger biometrics processing volumes have smaller corresponding biometrics processing prices.[142] For example, Table 9 provides an example of the pricing mechanism for a particular USCIS district. This district incurs a monthly fixed cost of $25,477.79, which will cover all biometrics submissions under a volume of 8,564. However, the price per biometrics submission decreases from an average cost of $6.66 for volumes between a range of 8,565 and 20,524 to an average of $5.19 once the total monthly volume exceeds 63,503. In other words, the average cost decreases when the biometrics submissions volume increases (jumps to a higher volume band).

TABLE 9—EXAMPLE OF PRICING MECHANISM FOR A USCIS DISTRICT PROCESSING BIOMETRICS APPOINTMENTS, FY 2021

District X	Volume band	Minimum volume	Maximum volume	Costs
Baseline: Fixed price per month	AA	0	8,564	$25,477.79
Fixed price per person processed	AB	8,565	20,524	6.66
Fixed price per person processed	AC	20,525	31,752	5.94
Fixed price per person processed	AD	31,753	63,504	5.53
Fixed price per person processed	AE	63,505	95,256	5.19

Source: USCIS, IRIS Directorate, received May 10, 2021.

At the district level, since there are small marginal changes to costs in terms of volumes, it would take a substantial change in volumes for a particular district to experience a significant change in costs for that district. If biometrics volumes increase on net, there could be small marginal, and hence, average, cost declines; in contrast, if volumes decline, some of those marginal costs might not be realized.

Having developed the costs for USCIS to implement the rule, this section brings the total costs together as annual inputs that are discounted over a 10-year horizon. At the three population bounds, the inputs are captured in Table 10. The FY 2022 and FY 2023 costs are from Tables 7 and 8. For FY 2024 through FY 2031, human resources cost increases. As stated earlier, USCIS expects positions to be filled at step 1 for each GS level, so in years where employees remain at the same step for more than one year, these estimates account only for human resource cost increases (FYs 2026, 2028 and 2030). The general non-IT cost increases account for expected contract pricing increases. Finally, IT costs are expected to remain flat at $4.375 million into the future, which accounts for ongoing operations and maintenance costs.

TABLE 10—MONETIZED COSTS OF THE INTERIM FINAL RULE TO USCIS

[In undiscounted 2020 dollars]

Time Period: FYs 2022 through 2031				
FY	Human resources	General (non-IT) cost	IT expenditure	Annual total
10A. Low Population Bound (75k Annual Cases)				
2022	$140,507,000	$26,813,000	$12,500,000	$179,820,000

[140] Data and information were provided by the USCIS IRIS Directorate. The average annual biometrics volumes were obtained through the CPMS database. The cost of the contract reflects the most recent contract update, dated June 18, 2020.

[141] Data and information were provided by USCIS IRIS Directorate, utilizing the CPMS database.

[142] ''Economies of scale'' refers to a scenario where a greater quantity of output produced (in this case, more biometric service appointments) results in a lower per-unit fixed cost or per-unit variable cost to produce that output.

TABLE 10—MONETIZED COSTS OF THE INTERIM FINAL RULE TO USCIS—Continued

[In undiscounted 2020 dollars]

Time Period: FYs 2022 through 2031				
FY	Human resources	General (non-IT) cost	IT expenditure	Annual total
2023	133,427,000	26,892,000	4,375,000	164,694,000
2024	137,429,810	27,698,760	4,375,000	169,503,570
2025	141,552,704	28,529,723	4,375,000	174,457,427
2026	142,968,231	29,385,614	4,375,000	176,728,846
2027	147,257,278	30,267,183	4,375,000	181,899,461
2028	148,729,851	31,175,198	4,375,000	184,280,049
2029	153,191,747	32,110,454	4,375,000	189,677,201
2030	154,723,664	33,073,768	4,375,000	192,172,432
2031	159,365,374	34,065,981	4,375,000	197,806,355
10-year total	1,459,152,660	300,011,682	51,875,000	1,811,039,342
10B. Primary Population Bound (150k Annual Cases)				
2022	355,175,000	70,525,000	12,500,000	438,200,000
2023	337,047,000	72,179,000	4,375,000	413,601,000
2024	347,832,504	74,344,370	4,375,000	426,551,874
2025	358,963,144	76,574,701	4,375,000	439,912,845
2026	362,552,776	78,871,942	4,375,000	445,799,718
2027	374,154,464	81,238,100	4,375,000	459,767,565
2028	377,896,009	83,675,243	4,375,000	465,946,252
2029	389,988,681	86,185,501	4,375,000	480,549,182
2030	393,888,568	88,771,066	4,375,000	487,034,634
2031	406,493,002	91,434,198	4,375,000	502,302,200
10-year total	3,703,991,149	803,799,121	51,875,000	4,559,665,270
10C. High Population Bound (300k Annual Cases)				
2022	806,697,000	133,182,000	12,500,000	952,379,000
2023	766,159,000	136,874,000	4,375,000	907,408,000
2024	793,740,724	140,980,220	4,375,000	939,095,944
2025	822,315,390	145,209,627	4,375,000	971,900,017
2026	830,538,544	149,565,915	4,375,000	984,479,459
2027	860,437,932	154,052,893	4,375,000	1,018,865,824
2028	869,042,311	158,674,480	4,375,000	1,032,091,791
2029	900,327,834	163,434,714	4,375,000	1,068,137,548
2030	909,331,112	168,337,755	4,375,000	1,082,043,868
2031	942,067,032	173,387,888	4,375,000	1,119,829,921
10-year total	8,500,656,879	1,523,699,492	51,875,000	10,076,231,371

The totals reported in Table 10 are collated in Table 11, with the 10-year discounted present values, each at a 3 percent and 7 percent discount rate. Because the cost inputs differ for each year, the average annualized equivalence costs are not uniform across discount rates.

TABLE 11—MONETIZED COSTS OF THE INTERIM FINAL RULE

[In millions, FY 2020 dollars]

Population level	Undiscounted	3-percent		7-percent	
	10-year cost	10-year cost	Annualized cost	10-year cost	Annualized cost
Low	$1,811.0	$1,538.8	$180.4	$1,260.8	$179.5
Primary	4,559.7	3,871.3	453.8	3,168.9	451.2
High	10,076.2	8,550.3	1,002.4	6,993.7	995.8

As discussed in Section G of the NPRM, and mentioned earlier in this preamble, DHS expects this rule to be implemented in phases. Our quantitative cost estimates assume that the funding for the rule is essentially available when the rule takes effect, and that implementation costs are spread out over several years due to timing effects related to operational and hiring impacts. In reality, budgeting constraints and variations are expected to play a prominent role in the phasing in of the program. Our estimates thus account partially but not fully for such phasing. Incorporating additional phasing into resource allocation models is complex because of the interaction

between initial and recurring costs, and DHS is not prepared at this time to attempt to fully phase in the costs quantitatively. Despite this limitation, we do not believe that the true costs would be significantly different than those presented above. A phased implementation would not skew the actual costs, but rather allocate them to different timing sequences. In fact, from a discounting perspective, the present value of the costs would actually be lower if they were allocated to future years. DHS will continue to evaluate all pertinent data and information related to the phasing approach, and, if feasible, may include refined estimates of the resource-related costs in the final rule.

As of the final drafting of this IFR, DHS believes that, through FY 2022, new staff positions can be funded with existing resources, which would support a minimum processing level of 50,000 annual family-unit cases. For the medium and high-volume bands of 150,000 and 300,000 annual cases, respectively, DHS does not believe it can meet the full staffing requirements with current funding. Based on preliminary modeling, it could take up to three years to fully staff the medium-volume band and up to five years to staff the high-volume band.[143]

If the medium- and high-volume bands of 150,000 and 300,000 were to be funded through a future fee rule, it would increase fees by an estimated weighted average of 13 percent and 26 percent respectively. This estimated increase would be attributable to the implementation of the asylum officer portions of the IFR only, and it is provided to show the magnitude of the impact that implementation of this IFR would have beyond whatever other increases might be included in a future fee rule. The 13 percent or 26 percent estimated weighted average increase would be in addition to any changes in the Immigration Examinations Fee Account non-premium budget.

ii. Intra-Federal Government Sector Impacts

This rule is expected to shift the initial case processing of some asylum and protection claims from EOIR to USCIS. We present this shift in case processing as new resource costs for USCIS because USCIS would incur costs such as hiring new staff and funding new IT upgrades. The IJs at EOIR will continue to remain at DOJ and work on other high-priority matters. The IJs are expected to continue to work on cases in which USCIS does not grant asylum because individuals whose asylum claims are not granted will be referred to EOIR for a streamlined section 240 removal proceeding. Cases in which USCIS grants asylum, however, would not receive further review within EOIR. Accordingly, every such case would constitute a direct reduction in new cases that EOIR would have to adjudicate. Given EOIR's significant pending caseload of approximately 1.3 million cases, reducing the number of cases referred to EOIR by 11,250 to 45,000 (assuming that approximately 15 percent of cases are granted, based on historical data as described above)[144] will enable EOIR to focus its resources on addressing existing pending cases and reducing the growth of the overall pending caseload. A reduction in the pending caseload may reduce the overall time required for adjudications because dockets would not have to be set as far into the future. This reduction in turn would better enable EOIR to meet its mission of fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws, including granting relief or protection to noncitizens who qualify.

c. Familiarization Costs, Benefits, and Transfers of Possible Early Labor Market Entry

It is possible that there will be familiarization costs associated with this IFR. It is expected that applicants and their support networks will incur costs to read and develop an understanding of this rule and the associated changes in the current asylum process. If, for example, attorneys are utilized, the cost could be $103.81 per hour, which is the average hourly wage for lawyers including the full cost of benefits.[145] As of the time of this analysis, there are approximately 155,000 words in this IFR. Although we could not identify formal studies on the subject, some reports suggest that, on average, a person reads about 250 words per minute, though there can be variation according to individual attributes and type of material being read. Based on the word count at the time of this analysis, it would thus take about 10.3 hours[146] to read the rule. At the burdened wage for lawyers, this would be about $612.48 per review. If each individual in the population required such a reviewer, the total familiarization cost would be about $76.3 million, which would potentially be incurred during the first year the rule is effective.[147] Since this estimate assumes each individual would hire an attorney unfamiliar with this rule, it is likely to be an overestimate of actual familiarization costs.

The rule offers other benefits to asylum applicants and the Government. Although we cannot precisely parse the portion of the IFR's impact constituting transfers and the portion constituting costs, we believe that most of the distributional effects will comprise transfers that are beneficial to some asylum applicants (which we calculated on a per-person, workday basis), as opposed to costs. These transfers may impact the support network of the applicants. This network could include public and private entities, and it may comprise family and personal friends; legal services providers and advisors; religious and charity organizations; State and local public institutions; educational providers; and non-governmental organizations. To the extent that some individuals may be able to earn income earlier, burdens on this support network may be lessened and the tax impacts could be beneficial at the local or State level. In addition, as described above, it will take time for USCIS to make the requisite resourcing and staffing changes needed to fully effectuate the changes through which the impacts could be realized. In other words, there is likely to be a delay ranging from several months to more than a year for a sizeable portion of the impacts to begin to be realized. As a result, resources and efforts related to the applicants' support networks can be expected to be maintained in the short to medium term.

