■ b. In paragraph (g)(16), in paragraph (B) of the definition of *Qualified debt,* remove ''85%'', ''120.131 and 120.870(b)'', and ''120.131(b)'' and add in their places ''75%'', ''§§ 120.131 and 120.870(b)'', and ''§ 120.131(b)'', respectively.

The revisions read as follows:

§ 120.882 Eligible Project costs for 504 loans.

* * * * *

(g) * * *

(3) A loan that is subject to a guarantee by a Federal agency or department may be refinanced under the following conditions and requirements:

(i) An existing 504 loan may be refinanced if both the Third Party Loan and the 504 Loan are being refinanced or the Third Party Loan has been paid in full. If the 504 Loan being refinanced received approval through another CDC, the CDC working on the current refinancing must provide advance notice to the other CDC in writing (by email or letter).

(ii) An existing 7(a) loan may be refinanced if the CDC notifies the 7(a) lender in advance in writing (by email or letter).

(iii) The refinancing will provide a substantial benefit to the borrower. For purposes of this paragraph (g)(3)(iii), ''substantial benefit'' means that the portion of the new installment amount attributable to the debt being refinanced must be at least 10 percent less than the existing installment amount(s). Prepayment penalties (including subsidy recoupment fees), financing fees, and other financing costs must be added to the amount being refinanced in calculating the percentage reduction in the new installment payment, but the portion of the new installment amount attributable to Eligible Business Expenses (as described in paragraph (g)(6)(ii) of this section) is not included in this calculation. Exceptions to the 10 percent reduction requirement may be approved by the Director, Office of Financial Assistance (D/FA) or designee for good cause. PCLP CDCs may not use their delegated authority to approve a loan requiring the exception in this paragraph (g)(3)(iii).

* * * * *

(15) Notwithstanding § 120.860, a debt may be refinanced under this paragraph (g) if it does not meet the job creation or other economic development objectives set forth in § 120.861 or § 120.862. In such case, the 504 loan may not exceed the product obtained by multiplying the number of employees of the Borrower by $90,000. The number of employees of the Borrower is equal to the sum of:

(i) The number of full-time employees of the Borrower on the date of the application; and

(ii) The product obtained by multiplying:

(A) The number of part-time employees of the Borrower on the date of the application; by

(B) The quotient obtained by dividing the average number of hours each part-time employee of the Borrower works each week by 40.

Example 1 to paragraph (g)(15): 30 full-time employees and 35 part-time employees working 20 hours per week is calculated as follows: $30 + (35 \times (20/40)) = 47.5$. The maximum amount of the 504 loan would be 47.5 multiplied by $90,000, or $4,275,000.

* * * * *

■ 3. Amend § 120.883 by revising paragraph (e) to read as follows:

§ 120.883 Eligible administrative costs for 504 loans.

* * * * *

(e) CDC Closing Fee (see § 120.971(a)(2)) up to a maximum of $10,000; and

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023–22169 Filed 10–11–23; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF JUSTICE

28 CFR Part 68

[EOIR Docket No. 022–0010; AG Order No. 5812–2023]

RIN 1125–AB28

Office of the Chief Administrative Hearing Officer, Review Procedures

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

ACTION: Interim final rule; request for comment.

SUMMARY: The Department of Justice (''Department'') is revising its regulations to provide that the Attorney General may, in his discretion, review decisions and orders of Administrative Law Judges (''ALJs'') in the Office of the Chief Administrative Hearing Officer (''OCAHO'') in cases arising under section 274B of the Immigration and Nationality Act (''INA'' or ''the Act''). This revision will ensure that the adjudicatory process for section 274B cases is consistent with the Supreme Court's decision in the 2021 case *United States* v. *Arthrex, Inc.,* and will align that process with similar processes for discretionary review of decisions by ALJs in OCAHO and throughout the Executive Branch. It will not limit or alter parties' right to seek judicial review of adverse decisions.

DATES:

Effective date: This rule is effective October 12, 2023.

Comments: Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before December 11, 2023.

