Combination of Occupations: New Challenges in PERM

By Alexander Dgebuadze*

I. Introduction

In the comments to the final PERM rule, DOL recognized that "U.S. businesses . . . needed flexibility to merge occupations in a rapidly changing technological and global marketplace," and that "many small companies expect their employees to 'multi-task,'" and therefore perform "a combination of duties."[1] Indeed, many businesses, both small and large, increasingly require workers with a multitude of advanced skills and qualifications that cut across traditional fields of specialization, which today are further infused with technologies like machine learning and artificial intelligence. PERM regulations can create a major headache if this area continues to lurk in the background. So, we ask why certain positions may or may not trigger a "combination of occupations" challenge from DOL and what is the best way to tackle the challenge.

Based on the straightforward nature of the regulation, this area of labor certification adjudications was by and large free of controversy, policy disagreements and scrutiny, until recently. The issue is that the DOL's National Prevailing Wage Center (NPWC) has been issuing prevailing wage determinations with a statement that the duties of the job described in the request are a combination of occupations.[2] In the past, the most common occupations impacted by such determinations included physicians, teachers, lecturers, financial analysts, clinical research coordinators, and others.[3] But reports now show that no occupation is immune from being challenged as restrictive under this regulation and the most likely reason why the DOL would add a "combination of occupations" note is to be able to assign a higher of the prevailing wage rates calculated for each of the occupational classifications the PERM position ostensibly combines.

It is uncontested that DOL has the authority to impose higher prevailing rates on occupations deemed to contain duties found in more than one occupational classification, defaulting to the highest of the occupation-specific wage rates.[4] Thus, for prevailing wage determination purposes, BALCA and DOL consider positions with duties shared among two classifications as combination occupations.

However, a combination of occupations finding for wage purposes is not the same as the combination of occupations finding under 20 CFR §656.17(h)(3). For instance, a Professor of Dentistry with teaching and clinical duties may receive a "combination of duties" notation in the prevailing wage determination but would not necessarily be considered a combination occupation under 20 CFR §656.17(h)(3). This is particularly so where

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[1] ETA, Final Rule, Labor Certification Process for the Permanent Employment of Aliens in the United States ["PERM"], 69 Fed. Reg. 77326, 77352 (Dec. 27, 2004).

[2] DOL/OFLC Stakeholders' Meeting, Mar. 29, 2012, 5-6, published on AILA InfoNet at Doc. No. 12042544 (posted Apr. 25, 2012).

[3] *Id*. and based on interviews of other attorneys and employers.

[4] *Matter of Emory University*, 2011-PWD-00001 & -00002 (BALCA Feb. 27, 2012), published on AILA InfoNet at Doc. No. 12101956 (posted Oct. 19, 2012); *Matter of University of Wisconsin-Oshkosh*, 2011-PWD-00003 (BALCA Mar. 27, 2012), published on AILA InfoNet at Doc. No. 12101957 (posted Oct. 19, 2012). See also ETA, Prevailing Wage Guidance—Nonagricultural Immigration Programs, published on AILA InfoNet at Doc. No. 10010468 (posted Jan. 4, 2010).

the duties of the job opportunity are consistent with, and fully contained in, the description of *Health Specialties Teachers, Postsecondary*, O*NET Code: 25-1071.00.[5]

DOL agreed with this analysis and previously stated that,[6]

> The fact the PWD says something is a combination of occupations does not mandate the need to answer in the affirmative the existence of a combination of duties on the 9089.

The legacy ETA 9089 form asked the question, "Does this application involve a job opportunity that involves a combination of occupations?" Employers and attorneys often answered "no," if the position did not require arguments justifying the combination or the employer was confident it could overcome the challenge in an audit.[7]

However, the redesigned ETA 9089 form which, beginning in June 2023, must be submitted in the FLAG portal, reframed the question. Item G.7 of the ETA 9089 now asks:

> *Does the job opportunity in Section F of the PWD identified in Question E.1 involve a combination of occupations?*

DOL's Office of Foreign Labor Certification (OFLC) was asked to comment on this question and the exchange confirmed the reversal of its earlier, long-standing policy:

> If the 9141 indicates a combination of occupations, is an employer required to check Yes to G.7 on the 9089 even when it does not believe that it is a combination of occupations?
>
> OFLC: **Yes**. If the employer does not believe that it is a combination of occupations, the employer should file a 9141 Request for Redetermination (RFR) with the NPWC before filing the 9089.[8] (Emphasis added.)

Thus, in contrast to the legacy approach, the employer must either contest the determination to correct the PWD not to show the combination of occupations notation, or answer "yes" and take the required steps to ensure PERM approvability.

What are the analytical steps needed to address the post-PWD combination of occupations challenge if there is no time to request a redetermination?

II. Combination of Occupations: Rules & Caselaw

PERM regulations provide employers with the opportunity to defend the position's requirements if, for instance, the requirements are not normal to the occupation[9] or contain foreign language fluency.[10]

The regulations also provide employers with a mechanism for rebutting the presumption that the position is unreasonably restrictive because it combines two distinct occupations.[11] When seeking certification for a combined occupation, an employer must document that,

> . . . it has normally employed persons for that combination of occupations, and/or workers customarily perform the combination of occupations in the area of intended employment, and/or the combination job opportunity is based on a business necessity.[12]

What follows is an analysis of regulations and BALCA caselaw to distill the analytical framework for determining what constitutes "combination of occupations" and steps for handling PERM applications involving such combinations.

A. A combination of what?

This seemingly simple question has a somewhat nuanced answer. If the opportunity *requires* skills and qualifications that cut across several fields, or exceed those normally required for the occupation, one must look to the "business necessity" regulation to show, among others, that,

> . . . job duties and requirements bear a reasonable relationship to the occupation in the context of the employer's business and are essential to perform the job in a reasonable manner.[13]

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5 *Supra* note 2, at 5-7.

6 *Id.*, at 6.

7 *See generally*, "Practice Pointer: New Considerations for Combination of Occupations in Perm," published on AILA InfoNet at Doc No. 25032033 (posted Mar. 20, 2025).

8 *See* "Practice Pointer: DOL OFLC Provides Updates at PLI Conference," published on AILA InfoNet at Doc. No. 25010700 (posted Jan. 7, 2025).

9 ETA Labor Certification Process for Permanent Employment of Aliens in the United States 20 CFR §656.17(h)(1).

10 20 CFR §656.17(h)(2).

11 20 CFR §656.17(h)(3).

12 *Id.*

13 20 CFR §656.17(h)(1).

In *Barretta & Associates*,[14] an employer sought labor certification for a "Project Designer" and included the following "duty" in its job description:

> . . . design, coordinate and direct architectural design projects including structural and environmental design utilizing knowledge of architectural, engineering and business management principles. . . .[15]

The DOL denied certification because the employer did not document the combination of occupations *in architecture, engineering, and business*. However, BALCA drew a distinction between combined duties and combined requirements:

> . . . knowledge of . . . engineering and business management principles . . . is meant to identify those skills the possession of which are demanded to carry out the duties described, that is, *the job requirements*. . . . Moreover, the demand for the possession and utilization of knowledge of engineering and business management principles is not the same as combining 'of two traditionally separate jobs into one position [under] *Information Industries*,' . . . nor is such demand akin to the [former] regulatory example of 'engineer-pilot' as a job opportunity involving a combination of duties contained in [former] 20 C.F.R. §656.21(b)(2)(ii). (Emphasis added.)

The panel found that the DOL incorrectly raised the issue of "combination of occupations." This meant the employer was not required to provide documentation under any of the three prongs of the regulation because its *duties* were not combined, only the requirements. BALCA also found that the employer demonstrated a legitimate business necessity for its "combined" requirements, that is, skills in engineering and business required for the job.[16]

In other words, initial analysis should focus on ascertaining whether there is a true combination of "two traditionally separate jobs into one position" by looking at the *duties* of the occupation and not the skills or experience required to perform it. If the duties are combined, the employer must be prepared to argue and document why its job permissibly combines occupations under 20 C.F.R. §656(h)(3).

Further, while the employer in *Barretta & Associates* was not required to justify and defend its "combination of occupations,"[17] as there was none, it was nevertheless required to show that its *requirements* arose out of business necessity.[18]

The foregoing leads to the proposition that if the job combines duties (occupations) *and* lists requirements that are not normal to the occupation (e.g., if the requirements abnormally combine skills from various fields as in *Barretta & Associates* or are otherwise unduly restrictive), the employer would be required to document that (a) it is permitted to combine the duties under 20 C.F.R. §656.17(h)(3) and that (b) its requirements arise out of business necessity under 20 C.F.R. §656.17(h)(1).

B. What is the next step of analysis before the employer decides to prepare the documentation justifying its combination of occupations?

As noted earlier, BALCA had long held that when an employer's job duties are consistent with the description of an occupational classification provided in DOL's occupational source materials (e.g., O*NET, OOH or DOT), DOL may not claim a violation of 20 C.F.R. §656.17(h)(3).[19] In 1992, in an *en banc* decision, the Board affirmed that,[20]

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[14] 88-INA-355, at 2 (Sep. 28, 1989).

[15] See *Barretta & Associates*, at 2-4.

[16] Specifically, BALCA agreed that "'knowledge of . . . engineering and business management principles' bears a reasonable relationship to the [] position of Project Designer (the occupation) and in the context of architectural design planning (the business) and is essential to perform, in a reasonable manner, the job duties described." *Matter of Barretta & Associates*, 88-INA-355, at 4 (BALCA Sep. 28, 1989).

[17] It should be noted that "an employer is not required to disprove a combination of occupations" is functionally and legally equivalent to "an employer has shown its position reasonably combines two distinct occupations," because both scenarios would result in certification. AD.

[18] *See supra,* note 14, at 4.

[19] *Matter of Bear Stearns & Co., Inc.*, 91-INA-248 (BALCA Apr. 13, 1992); *Matter of Gulliver Preparatory School*, 87-INA-549 (BALCA Aug. 17, 1988). Both matters were decided under pre-PERM regulations at 20 CFR §656.21(b)(2)(ii) and are likely good law considering that the current "combination of occupations" regulation at 20 CFR §656.17(h)(3) mirrors the criteria for demonstrating the permissibility of the occupational combinations and prudently deletes the reference to an "engineer-pilot" as an example of a job containing a presumptively impermissible combination of duties.

[20] *Matter of Robert L. Lippert Theatres*, 88-INA-433, at 3-4 (May 30, 1990). *See also* https://www.dol.gov/agencies/oalj/PUBLIC/INA/REFERENCES/

> [W]here a combination of duties is consistent with the description of the job in the Dictionary of Occupational Titles (DOT), the combination is normal and business necessity need not be shown. . . . The regulation reserves for certification only combinations of duties which, though they have not been employed previously, legitimately represent one job opportunity and not the expedient merger of two distinct vocational endeavors.

In other words, if the position combines occupations which are nevertheless contemplated in a single DOL occupational classification, an employer is not required to demonstrate it has historically engaged persons in similarly combined occupations, or that it is an industry standard, or that it arises out of business necessity.

For instance, according to DOL's Occupational Outlook Handbook (OOH), *Statisticians* are grouped with *Mathematicians* and may "[d]evelop mathematical or statistical models to analyze data" and "[u]se statistical software to analyze data and create visualizations to aid decision making in business."[21] O*NET On Line goes further and notes that *Statisticians, 15-2041.00* perform standard statistical analysis tasks *and* "[d]evelop software applications or programming for statistical modeling and graphic analysis."[22]

The above combination of clearly distinct *statistical duties* and *software development duties* is consistent with the description of the occupation provided in the OOH and O*NET chapters for *Statisticians, 15-2041.00.* It is therefore normal to the occupation, and "legitimately represents one job opportunity and not the expedient merger of two distinct vocational endeavors." Thus, a Statistician with similar duties will not require an employer's documentation that it has normally employed individuals in this position, or that it is an industry norm, or that it arises out of business necessity.