[143] These figures are based on preliminary results of staffing and resource allocation estimates provided by DHS's USCIS RAIO Directorate, Asylum Division; information was obtained on July 7, 2021.

[144] Calculations: 75,000 cases × 15 percent = 11,250; 300,000 cases × 15 percent = 45,000.

[145] For the average wage for lawyers, the Departments rely on BLS statistics. *See* BLS, May 2020 National Occupational Employment and Wage Estimates, *https://www.bls.gov/oes/2020/may/oes_nat.htm#00-0000* (last visited Mar. 1, 2022).

Calculation: $71.59 × 1.45 benefits burden = $103.81 (rounded).

[146] Calculation: 155,000 words/250 words per minute = 620 minutes; 620 minutes/60 minutes per hour = 10.3 hours (rounded).

[147] The benchmark of 250 words per minute applies to most adults, according to several reports. *See, e.g.,* HealthGuidance.org, What Is the Average Reading Speed and the Best Rate of Reading? (Jan. 3, 2020), *https://www.healthguidance.org/entry/13263/1/what-is-the-average-reading-speed-and-the-best-rate-of-reading.html* (last visited Feb. 28, 2022); ExecuRead, Speed Reading Facts, *https://secure.execuread.com/facts/* (last visited Feb. 28, 2022). It is noted that the reading of technical material can be slower than other types of documents. Because this document is technical in some ways, the actual review time might be higher, thus resulting in higher familiarization costs than reported herein. Calculation: 10.3 hours × $103.81 per hour = $1,069.24; $1,069.24 × 71,363 = $76.3 million.

In addition to the likely pecuniary benefits associated with early labor force entry, there could be other benefits. As a result of this rule, DHS will begin to consider parole on a case-by-case basis for noncitizens who have been referred to USCIS for a credible fear screening under an expanded set of factors. Allowing for parole to be considered for more individuals in Government custody could allow for resource redistribution within DHS, as DHS might be able to shift resources otherwise dedicated to the transportation and detention of these individuals and families. This redistribution would allow DHS to prioritize the use of its limited detention bed space to detain those noncitizens who pose the greatest threats to national security and public safety while facilitating the expanded use of the expedited removal process to order the removal of those who make no fear claim or who express a fear but subsequently fail to meet the credible fear screening standard after interview by an asylum officer (or, if applicable, by an IJ). DHS, however, does not know how many future referrals for a credible fear screening will be eligible for parole; therefore, DHS cannot make an informed monetized estimate of the impact of this potential resource redistribution.

This rule presents substantial costs for USCIS, especially as costs are incurred to upgrade IT systems and begin hiring and training new staff. However, there are several expected qualitative benefits associated with the increased efficiency that would enable many individuals determined to have a credible fear of persecution or torture to move through the asylum adjudication or removal process more expeditiously than through the current process. Currently, it takes anywhere from eight months to five years for individuals claiming credible fear to have a final asylum determination made for their case. Under this rule, it is expected that USCIS will reach a decision on the merits of an asylum application within about 60 days of the application's filing date for most cases. As a result, individuals who are granted asylum by USCIS would likely experience a much-reduced wait time for their asylum determination. Those who are not granted asylum by USCIS are also expected to receive a final decision (either denial of asylum and issuance of a removal order or grant of asylum by an IJ) faster than under the current procedures for cases originating in credible fear screening. The timelines of 8 CFR 1240.17 provide for the streamlined removal proceedings to conclude within 90 days of service of an NTA (that is, within approximately 5 months of the application's filing date) in a typical case, in the absence of continuances or extensions. Greater efficiencies in the adjudicative process could lead to individuals spending less time in detention, which is a benefit to both the individuals and the Federal Government. Another benefit is that EOIR will not see the cases in which USCIS grants asylum, which we estimate as at least a 15 percent reduction in its overall credible fear workload.[148] The Departments anticipate this reduction will help mitigate the number of cases pending in immigration court.

Additionally, this benefit will extend to individuals granted or not granted asylum faster than if they were to go through the current process with EOIR. For cases that are referred to EOIR, an asylum officer will have already prepared the equivalent of Form I–589, gathered evidence, and provided time for individuals to obtain counsel and request necessary documents from their home country, if desired. Having credible fear cases fully developed by an asylum officer will enable IJs to focus their efforts on the merits of a case instead of developing it anew, thus resulting in prompt IJ review. For those credible fear cases in which an individual receives a positive screen but a decision not granting the individual's asylum claim, USCIS recognizes that some streamlined section 240 removal proceedings will conclude with little expenditure of EOIR resources—if, for example, the applicant does not contest the asylum officer's decision. Therefore, the benefit to EOIR under the new procedures could be greater than the Departments are able to currently quantify.

The reduction of credible fear cases that EOIR would need to process would enable EOIR to focus its resources on addressing existing pending cases and reducing the growth of the overall pending caseload. It would also allow EOIR to shift some resources to other work. We cannot currently make a one-to-one comparison between the work time actually spent on credible fear cases between EOIR judges and USCIS asylum officers, but if there is a reduction in average work time spent on cases, there could be cost savings for EOIR, though it is emphasized that these cost savings would not be budgetary. Further, this rule may slow the growth of the number of Form I–765s for pending asylum applicants. As explained above, if some individuals are granted asylum faster than under current conditions, some applicants in this process may choose not to file for an EAD. This could result in cost savings to applicants, as discussed, and it would also reduce USCIS's adjudication burden.

The Departments assess that noncitizens placed into expedited removal proceedings and the new streamlined 240 procedures established by this rule will more likely receive a prompter adjudication of their claims for asylum, withholding of removal, or CAT protection than they would under the existing regulations. Depending on the individual circumstances of each case, this IFR could mean that such noncitizens would likely not remain in the United States—for years, potentially—pending resolution of their claims, and those who qualify for asylum will be granted asylum several years earlier than they are under the present process.

Overall, the anticipated operational efficiencies from this rule may provide for a prompter grant of protection to qualifying noncitizens and ensure that those who do not qualify for relief or protection are removed sooner than they would be in the absence of this rulemaking. Relative to the NPRM, the changes in this IFR may result in smaller overall operational efficiencies for DHS because attorneys from the ICE Office of the Principal Legal Advisor (''OPLA'') will need to participate in the streamlined section 240 removal process. With respect to DHS, the IFR's adoption of streamlined section 240 proceedings in place of the NPRM's proposed IJ application review proceedings means that DHS attorneys will necessarily participate in immigration court when the asylum officer does not grant asylum.[149] Likewise, with respect to EOIR, streamlined section 240 proceedings may require somewhat greater immigration court resources than would the optional IJ application review proceedings proposed in the NPRM. Considering both quantifiable and

[148] Based on the five-year (FY 2017 through FY 2021) average, an estimated 15 percent of EOIR asylum applicants were granted asylum in cases originating with a credible fear claim. *See* EOIR, Adjudications Statistics: Asylum Decision and Filing Rates in Cases Originating with a Credible Fear Claim (Jan. 19, 2022), *https://www.justice.gov/eoir/page/file/1062976/download*. Calculation: FY 2017 to FY 2021 grant rates (14.02 percent) + (16.48 percent) + (15.38 percent) + (16.60 percent) + 14.32 percent)/5 = 15 percent average (rounded).

[149] On the other hand, relative to the baseline, the reduced number of cases that reach immigration court as a result of this rule, as described above, will translate into a workload reduction for DHS's OPLA, just as for EOIR, enabling DHS attorneys to dedicate more time to other high-priority matters.

unquantifiable benefits and costs, the Departments believe that the aggregate benefits of the rule would amply justify the aggregate costs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (''RFA''), imposes certain requirements on Federal agency rules that are subject to the notice-and-comment requirements of the APA. *See* 5 U.S.C. 603(a), 604(a). This IFR does not directly regulate small entities and is not expected to have a direct effect on small entities. Rather, this IFR regulates individuals, and individuals are not defined as ''small entities'' by the RFA. *See* 5 U.S.C. 601(6). Although some employers that qualify as small entities [150] could experience costs or transfer effects, these impacts would be indirect. Based on the evidence presented in this analysis and throughout this preamble, DHS certifies that this IFR would not have a significant economic impact on a substantial number of small entities.

Nonetheless, in connection with the NPRM, USCIS examined the potential impact of this rule on small entities, 86 FR 46938, and several commenters provided feedback about the rule's impact.

Comments: A commenter claimed that the prior analysis did not adequately analyze the impact on small entities and that the rule should therefore be withdrawn. The comment asserted that the rule's substantial changes would entail extensive legal preparation, interpretation, explanation, and evidentiary efforts by the representatives of the impacted asylum seekers. These changes would stand to affect the resources and revenue of both private attorneys and non-profit organizations, including small entities. Because the rule, according to the commenter, would increase the complexity of the asylum system, these entities could either lose money or respond by charging higher fees. The latter response, the commenter asserted, would push more clients to proceed on their own behalf.

In addition, the commenter claimed that the potential familiarization costs of about $69.05 per hour, as presented in the NPRM, were unexplained and that the required time in hours was not accounted for. The commenter also claimed that the Departments' determination that the rule does not regulate small entities is erroneous because the added legal efforts will impact the resources and operations of legal providers, including small entities.

Response: The Departments disagree with this assessment of the RFA. As the Government has previously recognized, ''[t]he courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities.'' [151] This rule directly regulates individuals and does not regulate small entities. Changes in resources or business operations for legal providers may be indirect impacts, but the rule imposes no mandates or requirements on such entities. Furthermore, the Departments acknowledge that the rule could impact the support networks of individuals, which could include legal services and assistance providers that might qualify as small entities, but again, these effects are indirect consequences of the rule.

Regarding the commenters' claims about familiarization costs, we provided a reference noting that the wage used to calculate those costs represents the national average for lawyers applicable to the May 2020 BLS National Occupational Employment and Wage Estimates. In this IFR, we take the additional step of providing an estimate for these costs, based on the maximum population, typical reading speed, and word count. Based on this information, familiarization costs could be around $76.3 million the first year the rule is effective, and likely less in future years.

Comments: Several commenters expressed concern that fee increases will negatively impact legal service providers because asylum seekers may no longer be able to afford to hire legal counsel and would demand pro bono services. Additionally, they expressed concern that regulatory changes that force cases to be processed on an expedited timeline will increase the amount of time legal service providers must spend on a case, which will limit the number of clients they can serve.