ADDRESSES: If you wish to provide comment regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1125–AB28 or EOIR Docket No. 022–0010, by one of the two methods below.

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the website's instructions for submitting comments. The electronic Federal Docket Management System (FDMS) at *https://www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on December 11, 2023.
- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AB28 or EOIR Docket No. 022–0010 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Raechel Horowitz, Chief, Immigration Law Division, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this interim final rule (''IFR'') via one of the methods and by the deadline stated above. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this IFR. Comments that will provide the most assistance to the

Department in developing these procedures will reference a specific portion of the IFR; explain the reason for any recommended change; and include data, information, or authority that supports such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at *https://www.regulations.gov.* Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONALLY IDENTIFYING INFORMATION'' in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *https://www.regulations.gov.*

Personally identifying information located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.* To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** section of this document for agency contact information.

II. Background

A. Office of the Chief Administrative Hearing Officer (''OCAHO''): Organization and Authority

OCAHO is a component of the Department's Executive Office for Immigration Review (''EOIR''). *See* 8 CFR 1003.0(a). Administrative Law Judges (''ALJs'') in OCAHO have jurisdiction to decide cases arising under sections 274A, 274B, and 274C of the Immigration and Nationality Act (''INA''), 8 U.S.C. 1324a, 1324b, and 1324c, and the procedures for such cases are set forth at 28 CFR part 68. Under these statutes and regulations, OCAHO ALJs conduct hearings, administer oaths, compel the production of documents and appearance of witnesses, issue subpoenas, and issue decisions and orders. 28 CFR 68.28(a); *see also* INA 274A(e), 274B(f), (g), and 274C(d), 8 U.S.C. 1324a(e), 1324b(f), (g), 1324c(d); *accord* 5 U.S.C. 556(c) (outlining general authorities of administrative agency ALJs). OCAHO is headed by a Chief Administrative Hearing Officer (''CAHO''), who exercises administrative supervision over the ALJs and other staff assigned to OCAHO and reviews certain decisions and orders issued by the ALJs. *See generally* 28 CFR 68.2 (delineating the authorities of the CAHO).

The INA provides instruction regarding the finality of and available appellate procedures for OCAHO ALJ orders under sections 274A, 274B, and 274C of the Act, 8 U.S.C. 1324a, 1324b, and 1324c.[1] Specifically, in cases arising under sections 274A and 274C of the Act, 8 U.S.C. 1324a and 1324c, the Act provides that final orders issued by OCAHO ALJs are subject to administrative appellate review by both ''an official delegated by regulation to exercise review authority'' and the Attorney General. *See* INA 274A(e)(7), 274C(d)(4), 8 U.S.C. 1324a(e)(7), 1324c(d)(4).[2] OCAHO's regulations in turn provide specific procedures for this review. *See* 28 CFR 68.54 through 68.55. However, in cases arising under section 274B of the Act, 8 U.S.C. 1324b, the statute provides that the ALJ's order ''shall be final'' unless appealed to the appropriate United States court of appeals. INA 274B(g)(1), (i), 8 U.S.C. 1324b(g)(1), (i). OCAHO's current regulations provide that the ALJ's final order in a case under section 274B of the Act, 8 U.S.C. 1324b, is the final agency order and is not subject to further review within the Department. *See* 28 CFR 68.52(g). Consistent with that regulation, OCAHO has previously concluded that ALJ orders under section 274B of the Act, 8 U.S.C. 1324b, are not subject to further administrative review, including by the Attorney General. *See A.S.* v. *Amazon Web Servs. Inc.,* 14 OCAHO no. 1381h, 2 (2021); *Wong-Opasi* v. *Sundquist,* 8 OCAHO no. 1051, 799, 799 (2000).

B. Concerns With Current Regulations Interpreting Section 274B of the Act, 8 U.S.C. 1324b

The Supreme Court's decision in *United States* v. *Arthrex, Inc.,* 141 S. Ct. 1970 (2021), has spurred a reevaluation of OCAHO's current regulatory framework that permits OCAHO ALJs to issue final orders not subject to further agency review in cases arising out of alleged violations of section 274B of the Act, 8 U.S.C. 1324b.