This conclusion would follow even if the DOL NPWC determines – in a prevailing wage determination - that the job combines two distinct occupations - *Statisticians* and *Software Developers*[23] - to assign a higher wage rate. In short, for purposes of 20 C.F.R. §656.17(h)(3), this combination of occupations would *not* require any further documentation.

C. What is the standard for "business necessity" applicable to combinations of occupations?

A third prong of the combination of occupations regulation requires the showing that "the combination job opportunity is based on a business necessity." Of course, the business necessity of a particular combination of duties does not require examination if the employer successfully demonstrates that "such employment practice is normal to its operation [prong one] or that such practice is customary to the industry [prong two]."[24]

But if an employer is unable to document that its combination of occupations has not been previously utilized by the employer or the industry, it must "legitimately represent one job opportunity and not the expedient merger of two distinct vocational endeavors."[25]

In *Robert L. Lippert Theatres*, BALCA considered whether the position of "*Accountant/Projectionist*" involving "accounting functions" as well as "operation of the automated projection and sounds systems" represented an impermissible combination of occupations.[26] To answer this question, the Board fashioned a rule on business necessity specific to combinations of occupations,

> Accordingly, for a combination of duties to be based on a business necessity under [former] 20 C.F.R. §656.21(b)(2)(ii), an employer must document that *it is necessary to have one worker to perform the combination of duties, in the context of the employer's business, including a showing such a level of impracticability as to make the employment of two workers infeasible.* The intent of this formula is to focus the parties on addressing the fundamental issue of why it is necessary to have one worker perform the duties instead of two or more. Implicit in this standard is a showing by the employer that reasonable alternatives such as part-time workers, the purchase of new equipment, and a reordering of responsibilities within the organization are

REFERENCE_WORKS/BALCA_EN_BANC_SUMMARIES_UNDULY_RESTRICTIVE_JOB_REQUIREMENTS#17_6 (*last accessed* Jan. 22, 2026).

21 *See* U.S. BUREAU OF LAB. STAT., *What Mathematicians and Statisticians Do* (Aug. 28, 2025), https://www.bls.gov/ooh/math/mathematicians-and-statisticians.htm#tab-2 (*last accessed* Jan. 22, 2026).

22 *See 15-2041.00 – Statisticians*, O*NET OnLine, https://www.onetonline.org/link/summary/15-2041.00 (*last accessed* Jan. 22, 2026).

23 *See 15-1252.00 – Software Developers*, O*NET OnLine, https://www.onetonline.org/link/summary/15-1252.00 (*last accessed* Jan, 22, 2026).

24 *See Matter of Robert L. Lippert Theatres*, 88-INA-433, at 3 (May 30, 1990).

25 *Id.*

26 *Id.*, at 2.

> infeasible. In addition, though not necessary to satisfy the test, a showing that the duties are essential to perform each other would weigh heavily in favor of business necessity.[27] (*Emphasis added*.)

BALCA further noted that proof of business necessity for a given combination of occupations so defined is not sufficient and "does not end the analysis." The employer would still need to show that "the specified requirements for each set of duties are not unduly restrictive under *Information Industries*." It went on to note that,

> In the case at hand, for example, even if the Employer were to show that the combination of motion picture projection and accounting duties is justified by business necessity, it would still have to show that its requirements for each - three years [of] experience in business accounting and two to three years [of] experience with motion picture projection and sound systems - are not unduly restrictive under [former] section 656.21(b)(2).

In short, in the absence of evidence that a particular combination of occupations has been normally utilized by the employer or that is an industry norm, an employer must prove "business necessity" by showing that,

A. It is necessary to combine occupations in the context of its business;

B. It is so impracticable not to combine the occupations as to make the employment of two workers infeasible; and

C. Where applicable, each set of requirements independently satisfies the business necessity requirements (under 20 C.F.R. §656.17(h)(1)).

In *Robert L. Lippert Theatres*, BALCA reviewed the opposing arguments and concluded that the employer has not shown business necessity for combing *accounting* and *motion picture projectionist* duties as that combination arose "from the simple convenience and savings to the Employer." Specifically,

> Applying the test announced earlier, the Employer has not shown that it is necessary, even in the context of its business, to hire one worker to perform these duties, and that it is impractical to such a degree as to make it infeasible to hire two workers. No consideration of reasonable alternatives, such as using an outside accountant, is made by the employer. Furthermore, the projectionist duties are not essential to the accounting duties, or vice versa. What remains is the Employer's argument that, given the Alien's unusual background, it may "kill two birds with one stone," by combining these heretofore unrelated jobs.

Because the standard for "business necessity' in this context combines the business necessity and infeasibility to hire doctrines, the burden of proof is much higher than proving either business necessity or infeasibility to hire standing alone.[28]

> **Practice Pointer**: Attorneys should proceed with caution and consult the latest in BALCA caselaw, DOL announcements and adjudication trends to ensure labor certification approval without an audit or denial.[29] A prudent step may be to prepare documentation specified in 20 CFR 656.17(h)(3), or an alternative argument as to why the position does not represent an impermissible "combination of occupations," well in advance of a potential audit, and include a brief statement of its position in the ETA 9089 form to stave off the audit or denial.

III. Conclusion

DOL's recent process and policy changes have upended what was once a quiet, relatively uncontested area of labor certification law focused on combination of occupations. If the wage determination contains the combination occupation finding, practitioners must decide whether to seek redetermination or proceed to the recruitment phase of the application now burdened with known risks. If the latter decision is unavoidable, we recommend the following framework for analyzing - and enhancing approvability of - a PERM application involving a combination of occupations:

1. It is necessary, first, to ascertain whether there is a true combination of "two traditionally separate jobs into one position" by looking at the *duties* of the occupation and not the *requirements* (skills or experience) necessary to perform them. If the duties are not combined, then the applicant will not be required "to answer in the affirmative the existence of a combination of duties on

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27 *Id*., at 4.

28 For application of these principles, *see supra*, note 7, and *Liane Ginsberg*, 2013-PER-02239, 3-4 (Mar. 22, 2019); *Paramount Financial, d/b/a Avenir Mortgage Planners*, 2015-PER-00218, 6-9 (Nov. 30, 2016); and *Adam R. Rose*, 2010-PER-00391, 4-5 (Apr. 7, 2011).

29 *See* also Ron Wada, *SHAPING THE FUTURE OF PERM – Note on Combination of Occupations in PERM*, 30 Bender's Immigration Bulletin, 219 (Feb. 1, 2025).

the 9089," but should be prepared to defend its position in case of an audit.

2. If the position does not combine duties, but does combine the requirements, the employer should be prepared to document "business necessity" for those requirements under 20 CFR §656.17(h)(1).
3. If the position combines occupations which are nevertheless contemplated in a single DOL occupational classification, an employer is not required to demonstrate it has historically engaged persons in similarly combined occupations, or that it is an industry standard, or that it arises out of business necessity.[30]
4. If the position combines occupations which are not supported by a single DOL occupational classification, an employer must demonstrate it has historically engaged persons in similarly combined occupations, or that it is an industry standard, or that it arises out of business necessity.
5. If the position combines occupations, and the employer is unable to demonstrate it has historically engaged persons in similarly combined occupations, or that it is an industry standard, it must document, as a last resort, that the combined occupation arises out of business necessity.
6. If the position combines occupations, and the employer is required to establish business necessity, it must document that,
   A. It is necessary to combine occupations in the context of its business;
   B. It is so impracticable not to combine the occupations as to make the employment of two workers infeasible; and
   C. Where applicable, each set of requirements independently satisfies the business necessity requirements (under 20 C.F.R. §656.17(h)(1)).

From a practical standpoint, if a combination of occupations exists, an employer may wish to gather documentation under 20 C.F.R. §656.17(h)(3) and include a brief statement in the application to signal its readiness to respond to an audit:

> Employer attests and is prepared to provide documentation that it has normally employed persons for this combination of occupations; that workers customarily perform this combination of occupations in the area of intended employment; and/or that the combination job opportunity is based on legitimate business needs and consistently applied hiring standards.

The above analytical steps and sample statements for the ETA 9089 form provide ways of complying with 20 CFR §656.17(h)(3) if the combination of occupations regulation is implicated either in fact or by virtue of notations in prevailing wage determinations. To ensure success in obtaining labor certifications, it is necessary to analyze and help determine the precise nature of an employer's position, including clearly delineating and documenting any combination of duties *and* requirements that may be challenged by DOL post-filing, before advising employers to commence any attestation activity, obtain a wage rate or file a labor certification application.

[30] This scenario may arise when DOL's NPWC makes a "combination of occupations" notation on the ETA 9141 (PWD) but the position *does not* in fact require documentation under 20 CFR §656.17(h)(3). Employers may wish to proactively include an abridged explanation for its selection on the form prior to e-filing the application:

> Consistent with the PWD, we have checked "Yes" in G.7. (combination of occupations). Note, however, that the duties of POSITION are normal to and consistent with either occupational classification noted in the PWD. Employer is nevertheless prepared to provide documentation that it has normally employed persons for this combination of occupations; that workers customarily perform this combination of occupations in the area of intended employment; and/or that the combination job opportunity is based on legitimate business needs and consistently applied hiring standards.

CASE DIGESTS

FEDERAL COURT DECISIONS

Circuit Court:

Buenrostro-Mendez v. Bondi, 2026 U.S. App. LEXIS 3899, 166 F.4th 494 (5th Cir. Feb. 6, 2026): *The applicants for admission were not entitled to bond.*

Victor Buenrostro-Mendez and Jose Padron Covarrubias conceded that they were applicants for admission, meaning that they had not entered legally, even though they had been in the country since 2009 and 2001, respectively. The administration detained them and argued that they must be detained under 8 U.S.C. §1225(b)(2)(A). The noncitizens said that they were eligible for bond under §1226(a)(2). A district court (S.D. Tex.) ordered that they receive bond hearings or be released without any. They were released on bond. The administration appealed.

The court (Jones, Duncan; opinion by Jones) considered the question of statutory interpretation "novel but not recondite." After reviewing the INA's text, structure, and history, as well as congressional intent, the court agreed with the administration. It found the noncitizens' arguments both not sensible and odd. It also considered treating detention as mandatory more consistent with the congressional purpose. Judge Douglas dissented, saying that the administration's reading would mean that "the border is now everywhere," which was not the law Congress passed.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §108.03.

Iowa Migrant Movement for Justice v. Bird, 2026 U.S. App. LEXIS 3662 (8th Cir. Feb. 4, 2026): *The court denied a rehearing in a preemption case in which the panel had narrowed the preliminary injunction.*

Iowa Migrant Movement for Justice and others argued that an Iowa law encroached on federal authority to enforce immigration law. A district court (S.D. Iowa) preliminarily enjoined the law. The circuit court panel remanded for the PI to be narrowed.

The court denied rehearing by the panel and en banc. Judge Stras, with Loken in part, dissented from the denial of en banc rehearing, saying that Iowa's effort to help enforce the immigration laws should be accepted as long as it was not getting in the way.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §9.09.