Response: The Departments recognize the role of legal service providers in the application process for many asylum seekers. USCIS currently does not charge a fee to apply for asylum, nor does this rule require this population to pay a fee for their asylum applications to be adjudicated. This rule does not change an asylum applicant's ability to hire legal counsel or acquire pro bono services, nor does it prevent a legal service provider from offering its services. The purpose of the rule is to make the asylum process more efficient by streamlining proceedings that heretofore have been drawn out for months or even years before EOIR.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (''UMRA'') is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector.

Although this rule is expected to exceed the $100 million expenditure in any one year when adjusted for inflation ($178 million in 2021 dollars based on the Consumer Price Index for All Urban Consumers (''CPI–U'')),[152] the Departments do not believe this rule would impose any unfunded Federal mandates on State, local, or Tribal governments, or on the private sector. The impacts are likely to apply to individuals, potentially in the form of beneficial distributional effects and cost savings. There could be tax impacts related to the distributional effects. However, these effects do not constitute ''mandates'' for purposes of the UMRA. *See* 2 U.S.C. 658 (defining mandates only as statutory or regulatory provisions that ''impose an enforceable duty'' on the private sector or on State, local, or Tribal governments). Further, the real resource costs quantified in this analysis apply to the Federal Government and also are not mandates.

[150] The definition of ''small entity'' includes ''small business[es].'' *See* 5 U.S.C. 601(3).

[151] *See* U.S. Small Business Administration Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act* 22 (Aug. 2017), *https://cdn.advocacy.sba.gov/wp-content/uploads/2019/06/21110349/How-to-Comply-with-the-RFA.pdf* (last visited Feb. 28, 2022).

[152] *See* BLS, Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month, *https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202112.pdf* (last visited Feb. 28, 2022).

Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2020); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2021 – Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(270.970–152.383)/152.383] * 100 = (118.587/152.383) * 100 = 0.77821673 * 100 = 77.82 percent = 78 percent (rounded).

Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.78 = $178 million in 2021 dollars.

Therefore, the Departments have not prepared a written UMRA statement.

E. Congressional Review Act

The Administrator of the Office of Information and Regulatory Affairs has determined that this IFR is a ''major rule'' within the meaning of Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act), 5 U.S.C. 804(2). Accordingly, this final rule is effective 60 days after publication.

F. Executive Order 13132 (Federalism)

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

H. Family Assessment

The Departments have assessed this action in accordance with section 654 of the Treasury General Appropriations Act, 1999, Public Law 105–277, div. A, sec. 654(c), 112 Stat. 2681, 2681–529 (1998). With respect to the criteria specified in section 654(c), the Departments determined that the rule would not have any adverse impacts on family safety or stability. The rule would expand the circumstances in which asylum-seeking families who have been placed into expedited removal and who present neither a security risk nor a risk of absconding may be paroled from custody, thereby helping preserve family unity and safety, while also avoiding the overcrowding of detention facilities and better aligning detention resources, including the use of alternatives to detention. Additionally, this rule would result in greater efficiencies in the expedited removal and asylum processes, providing speedier resolution of meritorious cases and reducing the overall asylum system backlogs.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This rule would not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect 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.

J. National Environmental Policy Act

The Departments analyze actions to determine whether the National Environmental Policy Act, Public Law 91–190, 83 Stat. 852 (1970) (codified at 42 U.S.C. 4321–4347), applies to them and, if so, what degree of analysis is required. *See* DHS, *Implementation of the National Environmental Policy Act, Directive 023–01* (Oct. 31, 2014), *https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex* (''Directive 023–01''); *Instruction Manual 023–01. Directive 023–01* and *Instruction Manual 023–01* establish the policies and procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (''CEQ'') regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') that experience has shown do not have a significant effect on the human environment and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 40 CFR 1501.4, 1507.3(e)(2)(ii). The DHS categorical exclusions are listed in Appendix A of *Instruction Manual 023–01.* For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[153]

As discussed in more detail throughout this rule, the Departments are modifying regulations applicable to noncitizens who have been placed into the expedited removal process, specifically for those who are found to have a positive credible fear. The rule could result in an increase in the number of noncitizens in expedited removal paroled out of custody, thereby promoting efficient processing and prioritization of DHS's limited detention bed space to detain those noncitizens who pose the greatest threats to national security and public safety.

Generally, the Departments believe NEPA does not apply to a rule intended to change a discrete aspect of an immigration program because any attempt to analyze its potential impacts would be largely, if not completely, speculative. This rule would not alter any eligibility criteria, but rather would change certain procedures, specifically, which Federal agency adjudicates certain asylum claims. The rule also would not make any changes to detention facilities. Rather, the detention facilities are already in existence and to attempt to calculate how many noncitizens would be paroled—a highly discretionary benefit—and how many would proceed to the detention centers would be nearly impossible to determine. The Departments have no reason to believe that the IFR's amendments would change the environmental effect, if any, of the existing regulations.

Therefore, the Departments have determined that, even if NEPA applied to this action, this rule clearly fits within categorical exclusion A3(d) in *Instruction Manual 023–01,* which provides an exclusion for ''promulgation of rules . . . that amend an existing regulation without changing its environmental effect.'' *Instruction Manual 023–01* at A–2. Furthermore, the Departments have determined that this rule clearly fits within categorical exclusion A3(a) in *Instruction Manual 023–01* because the proposed rule is of a strictly administrative or procedural nature. *Id.* at A–1. This rule is not a part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this rule is categorically excluded, and no further NEPA analysis is required.

K. Paperwork Reduction Act

USCIS Form I–765

Under the Paperwork Reduction Act (''PRA''), Public Law 104–13, 109 Stat. 163 (1995), all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. In compliance with the PRA, DHS published a notice of proposed rulemaking on August 20, 2021, in which it requested comments on the revision to the information

[153] *Instruction Manual 023–01* at V.B(2)(a)–(c).

collection associated with this rulemaking.

DHS and USCIS invite the general public and other Federal agencies to comment on the impact of the proposed collection of information for an additional 60 days. Comments are encouraged and must be submitted on or before May 31, 2022. All submissions received must include the OMB Control Number 1615–0040 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and I. Public Participation sections of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of IT (*e.g.,* permitting electronic submission of responses).

Overview of Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–765; I–765WS; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses Form I–765 to collect information needed to determine if a noncitizen is eligible for an initial EAD, a new replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Noncitizens in many immigration statuses are required to possess an EAD as evidence of employment authorization. USCIS is revising the form instructions to correspond with revisions related to information about the asylum application and parole.

(5) *An estimate of the total number of noncitizens and the amount of time estimated for an average noncitizen to respond:* The estimated total number of noncitizens for the information collection I–765 paper filing is 2,178,820, and the estimated hour burden per response is 4.5 hours; the estimated total number of noncitizens for the information collection I–765 online filing is 107,180, and the estimated hour burden per response is 4 hours; the estimated total number of noncitizens for the information collection I–765WS is 302,000, and the estimated hour burden per response is 0.5 hours; the estimated total number of noncitizens for the information collection biometrics submission is 302,535, and the estimated hour burden per response is 1.17 hours; the estimated total number of noncitizens for the information collection passport photos is 2,286,000, and the estimated hour burden per response is 0.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection of information is 11,881,376 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

List of Subjects

8 CFR Part 208

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

8 CFR Part 212

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

8 CFR Part 235

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

8 CFR Part 1003

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

8 CFR Part 1208

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

8 CFR Part 1235

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

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Regulatory Amendments

DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, 8 CFR parts 208, 212, and 235 are amended 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. Amend § 208.2 by:

■ a. Revising paragraph (a);

■ b. Removing the word ''or'' at the end of paragraph (c)(1)(vii);

■ c. Removing the period at the end of paragraph (c)(1)(viii) and adding ''; or'' in its place; and

■ d. Removing and reserving paragraph (c)(1)(ix).

The revision reads as follows:

§ 208.2 Jurisdiction.

(a) *Jurisdiction of U.S. Citizenship and Immigration Services (USCIS).* (1) Except as provided in paragraph (b) or (c) of this section, USCIS shall have initial jurisdiction over:

(i) An asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry; and

(ii) Interviews provided in accordance with section 235(b)(1)(B)(ii) of the Act to further consider the application for asylum of an alien, other than a stowaway or alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands, found to have a credible fear of persecution or torture in accordance with § 208.30(f) and retained by USCIS, or referred to USCIS by an immigration judge pursuant to 8 CFR 1003.42 and 1208.30 after the immigration judge has vacated a negative credible fear determination. Interviews to further consider applications for asylum under this paragraph (a)(1)(ii) are governed by the procedures provided for under § 208.9. Further consideration of an asylum application filed by a stowaway who has received a positive credible fear

determination will be under the jurisdiction of an immigration judge pursuant to paragraph (c) of this section.

(2) USCIS shall also have initial jurisdiction over credible fear determinations under § 208.30 and reasonable fear determinations under § 208.31.

* * * * *

■ 3. Amend § 208.3 by revising paragraphs (a) and (c)(3) to read as follows:

§ 208.3 Form of application.

(a)(1) Except for applicants described in paragraph (a)(2) of this section, an asylum applicant must file Form I–589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

(2) For asylum applicants, other than stowaways, who are awaiting further consideration of an asylum application pursuant to section 235(b)(1)(B)(ii) of the Act following a positive credible fear determination, the written record of a positive credible fear finding issued in accordance with § 208.30(f) or 8 CFR 1003.42 or 1208.30 satisfies the application filing requirements in paragraph (a)(1) of this section for purposes of consideration by USCIS pursuant to the jurisdiction provided at § 208.2(a)(1)(ii). The written record of the positive credible fear determination shall be considered a complete asylum application for purposes of §§ 208.4(a), 208.7, and 208.9(a); shall not be subject to the requirements of 8 CFR 103.2; and shall be subject to the conditions and consequences in paragraph (c) of this section upon signature at the asylum interview. The date that the positive credible fear determination is served on the alien shall be considered the date of filing and receipt. Application information collected electronically will be preserved in its native format. The applicant's spouse and children may be included in the request for asylum only if they were included in the credible fear determination pursuant to § 208.30(c), or also presently have an application for asylum pending adjudication with USCIS pursuant to § 208.2(a)(1)(ii). If USCIS does not grant the applicant's asylum application after an interview conducted in accordance with § 208.9 and if a spouse or child who was included in the request for asylum does not separately file an asylum application that is adjudicated by USCIS, the application will also be deemed to satisfy the application filing requirements of 8 CFR 1208.4(b) for a spouse or child who was included in the request for asylum. The biometrics captured during expedited removal for the principal applicant and any dependents may be used to verify identity and for criminal and other background checks for purposes of an asylum application under the jurisdiction of USCIS pursuant to § 208.2(a)(1) and any subsequent immigration benefit.

* * * * *

(c) * * *

(3) An asylum application under paragraph (a)(1) of this section must be properly filed in accordance with 8 CFR part 103 and the filing instructions. Receipt of a properly filed asylum application under paragraph (a) of this section will commence the period after which the applicant may file an application for employment authorization in accordance with § 208.7 and 8 CFR 274a.12 and 274a.13.