The Appointments Clause of the Constitution sets out the manner in which ''Officers of the United States'' who exercise significant governmental authority must be appointed. U.S. Const. art. II, sec. 2, cl. 2; *Buckley* v. *Valeo,* 424 U.S. 1, 126 & n.162, 141 (1976). Principal officers must be appointed by the President, by and with the advice and consent of the Senate, but inferior officers may be appointed by the President alone, the head of an executive department, or a court of law. U.S. Const. art. II, sec. 2, cl. 2; *see also Buckley,* 424 U.S. at 132. OCAHO ALJs are appointed by the Attorney General, *see* 28 U.S.C. 509, 510; 5 U.S.C. 3105, consistent with one of the methods permitted by the Constitution for the appointment of inferior officers, *see Buckley,* 424 U.S. at 132.

In *Arthrex,* the Court considered an adjudicatory framework where a statute expressly precluded a principal officer from directly reviewing the decisions of certain inferior officers—administrative patent judges (''APJs'')—and those APJs further had restrictions on their removal from office. *See Arthrex,* 141 S. Ct. at 1977–78, 1981–82, 1985. The Court explained that ''[a]n inferior officer must be 'directed and supervised at some level by others who were appointed by Presidential nomination with the advice and consent of the Senate.' '' *Id.* at 1980 (quoting *Edmond* v. *United States,* 520 U.S. 651, 663 (1997)). The Court further explained that such unreviewable adjudicatory authority would conflict with the role of inferior officers, which inherently involves being subject to the direction

[1] Section 274A, 8 U.S.C. 1324a, relates to the unlawful employment of noncitizens, including making unlawful the employment of unauthorized noncitizens. Section 274B, 8 U.S.C. 1324b, sets forth requirements and procedures for investigating and conducting hearings related to unfair immigration-related employment practices, specifically discrimination based on national origin or citizenship status. Section 274C, 8 U.S.C. 1324c, establishes the penalties for document fraud when seeking immigration-related benefits or satisfying certain requirements of the INA.

[2] This appellate review authority has been delegated by regulation to the CAHO. *See* 28 CFR 0.118, 68.2, 68.54.

and supervision of others, either through higher-level review of the adjudicators' decisions or the ability to remove adjudicators from their positions at will. *See generally id.* at 1981–82. To remedy the constitutional concerns, the Court held that the statutory provision limiting or foreclosing review of APJ final decisions was unenforceable insofar as it prevented the Director of the United States Patent and Trademark Office (''USPTO'')—who is appointed by the President with the advice and consent of the Senate and therefore is ''a politically accountable officer'' as described in *Arthrex, id.* at 1982—from reviewing APJ decisions. *See id.* at 1986–87.

The Department has examined its current regulation governing cases arising under section 274B of the Act, 8 U.S.C. 1324b, in light of the principles outlined in *Arthrex.* The statutory framework under section 274B of the Act, 8 U.S.C. 1324b, does not expressly state that a principal officer may review an OCAHO ALJ's decision in cases arising under that provision and describes an OCAHO ALJ's order as final unless appealed to a federal circuit court, INA 274B(g)(1), 8 U.S.C. 1324(g)(1). Unlike the statutory framework in *Arthrex,* however, there is no statutory provision in section 274B of the Act, 8 U.S.C. 1324b, expressly limiting further review by a single principal officer. *Compare* 35 U.S.C. 6(c) (providing that decisions ''shall be heard by at least 3 members of the Patent Trial and Appeal Board'' and that ''[o]nly the Patent Trial and Appeal Board may grant rehearings'').

The Department's current regulation provides that, in cases arising under section 274B of the Act, 8 U.S.C. 1324b, an ALJ's decision ''becomes the final agency order on the date the order is issued'' and does not expressly provide for administrative review. 28 CFR 68.52(g). This regulation could be read to prevent further review by the Attorney General, which would make it comparable to the statutory scheme in *Arthrex* that prevented further review by the USPTO Director. *See id.; cf. Amazon Web Servs.,* 14 OCAHO no. 1381h at 2 n.4.