Montejo-Gonzalez v. Bondi, 2026 U.S. App. LEXIS 3718, 166 F.4th 851 (9th Cir. Feb. 5, 2026): *The IJ and BIA improperly applied a per se rule that bad traffic could not be an extraordinary circumstance allowing reopening after failure to appear.*

Claudia Elena Montejo-Gonzalez and her children were headed to their initial immigration hearing in Seattle, but were delayed by two major car accidents. They had left Bremerton at 6:45 for an 8:30 hearing. Normally, it would be a trip of about ninety minutes. It took more like four hours. They had no counsel, but tried to document the circumstances. At the court, she spoke to two clerks. It did not work. The IJ ordered removal in absentia. They promptly moved for reopening, claiming exceptional circumstances beyond their control. They attached photos and a news alert about the accidents. The IJ did not address her evidence before saying that traffic and trouble finding parking were not enough for an exceptional circumstance. The BIA adopted the IJ's decision. It said that traffic plus her miscalculation of the time to get there, plus the IJ no longer being on the bench, did not equal an exceptional circumstance. They appealed, and the Ninth Circuit eventually took the case en banc.

The court (Murguia, Christen, Koh, Sung, Mandoza, Desai; opinion by Desai) held that any per se rule was wrong, for a review of the specific facts was necessary. It overruled *Hernandez-Galand*, 996 F.3d 1030 (9th Cir. 2021), to the extent that that case required consideration of potentially unconscionable results as a "standalone element." It cited case law that should have told the BIA that there was no such thing as a per se rule for exceptional circumstances. Furthermore, the IJ and BIA had abused their discretion by not considering the totality of the circumstances in this case. In addition, the court observed that she had not miscalculated the time to get to court. The IJ and BIA, the court said, had not considered her diligence. They had allowed for an extra fifteen minutes. Even ninety minutes was not enough cushion that day. And, citing case law, the court explained that they would not have been too late as long as the IJ was still in the courtroom. Here, by 10:30, the IJ was not. Finally, the court stated that the IJ and BIA had not considered what motive there was to not show up. The court granted her motion and remanded for further proceedings. Judge Friedland concurred in rejecting the claim of a per se rule that the administration had made at oral argument. Judge Ryan Nelson (with Callahan, Nguyen, and Lee) agreed about overruling *Hernandez*, but dissented due to the lack of deference to the IJ and BIA, who did not apply such a per se rule.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §§3.05, 64.03.

Guevara-Serrano v. Bondi, 2026 U.S. App. LEXIS 1337, 164 F.4th 1133 (9th Cir. Jan. 20, 2026): *It would have been dangerous for the applicant to report her partner's abuse to the police, so it was error to rule that her failure to report him was fatal to her claim that the Honduran government would not or could not protect her.*

Gaby Gisselle Guevara-Serrano and her daughter were from Honduras. They applied for asylum and related relief. At a hearing, Guevara-Serrano testified that her partner, a gang member, had beaten her repeatedly and once stabbed her in the stomach when he was drunk. The abuse often happened when she tried to go to church. She had not reported his actions to officials. The IJ denied relief. The BIA agreed, saying the failure to report him had prevented her from showing government inability or unwillingness to protect her. She appealed, claiming that the BIA had imposed a per se requirement to report, which would have been an error of law. She also claimed that the record compelled a finding that the government had been unable or unwilling to protect her.

The court (Schroeder, Schreier; opinion by Schroeder) commented that the parties agreed that the key issue was government ability and willingness to protect her. That was covered in one paragraph. She argued that many cases had established that there was no requirement to report in order to show inability or unwillingness. The court said that the administration had not "meaningfully" discussed those authorities; it had focused on her burden. The court agreed with her that the law was both "clear" and "longstanding" in the circuit. However, the court also said that it was not necessary to consider whether the BIA had reversibly failed to consider all the relevant evidence. Rather, the court found that the record compelled the conclusion that reporting would have endangered her and that the Honduran government was unable or unwilling to protect her. The court laid out some of that evidence, which the BIA had not mentioned. The court remanded the asylum and withholding claims. Judge Friedland concurred on the Honduran government's inability or unwillingness to protect her, but also would require that the nexus element be considered met when the withholding case was heard again below.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §§33.04, 33.05, 33.06.

GEO Group v. Inslee, 2026 U.S. App. LEXIS 4183 (9th Cir. Feb. 11, 2026): *The court denied en banc rehearing about standards of detention for immigration detainees.*

The panel (W. Fletcher, Gould, Nguyen) unanimously denied a panel rehearing. They explained that there were two cases involved. The first, *Nwauzor v. GEO Group*, involved work done by children in immigration detention in a GEO Group facility in Tacoma. GEO estimated that they did the equivalent of the work of eighty-five full time employees. GEO's contract allowed it to use detainees as long as it complied with all federal, state, and local laws and standards, including "labor laws and codes." The district court held that GEO must pay the Washington state minimum wage. That case was affirmed by a panel. The circuit denied en banc rehearing, despite Judge Bumatay's dissent. The panel said that he was continuing to discuss that case here, which was *GEO Group v. Inslee,* about conditions in the Tacoma facility for immigration detainees. The panel said that the detainees had to be held in conditions comparable to those in residential treatment facilities for patients with mental illness or substance-abuse disorders or in involuntary civil commitment facilities. The other option, which the panel rejected, was to treat the immigration detainees, none of whom had been even charged with a crime, like convicted criminals in Washington's jails and prisons. The panel had remanded for the district court to make the comparison between the standard and the actual conditions in the GEO facility. It agreed with the dissent that the case was "easy," but easy in the opposite way.

The en banc petition did not receive a majority of the votes. Judge Bumatay (with Callahan, Bennett, R. Nelson, Collins, Bress, VanDyke, Tung) dissented, saying that the panel had discriminated against the federal government.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §108.04.

National TPS Alliance v. Noem, 2026 U.S. App. LEXIS 2164, 166 F.4th 739 (9th Cir. Jan. 28, 2026): *The court affirmed the district court's holding that the Secretary of Homeland Security lacked the authority to terminate an existing designation of a country for TPS.*

The National TPS Alliance and individual holders of temporary protected status challenged the Secretary of Homeland Security's vacatur and termination of the

TPS designation of Venezuela and her partial vacatur of TPS for Haiti. The district court (Chen, N.D. Cal.) held that her actions had exceeded her authority and were arbitrary and capricious. She appealed.

The court (Wardlaw, Johnstone; opinion by Wardlaw) held that the Secretary's "significant discretion and authority in designating, extending, and terminating a country's TPS" did not extend as far as she had taken it. Citing the plain language of the INS, 8 U.S.C. 1254a(b)(2)(B) and (3)(C), the court declared that the Secretary lacked power to vacate an existing designation. It added that her actions "fundamentally contradict Congress's statutory design, and her assertion of a raw, unchecked power to vacate … is irreconcilable with the plain language of the statute." The court also rejected the administration's argument that two Supreme Court emergency stay orders controlled, distinguishing them and pointing out that the stay orders did not explain the reasoning underpinning them. It also distinguished an injunction from set-aside relief under the Administrative Procedure Act. Judge Mendoza (joined in part by Wardlaw) concurred, writing to emphasize that it would be wrong to let agencies use pretexts, especially a pretext hiding animus based on race or national origin, to justify the agencies' actions.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §§3.02, 33.08.

Mukantagara v. Noem, 2026 U.S. App. LEXIS 699, 164 F.4th 765 (10th Cir. Jan. 12, 2026): *The first step of terminating refugee status is nondiscretionary and reviewable.*

Agnes Mukantagara and her son sued USCIS after it terminated her refugee status. USCIS had decided that she had taken part in genocide in Rwanda. In removal proceedings, the IJ found her credible and granted asylum to her — but not to her son. He had aged out by then. They sought Administrative Procedure Act review in the district court (D. Utah), which dismissed for lack of jurisdiction because of 8 U.S.C. §1252(a)(2)(B)((ii), which bars review of discretionary actions. The Tenth Circuit reversed, saying that the bar did not apply, for the termination decision was separate from removal proceedings. Again the district court relied on the bar. Again she and her son appealed. The proceedings about asylum were put to one side until this case was completed.

The court (Tymkovich, Phillips, McHugh; opinion by Phillips) held that the bar did not apply to termination of refugee status, which fell under 8 U.S.C. §1157(c)(4). It explained that the first step of termination is not discretionary; it is the determination as to whether the applicant met the definition of a refugee when admitted to the United States. The second step is discretionary, but she could sue over the eligibility determination. The court drew on cases about temporary protected status. It also distinguished recent Supreme Court and circuit court decisions. Accordingly, the court reversed and remanded.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §§34.01, 104.09, 104.13.

Mehneh v. Rubio, 2026 U.S. App. LEXIS 1127, 164 F.4th 928 (D.C. Cir. Jan. 16, 2026): *The visa applications had been decided while the appeal was in process, so it was moot.*

Shahnaz Haeri Mehneh and Saeid Motevali separately sued DOS over delays in adjudicating two visas. One was for Mehneh's husband, Aliasghar Nejat. The other was for Motevali's father, Alireza Motevaly Alamouti. The cases were in "administrative processing." The district court (D.D.C.) dismissed both for failure to state a claim. Both appealed. While the appeals were underway, DOS approved Nejat's visa and denied Alamouti one. Nejat had entered the United States and applied for LPR status.

The court (Childs, Edwards, Ginsburg; opinion by Ginsburg) vacated both appeals as moot. It explained that Nejat was unlikely to face such a delay again. The court did not see the necessary evidence of "gamesmanship" that he claimed was at play. Likewise, there was nothing that the court could do for Alamouti, it said. He had been rejected for "terrorist activities," which would make any process in handling a future application quick, the court pointed out. As with Nejat's case, the court rejected the gamesmanship claim. It remanded with instructions for dismissal of the cases.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §104.04.

District Court

J.G.G. v. Trump, 2026 U.S. Dist. LEXIS 29467 (D.D.C. Feb. 12, 2026): *The court set out steps to move the case toward finding a way to remedy the violations of the noncitizens' due process rights.*

Venezuelans who were removed to the "CECOT" detention center in El Salvador and eventually released to Venezuela as part of a deal continued to pursue habeas claims in the United States. Even their counsel did not know exactly how many wanted to do so and how many were in Venezuela. The court had ordered the administration not to remove them. After they were removed despite the order, the court found a violation of due process. The court invited the administration to propose how to have hearings on the habeas claims, but the administration "essentially told the Court to pound sand." The court, however, thought that "other courses would be both more productive and in line with the Supreme Court's requirements" discussed in an earlier phase of this litigation. The court repeatedly remarked on the administration's hard line and the noncitizens' "prudent," "measured," and reasonable behavior. It added that the administration preferred that the noncitizens return, but not at government expense.

The court (Boasberg) granted that the situation in Venezuela was unsettled and that foreign affairs concerns were involved. However, it was determined that the administration "remedy the wrong that it perpetrated here" and offer a route to that remedy. After more comments about "the flagrancy of the Government's violations" of due process, the court ordered the administration to (1) parole into U.S. custody any plaintiff who appeared at a port of entry; (2) offer a boarding letter to any plaintiff in another foreign country who sought commercial air travel to the United States; and (3) pay the cost of the noncitizens' returns. The court reiterated that the returning plaintiffs would be detained. It also noted that there probably would be few people returning, since only those outside Venezuela were covered. The court also authorized any plaintiffs outside the United States to file supplemental pleadings. Other issues were left for later. The court also ordered the plaintiffs to file a list of which plaintiffs were in which countries other than Venezuela, who wanted to travel independently to the United States or be flown here, and who wanted to file supplemental pleadings. It ordered the administration to return passports and other identification documents and to file a status report.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §6.02.

Community Economic Development Center of Southeastern Massachusetts, 2026 U.S. Dist. LEXIS 24212 (D. Mass. Feb. 5, 2026): *The court enjoined the ICE-IRS information-sharing agreement.*

The Community Economic Development Center of Southeastern Massachusetts and others sued, claiming that the IRS and other federal agencies and officials had made and carried out data-sharing agreements that violated privacy protections and were unlawful, arbitrary, capricious, and contrary to the Administrative Procedure Act. Specifically, the IRS and Social Security Administration allegedly shared addresses with ICE. The plaintiffs moved for a stay or preliminary injunction. The court denied the motion as to some defendants. It now dealt with the motion relating to ICE, the Secretary of Homeland Security, and the acting ICE director. The plaintiffs wanted a stop to information sharing, but also a bar on any ICE/DHS inspection, view, use, copying, distributing, relying on, or acting on any "return information" obtained from the IRS.