* * * * *

■ 4. Amend § 208.4 by redesignating paragraph (c) as paragraph (b) and revising it to read as follows:

§ 208.4 Filing the application.

* * * * *

(b) *Amending an application after filing.* (1) For applications being considered by USCIS pursuant to § 208.2(a)(1)(i), upon the request of the alien, and as a matter of discretion, the asylum officer or immigration judge with jurisdiction may permit an asylum applicant to amend or supplement the application. Any delay in adjudication or in proceedings caused by a request to amend or supplement the application will be treated as a delay caused by the applicant for purposes of § 208.7 and 8 CFR 274a.12(c)(8).

(2) For applications being considered by USCIS pursuant to § 208.2(a)(1)(ii), the asylum applicant may subsequently amend or correct the biographic or credible fear information in the Form I–870, Record of Determination/Credible Fear Worksheet, or supplement the information collected during the process that concluded with a positive credible fear determination, provided the information is submitted directly to the asylum office no later than 7 calendar days prior to the scheduled asylum interview, or for documents submitted by mail, postmarked no later than 10 calendar days prior to the scheduled asylum interview. The asylum officer, finding good cause in an exercise of USCIS's discretion, may consider amendments or supplements submitted after the 7- or 10-day (depending on the method of submission) deadline or may grant the applicant an extension of time during which the applicant may submit additional evidence, subject to the limitation on extensions described at § 208.9(e)(2). Any amendment, correction, or supplement shall be included in the record.

■ 5. Amend § 208.9 by:

■ a. Revising paragraphs (a) through (g); and

■ b. Adding paragraph (i).

The revisions and addition read as follows:

§ 208.9 Procedure for interview before an asylum officer.

(a) *Claims adjudicated.* USCIS shall adjudicate the claim of each asylum applicant whose application is complete within the meaning of § 208.3(a)(2) or (c)(3), when applicable, and is within the jurisdiction of USCIS pursuant to § 208.2(a). In all cases, such proceedings shall be conducted in accordance with section 208 of the Act.

(1) *Timing of interview.* For interviews on asylum applications within the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), USCIS shall not schedule the interview to take place fewer than 21 days after the applicant has been served with a record of the positive credible fear determination pursuant to § 208.30(f), unless the applicant requests in writing that an interview be scheduled sooner. The asylum officer shall conduct the interview within 45 days of the applicant being served with a positive credible fear determination made by an asylum officer pursuant to § 208.30(f) or made by an immigration judge pursuant to 8 CFR 1208.30, subject to the need to reschedule an interview due to exigent circumstances, such as the unavailability of an asylum officer to conduct the interview, the inability of the applicant to attend the interview due to illness, the inability to timely secure an appropriate interpreter pursuant to paragraph (g)(2) of this section, or the closure of the asylum office.

(2) [Reserved]

(b) *Conduct and purpose of interview.* The asylum officer shall conduct the interview in a nonadversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for asylum. For interviews on applications within the

jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), the asylum officer shall also elicit all relevant and useful information bearing on the applicant's eligibility for withholding of removal under the Act and protection under the Convention Against Torture, and, as appropriate, elicit sufficient information to make a determination whether there is a significant possibility that the applicant's spouse or child, if included in the request for asylum, has experienced or fears harm that would be an independent basis for asylum, withholding of removal under the Act, or protection under the Convention Against Torture in the event that the principal applicant is not granted asylum. If the asylum officer determines that there is a significant possibility that the applicant's spouse or child has experienced or fears harm that would be an independent basis for asylum, withholding of removal under the Act, or protection under the Convention Against Torture, the asylum officer shall inform the spouse or child of that determination. At the time of the interview, the applicant must provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and may be required to register this identity. The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(c) *Authority of asylum officer.* The asylum officer shall have authority to administer oaths, verify the identity of the applicant (including through the use of electronic means), verify the identity of any interpreter, present evidence, receive evidence, and question the applicant and any witnesses.

(d) *Completion of the interview.* Upon completion of the interview before an asylum officer:

(1) The applicant or the applicant's representative will have an opportunity to make a statement or comment on the evidence presented. The representative will also have the opportunity to ask follow-up questions of the applicant and any witness. The asylum officer may, in the asylum officer's discretion, limit the length of any statement or comment and may require its submission in writing.

(2) USCIS shall inform the applicant that the applicant must appear in person to receive and to acknowledge receipt of the decision of the asylum officer and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer. An applicant's failure to appear to receive and acknowledge receipt of the decision will be treated as delay caused by the applicant for purposes of § 208.7.

(e) *Extensions.* The asylum officer will consider evidence submitted by the applicant together with the applicant's asylum application.

(1) For applications being considered under § 208.2(a)(1)(i), the applicant must submit any documentary evidence at least 14 calendar days in advance of the interview date. As a matter of discretion, the asylum officer may consider evidence submitted within the 14-day period prior to the interview date or may grant the applicant a brief extension of time during which the applicant may submit additional evidence. Any such extension will be treated as a delay caused by the applicant for purposes of § 208.7.

(2) For applications being considered under § 208.2(a)(1)(ii), the asylum officer may grant the applicant a brief extension of time during which the applicant may submit additional evidence, but the asylum officer shall not grant any extension to submit additional evidence that would prevent a decision from being issued on the application within 60 days of service of the positive credible fear determination made by an asylum officer pursuant to § 208.30(f) or made by an immigration judge pursuant to 8 CFR 1208.30 except when the interview has been rescheduled due to exigent circumstances pursuant to paragraph (a)(1) of this section.

(f) *Record.* (1) The asylum application, as defined in § 208.3(a), all supporting information provided by the applicant, any comments submitted by the Department of State or by DHS, and any other unclassified information considered by the asylum officer in the written decision shall comprise the record.

(2) For interviews on asylum applications within the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), except for statements made off the record with the permission of the asylum officer, the interview shall be recorded. A verbatim transcript of the interview shall be prepared and included in the referral package to the immigration judge as described in § 208.14(c)(1), with a copy also provided to the applicant.

(g) *Interpreters.* (1) Except as provided in paragraph (g)(2) of this section, an applicant unable to proceed with the interview in English must provide, at no expense to USCIS, a competent interpreter fluent in both English and the applicant's native language or any other language in which the applicant is fluent. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. Failure without good cause to comply with this paragraph (g)(1) may be considered a failure to appear for the interview for purposes of § 208.10.

(2) Notwithstanding paragraph (h) of this section, for interviews on asylum applications within the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), if the applicant is unable to proceed effectively in English, the asylum officer shall arrange for the assistance of an interpreter in conducting the interview. The interpreter must be at least 18 years of age. Neither the applicant's attorney or representative of record, a witness testifying on the applicant's behalf, nor a representative or employee of the applicant's country of nationality, or if stateless, country of last habitual residence, may serve as the applicant's interpreter. If a USCIS interpreter is unavailable, USCIS will attribute any resulting delay to USCIS for the purposes of employment authorization pursuant to § 208.7.

* * * * *

(i) *Dependents of applicants being considered under § 208.2(a)(1)(ii).* This paragraph (i) governs when an applicant whose application for asylum is being considered under § 208.2(a)(1)(ii) is not granted asylum pursuant to § 208.14(c) and has included a spouse or children within their request for asylum. The asylum officer will make a determination whether there is a significant possibility that the spouse or child has experienced or fears harm that would be an independent basis for asylum, withholding of removal under the Act, or protection under the Convention Against Torture, based on the information elicited pursuant to paragraph (b) of this section. This determination will be included in the record, as otherwise described in paragraph (f) of this section. Referral of the principal applicant's application to an immigration judge, along with the appropriate charging documents, will not be made until any pending application by the spouse or child as a principal applicant is adjudicated.

* * * * *

■ 6. Amend § 208.14 by revising paragraphs (b), (c) introductory text, and (c)(1) to read as follows:

§ 208.14 Approval, denial, referral, or dismissal of application.

* * * * *

(b) *Approval by an asylum officer.* In any case within the jurisdiction of USCIS, unless otherwise prohibited in § 208.13(c), an asylum officer, subject to review within USCIS, may grant, in the exercise of his or her discretion, asylum to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, and whose identity has been checked pursuant to section 208(d)(5)(A)(i) of the Act.

(c) *Denial, referral, or dismissal by an asylum officer.* If the asylum officer, subject to review within USCIS, does not grant asylum to an applicant after an interview conducted in accordance with § 208.9, or if, as provided in § 208.10, the applicant is deemed to have waived the applicant's right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application as follows:

(1) *Inadmissible or deportable aliens.* Except for applicants described in paragraph (c)(4)(ii) of this section who have not already been subject to proceedings in accordance with § 235.3(b) of this chapter, in the case of an applicant who appears to be inadmissible or deportable under section 212(a) or 237(a) of the Act, the asylum officer shall refer the application to an immigration judge, together with the appropriate charging document, for adjudication in removal proceedings (or, where charging documents may not be issued, shall dismiss the application).

* * * * *

■ 7. Amend § 208.16 by revising paragraphs (a) and (c)(4) to read as follows:

§ 208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

(a) *Consideration of application for withholding of removal.* An asylum officer shall not determine whether an alien is eligible for withholding of the exclusion, deportation, or removal of the alien to a country where the alien's life or freedom would be threatened, except in the case of an alien who is determined to be an applicant for admission under section 235(b)(1) of the Act, who is found to have a credible fear of persecution or torture, whose case is subsequently retained by or referred to USCIS pursuant to the jurisdiction provided at § 208.2(a)(1)(ii) to consider the application for asylum, and whose application for asylum is not granted; or in the case of the spouse or child of such an alien who is included in the alien's asylum application and who files a separate application for asylum with USCIS that is not granted. In such cases, the asylum officer will determine, based on the record before USCIS, whether the applicant is eligible for statutory withholding of removal under paragraph (b) of this section or withholding or deferral of removal pursuant to the Convention Against Torture under paragraph (c) of this section. Even if the asylum officer determines that the applicant has established eligibility for withholding of removal under paragraph (b) or (c) of this section, the asylum officer shall proceed with referring the application to the immigration judge for a hearing pursuant to § 208.14(c)(1). In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

* * * * *

(c) * * *

(4) In considering an application for withholding of removal under the Convention Against Torture, the adjudicator shall first determine whether the alien is more likely than not to be tortured in the country of removal. If the adjudicator determines that the alien is more likely than not to be tortured in the country of removal, the alien is eligible for protection under the Convention Against Torture, and the adjudicator shall determine whether protection under the Convention Against Torture should be granted either in the form of withholding of removal or in the form of deferral of removal. The adjudicator shall state that an alien eligible for such protection is eligible for withholding of removal unless the alien is subject to mandatory denial of withholding of removal under paragraph (d)(2) or (3) of this section. If an alien eligible for such protection is subject to mandatory denial of withholding of removal under paragraph (d)(2) or (3) of this section, the adjudicator shall state that the alien is eligible for deferral of removal under § 208.17(a). For cases under the jurisdiction of USCIS pursuant to § 208.2(a)(1)(ii), the asylum officer may make such a determination based on the application and the record before USCIS; however, the asylum officer shall not issue an order granting either withholding of removal or deferral of removal because that is referred to the immigration judge pursuant to § 208.14(c)(1) and 8 CFR 1240.17.