C. Interpreting INA 274B, 8 U.S.C. 1324b, in Light of Arthrex

Following the Supreme Court's decision in *Arthrex,* the Department has considered whether the current regulation setting out procedures for OCAHO ALJ decisions under section 274B of the Act, 8 U.S.C. 1324b, is the best implementation of the statute. The Department concludes that another reading of section 274B of the Act, 8 U.S.C. 1324b—one that expressly accounts for review of ALJ decisions by the Attorney General—is the better understanding of the law. This reading is also more consistent with the Administrative Procedure Act's (APA) general framework, which acknowledges a default rule of agency review of ALJ decisions. Specifically, the APA provides that after an ALJ makes an initial decision, ''that decision then becomes the final decision of the agency without further proceedings *unless there is an appeal to, or review on motion of, the agency* within time provided by rule.'' 5 U.S.C. 557(b) (emphasis added). This default rule of review supports the conclusion that the phrase ''shall be final'' in section 274B(g)(1) of the Act, 8 U.S.C. 1324b(g)(1), is best understood to mean that the ALJ's initial decision under section 274B of the Act, 8 U.S.C. 1324b, is the final agency action for purposes of seeking judicial review unless the decision is further reviewed by the Attorney General. This conclusion is further bolstered when read in conjunction with general principles of administrative law, the well-settled meaning of the word ''final'' in this context, the Executive Branch's practice in related areas, and the constitutional requirements of the Appointments Clause, each discussed in further detail below.

Specifically, this understanding of section 274B of the Act, 8 U.S.C. 1324b, is most consonant with general administrative law principles. As the Office of Legal Counsel has previously explained, ''[u]nder the APA, 'final agency action' is generally understood to mean that action which is necessary and sufficient for judicial review.'' *Secretary of Education Review of Administrative Law Judge Decisions,* 15 Op. O.L.C., 8, 10 (1991) (''*Secretary of Education*''). An ''extensive body of precedent'' establishes that an ''agency's decision need not be its last word on a subject to be considered 'final agency action,' '' and that an ''agency action can be 'final' for purposes of the APA, and thus for purposes of judicial review, even though it is subject to reconsideration on appeal to a higher authority within the agency.'' *Id.* at 10–11. And where ''Congress employs a term of art with a well-established meaning, it is generally presumed in the absence of evidence to the contrary to have intended that meaning to apply.'' *Id.* at 11. Section 274B of the Act, 8 U.S.C. 1324b, is thus ''most naturally read'' to indicate that an ALJ's decision shall be considered final agency action for purposes of sufficiency for judicial review under 5 U.S.C. 704, not as ''preclud[ing] further review of an ALJ's decision'' by the Attorney General. *Id.*

Indeed, throughout the Executive Branch, including in other Department components that utilize ALJs, ALJs render ''initial decisions,'' sometimes called ''recommended decisions,'' in certain cases that the agency can review further or, if there is no appeal or referral, become final agency decisions. *See, e.g.,* 21 CFR 1316.64 through 1316.67 (providing a process through which the Administrator of the Drug Enforcement Administration reviews recommended decisions of ALJs before they are published as final decisions); 27 CFR 555.79 (providing a process for the Director of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to review initial decisions of ALJs in license and permit proceedings, after which the initial decision becomes final unless modified or reversed by the Director, but also noting that initial decisions may be appealed directly to the federal court of appeals); *see also* 28 CFR 68.52(g) (providing that ALJ orders in cases under sections 274A and 274C of the Act, 8 U.S.C. 1324a and 1324c, become final agency orders 60 days after issuance unless the orders are modified or vacated by the CAHO or referred to the Attorney General for review). Thus, a structure in which ALJ decisions are not subject to further review within the Executive Branch is an anomaly rather than the standard.