The court (Talwani) granted the motion. It explained Internal Revenue Code §6103, making tax returns and the information in them generally confidential. It also discussed similar litigation in the U.S. District Court for the District of Columbia, in which the court enjoined the IRS-ICE arrangement. This court agreed with the D.C. court and found more problems with the arrangement, such as a technical inability to share the information as confidentially as the law required. It said that violations had already happened. It found irreparable harm that would continue. It also saw both the balance of hardships and the public interest as favoring the plaintiffs. The court added that the administration had not shown that providing taxpayer addresses was "integral to law enforcement, let alone to the President's promise to start enforcement with the 'worst of the worst.'" Consequently, the court forbade implementation and enforcement of the agreement as well as use of the information. Additionally, it ordered notification of this court order to the DHS employee who had received certain information.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §§3.02, 3.17, 6.02.

Rodriguez Romero v. Ladwig, 2026 U.S. Dist. LEXIS 25030 (M.D. La. Feb. 6, 2026): *The court ordered release within three hours of four noncitizens redetained in violation of due process.*

Francisco Rodriguez Romero and other noncitizens sought habeas to be released from civil ICE detention in Louisiana. ICE had been unable to remove them and decided that they were neither flight risks nor dangerous and that they would comply with conditions of release. Then it redetained them. Three of them were arrested when they went to regular check-ins; one was arrested at home. Although ICE argued that they were detained as part of the removal process, "months later, all remained in ICE lockup" at a detention center on the grounds of a maximum-security prison. They claimed deprivations of substantive and procedural due process, particularly failure to follow ICE's own regulations. Primarily, they objected to the lacks of any proper explanation of why and of notice and a chance to be heard. The administration said that any errors were harmless and not a good basis for habeas.

The court (DeGravelles) granted the petition and required release within three hours. It pointed out that, under 8 C.F.R. §241.13(i)(2), revocation of the order of supervision required a showing of a "significant likelihood" of removal "in the reasonably foreseeable future," and "future" does not start after the revocation. Two of the four detainees never got any notice of why they were being detained again. Two got ones in English, in which they were not fluent. None got a chance to respond in the way the regulations required, and the court review was not a satisfactory substitute in the court's view. The court also was unimpressed with the case law that the administration cited. Instead the court "join[ed] the multitude" of courts in holding that the noncitizens had had "an overwhelming liberty interest" in remaining free after their releases. That is, they were entitled to due process. A violation was "per se prejudicial." Therefore, they were entitled to immediate release. They also, the court said, could use *Zadvydas*. Looking at the impediments to removal of these men in their circumstances, the court said that the administration had not shown a significant likelihood of removal in the reasonably foreseeable future. Lastly, on relief, the court spoke of the practical difficulties the men had faced when suddenly redetained ("no opportunity to arrange for care for their dependents, pets, or home … their bills have gone unpaid, jobs may have been lost, and Petitioners may be released into housing and food instability").

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §108.05.

BIA DECISIONS

Nonprecedent:

Matter of X, [file no. not provided] (BIA May 19, 2025) (El Paso): *The IJ had provided a fair proceeding and not erred in denying the mentally ill noncitizen deferral of removal.*

A Mexican citizen with a history of substance abuse and schizophrenia sought deferral of removal. He moved to terminate for lack of proper service of the NTA, and the IJ denied the motion. The IJ then denied deferral of removal.

The BIA (Mullane) explained that his mental incompetency was not known when DHS served him, and the agency then fulfilled its obligations under 8 C.F.R. §103.8(c)(2)(ii). It had served the warden of the detention center where he was and his counsel. The BIA upheld the IJ's allowance of the untimely filing of the NTA. The noncitizen had not shown prejudice, according to the BIA. The BIA also rejected his claim that his alienage had not been proven by his birth in Mexico and his Matricula Consular. It also saw no harm from the recalendaring of a hearing. In addition, it saw no error in the denial of termination, disagreeing with his contention that he was so mentally ill that termination was the only fair action. It said that the IJ had used appropriate safeguards and provided a fundamentally fair process. The BIA added that the fact that his condition had not improved did not show that the proceedings were unfair. The IJ had correctly ruled that a first-degree burglary conviction barred him from asylum and withholding. Finally, the BIA stated that the denial of deferral was supported by the record. That record showed, the BIA said, that there was no clear error in finding that the Mexican government would intend to torture him or would be unable or unwilling to prevent his torture.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §33.10, 64.03.

Matter of X, [file no. not provided] (BIA May 15, 2025) (Tacoma): *The noncitizen was an arriving alien who could not be released on bond.*

A Chinese woman entered in 2022 by crossing the U.S. border with Mexico without admission, parole, or inspection. She was about five and a half miles from the nearest port of entry. She told the officer who found her, about a hundred yards into the United States, that she had no documents authorizing her to enter or stay in the United States. The officer did not have a warrant, but took her to a processing center. She was initially paroled, provided that she reported to a field office as required. In 2024, Interpol informed DHS of a Red Notice about her due to forgery and human smuggling allegations in Spain. She was therefore detained and served with a notice to appear and notice of custody determination. She was charged under INA §212(a)(6)(A)(i). She sought bond. The IJ ruled that she was detained under INA §235(b)(2)(A), so the IJ lacked jurisdiction. The noncitizen appealed, arguing that she was eligible for bond under INA §236(a).

The BIA (Malphrus, Goodwin; opinion by Malphrus) held that, as an applicant for admission arrested and detained without a warrant when arriving in the country and later put into removal proceedings, she fell under §235(b). Therefore, she could not be released. The BIA added that her parole had ended automatically once she was served with the NTA. She was placed into regular removal proceedings. The BIA explained that therefore she had to remain detained until the end of the removal proceedings. It cited the decision in *Matter of M- S-*, 27 I. & N. Dec. 509 (Att'y Gen. 2019). AIJ Mullane concurred that she was an arriving alien who could not be released, citing INA §212(d)(5)(A) and 8 C.F.R. §1003.19(h)(2)(i)(B).

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §108.03.

Matter of X, [file no. not provided] (BIA May 16, 2025) (New York City): *The IJ who determined that the detainee would be a danger to the community did not commit error.*

A detainee applied for bond, but the IJ denied the request. The detainee appealed. The detainee objected to the IJ's written decision as not fully summarizing the oral decision and not being based on notes from the bond hearing. The detainee cited Immigration Court Practice Manual Chapter 9.3(e)(7) and BIA Practice Manual Chapter 3.2(f)(4). The detainee claimed that the written decision had corrected the oral decision's "unfounded speculation" and misassignment of the burden of proof.

The BIA (Malphrus, Goodwin; opinion by Malphrus) declared that DHS had shown by clear and convincing evidence that he would be dangerous to the community and therefore should be detained. The BIA stated that the Manuals did not create rights of action for violations. In addition, the BIA said that the written decision was consistent with the IJ's bond order and gave an explanation based on record evidence for the holding that he was dangerous. The BIA stated that the IJ had correctly placed the burden on DHS regarding danger. Furthermore, the BIA disagreed with his contention that the IJ had said that his detention was mandatory under INA §236(c). It also said that he was wrong that the IJ had relied on one document. It found that the IJ had acted within his authority on other points that the detainee had raised. On the issue of danger, the BIA saw no clear error. The detainee had been arrested or convicted "numerous" times in the previous two years, including for criminal possession of a controlled substance, criminal possession of stolen property, disorderly conduct, and petit larceny. He acknowledged ten years in the Mara-18 gang. The BIA saw no inconsistency with the grant of CAT relief. And it said that a transcript of the bond hearing as not required. AIJ Mullane concurred in the result without further comment.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §§3.06, 108.05. The manuals are available in the primary-source materials in Gordon, et al.

OCAHO DECISIONS

Gulcu v. Fraunhofer USA, OCAHO Case No. 2024B00053, 19 OCAHO 1560d, 2026 OCAHO LEXIS 10 (Jan. 27, 2026): *OCAHO issued an order for the complainant to show cause for OCAHO not to dismiss the case when he did not appear for a deposition, raise any objections to it, or subsequently participate in the case.*

Talha Cihad Gulcu alleged that Fraunhofer USA had discriminated against him because of his citizenship status and national origin, then retaliated. OCAHO in March 2025 dismissed the discrimination claims for lack of jurisdiction. 30 BIB 1138 (July 1, 2025). The retaliation claim proceeded, including notice of a deposition of Gulcu. However, Gulcu did not appear, move for a protective order, or make any other discovery motion. Fraunhofer then moved to dismiss for nonprosecution, to compel discovery, to extend the discovery deadline, and for sanctions. Gulcu did not oppose the motion.

OCAHO (Henderson) saw a potential abandonment of the case and a possible unwillingness to pursue it. He had not raised any arguments against the deposition, although "extracts of the email correspondence" between him and Fraunhofer suggested that he did not feel required to take part in the deposition. OCAHO therefore decided to issue a notice to show cause, then wait before doing anything more.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §3.07.

Usifo v. Truveta Inc., OCAHO Case No. 2025B00014, 21 OCAHO 1642b, 2026 OCAHO LEXIS 6 (Jan. 13, 2026): *The complainant effectively abandoned her case, so the remaining claims were dismissed.*

Joanna C. Usifo complained that Truveta Inc. had discriminated against her based on her citizenship and national origin in the form of refusing to hire her. She also alleged retaliation by telling her that she would not be considered for other positions once she alleged discrimination. Truveta denied her allegations and moved to dismiss for lack of jurisdiction and failure to state a claim. She did not respond. She also did not appear at a prehearing conference or produce a prehearing statement, and she did not explain why she did not. OCAHO stayed proceedings pending a decision on the motion to dismiss. In August 2025 (30 BIB 2282, Dec. 1, 2025, issue), OCAHO dismissed the discrimination claim for failure to state a claim. OCAHO stayed a decision on national origin discrimination pending discovery on how many employees Truveta had. OCAHO allowed limited discovery on that issue. OCAHO also ordered Usifo to clarify whether she was alleging unfair documentary practices. She did not respond. OCAHO denied the motion to dismiss the retaliation claim.

OCAHO (Henderson) found the unfair documentary practices claim, if it even was against Truveta, too vague. It dismissed the claim. As to how many employees Truveta had, OCAHO granted the motion to dismiss the national-origin claim based on her lack of opposition to Truveta's contention that it had over 250 employees. OCAHO said that Usifo seemed to have abandoned the case. Given that she had committed more than one or two violations of court orders, and that OCAHO had already warned her that the case could be dismissed, it went ahead and did so.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §3.07.

Hussain v. Developlus, Inc., OCAHO Case No. 2025B00028, 21 OCAHO 1649d (Jan. 5, 2026): *The case was dismissed for a lack of jurisdiction and a failure to state a claim for which relief could be granted.*

Syed Asad Hussain alleged discrimination based on citizenship (Pakistani) and national origin (same) and retaliation by Developlus, Inc. He had applied to be a production worker in 2021. He alleged threats, intimidation, coercion, or retaliation, but did not give any more information of just what had happened. Developlus moved to dismiss. After the ALJ stayed the deadline for an answer and invited Hussain's representative to file an appearance, a relative (Syed Ahad Hussain) submitted a series of items that "at no point in time demonstrated he had the requisite supervision or qualifications to appear in this forum on behalf of anyone." After repeated grants of more time, OCAHO set October 1, 2025, as the deadline to respond to the motion to dismiss. There was no response. OCAHO therefore decided the motion.