* * * * *

■ 8. Amend § 208.30 by revising the section heading and paragraphs (b), (c), (d) introductory text, (e) heading, (e)(1) through (4), (e)(5)(i), (e)(6) introductory text, (e)(6)(ii), (f), and (g) to read as follows:

§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

* * * * *

(b) *Process and authority.* If an alien subject to section 235(a)(2) or 235(b)(1) of the Act indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by a USCIS asylum officer in accordance with this section. A USCIS asylum officer shall then screen the alien for a credible fear of persecution or torture. An asylum officer, as defined in section 235(b)(1)(E) of the Act, has the authorities described in § 208.9(c). If in exercising USCIS's discretion, it is determined that circumstances so warrant, the asylum officer, after supervisory concurrence, may refer the alien for proceedings under section 240 of the Act without making a credible fear determination.

(c) *Treatment of family units.* (1) A spouse or child of a principal alien who arrived in the United States concurrently with the principal alien shall be included in that alien's positive credible fear evaluation and determination, unless the principal alien or the spouse or child declines such inclusion. Any alien may have his or her evaluation and determination made separately, if that alien expresses such a desire. The option for members of a family unit to have their evaluations and determinations made separately shall be communicated to all family members at the beginning of the interview process.

(2) The asylum officer in the officer's discretion may also include other accompanying family members who arrived in the United States concurrently with a principal alien in that alien's positive fear evaluation and determination for purposes of family unity.

(3) For purposes of family units in credible fear determinations, the category of ''child'' includes only unmarried persons under 21 years of age.

(d) *Interview.* A USCIS asylum officer will conduct the credible fear interview in a nonadversarial manner, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on whether the alien can establish a credible fear of persecution or torture. The information provided during the interview may form the basis of an asylum application pursuant to

paragraph (f) of this section and § 208.3(a)(2). The asylum officer shall conduct the interview as follows:

* * * * *

(e) *Determination.* (1) The asylum officer shall create a written record of the officer's determination, including a summary of the material facts as stated by the applicant, any additional facts relied on by the officer, and the officer's determination of whether, in light of such facts, the alien has established a credible fear of persecution or torture.

(2) An alien will be found to have a credible fear of persecution if there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien can establish eligibility for asylum under section 208 of the Act or for withholding of removal under section 241(b)(3) of the Act. However, prior to January 1, 2030, in the case of an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands, the officer may only find a credible fear of persecution if there is a significant possibility that the alien can establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act.

(3) An alien will be found to have a credible fear of torture if the alien shows that there is a significant possibility that the alien is eligible for withholding of removal or deferral of removal under the Convention Against Torture, pursuant to § 208.16 or § 208.17.

(4) In determining whether the alien has a credible fear of persecution, as defined in section 235(b)(1)(B)(v) of the Act, or a credible fear of torture, the asylum officer shall consider whether the alien's case presents novel or unique issues that merit a positive credible fear finding pursuant to paragraph (f) of this section in order to receive further consideration of the application for asylum and withholding of removal.

(5)(i) Except as provided in paragraphs (e)(5)(ii) through (iv), or paragraph (e)(6) or (7) of this section, if an alien is able to establish a credible fear of persecution or torture but appears to be subject to one or more of the mandatory bars to applying for, or being granted, asylum contained in section 208(a)(2) and (b)(2) of the Act, or to withholding of removal contained in section 241(b)(3)(B) of the Act, the Department of Homeland Security shall nonetheless issue a Notice to Appear or retain the alien for further consideration of the alien's claim pursuant to paragraph (f) of this section, if the alien is not a stowaway. If the alien is a stowaway, the Department shall place the alien in proceedings for consideration of the alien's claim pursuant to § 208.2(c)(3).

* * * * *

(6) Prior to any determination concerning whether an alien arriving in the United States at a U.S.-Canada land border port-of-entry or in transit through the United States during removal by Canada has a credible fear of persecution or torture, the asylum officer shall conduct a threshold screening interview to determine whether such an alien is ineligible to apply for asylum pursuant to section 208(a)(2)(A) of the Act and subject to removal to Canada by operation of the Agreement Between the Government of the United States and the Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (''Agreement''). In conducting this threshold screening interview, the asylum officer shall apply all relevant interview procedures outlined in paragraph (d) of this section, provided, however, that paragraph (d)(2) of this section shall not apply to aliens described in this paragraph (e)(6). The asylum officer shall advise the alien of the Agreement's exceptions and question the alien as to applicability of any of these exceptions to the alien's case.

* * * * *

(ii) If the alien establishes by a preponderance of the evidence that the alien qualifies for an exception under the terms of the Agreement, the asylum officer shall make a written notation of the basis of the exception, and then proceed immediately to a determination concerning whether the alien has a credible fear of persecution or torture under paragraph (d) of this section.

* * * * *

(f) *Procedures for a positive credible fear finding.* If an alien, other than an alien stowaway, is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue the alien a record of the positive credible fear determination, including copies of the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based. The documents may be served in-person, by mail, or electronically. USCIS has complete discretion to either issue a Form I–862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in proceedings under section 240 of the Act, or retain jurisdiction over the application for asylum pursuant to § 208.2(a)(1)(ii) for further consideration in a hearing pursuant to § 208.9. Should any part of 8 CFR 1240.17 be enjoined or vacated, USCIS has the discretion to determine that it will issue a Form I–862, Notice to Appear, in all cases that receive a positive credible fear determination. If an alien stowaway is found to have a credible fear of persecution or torture, the asylum officer will so inform the alien and issue a Form I–863, Notice of Referral to Immigration Judge, for full consideration of the asylum claim, or the withholding of removal claim, in proceedings under § 208.2(c). Parole of the alien may be considered only in accordance with section 212(d)(5) of the Act and 8 CFR 212.5.

(g) *Procedures for a negative credible fear finding.* (1) If an alien is found not to have a credible fear of persecution or torture, the asylum officer shall provide the alien with a written notice of decision and issue the alien a record of the credible fear determination, including copies of the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based. The asylum officer shall inquire whether the alien wishes to have an immigration judge review the negative decision, which shall include an opportunity for the alien to be heard and questioned by the immigration judge as provided for under section 235(b)(1)(B)(iii)(III) of the Act, using Form I–869, Record of Negative Credible Fear Finding and Request for Review by Immigration Judge. The alien shall indicate whether the alien desires such review on Form I–869. A refusal or failure by the alien to make such indication shall be considered a request for review.

(i) If the alien requests such review, or refuses or fails to either request or decline such review, the asylum officer shall serve the alien with a Form I–863, Notice of Referral to Immigration Judge, for review of the credible fear determination in accordance with paragraph (g)(2) of this section. USCIS may, in its discretion, reconsider a negative credible fear finding that has been concurred upon by an immigration judge provided such reconsideration is requested by the alien or initiated by USCIS no more than 7 calendar days after the concurrence by the immigration judge, or prior to the alien's removal, whichever date comes first, and further provided that no previous request for reconsideration of that negative finding has already been made. The provisions of 8 CFR 103.5 shall not apply to credible fear determinations.

(ii) If the alien is not a stowaway and does not request a review by an

immigration judge, DHS shall order the alien removed and issue a Form I–860, Notice and Order of Expedited Removal, after review by a supervisory asylum officer.

(iii) If the alien is a stowaway and the alien does not request a review by an immigration judge, the asylum officer shall refer the alien to the district director for completion of removal proceedings in accordance with section 235(a)(2) of the Act.

(2)(i) Immigration judges will review negative credible fear findings as provided in 8 CFR 1003.42 and 1208.30(g).

(ii) The record of the negative credible fear determination, including copies of the Form I–863, Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 9. The authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108–458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110–229 (8 U.S.C. 1185 note); 8 CFR part 2; Pub. L. 115–218.

Section 212.1(q) also issued under section 702, Pub. L. 110–229, 122 Stat. 754, 854.

■ 10. Amend § 212.5 by revising paragraph (b) introductory text to read as follows:

§ 212.5 Parole of aliens into the United States.

* * * * *

(b) *Parole from custody.* The parole of aliens within the following groups who have been or are detained in accordance with § 235.3(b) or (c) of this chapter would generally be justified only on a case-by-case basis for ''urgent humanitarian reasons'' or ''significant public benefit,'' provided the aliens present neither a security risk nor a risk of absconding:

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 11. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 48 U.S.C. 1806, 1807, and 1808 and 48 U.S.C. 1806 notes (title VII, Pub. L. 110–229, 122 Stat. 754); 8 U.S.C. 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638, and Pub. L. 112–54, 125 Stat. 550).

■ 12. Amend § 235.3 by revising paragraphs (b)(2)(iii), (b)(4)(ii), and (c) to read as follows:

§ 235.3 Inadmissible aliens and expedited removal.

* * * * *

(b) * * *

(2) * * *

(iii) *Detention and parole of alien in expedited removal.* An alien whose inadmissibility is being considered under this section or who has been ordered removed pursuant to this section shall be detained pending determination and removal. Parole of such alien shall only be considered in accordance with section 212(d)(5) of the Act and § 212.5(b) of this chapter. A grant of parole would be for the limited purpose of parole out of custody and cannot serve as an independent basis for employment authorization under § 274a.12(c)(11) of this chapter.

* * * * *

(4) * * *

(ii) *Detention pending credible fear interview.* Pending the credible fear determination by an asylum officer and any review of that determination by an immigration judge, the alien shall be detained. Parole of such alien shall only be considered in accordance with section 212(d)(5) of the Act and § 212.5(b) of this chapter. A grant of parole would be for the limited purpose of parole out of custody and cannot serve as an independent basis for employment authorization under § 274a.12(c)(11) of this chapter. Prior to the interview, the alien shall be given time to contact and consult with any person or persons of the alien's choosing. If the alien is detained, such consultation shall be made available in accordance with the policies and procedures of the detention facility where the alien is detained, shall be at no expense to the Government, and shall not unreasonably delay the process.

* * * * *

(c) *Arriving aliens placed in proceedings under section 240 of the Act or aliens referred for an asylum merits interview under § 208.2(a)(1)(ii) of this chapter.* (1) Except as otherwise provided in this chapter, any arriving alien who appears to the inspecting officer to be inadmissible, and who is placed in removal proceedings pursuant to section 240 of the Act shall be detained in accordance with section 235(b) of the Act. Parole of such alien shall only be considered in accordance with § 212.5(b) of this chapter. This paragraph (c) shall also apply to any alien who arrived before April 1, 1997, and who was placed in exclusion proceedings.