In addition to the above conclusion that this reading of the term ''final agency action'' is most consonant with general administrative law practices, the analysis in *Secretary of Education* provides further support for this interpretation as a mechanism for avoiding potential constitutional issues that would arise with a contrary reading of section 274B(g)(1) of the Act, 8 U.S.C. 1324b(g)(1). That opinion explained that a statutory provision providing that an ALJ's decision ''shall be considered to be a final agency action'' was best read to mean that the decision could be a final agency action for purposes of seeking judicial review, not that the Secretary of Education was foreclosed from exercising the agency head's customary role of reviewing the decisions of subordinates. 15 Op. O.L.C. at 12–13. The opinion noted that ''[i]f the Act were construed to forbid the Secretary's review of an ALJ decision, there would be presented serious constitutional questions relating to the ALJ's appointments and the lack of presidential control over their activities.'' *Id.* at 13.

Relatedly, ensuring that the Attorney General has the opportunity to review ALJ decisions is informed by the remedy that the Supreme Court prescribed in *Arthrex.* There, the Court held that pursuant to severability principles, ''the structure of the PTO and the governing constitutional principles chart a clear course: Decisions by APJs must be subject to review by the Director,'' a politically accountable officer. *Arthrex,* 141 S. Ct. at 1986. Here too, allowing the Attorney General to ''review[ ] the decisions of the [ALJs] on his own,'' *id.* at 1987, would be most consistent with the Appointments Clause.

Given the general principles of administrative law, the well-settled meaning of the word ''final'' in this context, the fact that head-of-agency review of ALJ decisions is the APA norm, and possible constitutional concerns with granting ALJs final decision-making authority not subject to further agency review, the Department declines to read the statute as precluding Attorney General review.

D. Purpose of the IFR

Consequently, the Department concludes that section 274B(g)(1) of the Act, 8 U.S.C. 1324b(g)(1), should not be read to preclude all further administrative review of an ALJ's decision. The typical understanding of the word ''final'' in Administrative Procedure Act cases, the fact that head-of-agency review of ALJ decisions is the APA norm, and possible constitutional avoidance concerns make this IFR's new provisions implementing procedures related to section 274B of the Act, 8 U.S.C. 1324b, including section 274B(g)(1) of the Act, 8 U.S.C. 1324b(g)(1), most appropriate to ensure a constitutionally sound review procedure for claims arising under this section.[3] Further, OCAHO cases arising under section 274A and 274C of the Act, 8 U.S.C. 1324a and 1324c, are already subject to possible review by the Attorney General. *See* 28 CFR 68.55.

[3] Additional authority for this IFR is found in 28 U.S.C. 509, which provides that ''[a]ll functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General,'' except for functions ''vested by [the APA] in administrative law judges'' and other exceptions not relevant here. The exclusion of ALJ functions in 28 U.S.C. 509 does not affect the Attorney General's authority to promulgate an appeal or referral procedure for cases heard by ALJs and review such cases pursuant to that regulation because when reviewing an ALJ decision, the Attorney General would be exercising a function generally vested in agency heads under the APA, 5 U.S.C. 557(b), and not the functions of ALJs themselves.

Accordingly, to effectuate the Department's new interpretation and avoid potential constitutional issues raised by the *Arthrex* decision, the Department is amending relevant parts of 28 CFR part 68 to provide the opportunity for Attorney General review of ALJ decisions in cases arising under section 274B of the Act, 8 U.S.C. 1324b, consistent with longstanding existing practices used in cases under sections 274A and 274C of the Act, 8 U.S.C. 1324a and 1324c.

III. Summary of Changes

The Department is amending OCAHO's rules of practice and procedure to implement a review procedure for ALJ decisions in cases arising under section 274B of the Act, 8 U.S.C. 1324b, that aligns with the agency review procedures set forth in the APA, is consistent with general administrative law principles, and is constitutionally sound. These changes will provide the Attorney General with an opportunity to review all OCAHO ALJ final orders consistent with the Attorney General's position as the head of the Department with responsibility for oversight of inferior officers at the Department. The decision whether to review an OCAHO ALJ decision would be within the sole discretion of the Attorney General, and no party will have the right to seek or request such review.