OCAHO (Carroll-Tipton) pointed out that Hussain's immigration status was unclear, but he had filed a charge with the IER. He seemed to have issues involving USCIS, DOS, or both. His complaint to OCAHO described his immigration status as "EW3 other worker (PERM labor certification) Immigrant Visa … Permanent Residence without work authorization." There was correspondence between Hussain and Developlus in October 2021 in which he was to give it money in exchange for some "fees." There also seemed to be a dispute about a visa. The earliest protected activity seemed to have been his filing with IER in 2024. Developlus explained that it had filed a PERM application for him as a warehouse worker in September 2021. His I-140 was approved in November 2021. Then his case went to the National Visa Center to be sent to Islamabad once his priority date was reached. In September 2023, Developlus said, it told him that it could not continue processing the case, and he remained in Pakistan.

On the motion itself, OCAHO saw a lack of jurisdiction over the national-origin claim, for he had pleaded that Developlus had more than fourteen employees. So OCAHO dismissed with prejudice. On the citizenship claim, the court did the same because he had never been admitted to the United States and therefore was not a protected individual. On retaliation, he had not stated a claim. By his description, the retaliation was in 2021 and the protected activity in 2024. So the entire case was dismissed.

NOTE: For more on this subject, see Charles Gordon, et al., Immigration Law and Procedure §7.0

GOVERNMENT DOCUMENTS

FEDERAL REGISTER

Final Rules:

U.S. Department of Homeland Security, Citizenship and Immigration Services, "USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill." Action: Interim final rule; request for comments. 91 Fed. Reg. 22,952 (April 29, 2026). Comments are due by June 29, 2026. The changes are effective May 29, 2026. The amendments codify provisions of the "One Big Beautiful Bill Act" dealing with asylum fees, I-94 fees, and employment authorization. The IFR is reprinted at **Appendix A.**

U.S. Department of Justice, Executive Office for Immigration Review, "Office of the Chief Administrative Hearing Officer, Chief Administrative Law Judge."

Action: Final rule. 91 Fed. Reg. 23,168 (April 30, 2026). The final rule adopts, with technical corrections, the IFR issued at 85 Fed. Reg. 63,204 (Oct. 7, 2020). It amends 28 CFR Part 68. It is reprinted at **Appendix B.**

U.S. Department of State, "Schedule of Fees for Consular Services—Fee for Administrative Processing of Request for Certificate of Loss of Nationality of the United States; Correction." Action: Correcting amendment. 91 Fed. Reg. 20,583 (April 17, 2026). Public Notice 12,998. DOS corrects a citation in the instructions in the final rule promulgated at 91 Fed. Reg. 12,296 (March 13, 2026).

Notices:

U.S. Department of Homeland Security, Office of the Secretary. "Rescission of the Suspension of All Direct Commercial Passenger and Cargo Flights Between the United States and Venezuela." Action: Notice. 91 Fed. Reg. 20,698 (April 17, 2026). The rescission was effective April 15, 2026.

U.S. Department of State, "United States Passports Moving to Single-Sized Passport Book." Action: Notice. 91 Fed. Reg. 21,070 (April 20, 2026). Public Notice 12,997. Comments are to be submitted by June 22, 2026. Series B is projected for 2028, and those passports will all have thirty-eight pages, instead of either twenty-six or fifty pages. Emergency passports will stay at twelve pages. The notice is reprinted at **Appendix C.**

U.S. Department of the Treasury, Internal Revenue Service, "Quarterly Publication of Individuals[] Who Have Chosen To Expatriate." 91 Fed. Reg. 21,597 (April 22, 2026). Action: Notice. The notice lists the names of about twenty pages' worth of people.

ICE DOCUMENT

- ***Firearms and Use of Force***

On May 26, 2023, ICE issued Directive 19009.3, "Firearms and Use of Force." The thirteen-page directive is reprinted at **Appendix D.**

DOL DOCUMENT

- ***OFLC on Response to Typhoon Sinlaku***

On April 21, 2026, OFLC issued FAQs about an emergency declaration for the Commonwealth of the Northern Mariana Islands because of Typhoon Sinlaku. They are reprinted at **Appendix E.**

APPENDIX A (see summary on page 754)

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

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carton or equivalent is established for Florida citrus covered under the Order.

Erin Morris,

Administrator, Agricultural Marketing Service.

[FR Doc. 2026–08358 Filed 4–28–26; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 106, 208, 244, and 274a

[CIS No. 2841–26; DHS Docket No. USCIS–2026–0133]

RIN 1615–AD09

USCIS Immigration Fees and Related Procedures Required by H.R.1 Reconciliation Bill

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Interim final rule; request for comments.

SUMMARY: The U.S. Department of Homeland Security (DHS) issues this interim final rule (IFR) to codify certain immigration fees and other provisions required by the One Big Beautiful Bill Act (H.R.1). This IFR amends U.S. Citizenship and Immigration Services (USCIS) regulations to codify: the asylum and annual asylum fees, including the consequences of non-payment of these fees; the new Form I–94 fee requirement; the validity period for certain types of employment authorization; and the retention of the Form I–589 filing fee for every application.

DATES: This interim final rule is effective May 29, 2026. DHS invites public comment on all aspects of this interim final rule; written comments must be submitted on this interim final rule on or before June 29, 2026.

ADDRESSES: You may submit comments on the entirety of this interim final rule package, identified by DHS Docket No. USCIS–2026–0133, through the Federal eRulemaking Portal: *http://www.regulations.gov.* In accordance with 5 U.S.C. 553(b)(4), the summary of this rule found above may also be found at *https://www.regulations.gov.* Follow the website instructions for submitting comments. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS 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 the one listed above, including emails or letters sent to DHS or USCIS officials, will not be considered comments on the rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Table of Contents

Table of Abbreviations

AAF—Annual Asylum Fee
APA—Administrative Procedure Act
BLS—U.S. Bureau of Labor Statistics
CBP—U.S. Customs and Border Protection
CFO Act—Chief Financial Officers Act
CFR—Code of Federal Regulations
CPI–U—Consumer Price Index for All Urban Consumers
CRA—Congressional Review Act
DHS—Department of Homeland Security
DOJ—Department of Justice
DOL—Department of Labor
EAD—Employment Authorization Document
E.O.—Executive Order
EOIR—Executive Office for Immigration Review
FR—Federal Register
FRN—Federal Register Notice
FY—Fiscal Year
H.R.1—One Big Beautiful Bill Act
HSA—Homeland Security Act of 2002
IFR—Interim Final Rule
INA—Immigration and Nationality Act
IPF—Immigration Parole Fee
NATO—North Atlantic Treaty Organization
NEPA—National Environmental Policy Act
NTA—Notice to Appear
OMB—Office of Management and Budget
PRA—Paperwork Reduction Act
RFA—Regulatory Flexibility Act of 1980
RIA—Regulatory Impact Analysis
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996
SIJ—Special Immigrant Juvenile
TPS—Temporary Protected Status
UMRA—Unfunded Mandates Reform Act of 1995
USCIS—U.S. Citizenship and Immigration Services

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this interim final rule. DHS also invites 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 USCIS 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 the one listed above, including emails or letters sent to DHS or USCIS officials,

APPENDIX A (continued)

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will not be considered comments on the interim final rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2026–0133 for this interim final rule. Please note all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://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 DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS–2026–0133. 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. Purpose of the Regulatory Action

On July 4, 2025, the President signed into law H.R.1—One Big Beautiful Bill Act, Public Law 119–21, 139 Stat. 72 (''H.R.1''). H.R.1 was a comprehensive legislative package that changed many laws and added new laws that touch many areas of the United States government. Among those changes, the law established several new provisions and fees to the Immigration and Nationality Act (INA). *See* H.R.1, Title X, Subtitle A, Part I, Sections 100001 through 1000018. This IFR codifies several of the H.R.1 immigration fee provisions and other limitations on aliens.

Specifically, the IFR does the following: (1) codification in the Code of Federal Regulations (CFR) of the Form I–94 fee requirement set forth in 8 U.S.C. 1807 as it applies to USCIS; (2) codification of the Annual Asylum Fee (AAF) requirement in 8 U.S.C. 1808, including consequences for failure to pay the AAF and limitations related to employment authorization required by 8 U.S.C. 1810(b); (3) codification of the requirement that every asylum application include the fee required by 8 U.S.C. 1802 at filing regardless of whether the application is rejected, and is not refundable; and (4) codification of the H.R.1 limits on the validity of Temporary Protected Status (TPS) employment authorization required by 8 U.S.C. 1803(c) and 8 U.S.C. 1811(a).

B. Legal Authority

This rule is issued under section 208(d)(3) of the Immigration and Nationality Act (INA), 8 U.S.C. 1158(d); section 102 of the Homeland Security Act of 2002 (HSA), 6 U.S.C. 112; and sections 100002 through 100018 of H.R.1, codified at 8 U.S.C. 1802 through 1815. These statutes authorize DHS to administer the asylum process, and collect certain fees as required by law.

DHS is issuing this rule as an interim final rule under the ''good cause'' exception of 5 U.S.C. 553(b)(B), as prior notice and comment would be impracticable and contrary to the public interest. H.R.1 requires immediate implementation to ensure compliance with the statutory mandate and provides no discretion to DHS on the provisions implemented in this rule.

C. Summary of the Regulatory Action

This rule codifies certain H.R.1 fee provisions applicable to USCIS:

- Form I–94 Fee required by 8 U.S.C. 1807: Establishes a fee requirement that, for USCIS, is applicable to the filing of Form I–102, Application for Replacement/Initial Nonimmigrant Arrival–Departure Document. New 8 CFR 103.7(d)(4).
- Annual Asylum Fee required by 8 U.S.C. 1808: Codifies the requirement that an alien pay the AAF and establishes that, procedurally, failure to pay within 30 days of notice results in rejection of the pending asylum application and the denial of any associated application for employment authorization. New 8 CFR 106.2(c)(15)(ii) and 208.3(c)(6).
- Retention of Asylum Application Fee required by 8 U.S.C. 1802: Codifies the fee requirement and provides that the asylum application filing fee is retained by USCIS if a Form I–589 is rejected. New 8 CFR 106.2(c)(14).
- TPS Employment Authorization Validity required by 8 U.S.C. 1803(c) and 8 U.S.C. 1811(a): Limits work authorization and any associated employment authorization document under TPS to one year, or the remaining period of designation if shorter, with conforming changes to ensure consistency across DHS regulations. New 8 CFR 274a.12(a)(12) and 274.12(c)(19).

D. Summary of Costs and Benefits

DHS also analyzed the costs and benefits of this rule. Because the rule codifies statutory mandates or procedural processes, DHS estimates minimal incremental cost beyond those imposed by Congress. Qualitative benefits include improved fee transparency, reduced administrative ambiguity, and enhanced enforcement efficiency consistent with the goals of H.R.1.

III. Background and Authority

A. H.R.1—One Big Beautiful Bill Act

The H.R.1 Reconciliation Act of 2025 (H.R.1), Public Law 119–21, established a new framework of immigration fees that Congress directed DHS to implement beginning FY 2025.[1] Congress intended H.R.1 to ensure that aliens who apply for or maintain eligibility for immigration benefits bear more of the costs of administering the immigration system.[2] In explaining its decision, Congress made clear that these new fees were long overdue and necessary to recover the growing costs of adjudicating the millions of pending asylum applications before both USCIS, a component agency of DHS, and the Department of Justice, Executive Office for Immigration Review (EOIR).[3] H.R.1 requires that these fees be applied commencing in FY 2025 ''in addition to any other fee authorized by law.'' [4]

[1] H.R.1, Public Law 119–21 (2025), 139 Stat. 221 (2025) (codified at 8 U.S.C. 1802–1815).