(2) Except as otherwise provided in this chapter, any alien over whom USCIS exercises jurisdiction pursuant to § 208.2(a)(1)(ii) of this chapter after being found to have a credible fear of persecution or torture shall be detained in accordance with section 235(b) of the Act. Parole of such alien shall only be considered in accordance with § 212.5(b) of this chapter.

* * * * *

■ 13. Amend § 235.6 by:

■ a. Removing and reserving paragraphs (a)(1)(iii) and (iv);

■ b. Revising paragraph (a)(2)(i);

■ c. Removing the period at the end of paragraph (a)(2)(ii) and adding ''; or'' in its place; and

■ d. Revising paragraph (a)(2)(iii).

The revisions read as follows:

§ 235.6 Referral to immigration judge.

(a) * * *

(2) * * *

(i) If an asylum officer determines that the alien does not have a credible fear of persecution or torture, and the alien requests a review of that determination by an immigration judge;

* * * * *

(iii) If an immigration officer refers an applicant in accordance with the provisions of § 208.2(c)(1) or (2) of this chapter to an immigration judge for an asylum- or withholding-only hearing.

* * * * *

DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, 8 CFR parts 1003, 1208, 1235, and 1240 are amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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

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

■ 15. Amend § 1003.42 by revising the section heading and paragraph (d)(1) to read as follows:

§ 1003.42 Review of credible fear determinations.

* * * * *

(d) * * *

(1) The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim, and such other facts as are known to the immigration judge, that the alien could establish eligibility for asylum under section 208 of the Act or withholding of removal under section 241(b)(3)(B) of the Act or deferral of removal under the Convention Against Torture.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 16. The authority citation for part 1208 continues to read as follows:

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

■ 17. Amend § 1208.2 by:
■ a. Revising paragraph (a);
■ b. Removing and reserving paragraph (c)(1)(ix); and
■ c. Removing ''paragraph (c)(1) or (c)(2)'' and adding ''paragraph (c)(1) or (2)'' in its place in paragraph (c)(3)(i).

The revision reads as follows:

§ 1208.2 Jurisdiction.

(a) *U.S. Citizenship and Immigration Services (USCIS).* (1) Except as provided in paragraph (b) or (c) of this section, USCIS shall have initial jurisdiction over:

(i) An asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry; and

(ii) Interviews provided in accordance with section 235(b)(1)(B)(ii) of the Act to further consider the application for asylum of an alien, other than a stowaway, found to have a credible fear of persecution or torture in accordance with 8 CFR 208.30(f) and retained by USCIS, or referred to USCIS by an immigration judge pursuant to §§ 1003.42 of this chapter and 1208.30, after the immigration judge has vacated a negative credible fear determination. Interviews to further consider applications for asylum under this paragraph (a)(1)(ii) are governed by the procedures provided for under 8 CFR 208.9. Further consideration of an asylum application filed by a stowaway who has received a positive credible fear determination will be under the jurisdiction of an immigration judge pursuant to paragraph (c) of this section.

(2) USCIS shall also have initial jurisdiction over credible fear determinations under 8 CFR 208.30 and reasonable fear determinations under 8 CFR 208.31.

* * * * *

■ 18. Amend § 1208.3 by:
■ a. Revising paragraph (a); and
■ b. Adding the words ''under paragraph (a)(1) of this section'' following ''An asylum application'' in paragraph (c)(3).

The revision reads as follows:

§ 1208.3 Form of application.

(a)(1) Except for applicants described in paragraph (a)(2) of this section, an asylum applicant must file Form I–589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form. The applicant's spouse and children shall be listed on the application and may be included in the request for asylum if they are in the United States. One additional copy of the principal applicant's Form I–589 must be submitted for each dependent included in the principal's application.

(2) In proceedings under § 1240.17 of this chapter, the written record of a positive credible fear determination issued in accordance with 8 CFR 208.30(f), and §§ 1003.42 of this chapter and 1208.30, shall be construed as the asylum application and satisfies the application filing requirements and § 1208.4(b). The written record of the positive credible fear determination shall be considered a complete asylum application for purposes of § 1208.4(a), with the date of service of the positive credible fear determination on the alien considered the date of filing and receipt, and shall be subject to the conditions and consequences provided for in paragraph (c) of this section following the applicant's signature at the asylum merits interview before the USCIS asylum officer. The applicant's spouse and children may be included in the request for asylum only if they were included in the credible fear determination pursuant to 8 CFR 208.30(c), or also presently have an application for asylum pending adjudication with USCIS pursuant to 8 CFR 208.2(a)(1)(ii). If USCIS does not grant the applicant's asylum application after an interview conducted in accordance with 8 CFR 208.9 and if a spouse or child who was included in the request for asylum does not separately file an asylum application that is adjudicated by USCIS, the application will be deemed to satisfy the application filing requirements of § 1208.4(b) for a spouse or child who was included in the request for asylum. The asylum applicant may subsequently seek to amend, correct, or supplement the record of proceedings created before the asylum officer or during the credible fear review process as set forth in § 1240.17(g) of this chapter concerning the consideration of documentary evidence and witness testimony.

* * * * *

§ 1208.4 [Amended]

■ 19. Amend § 1208.4 by adding the words ''except that an alien in proceedings under § 1240.17 of this chapter is not required to file the Form I–589'' after ''underlying proceeding'' in paragraph (b)(3)(i).

§ 1208.5 [Amended]

■ 20. Amend § 1208.5(b)(2) by removing the reference to ''§ 1212.5 of this chapter'' and adding ''8 CFR 212.5'' in its place.

■ 21. Amend § 1208.14 by revising paragraphs (b), (c) introductory text, and (c)(1) to read as follows:

§ 1208.14 Approval, denial, referral, or dismissal of application.

* * * * *

(b) *Approval by an asylum officer.* In any case within the jurisdiction of USCIS, unless otherwise prohibited in § 1208.13(c), an asylum officer, subject to review within USCIS, may grant, in the exercise of his or her distraction, asylum to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, and whose identity has been checked pursuant to section 208(d)(5)(A)(i) of the Act.

(c) *Denial, referral, or dismissal by an asylum officer.* If the asylum officer, subject to review within USCIS, does not grant asylum to an applicant after an interview conducted in accordance with 8 CFR 208.9, or if, as provided in 8 CFR 208.10, the applicant is deemed to have waived the applicant's right to an interview or an adjudication by an asylum officer, the asylum officer shall deny, refer, or dismiss the application, as follows:

(1) *Inadmissible or deportable aliens.* Except for applicants described in paragraph (c)(4)(ii) of this section who have not already been subject to proceedings in accordance with 8 CFR 235.3, in the case of an applicant who appears to be inadmissible or deportable under section 212(a) or 237(a) of the Act, the asylum officer shall refer the application to an immigration judge, together with the appropriate charging document, for adjudication in removal proceedings (or, where charging

documents may not be issued, shall dismiss the application).

* * * * *

■ 22. Amend § 1208.16 by revising paragraph (a) to read as follows:

§ 1208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

(a) *Consideration of application for withholding of removal.* Consideration of eligibility for statutory withholding of removal and protection under the Convention Against Torture by a DHS officer is as provided at 8 CFR 208.16. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

* * * * *

■ 23. Amend § 1208.18 by revising paragraph (b)(1) to read as follows:

§ 1208.18 Implementation of the Convention Against Torture.

* * * * *

(b) * * *

(1) *Aliens in proceedings on or after March 22, 1999.* (i) An alien who is in exclusion, deportation, or removal proceedings on or after March 22, 1999, may apply for withholding of removal under § 1208.16(c), and, if applicable, may be considered for deferral of removal under § 1208.17(a).

(ii) In addition, an alien may apply for withholding of removal under 8 CFR 208.16(c), and, if applicable, may be considered for deferral of removal under 8 CFR 208.17(a), in the following situation: The alien is determined to be an applicant for admission under section 235(b)(1) of the Act, the alien is found to have a credible fear of persecution or torture, the alien's case is subsequently retained by or referred to USCIS pursuant to the jurisdiction provided at 8 CFR 208.2(a)(1)(ii) to consider the application for asylum, and that application for asylum is not granted.

* * * * *

§ 1208.19 [Removed and Reserved]

■ 24. Remove and reserve § 1208.19.

■ 25. Revise § 1208.22 to read as follows:

§ 1208.22 Effect on exclusion, deportation, and removal proceedings.

An alien who has been granted asylum may not be deported or removed unless asylum status is terminated pursuant to 8 CFR 208.24 or § 1208.24. An alien in exclusion, deportation, or removal proceedings who is granted withholding of removal or deportation, or deferral of removal, may not be deported or removed to the country to which his or her deportation or removal is ordered withheld or deferred unless the withholding order is terminated pursuant to 8 CFR 208.24 or § 1208.24 or deferral is terminated pursuant to 8 CFR 208.17 or § 1208.17(d) or (e).

■ 26. Amend § 1208.30 by revising the section heading and paragraphs (a), (e), and (g)(2) to read as follows:

§ 1208.30 Credible fear determinations involving stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.

(a) *Jurisdiction.* The provisions of this subpart apply to aliens subject to sections 235(a)(2) and 235(b)(1) of the Act. Pursuant to section 235(b)(1)(B) of the Act, DHS has exclusive jurisdiction to make the determinations described in this subpart. Except as otherwise provided in this subpart, paragraphs (b) through (g) of this section are the exclusive procedures applicable to stowaways and applicants for admission who are found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act and who receive fear interviews, determinations, and reviews under section 235(b)(1)(B) of the Act. Prior to January 1, 2030, an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands is ineligible to apply for asylum and may only establish eligibility for withholding of removal pursuant to section 241(b)(3) of the Act or withholding or deferral of removal under the regulations in §§ 1208.16(c) through (f), 1208.17, and 1208.18 issued pursuant to the Convention Against Torture's implementing legislation.

* * * * *

(e) *Determination.* For the standards and procedures for asylum officers in conducting credible fear interviews, and in making positive and negative credible fear determinations, see 8 CFR 208.30. The immigration judges will review such determinations as provided in paragraph (g) of this section and §§ 1003.42 and 1240.17 of this chapter.

* * * * *

(g) * * *

(2) *Review by immigration judge of a negative credible fear finding.* (i) The asylum officer's negative decision regarding credible fear shall be subject to review by an immigration judge upon the applicant's request, or upon the applicant's refusal or failure either to request or to decline the review after being given such opportunity, in accordance with section 235(b)(1)(B)(iii)(III) of the Act. The immigration judge shall not have the authority to remand the case to the asylum officer.

(ii) The record of the negative credible fear determination, including copies of the Form I–863, Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination.

(iii) A credible fear hearing will be closed to the public unless the alien states for the record or submits a written statement that the alien is waiving that requirement; in that event the hearing shall be open to the public, subject to the immigration judge's discretion as provided in § 1003.27 of this chapter.