First, consistent with the overall intent of this IFR to ensure the opportunity for Attorney General review of ALJ decisions in cases under section 274B of the Act, 8 U.S.C. 1324b, this IFR amends the definitions of ''entry'' and ''final agency order'' in 28 CFR 68.2. With respect to the definition of ''entry,'' this IFR removes the separate definition of ''entry'' for cases arising under section 274B(i)(1) of the Act, 8 U.S.C. 1324b(i)(1). *See* 28 CFR 68.2 (2023) (defining the word ''entry'' to mean ''the date the Administrative Law Judge, Chief Administrative Hearing Officer, or the Attorney General signs the order'' and, as used in section 274B(i)(1) of the INA, to mean ''the date the Administrative Law Judge signs the order[.]''). Thus, pursuant to this IFR, the regulation provides a singular definition for ''entry'' that applies to cases arising under sections 274A, 274B, and 274C of the Act, 8 U.S.C. 1324a, 1324b, and 1324c. Regarding the definition of ''final agency order,'' this IFR adds a reference to section 274B of the Act, 8 U.S.C. 1324b, in addition to the existing references to sections 274A and 274C of the Act, 8 U.S.C. 1324a and 1324c, to the first sentence of the definition and removes a separate definition of the term ''final agency order'' exclusive to cases arising under section 274B of the Act, 8 U.S.C. 1324b. *See* 28 CFR 68.2 (2023) (stating that ''[i]n cases arising under section 274B of the INA, an Administrative Law Judge's final order is also the final agency order''). Further, this IFR makes conforming amendments in paragraph (g) of 28 CFR 68.52 regarding what constitutes the final agency order in cases under section 274B of the Act, 8 U.S.C. 1324b. Specifically, the IFR adds that in cases arising under 274B of the Act, 8 U.S.C. 1324b, the Administrative Law Judge's order becomes the final agency order sixty (60) days after the date of entry of the Administrative Law Judge's order, unless the order is referred to the Attorney General pursuant to 28 CFR 68.55.

Second, the IFR amends 28 CFR 68.55 to specify the procedures for Attorney General review of ALJ decisions and orders in cases arising under section 274B of the Act, 8 U.S.C. 1324b, including by providing a time frame for referral of such cases.

Third, the IFR amends 28 CFR 68.57 regarding the procedures for seeking judicial review of a final agency order in cases arising under section 274B of the Act, 8 U.S.C. 1324b, to include final agency orders issued under 28 CFR 68.55(d). *See* 28 CFR 68.55(d) (2023) (describing the final agency order in cases referred to the Attorney General for review). The IFR also makes non-substantive edits to 28 CFR 68.56 to include cross-references to relevant regulatory provisions and parallel the structure of revised 28 CFR 68.57.

Finally, the IFR also revises the authority citation for 28 CFR part 68 to include citations to 28 U.S.C. 509 (''Functions of the Attorney General''), 28 U.S.C. 510 (''Delegation of Authority''), and 5 U.S.C. 557(b) to ensure clarity regarding the basis for the Attorney General's authority to review OCAHO cases.

IV. Regulatory Requirements

A. Administrative Procedure Act

The Department has determined that this rule is not subject to the general requirements of notice and comment and a 30-day delay in the effective date. The requirements of 5 U.S.C. 553 do not apply to these regulatory changes because this IFR is a rule of ''agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This IFR, as with prior OCAHO procedural rulemakings, pertains solely to agency procedures and practices regarding the processing of cases before OCAHO and does not diminish or reduce any substantive

rights possessed by parties utilizing those practices and procedures. *See, e.g.,* Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens and Unfair Immigration-Related Employment Practices, 56 FR 50049, 50052 (Oct. 3, 1991); Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-Related Employment Practices, and Document Fraud, 64 FR 7076, 7072 (Feb. 12, 1999). Although the Department has determined that this IFR is not subject to the general requirements of notice and comment and a 30-day delay in the effective date, it is nevertheless promulgating this rule as an IFR, providing the public with the opportunity for post-promulgation comment.