[2] *Id.;* H. Comm. on the Judiciary, Markup of H.R.1, 119th Cong. (Apr. 30, 2025) (statement of Chairman Jordan), *https://www.congress.gov/event/119th-congress/house-event/118180;* Am. First Policy Inst., Remarks of Chairman Jim Jordan, Conversation with Chad Wolf (June 25, 2025), *https://www.americafirstpolicy.com/issues/securing-the-border-restoring-the-law-a-conversation-with-rep-jim-jordan.*

[3] H.R. Rep No. 119–106, Book 1, at 843–856 (2025).

[4] *See* 8 U.S.C. 1802(a) (''In addition to any other fee authorized by law, the Secretary of Homeland Security or the Attorney General, as applicable, shall require the payment of a fee, equal to the amount specified in this section, by any alien who files an application for asylum under section 208 (8 U.S.C. 1158) at the time such application is filed.''); see also 8 U.S.C. 1803(a)(1) (initial application for employment authorization under section 208(d)(2)); 8 U.S.C. 1803(b)(1) (initial application for employment authorization filed by any alien paroled into the United States); 8 U.S.C. 1803(c)(1) (initial application for employment authorization under section 244(a)(1)(B)); 8 U.S.C. 1805(a) (any alien, parent, or legal guardian of an alien applying for SIJ status under section 101(a)(27)(J)); 8 U.S.C. 1808(a) (for each calendar year that an alien's asylum application remains pending); 8 U.S.C. 1809(a) (any parolee who seeks a renewal or extension of employment authorization based on a grant of parole); 8 U.S.C. 1810(a) (any alien who has applied for asylum for each renewal or extension of employment authorization); 8 U.S.C. 1811(a) (renewal or

Continued

APPENDIX A (continued)

Unless otherwise described in this rule with respect to a specific fee, the fees set forth in H.R.1 are imposed in addition to fees in 8 CFR part 106, or any other fee promulgated by DHS under INA sec. 286(m), 8 U.S.C. 1356(m), and are not refundable. *See* 89 FR 6194 (Jan. 31, 2024); 90 FR 34511 (July 22, 2025). On July 22, 2025, USCIS published a **Federal Register** notice (FRN) announcing the implementation of several fees administered by USCIS mandated by H.R.1 (H.R.1 Fee notice). 90 FR 34511 (July 22, 2025).[5] That notice implemented a minimum $100 asylum application filing fee commencing in FY 2025 under 8 U.S.C. 1802 and a minimum $100 annual asylum fee (AAF) starting in FY 2025 for each calendar year an asylum application remains pending under 8 U.S.C. 1808. 90 FR 34511 (July 22, 2025). The notice also announced fees for Temporary Protected Status (TPS), special immigrant juveniles (SIJs) under 8 U.S.C. 1805, and certain categories of employment authorization under 8 U.S.C. 1803(a)–(c). 90 FR 34511 (July 22, 2025).

The USCIS notice also provides that USCIS will issue personal, individualized notice to each asylum applicant with an application pending with USCIS from whom the AAF is required, and that the notice will include the amount of the fee, when and how the fee must be paid, and the consequences of failure to pay.[6] For the AAF due for FY 2025, DHS has issued AAF notices that only state that failure to pay the fee before the deadline may negatively affect the application, but do not specify what will occur if the fee is not paid.[7]

The H.R.1 Fee notice expressly deferred announcement of multiple statutory fees. Among them were: (1) the Immigration Parole Fee (IPF) required by 8 U.S.C. 1804, which includes multiple enumerated statutory exceptions, and (2) the Form I–94 fee required by 8 U.S.C. 1807 applicable to any alien who submits an application for a Form I–94 Arrival/Departure Record. 90 FR 34511 at 34516 (July 22, 2025). In both cases, USCIS explained that further interpretation and guidance were necessary before implementation could proceed. 90 FR 34511 (July 22, 2025). On October 16, 2025, DHS published an additional FRN to address the Immigration Parole Fee (IPF) required by 8 U.S.C. 1804. 90 FR 48317 (Oct. 16, 2025). The IPF notice announced the new fee to be administered by DHS components, including USCIS, and specified the classes of applicants to whom the fee applies, the effective date of the new requirement, and instructions for remitting payment. 90 FR 48317 (Oct. 16, 2025). It also described the circumstances under which the fee exceptions may apply in accordance with the statutory exceptions provided in H.R.1 and clarified the consequences for failure to pay. 90 FR 48317 (Oct. 16, 2025). The IPF notice fulfilled the commitment made in the H.R.1 Fee notice, which stated that the fee mandated by 8 U.S.C. 1804, subject to multiple statutory exceptions requiring agency interpretation, would be announced in a future publication. 90 FR 34511 (July 22, 2025). By providing this follow-up guidance, DHS ensured that members of the public received the necessary information to comply fully with the new statutory mandate.

H.R.1 requires that DHS, beginning in FY 2026 and continuing for each subsequent fiscal year, adjust the immigration-related fees for inflation. H.R.1 prescribes that DHS use the percentage change to the CPI–U for the month of July in the current year compared to the preceding calendar year, and round each fee to the next lowest multiple of $10 or down to the nearest dollar as authorized by H.R.1. In furtherance of enacting the text of H.R.1, DHS components published multiple FRNs announcing the new H.R inflationary increases (90 FR 52085 (Nov. 19, 2025), 90 FR 52425 (Nov. 20, 2025), and 90 FR 52693 (Nov. 21, 2025)).

B. DHS General Rulemaking Authority

The Secretary of Homeland Security's authority for the regulatory amendment is found in various sections of the INA, 8 U.S.C. 1101 *et seq.* and the Homeland Security Act of 2002 (HSA), 6 U.S.C. 101 *et seq.* General authority for issuing this IFR is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority,[8] as well as sections 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.[9] In addition to the general authority, the asylum-specific authority at INA sec. 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B), states that ''the Attorney General may provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with this chapter.''[10]

The H.R.1 text ''in addition to any other fee authorized by law'' is clear.[11] H.R.1 fees do not supersede or replace the fee schedule DHS promulgated in 8 CFR part 106 and related provisions, nor do they limit DHS's authority under INA sec. 286(m), 8 U.S.C. 1356(m), to recover the costs of providing adjudication and naturalization services. The H.R.1 fees are a distinct set of statutory requirements intended to raise revenue to support enforcement priorities, improve public safety, and provide revenue to the Treasury while USCIS continues to fund adjudicatory functions through its existing fee authority. To interpret H.R.1 as supplanting the USCIS fees DHS codified in 8 CFR part 106 would produce a large shortfall in USCIS' operating revenue, compromise USCIS' ability to fund its operations, and jeopardize service levels Congress has not indicated should be curtailed.

IV. Discussion of Changes Made in This IFR

This IFR expands upon the H.R. 1 Fee notice and the IPF notice to more fully implement the H.R.1 fees related to USCIS. Congressional intent, reflected in both the statutory text of H.R.1 and in the accompanying legislative history, makes clear that these statutory provisions were enacted to expeditiously strengthen immigration enforcement and improve public

extension of employment authorization based on a grant of temporary protected status).

[5] In furtherance of enacting the text of H.R.1, DHS published multiple FRNs (90 FR 34511 (July 22, 2025), 90 FR 42025 (Aug. 28, 2025), 90 FR 43223 (Sept. 8, 2025), and 90 FR 48317 (Oct. 16, 2025)) announcing the new H.R.–1 fees that are administered by DHS components.

[6] *See* new 8 CFR 106.2(15).

[7] On October 30, 2025, the United States District Court for the District of Maryland issued an order in *Asylum Seeker Advocacy Project* v. *United States Citizenship and Immigration Services, et al.,* SAG–25–03299 (D. Md.), staying the Annual Asylum Fee (AAF) implementation provisions by USCIS as provided in the July 22, 2026 notice. In accordance with the order, USCIS paused the issuance of AAF notices. The stay was lifted on February 2, 2026. Once this rule is effective, DHS will send notices to applicants who have not paid informing them of how non-payment affects their application.

[8] *See* 6 U.S.C. 522 (''Nothing in [the HSA], any amendment made by [the HSA], or in section 1103 of Title 8, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.'').

[9] Although several provisions of the INA discussed in this IFR refer exclusively to the ''Attorney General,'' such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1) and (g), 1551 note; *Nielsen* v. *Preap,* 586 U.S. 392, 397 n.2 (2019).

[10] INA sec. 208(d)(5)(B).

[11] 8 U.S.C. 1801–1815.

APPENDIX A (continued)

safety.[12] The specific changes are as follows:

A. Form I–94 Immigration Fee

H.R.1 requires ''any alien who submits an application for a Form I–94 Arrival/Departure Record to pay a minimum of $24.'' [13] This new fee shall be adjusted annually for inflation and is to be collected ''in addition to any other fee authorized by law.'' [14] The statute specifies that this fee ''shall not be waived or reduced.'' [15] This IFR codifies the new 8 U.S.C. 1807 fee requirement for applicants that submit a Form I–94 Arrival/Departure Record and that the fee must be submitted when the applicants request the Form I–94 in addition to the fee required by 8 CFR 106.2(a)(2).[16]

USCIS interprets the language ''submits an application for a Form I–94'' in 8 U.S.C. 1807 to apply exclusively to scenarios where an applicant files an application explicitly requesting a Form I–94 Arrival/Departure record. This interpretation limits USCIS' collection of the Form I–94 fee solely to Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, or successor form, as required by 8 U.S.C. 1807.[17]

USCIS recognizes that in many adjudications, the agency may create or update an electronic Form I–94 record in its systems when approving an application or petition that confers, extends, or changes a period of authorized stay. However, this process is distinct from a direct request for a Form I–94 through the filing of Form I–102. Accordingly, as it pertains to USCIS' collection, the Form I–94 fee required by 8 U.S.C. 1807 is limited to cases involving the direct filing of Form I–102 and does not extend to an adjudication that results in the incidental creation or amendment of a Form I–94 record.[18]

Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, is the application an alien requests the issuance, replacement, or correction of a Form I–94. Form I–102 may be filed for a range of reasons, as outlined in the USCIS form instructions and codified at 8 CFR 264.6.[19] These include the ''general filing'' category, which applies where an applicant requires replacement of a lost, stolen, mutilated, or damaged Form I–94 or otherwise needs a Form I–94 not covered by one of the specific exceptions. In addition, applicants may file Form I–102 where U.S. Customs and Border Protection (CBP) did not issue a Form I–94 at the time of admission at a land border, airport, or seaport, where a correction of a Forms I–94, I–94W, Nonimmigrant Visa Waiver Arrival/Departure Record, or I–95, Alien Crew Landing Permit, is necessary through no fault of the applicant, or where the record cannot be retrieved electronically through CBP's website.[20] Other categories reflect special provisions for nonimmigrant members of the U.S. Armed Forces, North Atlantic Treaty Organization (NATO) forces, or Partnership for Peace programs, where initial requests may be exempt from the underlying USCIS filing fee but subsequent requests remain subject to it.[21]

Under 8 U.S.C. 1807 and new 8 CFR 103.7(d)(4), benefit requests submitted on Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document are subject to the new Form I–94 fee, in addition to the existing DHS filing fees. Even in instances where the DHS filing fee is waived or set at $0, the H.R.1 Form I–94 fee remains applicable.[22] The only exception to the H.R.1 Form I–94 fee is for Form I–102 filings when the application is submitted to correct a DHS error. The fees eligible for a waiver request under 8 CFR 106.3(a) do not include the H.R.1 Form I–94 fee.