(iv) Upon review of the asylum officer's negative credible fear determination:

(A) If the immigration judge concurs with the determination of the asylum officer that the alien does not have a credible fear of persecution or torture, the case shall be returned to DHS for removal of the alien. The immigration judge's decision is final and may not be appealed. USCIS may nevertheless reconsider a negative credible fear finding as provided at 8 CFR 208.30(g)(1)(i).

(B) If the immigration judge finds that the alien, other than an alien stowaway, possesses a credible fear of persecution or torture, the immigration judge shall vacate the Notice and Order of Expedited Removal and refer the case back to DHS for further proceedings consistent with § 1208.2(a)(1)(ii). Alternatively, DHS may commence removal proceedings under section 240 of the Act, during which time the alien may file an application for asylum and withholding of removal in accordance with § 1208.4(b)(3)(i).

(C) If the immigration judge finds that an alien stowaway possesses a credible fear of persecution or torture, the alien shall be allowed to file an application for asylum and withholding of removal before the immigration judge in accordance with § 1208.4(b)(3)(iii). The immigration judge shall decide the application as provided in that section. Such decision may be appealed by either the stowaway or DHS to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If an approval of the application for asylum or for withholding of removal becomes final, DHS shall terminate removal proceedings under section 235(a)(2) of the Act.

PART 1235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 27. The authority citation for part 1235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; Title VII of Pub. L. 110–229; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); Public Law 115–218.

■ 28. Amend § 1235.6 by:
■ a. Revising paragraph (a)(2)(i);
■ b. Removing the period at the end of paragraph (a)(2)(ii) and adding ''; or'' in its place; and
■ c. Revising paragraph (a)(2)(iii).

The revisions read as follows:

§ 1235.6 Referral to immigration judge.

(a) * * *

(2) * * *

(i) If an asylum officer determines that an alien does not have a credible fear of persecution or torture, and the alien requests a review of that determination by an immigration judge;

* * * * *

(iii) If an immigration officer refers an applicant in accordance with the provisions of 8 CFR 208.2(b) to an immigration judge.

* * * * *

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 29. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

■ 30. Add § 1240.17 to read as follows:

§ 1240.17 Removal proceedings where the respondent has a credible fear of persecution or torture.

(a) *Scope.* This section applies in cases referred to the immigration court under 8 CFR 208.14(c)(1) where the respondent has been found to have a credible fear of persecution or torture, and U.S. Citizenship and Immigration Services (USCIS) subsequently adjudicated but did not grant the respondent's application for asylum under section 208 of the Act; or the respondent was included in a spouse's or parent's application under 8 CFR 208.2(a)(1)(ii) that USCIS subsequently adjudicated but did not grant under section 208 of the Act. Except as otherwise provided in this section, removal proceedings for such respondents shall be governed by the same rules and procedures that apply to proceedings conducted under this subpart. In all cases, such proceedings shall be conducted in accordance with section 208 of the Act. Should any part of the USCIS process governing cases covered by 8 CFR 208.2(a)(1)(ii) be enjoined or vacated, the Executive Office for Immigration Review (EOIR) shall have the discretion to adjudicate any case referred to EOIR under 8 CFR 208.14(c)(1) using the rules and procedures that apply to proceedings conducted under this subpart without regard to this section.

(b) *Commencement of proceedings.* Removal proceedings conducted under this section shall commence when DHS files a Notice to Appear (NTA) pursuant to 8 CFR part 1239 and schedules the master calendar hearing to take place 30 days after the date the NTA is served or, if a hearing cannot be held on that date, on the next available date no later than 35 days after the date of service. Where the NTA is served by mail, the date of service shall be construed as the date the NTA is mailed. The DHS component issuing the NTA shall also identify for the respondent and the immigration court that the case is subject to the provisions of this section. DHS shall personally serve the NTA on the respondent whenever practicable and by mail when personal service is not effectuated, and shall inform the respondent of the right to be represented by counsel.

(c) *Service of the record.* No later than the date of the master calendar hearing, DHS shall serve on the respondent and on the immigration court where the NTA is filed the record initiating proceedings as defined in this paragraph (c). The record initiating proceedings shall include the record of proceedings for the asylum merits interview, as outlined in 8 CFR 208.9(f), the Form I–213, Record of Deportable/Inadmissible Alien, pertaining to the respondent, and the asylum officer's written decision issued pursuant to 8 CFR 208.19. If service is not effectuated as provided in this paragraph (c), the schedule of proceedings pursuant to paragraph (f) of this section shall be delayed until service is effectuated.

(d) *Failure to appear.* An immigration judge shall issue an in absentia removal order where the respondent fails to appear at the master calendar hearing scheduled under paragraph (b) of this section, or at a later status conference or hearing under this section, if the requirements under section 240(b)(5) of the Act and § 1003.26 of this chapter are met, unless the immigration judge waives the respondent's presence under § 1003.25(a) of this chapter. If the asylum officer determined the respondent eligible for withholding of removal under the Act or withholding or deferral of removal under the Convention Against Torture, the immigration judge shall give effect to the protection for which the asylum officer determined the respondent eligible, unless DHS makes a prima facie showing, through evidence that specifically pertains to the respondent and was not in the record of proceedings for the USCIS asylum merits interview, that the respondent is not eligible for such protection(s). Where DHS makes such a showing at the master calendar hearing or status conference, the immigration judge shall allow the respondent a reasonable opportunity of at least 10, but no more than 30, days to respond before issuing an order.

(e) *Form of application.* In removal proceedings under this section, the written record of the positive credible fear determination issued in accordance with 8 CFR 208.30(f) satisfies the respondent's filing requirement for the application for asylum, withholding of removal under the Act, and withholding or deferral of removal under the Convention Against Torture. The record of the proceedings for the hearing before the asylum officer, as outlined in 8 CFR 208.9(f), and the asylum officer's decision, together with any amendment, correction, or supplementation made before the immigration judge as described in § 1208.3(a)(2) of this chapter, shall be admitted as evidence and considered by the immigration judge, in addition to any further documentation and testimony provided by the parties under the procedures in this section.

(f) *Schedule of proceedings*—(1) *Master calendar hearing.* At the master calendar hearing, the immigration judge shall perform the functions required by § 1240.10(a), including advising the respondent of the right to be represented, at no expense to the Government, by counsel of the respondent's own choice. In addition, the immigration judge shall advise the respondent as to the nature of removal proceedings under this section, including: That the respondent has pending applications for asylum, withholding of removal under the Act and withholding or deferral of removal under the Convention Against Torture, as appropriate; that the respondent has the right to present evidence in support of the applications; that the respondent has the right to call witnesses and to testify at any merits hearing; and that the respondent must comply with the

deadlines that govern the submission of evidence. Except where the respondent is ordered removed in absentia, at the conclusion of the master calendar hearing, the immigration judge shall schedule a status conference 30 days after the master calendar hearing or, if a status conference cannot be held on that date, on the next available date no later than 35 days after the master calendar hearing. The immigration judge shall inform the respondent of the requirements for the status conference. The adjournment of the case until the status conference shall not constitute a continuance for the purposes of paragraph (h)(2) of this section.

(2) *Status conference.* The purpose of the status conference shall be to take pleadings, identify and narrow the issues, determine whether the case can be decided on the documentary record, and, if necessary, ready the case for a merits hearing. At the status conference, the immigration judge shall advise the respondent that: The respondent has the right to present evidence in support of the applications; the respondent has the right to call witnesses and to testify at any merits hearing; and the respondent must comply with the deadlines that govern the submission of evidence. Based on the parties' representations at the status conference and an independent evaluation of the record, the immigration judge shall decide whether further proceedings are warranted or whether the case will be decided on the documentary record in accordance with paragraph (f)(4) of this section. If the immigration judge determines that further proceedings are warranted, the immigration judge shall schedule the merits hearing to take place 60 days after the master calendar hearing or, if the merits hearing cannot be held on that date, on the next available date no later than 65 days after the master calendar hearing. The immigration judge may schedule additional status conferences prior to the merits hearing if the immigration judge determines that such conferences are warranted and would contribute to the efficient resolution of the case.

(i) *The respondent.* At the status conference, the respondent shall plead to the NTA under § 1240.10(c), and indicate orally or in writing whether the respondent intends to seek any protection(s) for which the asylum officer did not find the respondent eligible.

(A)(*1*) If the respondent indicates that the respondent intends to contest removal or seek any protection(s) for which the asylum officer did not determine the respondent eligible, the respondent shall, either orally or in writing:

(*i*) Indicate whether the respondent intends to testify before the immigration court;

(*ii*) Identify any witnesses the respondent intends to call in support of the applications at the merits hearing;

(*iii*) Provide any additional documentation in support of the applications;

(*iv*) Describe any alleged errors or omissions in the asylum officer's decision or the record of proceedings before the asylum officer;

(*v*) Articulate or confirm any additional bases for asylum and related protection, whether or not they were presented to or developed before the asylum officer; and

(*vi*) State any additional requested forms of relief or protection.

(*2*) If the respondent is unrepresented, the respondent shall not be required to provide items set forth in paragraphs (f)(2)(i)(A)(*1*)(*iv*), (*v*), and (*vi*) of this section.

(B) If the respondent indicates that the respondent does not intend to contest removal or seek any protection(s) for which the asylum officer did not find the respondent eligible, the immigration judge shall order the respondent removed, and no further proceedings shall be held by the immigration judge. If the asylum officer determined the respondent eligible for withholding of removal under the Act or withholding or deferral of removal under the Convention Against Torture, the immigration judge shall give effect to the protection(s) for which the asylum officer determined the respondent eligible, unless DHS makes a prima facie showing, through evidence that specifically pertains to the respondent and was not in the record of proceedings for the USCIS asylum merits interview, that the respondent is not eligible for such protection(s).

(ii) *DHS.* (A) At the status conference, DHS shall indicate orally or in writing whether it intends to:

(*1*) Rest on the record;

(*2*) Waive cross examination of the respondent;

(3) Otherwise participate in the case; or

(*4*) Waive appeal if the immigration judge decides that the respondent's application should be granted.

(B) If DHS indicates that it will participate in the case, it shall, either orally or in writing at the status conference, or in a written submission pursuant to paragraph (f)(3)(i) of this section:

(*1*) State its position on each of the respondent's claimed grounds for asylum or related protection;

(*2*) State which elements of the respondent's claim for asylum or related protection it is contesting and which facts it is disputing, if any, and provide an explanation of its position;

(*3*) Identify any witnesses it intends to call at any merits hearing;

(*4*) Provide any additional non-rebuttal or non-impeachment evidence; and

(*5*) State whether the appropriate identity, law enforcement, or security investigations or examinations required by section 208(d)(5)(A)(i) of the Act and § 1003.47 of this chapter have been completed.

(C) Any position DHS expresses pursuant to paragraph (f)(2)(ii)(A) of this section may be retracted, orally or in writing, prior to the issuance of the immigration judge's decision, if DHS seeks consideration of evidence pursuant to the standard laid out in paragraph (g)(2) of this section. Where the immigration judge holds a merits hearing or hearings, any position DHS expressed pursuant to paragraph (f)(2)(ii)(A) may only be retracted prior to the final hearing; if no such hearing is held, the retraction must take place prior to the immigration judge's decision.