B. Regulatory Flexibility Act

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this IFR will not have a significant economic impact on a substantial number of small entities. Further, a regulatory flexibility analysis is not required when the agency is not required to publish a general notice of proposed rulemaking, as is the case here. 5 U.S.C. 604(a) (''When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking . . . the agency shall prepare a final regulatory flexibility analysis.''); *see also* 5 U.S.C. 601(2) (defining a rule for purposes of the Regulatory Flexibility Act ''as any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b)'').

C. Unfunded Mandates Reform Act of 1995

This IFR will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1532(a).

D. Congressional Review Act

This IFR is not a major rule as defined by section 804 of the Congressional Review Act. See 5 U.S.C. 804(2). Moreover, this action is a rule of agency organization that does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used in 5 U.S.C. 804(3). Therefore, the reports to Congress and the Government Accountability Office specified by 5 U.S.C. 801 are not required.

E. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Sept. 30, 1993), Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 18, 2011), and Executive Order 14094, Modernizing Regulatory Review, 88 FR 21879 (Apr. 6, 2023), direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 also emphasizes the importance of using the best available methods to quantify costs and benefits, and of reducing costs, harmonizing rules, and promoting flexibility.

Because this IFR is limited to agency organization, management, or personnel matters, it is not subject to review by the Office of Management and Budget pursuant to section 3(d)(3) of Executive Order 12866. Further, because this IFR is one of internal organization, management, or personnel, it is not subject to the requirements of Executive Order 13563.

F. Executive Order 13132 (Federalism)

This IFR will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, Federalism, 64 FR 43225, 43257–58 (Aug. 4, 1999), it is determined that this IFR 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, 61 FR 4729, 4730–32 (Feb. 5, 1996).

H. Paperwork Reduction Act

This IFR does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (May 22, 1995), codified at 44 U.S.C. 3501 *et seq.,* and its implementing regulations, 5 CFR part 1320. *See* 44 U.S.C. 3502(3).

List of Subjects in 28 CFR Part 68

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil Rights, Employment, Equal employment opportunity, Immigration.

Accordingly, for the reasons set forth in the preamble and by the authority vested in me as Attorney General by law, part 68 of title 28 of the Code of Federal Regulations is amended as follows:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD

■ 1. The authority citation for part 68 is revised to read as follows:

Authority: 5 U.S.C. 301, 554, 557(b); 8 U.S.C. 1103, 1324a, 1324b, and 1324c; 28 U.S.C. 509, 510, and 2461 note.

■ 2. Amend § 68.2 by revising the definitions of ''Entry'' and ''Final agency order'' to read as follows:

§ 68.2 Definitions.

* * * * *

Entry means the date the Administrative Law Judge, the Chief Administrative Hearing Officer, or the Attorney General signs the order;

Final agency order is an Administrative Law Judge's final order, in cases arising under sections 274A, 274B, and 274C of the INA, that has not been modified, vacated, or remanded by the Chief Administrative Hearing Officer pursuant to § 68.54, referred to the Attorney General for review pursuant to § 68.55(a) or accepted by the Attorney General for review pursuant to § 68.55(b)(3). Alternatively, if the Chief Administrative Hearing Officer modifies or vacates the final order pursuant to § 68.54, the modification or vacatur becomes the final agency order if it has not been referred to the Attorney General for review pursuant to § 68.55(a) or accepted by the Attorney General for review pursuant to

§ 68.55(b)(3). If the Attorney General enters an order that modifies or vacates either the Chief Administrative Hearing Officer's or the Administrative Law Judge's order, the Attorney General's order is the final agency order.

* * * * *

■ 3. Amend § 68.52 by revising paragraph (g) to read as follows:

§ 68.52 Final order of the Administrative Law Judge.

* * * * *

(g) *Final agency order.* In a case arising under section 274A, 274B, or 274C of the INA, the Administrative Law Judge's order becomes the final agency order sixty (60) days after the date of entry of the Administrative Law Judge's order, unless:

(1) In a case arising under section 274A or 274C of the INA, the Chief Administrative Hearing Officer modifies, vacates, or remands the Administrative Law Judge's final order pursuant to § 68.54; or

(2) In a case arising under section 274A, 274B, or 274C of the INA, the order is referred to the Attorney General pursuant to § 68.55.