Table 1 shows the current USCIS paper filing fee for each Form I–102 filing category, the additional minimum $24 H.R.1 Form I–94 fee, and the total fee to be collected. This format follows the structure used in the H.R.1 Fee notice and complements the parallel CBP notice for the H.R.1 Form I–94 fee published August 28, 2025. 90 FR 34511 (July 22, 2025); 90 FR 42025 (Aug. 28, 2025).[23]

TABLE 1—FORM I–102 FEES UNDER 8 U.S.C. 1807

Filing category/general reason	Current USCIS fee	Minimum H.R.1 form I–94 fee [24]	Total fee
General Filing (lost, stolen, mutilated, damaged, or other reasons not covered elsewhere)	$560	$24	$584
Nonimmigrant member of U.S. armed forces—Request for initial Form I–94	0	24	24
NATO armed forces/civil component—Request for initial Form I–94	0	24	24
Partnership for Peace under SOFA—Request for initial Form I–94	0	24	24
Replacement for USCIS error	0	0	0

[12] H.R. Rep No. 119–106, Book 1, at 843–856 (2025).

[13] 8 U.S.C. 1807.

[14] *Id; see also,* 90 FR 52085 (Nov. 19, 2025) (adjusting the Form I–94 fee mathematically for inflation although no change was made in the FY26 amount).

[15] 8 U.S.C. 1807.

[16] *Id; see also* new 8 CFR 103.7(d)(4).

[17] CBP also collects the I–94 fee under certain circumstances. *See* CBP Immigration Fees Required by H.R.1 for Fiscal Year 2025, 90 FR 42025 (Aug. 28, 2025).

[18] *See* new 8 CFR 103.7(d)(4).

[19] USCIS, Form I–102, ''Application for Replacement/Initial Nonimmigrant Arrival-Departure Document'' (last updated Oct. 28, 2025), *https://www.uscis.gov/i-102.*

[20] Under 8 U.S.C. 1807, the Form I–94 fee only applies to an application for a Form I–94 Arrival/Departure Record. Accordingly, although Form I–102 may be used to request replacement or correction of a Form I–94, Form I–94W, or Form I–95, only requests involving a Form I–94 are subject to the fee. *See* USCIS, Form I–102, ''Application for Replacement/Initial Nonimmigrant Arrival-Departure Document,'' Instructions 2–3 (Apr. 1, 2024) (identifying eligibility for replacement or correction of Forms I–94, I–94W, and I–95); *see also* 8 CFR 264.1(b) (identifying Forms I–94 and I–95 as evidence of alien registration).

[21] *Id.;* USCIS, Form G–1055, ''Fee Schedule'' (last updated Oct. 28, 2025), *https://www.uscis.gov/g-1055.*

[22] The fee does not apply when DHS issued an incorrect I–94 at its fault because DHS has a responsibility to issue a replacement for the Form I–94 it issued incorrectly. DHS utilizes the Form I–102 to track the development of the new, correct Form I–94 in its system, but we do not consider the correction an application to which 8 U.S.C. 1807 applies, and do not perform an adjudication service to which a fee applies under 8 U.S.C. 1356(m).

[23] *See also,* 90 FR 52085 (making no change in the FY26 amount of the Form I–94 fee).

[24] This fee shall be adjusted annually for inflation per 8 U.S.C. 1807.

APPENDIX A (continued)

B. Asylum Application Fee

1. Background and Statutory Context

In this rule, DHS codifies the asylum application fee requirement set forth in 8 U.S.C. 1802,[25] and provides that USCIS will retain the asylum application fee when a Form I–589 is rejected for any reason consistent with 8 CFR 103.2. Currently, a Form I–589 is filed as an incomplete application if it does not include a signature, does not include a response to the questions on the form, or is missing required evidence or materials. 8 CFR 208.3(c). DHS is adding in 8 CFR 208.3(c) that a filed Form I–589 is also incomplete if it does not include the asylum application fee, which is consistent with DHS's other regulations. DHS is also adding the asylum application fee to 8 CFR 103.7 which is subject to submission requirements in 8 CFR 103.2.

INA sec. 208 establishes the statutory framework for asylum applications and requires the Government to impose ''fees for the consideration of an application for asylum.'' [26] The asylum application fee required by 8 U.S.C. 1802 is due at the time the application is filed and provides that the fee may not be waived or reduced.[27] In the H.R.1 Fee notice, USCIS implemented 8 U.S.C. 1802 by announcing the initial minimum $100 asylum application fee and clarifying that I–589 filings must include the new fee or they will be rejected if the fee is missing. 90 FR 34511 (July 22, 2025). However, that notice did not address applications that are received by USCIS and therefore filed,[28] but subsequently rejected under 8 CFR 103.2(a)(7) or returned under 8 CFR 208.3(c).

DHS regulations require that a form must be executed in accordance with the form instructions and filed with the fee(s) required by regulation, and filing fees are non-refundable, except at the discretion of USCIS. 8 CFR 103.2(a)(1). In addition, regulations provide that USCIS records the receipt date as of the actual date of physical receipt of a benefit request, a rejected request will not retain a receipt date, and a request will be rejected if not submitted with the correct fee. 8 CFR 103.2(a)(7)(ii)(D). Those filing requirements and receipt rules have been in place for benefit request filings since at least 1964.[29] For the purpose of 8 CFR 103.2(a)(7), USCIS has long defined the term ''rejected'' to mean that the benefit request and fee payment are returned for failure to comply with all filing requirements without being fully considered, and can be re-filed when properly completed. *See, e.g.,* Immigration Benefits Business Transformation, Increment I, 76 FR 53764, 53770 (August 29, 2011).[30] However, the term ''rejection'' is not codified, defined, or promulgated in DHS regulations. ''Denied,'' on the other hand, generally means that the request is fully adjudicated and considered, and the requestor is determined ineligible for the benefit sought. *Id.* Denied is also defined only in practice and not codified.[31]

Consistent with the discretion provided in 8 CFR 103.2(a)(1) regarding the non-refundability of fees, DHS is providing that if an asylum application is rejected, the asylum application fee will be retained and not returned or refunded when a filed asylum application is rejected. *See* new 8 CFR 106.2.

DHS is retaining the fee both for legal and practical reasons. First, such treatment is directed by H.R.1 given the requirement in 8 U.S.C. 1802 that each application when filed must include the fee. H.R.1 provides that DHS shall require the payment of a $100 fee by any alien who files an application for asylum at the time such application is filed. 8 U.S.C. 1802(a). That provision requires a fee at the time of the application without regard for the services DHS must provide or the applicant must receive in exchange for the fee or how the fee is treated if the application is denied, rejected, abandoned, delayed, etc. *Id.*[32] On the other hand, the lack of a statutory link in H.R.1 to the services DHS must provide contrasts with INA 286(m), 8 U.S.C. 1356(m) that provides that DHS may set benefit request fees to recover the costs of providing such services. DHS has interpreted ''fees for providing adjudication and naturalization services'' in section 1356(m) as meaning the fee is required for the provision of a service, in effect, an adjudication of the filed request. When the request is rejected and the only service performed is to determine if it is minimally acceptable, no fee is due, and the fee is returned.[33]

Next, retention of the H.R.1 asylum application fee promotes deterrence of defective filings, recoups intake costs, and concretely advances Congress's expressed intent to resource enforcement and ensure aliens, not American taxpayers, bear specified administrative costs.[34] The H.R.1 Fee notice implementation details (effective dates, payment mechanics, and rejection for missing fees) are consistent with this reading. In this IFR, DHS establishes regulations with the force and effect of law to provide for retention of filing fees when asylum applications are rejected, to include when an asylum application is rejected due to nonpayment of the AAF.[35]

DHS is also referencing 8 CFR 103.2 which provides some administrative discretion to USCIS to refund a fee if the agency determines that is appropriate. For example, in the past, USCIS on a rare occasion has erroneously requested that an individual file an unnecessary form along with the associated fee. Another example is where an individual pays a required fee more than once or otherwise pays a fee in excess of the amount due and USCIS accepts the incorrect overpayment. Therefore, DHS references 8 CFR 103.2 noting that while the fee will be retained and not returned or refunded when a filed asylum application is rejected, DHS's existing regulations provide limited refunds at DHS discretion.

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[25] *See* new 8 CFR 106.2(c)(14). Per 8 U.S.C. 1802(d), fifty percent of the fees received by USCIS will be credited to USCIS and fifty percent to EOIR.

[26] INA sec. 208(d)(3); 8 U.S.C. 1158(d)(3).

[27] 8 U.S.C. 1802(a), (e).

[28] Consistent with CFR 208.4(a)(2)(ii), USCIS considers an asylum application filed on the date that USCIS receives it. And consistent with 8 CFR 208.3(c), a filed asylum application may subsequently be deemed complete or incomplete and rejected or returned to the applicant.

[29] 29 FR 11956 (Aug. 21, 1964) (final rule codifying 8 CFR 103.2(a)(1) that provided that every application shall be executed and filed in accordance with the instructions on the form, applications received shall be stamped to show the time and date of their actual receipt and regarded as filed when so stamped unless returned as improperly executed).

[30] The only exception is when an appeal filed by a requestor not entitled to file is rejected, the filing fee will not be refunded. 8 CFR 103.3(a)(2)(v)(A)(*1*).

[31] 8 CFR 103.2 uses the terms filed and submitted as synonyms.

[32] 8 U.S.C. 1802(e) also provides that there is no waiver or reduction of this fee. DHS has codified multiple fee exemptions utilizing the fee-setting authority in INA sec. 286(m), 8 U.S.C. 1356(m) because that provision does not require USCIS to charge a fee and DHS may set fees at less than full cost or provide services for free. *See* 8 CFR 106.3(c). The statute does not use the word ''exemption,'' but DHS has exercised its discretion to provide free services using that term. Consistent with that interpretation, DHS interprets ''shall not be waived or reduced'' in multiple provisions of H.R.1 as precluding fee exemptions, $0 fees, or no fee, regardless of the words exempt or exemption not being in the statute.

[33] When DHS has determined the fee should not be returned it has codified retention. *See* 8 CFR 103.3(a)(2)(v)(A)(*1*) (providing that USCIS does not refund the filing fee when it rejects an appeal filed by a person or entity not entitled to file an appeal).

[34] *Id.;* Further Consolidated Appropriations Act, Public Law 118–47 (Mar. 23, 2024); Joint Explanatory Statement, Division C, Department of Homeland Security Appropriations Act, Public Law 118–47 (Mar. 22, 2024) (appropriating funds to USCIS to address the affirmative asylum application backlog); 8 CFR 208.4(a)(5)(v).

[35] *Id.*

APPENDIX A (continued)

2. Summary of Regulatory Text Changes

DHS adopts the following regulatory changes to implement H.R.1's asylum application fee under 8 U.S.C. 1802 and to clarify the retention of the fee upon rejection:

- New 8 CFR 106.2(c)(14): Codifies that the new Asylum Application Fee is due at filing, and if a Form I–589 is rejected, USCIS will retain the fee and that it will be consistent with 8 CFR 103.2.

C. Implementation and Administration of the Annual Asylum Fee

1. AAF Background

On July 22, 2025, USCIS published the H.R.1 Fee notice implementing 8 U.S.C. 1808 by announcing how the AAF would be administered for FY 2025 and beyond. 90 FR 34511 (July 22, 2025). H.R.1 requires all asylum applicants with pending asylum applications to pay a minimum $100 annual fee for each calendar year the application ''remains pending,'' in addition to any other applicable fee. 8 U.S.C. 1808.

In the H.R.1 Fee notice, DHS interpreted the statutory phrase ''remains pending'' to encompass any Form I–589 filed with USCIS or DOJ and that remains pending with any federal government agency, court, or entity with jurisdiction over asylum claims. 90 FR 34511 (July 22, 2025). The notice further clarified that the initial minimum $100 AAF must be paid by asylum applicants whose applications had been filed with USCIS on or before October 1, 2024, and that were still pending at the close of FY 2025 on September 30, 2025. 90 FR 34511 (July 22, 2025). In doing so, USCIS provided several months' notice to impacted applicants that they would be subject to a fee if they chose to pursue their application through and beyond September 2025.