(3) *Written submissions.* (i) If DHS intends to participate in the case, DHS shall file a written statement that provides any information required under paragraph (f)(2)(ii) of this section that DHS did not provide at the status conference, as well as any other relevant information or argument in response to the respondent's submissions. DHS's written statement, if any, shall be filed no later than 15 days prior to the scheduled merits hearing or, if the immigration judge determines that no such hearing is warranted, no later than 15 days following the status conference. Where DHS intends to participate in the case but does not timely provide its position as required under paragraph (f)(2)(ii) of this section, either at the status conference or in its written statement, to one or more of the respondent's claimed grounds for asylum or related protection, including which arguments raised by the respondent it is disputing and which facts it is contesting, the immigration judge shall have authority to deem those arguments or claims unopposed; provided, however, that DHS may respond at the merits hearing to any arguments or claimed bases for asylum first advanced by the respondent after the status conference.

(ii) The respondent may submit a filing no later than 5 days prior to the scheduled merits hearing or, if the immigration judge determines that no such hearing is warranted, no later than 25 days following the status conference, that supplements the respondent's oral statement or written submission under paragraph (f)(2)(i) of this section. In the respondent's supplemental filing, if any, the respondent shall reply to any statement submitted by DHS, identify any additional witnesses, and provide any additional documentation in support of respondent's applications.

(4) *Merits hearings.* (i) If DHS has indicated that it waives cross examination and neither the respondent nor DHS has requested to present testimony under the pre-hearing procedures in paragraph (f)(2) and (3) of this section, the immigration judge shall decide the case on the documentary record, without holding a merits hearing, unless the immigration judge, after consideration of the record, determines that a merits hearing is necessary to fulfill the immigration judge's duty to fully develop the record.

(ii) If the respondent has timely requested to present testimony and DHS has indicated that it waives cross examination and does not intend to present testimony or produce evidence, and the immigration judge concludes, consistent with the immigration judge's duty to fully develop the record, that the respondent's application can be granted without further testimony, the immigration judge shall grant the application without holding a merits hearing.

(iii) In all other situations, the immigration judge shall proceed as follows:

(A) If the immigration judge determines that proceedings can be completed at the merits hearing scheduled under paragraph (f)(1) of this section, the immigration judge shall hold the scheduled merits hearing, at which the immigration judge shall swear the respondent to the truth and accuracy of any information or statements submitted pursuant to paragraphs (f)(2) and (3) of this section, hear all live testimony requested by the parties, consider the parties' submissions, and, whenever practicable, issue an oral decision in the case.

(B) If the immigration judge determines that proceedings cannot be completed at the merits hearing scheduled under paragraph (f)(1) of this section, the immigration judge may conduct a portion of the scheduled hearing, hold a status conference in lieu of the scheduled hearing, and take any other steps the immigration judge deems necessary and efficient to expeditiously resolve the case. The immigration judge shall schedule any and all subsequent merits hearings to occur no later than 30 days after the initial merits hearing.

(5) *Decision.* Whenever practicable, the immigration judge shall issue an oral decision on the date of the final merits hearing or, if the immigration judge determines that no merits hearing is warranted, no more than 30 days after the status conference. The immigration judge may not, however, issue a decision in a case where DHS has made a prima facie showing, through evidence that specifically pertains to the respondent and was not in the record of proceedings for the USCIS asylum merits interview, that the respondent is not eligible for withholding of removal or protection under the Convention Against Torture unless the respondent was first provided a reasonable opportunity of at least 10, but no more than 30, days to respond to the evidence submitted by DHS. Where issuance of an oral decision on the date specified under the first sentence of this paragraph (f)(5) is not practicable, the immigration judge shall issue an oral or written decision as soon as practicable, and in no case more than 45 days after the date specified under the first sentence of this paragraph (f)(5).

(g) *Consideration of evidence and testimony.* (1) The immigration judge shall exclude documentary evidence or witness testimony only if it is not relevant or probative; if its use is fundamentally unfair; or if the documentary evidence is not submitted or the testimony is not requested by the applicable deadline, absent a timely request for a continuance or filing extension that is granted.

(2) The immigration judge may consider documentary evidence or witness testimony submitted after the applicable deadline, taking into account any timely requests for continuances or filing extensions that are granted, but before the immigration judge has issued a decision, only if the evidence could not reasonably have been obtained and presented before the applicable deadline through the exercise of due diligence or if the exclusion of such evidence would violate a statute or the Constitution. The admission of such evidence shall not automatically entitle either party to a continuance or filing extension; such a continuance or extension is governed by paragraph (h) of this section.

(h) *Continuances, adjournments, and filing extensions*—(1) *In general.* For cases governed by this section, an immigration judge may grant a continuance of a hearing date or extension of a filing deadline only as set forth in this paragraph (h).

(2) *Respondent-requested continuances and filings extensions.* (i) The immigration judge may, for good cause shown, grant the respondent continuances and extend the respondent's filing deadlines. Each such continuance or extension shall not exceed 10 calendar days, unless the immigration judge determines that a longer period is more efficient. The immigration judge may not grant the respondent continuances or extensions for good cause that cause a merits hearing to occur more than 90 days after the master calendar hearing.

(ii) The immigration judge may grant the respondent continuances or extensions that cause a merits hearing to occur more than 90 days after the master calendar hearing only if the respondent demonstrates that the continuance or extension is necessary to ensure a fair proceeding and the need for the continuance or extension exists despite the respondent's exercise of due diligence. The length of any such continuance or extension shall be limited to the time necessary to ensure a fair proceeding. The immigration judge may not grant the respondent continuances or extensions pursuant to this paragraph (h)(2)(ii) that cause a merits hearing to occur more than 135 days after the master calendar hearing.

(iii) The immigration judge may grant the respondent continuances or extensions notwithstanding the requirements of paragraphs (h)(2)(i) and (ii) of this section if the respondent demonstrates that failure to grant the continuance or extension would be contrary to statute or the Constitution.

(iv) In calculating the delay to a merits hearing for purposes of applying paragraphs (h)(2)(i) and (ii) of this section, the immigration judge shall exclude any continuances, hearing delays, or filing extensions issued pursuant to paragraphs (h)(3) and (4) of this section.

(3) *DHS-requested continuances and filings extensions.* The immigration judge may, based on significant Government need, grant DHS continuances and extend DHS's filing deadlines. Significant Government need may include, but is not limited to, confirming domestic or foreign law-enforcement interest in the respondent, conducting forensic analysis of documents submitted in support of a relief application or other fraud-related investigations, and securing criminal history information, translations of foreign language documents, witness testimony or affidavits, or evidence suggesting that the respondent is

described in sections 208(a)(2)(A)(C), 208(b)(2), or 241(b)(3)(B) of the Act or has filed a frivolous asylum application as defined in 8 CFR 208.20.

(4) *Continuances, adjournments, and filing extensions due to exigent circumstances.* The immigration judge may continue a status conference or a hearing, or extend a filing deadline, and a status conference or a hearing set forth in this section may be adjourned, where necessary due to exigent circumstances, such as the unavailability of an immigration judge, the respondent, or either party's counsel assigned to the case due to illness; or the closure of the immigration court or a relevant DHS office. Any such continuance, extension, or adjournment shall be limited to the shortest period feasible and shall not be counted against the time limits set forth in paragraphs (h)(2)(i) and (ii) of this section. A new finding of exigent circumstances must be made to justify any and every subsequent continuance, extension, or adjournment under this paragraph (h)(4).

(i) *Decision.* (1) Where the asylum officer did not grant asylum and did not determine that the respondent was eligible for withholding of removal under the Act or for withholding or deferral of removal under the Convention Against Torture based on the record before USCIS, the immigration judge shall adjudicate, de novo, the respondent's applications for asylum and, if necessary, for withholding of removal under the Act, and withholding or deferral of removal under the Convention Against Torture.

(2) Except as provided in paragraph (f)(2)(i)(B) of this section, where the asylum officer did not grant asylum but determined the respondent eligible for withholding of removal under the Act, or for withholding or deferral of removal under the Convention Against Torture, the immigration judge shall adjudicate, de novo, the respondent's application for asylum. If the immigration judge subsequently denies asylum and enters a removal order, the immigration judge shall give effect to the protection(s) for which the asylum officer determined the applicant eligible, unless DHS has demonstrated, through evidence or testimony that specifically pertains to the respondent and was not in the record of proceedings for the USCIS asylum merits interview, that the respondent is not eligible for such protection(s). The immigration judge shall also grant any additional protection(s) for which the immigration judge finds the applicant eligible. DHS shall not be permitted to appeal to the Board the grant of any protection(s) for which the asylum officer determined the respondent eligible, except to argue that the immigration judge should have denied the application(s) based on the evidence allowed under this paragraph (i)(2).

(3) Where the respondent has requested voluntary departure in the alternative to, or in lieu of, asylum and related protection, the immigration judge shall adjudicate this application where necessary.

(j) *Changes of venue.* Where an immigration judge grants a motion to change venue under § 1003.20 of this chapter, the schedule of proceedings pursuant to paragraph (f) of this section commences again with the master calendar hearing at the court to which venue has been changed.

(k) *Exceptions.* The provisions in paragraphs (f) through (h) of this section shall not apply in any of the following circumstances:

(1) The respondent was under the age of 18 on the date the NTA was issued, except where the respondent is in removal proceedings with one or more adult family members.

(2) The respondent has produced evidence of prima facie eligibility for relief or protection other than asylum, withholding of removal under the Act, withholding or deferral of removal under the Convention Against Torture, or voluntary departure, and the respondent is seeking to apply for, or has applied for, such relief or protection.

(3) The respondent has produced evidence that supports a prima facie showing that the respondent is not subject to removal as charged (including under any additional or substitute charges of removal brought by DHS pursuant to § 1240.10(e)), and the immigration judge determines, under § 1240.10(d), that the issue of whether the respondent is subject to removal cannot be resolved simultaneously with the adjudication of the respondent's applications for asylum, withholding of removal under the Act, or withholding or deferral of removal under the Convention Against Torture.

(4) The immigration judge, pursuant to § 1240.10(f), finds the respondent subject to removal to a country other than the country or countries in which the respondent claimed a fear of persecution, torture, or both before the asylum officer and the respondent claims a fear of persecution, torture, or both in that alternative country or countries.

(5) The case has been reopened or remanded following the immigration judge's order.

(6) The respondent has exhibited indicia of mental incompetency.

(l) *Termination of protection.* Nothing in this section shall preclude DHS from seeking termination of asylum, withholding of removal under the Act, or withholding or deferral of removal under the Convention Against Torture pursuant to 8 CFR 208.17(d) and 208.24(f).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Dated: March 17, 2022.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

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