■ 4. Amend § 68.55 by revising the section heading, paragraph (a), and the first sentence of paragraph (c) introductory text to read as follows:

§ 68.55 Referral of cases arising under section 274A, 274B, or 274C to the Attorney General for review.

(a) *Referral of cases by direction of the Attorney General.* The Chief Administrative Hearing Officer shall promptly refer to the Attorney General for review any final order in cases arising under section 274A, 274B, or 274C of the INA if the Attorney General so directs the Chief Administrative Hearing Officer. For cases arising under section 274A and 274C, the Attorney General may so direct the Chief Administrative Hearing Officer within no more than thirty (30) days of the entry of a final order by the Chief Administrative Hearing Officer modifying or vacating an Administrative Law Judge's final order, or within no more than sixty (60) days of the entry of an Administrative Law Judge's final order, if the Chief Administrative Hearing Officer does not modify or vacate the Administrative Law Judge's final order. For cases arising under section 274B, the Attorney General may so direct the Chief Administrative Hearing Officer within no more than sixty (60) days of the entry of a final order by the Administrative Law Judge. When a final order is referred to the Attorney General in accordance with this paragraph (a), the Chief Administrative Hearing Officer shall give the Administrative Law Judge and all parties a copy of the referral.

* * * * *

(c) * * * When a final order of an Administrative Law Judge or the Chief Administrative Hearing Officer is referred to the Attorney General pursuant to paragraph (a) of this section, or a referral is accepted in accordance with paragraph (b)(3) of this section, the Attorney General shall review the final order in accordance with the provisions of this section. * * *

* * * * *

■ 5. Amend § 68.56 by revising the first sentence to read as follows:

§ 68.56 Judicial review of a final agency order in cases arising under section 274A or 274C.

In cases arising under section 274A or 274C of the INA, a person or entity adversely affected by a final agency order issued under § 68.52(c) or (e), § 68.54(e), or § 68.55(d) may file, within forty-five (45) days after the date of the final agency order, a petition in the United States Court of Appeals for the appropriate circuit for review of the final agency order. * * *

■ 6. Revise § 68.57 to read as follows:

§ 68.57 Judicial review of a final agency order in cases arising under section 274B.

In cases arising under section 274B of the INA, any person aggrieved by a final agency order issued under § 68.52(d) or § 68.55(d) may, within sixty (60) days after entry of the order, seek review of the final agency order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business. If a final agency order is not appealed, the Special Counsel (or, if the Special Counsel fails to act, the person filing the charge, other than the Department of Homeland Security) may file a petition in the United States District Court for the district in which the violation that is the subject of the final agency order is alleged to have occurred, or in which the respondent resides or transacts business, requesting that the order be enforced.

Merrick B. Garland,

Attorney General.

[FR Doc. 2023–22206 Filed 10–11–23; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2023–0113]

RIN 1625–AA09

Drawbridge Operation Regulation; Cheboygan River at Cheboygan, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedule that governs the US 23 Highway Bridge, mile 0.92, across the Cheboygan River—Part of the Inland Route, at Cheboygan, Michigan. The Cheboygan County Road Commission requested we extend the winter advance notice for the bridge.

DATES: This rule is effective November 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number USCG–2023–0113 in the ''SEARCH'' box and click ''SEARCH''. In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
MDNR Michigan Department of Natural Resources
MDOT Michigan Department of Transportation
OMB Office of Management and Budget
LWD Low Water Datum based on IGLD85
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

On April 5, 2023, the Coast Guard published an NPRM titled Drawbridge Operation Regulation; Cheboygan River at Cheboygan, MI in the **Federal Register** (88 FR 20082) and posted it on *Regulations.gov* for 60-days to seek your comments on whether the Coast Guard should consider modifying the current operating schedule to the US 23