The H.R.1 Fee notice also explained how the AAF applies in subsequent years. For asylum applications pending during the entirety of FY 2025, the AAF would become due on September 30 for each subsequent year that the application remains pending. For Forms I–589 filed after October 1, 2024 that remain pending for 365 days after filing, the AAF becomes due annually on the one-year anniversary of the filing date each year the application remains pending. 90 FR 34511 (July 22, 2025). USCIS determined that H.R.1 does not impose the AAF retroactively for years prior to FY 2025, but that the plain language of 8 U.S.C. 1808 requires applying the minimum $100 fee to applications that were already pending at the start of FY 2025. 90 FR 34511 (July 22, 2025). In reaching this conclusion, USCIS cited established principles of statutory interpretation and U.S. Supreme Court case law, *Landgraf* v. *USI Film Products,* which distinguishes between impermissible retroactive rules and prospective procedural changes. 90 FR 34511 (July 22, 2025). Because H.R.1 expressly mandated that the AAF ''shall'' apply beginning in and for FY 2025, applying the requirement to pending cases as of October 1, 2024, was deemed consistent with both congressional intent and case law. 90 FR 34511 (July 22, 2025).

Finally, the July notice established USCIS' administrative process for collecting the AAF. For FY 2025, consistent with the H.R.1 Fee notice, USCIS sent individual, personalized notices to asylum applicants with pending cases, identifying the amount owed, the time period in which to pay the fee, the method of payment, and the consequences of failure to pay. 90 FR 34511 (July 22, 2025). USCIS requires the AAF to be paid online through the agency's electronic fee payment system. The framework established by USCIS was designed to facilitate compliance by applicants, to make the AAF process unconfusing and as un-burdensome as possible, and to ensure the government can reliably administer the new statutory requirement across all pending asylum applications. 90 FR 34511 (July 22, 2025).

2. Consequences of Failure To Pay the AAF

i. Summary of Consequences

H.R.1 requires, and this IFR codifies in regulation, for FY 2025 and beyond, payment of the AAF for each calendar year that an asylum application remains pending. 8 U.S.C. 1808. The statute mandates collection and enforcement of the AAF and prohibits waivers. 8 U.S.C. 1808. Regulatory codification of the consequences for failure to pay the AAF is essential to give clarity to applicants and give effect to Congress's mandate. USCIS has never required an annual fee for an application or petition that is pending with USCIS. Therefore, USCIS cannot rely on current or past practice to determine the consequences for nonpayment of the AAF. A clearly defined regulatory consequence implements the statutory requirement most effectively because the statutory requirement would risk becoming ineffective, allowing applicants to avoid their obligations while maintaining pending asylum claims indefinitely.[36] Such a result would undercut H.R.1's purpose, create inequities between compliant and non-compliant applicants, and fail to place costs on applicants rather than being subsidized by fees paid by legal immigrants.[37] Pursuant to H.R.1 sec. 100018, INA sec. 208(d)(3) was amended to require that USCIS ''impose fees for the consideration of an application for asylum.'' One of those mandatory fees is the AAF. 8 U.S.C. 1808. Without established consequences for failure to pay the AAF, USCIS would be required to adjudicate an asylum application without statutory authority or keep applications with unpaid AAFs in the backlog indefinitely.

DHS codifies in this rule that, following individualized notice and a 30-day window for online payment, failure to pay the AAF results in rejection of the pending Form I–589.[38] Rejection results in the termination of the asylum application with USCIS, meaning that USCIS will take no further action on the application. If the alien wishes to reapply for asylum, he or she will need to file a new Form I–589, including a new mandatory filing fee as required by 8 U.S.C. 1802. If the alien maintains lawful status, USCIS will not issue a Notice to Appear (NTA) or initiate removal solely based on the AAF nonpayment.[39] If the alien lacks lawful status, DHS will either initiate expedited removal under INA sec. 235(b), 8 U.S.C. 1225(b), where the applicant is amenable to expedited removal, or issue an NTA under INA sec. 239, 8 U.S.C. 1229, in other cases.[40] Consistent with existing asylum jurisdiction rules, once the NTA is filed after rejection, any subsequent defensively filed Form I–589 is submitted to and adjudicated by an immigration judge under 8 CFR 1208.2(b). If the alien maintains lawful status, USCIS will reject Form I–589 for nonpayment but will only issue an NTA if the facts support a charge of removability.[41]

Further, rejection for nonpayment will stop the asylum employment-authorization clock under new 8 CFR 208.7(a)(1)(i) as the application will no longer be pending. Further, any pending application for employment authorization under 8 CFR 274a.12(c)(8) would be rejected or denied per new 8 CFR 208.7(a)(1)(iii) and (iv). Upon

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[36] INA sec. 208, 8 U.S.C. 1158; *see* also 8 U.S.C. 1808.

[37] H.R. Rep No. 119–106, Book 1, at 859 (2025).

[38] *See* new 8 CFR 106.2(c)(15); new 8 CFR 208.3(c)(3), (a)(6); and 8 U.S.C. 1808.

[39] *See* 8 U.S.C. 1229(a).

[40] *Id.;* INA sec. 235(b), 8 U.S.C. 1225(b); 8 CFR 235.3(b); INA sec. 239, 8 U.S.C. 1229.

[41] *See* INA sec. 239(a)(1); 8 U.S.C. 1229(a)(1) (providing for general information needed for NTA issuance).

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rejection of the asylum application by USCIS, any existing employment authorization pursuant to 8 CFR 274a.12(c)(8) will terminate immediately per new 8 CFR 208.7(b)(1). Per 8 U.S.C. 1810(b)(2) and new 8 CFR 208.7(b)(2), if the asylum application is denied or rejected by an immigration judge at EOIR, the employment authorization will terminate immediately on the date that is 30 days after the date of denial or rejection, unless the alien makes a timely appeal to the Board of Immigration Appeals. Per 8 U.S.C. 1810(b)(3) and new 8 CFR 208.7(b)(3), if the Board of Immigration Appeals denies an appeal of a denial or rejection of an asylum application, employment authorization will terminate immediately.[42]

ii. Summary of Regulatory Text Changes

DHS adopts the following amendments to 8 CFR part 208 to implement H.R.1's AAF requirement:

- 8 CFR 208.3(c)(3) and (6) (filing consequences):[43] This IFR clarifies that even if an application is initially accepted as complete, upon non-payment of the AAF, it will be considered incomplete and rejected by USCIS. Further, upon rejection, accrual of time toward the period after which the applicant may file an application for employment authorization is stopped.
- 8 CFR 208.7(a)(1) (consequences of rejected application—new language added): As amended, this provides that USCIS will reject an application for employment authorization submitted by an applicant whose asylum application has been previously denied or rejected. Further, if an asylum application is denied or rejected prior to a decision on a pending application for employment authorization, the application for employment authorization will be denied.
- 8 CFR 208.7(b)(1) through (3) (consequences of rejected application—new language added):
  - ○ Pursuant to 8 U.S.C. 1810(b)(1) through (3), employment authorization will terminate immediately upon denial or rejection of an asylum application by USCIS (which does not include asylum applications referred to an immigration judge); or
  - ○ On the date that is 30 days after the date on which an immigration judge denies an asylum application, unless the alien makes a timely appeal to the Board of Immigration Appeals; or
  - ○ Immediately following the denial by the Board of Immigration Appeals of an appeal of a denial or rejection of an asylum application.

iii. Rejection of a Pending Asylum Application for Failure To Pay the AAF

a. DHS Authority Under H.R.1 and INA Sec. 208

Section 208 of the INA, 8 U.S.C. 1158, establishes the statutory framework governing asylum applications and related procedures. Section 208(a) provides a general statement that any alien physically present in or arriving at the United States may apply for asylum, either pursuant to section 208 or section 235 where applicable, and also provides exceptions describing certain aliens who are not eligible to apply for asylum. Section 208(b) defines the standards for granting asylum and permits DHS to establish additional limitations and conditions under which an alien will be ineligible for asylum.[44] Section 208(d) sets procedural requirements and expressly authorizes the Government to impose "fees for the consideration of an application for asylum" and "fees for employment authorization under this section," and permits DHS to "provide by regulation for any other conditions or limitations on the consideration of an application for asylum."[45]

Congress thus recognized that an alien's pursuit of asylum status before DHS is contingent on the payment of reasonable administrative fees and that failure to comply with such procedural requirements renders any attempted asylum application a nullity because DHS is unable to consider it.[46] As such, section 208 of the INA permits DHS to condition the continued pendency of an asylum application—and retention of benefits associated with it—on compliance with established fee obligations.[47] H.R.1's requirement that DHS collect the AAF for each year an application remains pending operates squarely within the bounds of section 208 of the INA.[48] Thus, DHS codifies that failure to pay the AAF within a 30-day payment period will result in consequences consistent with both the procedural requirements of the asylum statute and the immigration enforcement purpose of H.R.1 previously described in its H.R.1 Fee notice.[49] 90 FR 34511 (July 22, 2025).

b. Rejection Aligns With USCIS Filing Rules and Administrative Practice

USCIS' general filing regulations require that any benefit request be submitted "in accordance with the form instructions and applicable regulations," which include fee requirements.[50] USCIS regulations also provide that a benefit request "will be rejected" if it is submitted with an incorrect fee, no fee, or otherwise fails to satisfy required fee payment conditions—codifying the longstanding practice of rejecting filings that do not include proper fees.[51] Fees are a filing prerequisite and USCIS may reject filings that do not meet fee requirements prescribed by statute, regulation, or form instructions.[52] Because 8 U.S.C. 1808(b) ties fee payment to each year the application "remains pending," the administrable, logical, and uniform consequence for nonpayment—after individualized notice and a 30-day payment period—is rejection rather than allowing it to remain pending for consideration contrary to the applicable statutes.[53] 90 FR 34511 (July 22, 2025).

c. Rejection for Failure To Pay Is Consistent With the Best Interpretation of 8 U.S.C. 1808(b)

Congress intended 8 U.S.C. 1808 to have operative effect such that failure to pay the AAF would carry meaningful consequences. Under settled principles of statutory construction, including the rule against superfluities, a statute must be interpreted so that each provision is given effect.[54] Reading 8 U.S.C. 1808 to impose a mandatory annual fee without consequence for nonpayment would render the provision a nullity, contrary to Congress' intent.[55]

DHS further interprets H.R.1's silence regarding the specific consequence for nonpayment of the AAF consistent with longstanding USCIS practice. USCIS has consistently required that benefit requests be accompanied by proper fee payment as a condition of filing and

[42] 8 U.S.C. 1810(b)(1)–(3); *see* new 8 CFR 208.7(b)(1)–(3), (a)(2); 8 CFR 274a.12(c)(8).

[43] DHS also divides 8 CFR 208.3(c) in this rule into more paragraphs to make it less dense and more readable, without making changes to its substance.

[44] INA sec. 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C).

[45] INA sec. 208(d)(3) and (5), 8 U.S.C. 1158(d)(3) and (5).

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *See* new 8 CFR 106.2(c)(15), 8 CFR 208.3(c)(3) and (c)(6), 8 CFR 208.7(a)(1) and (b)(1)–(2); H. Comm. on the Judiciary, Markup of H.R.1, 119th Cong. (Apr. 30, 2025) (statement of Chairman Jordan), *https://www.congress.gov/event/119th-congress/house-event/118180.*

[50] 8 CFR 103.2(a)(1) (requiring compliance with form instructions and regulations, including fees).

[51] 8 CFR 103.2(a)(7)(ii) (benefit request will be rejected if not accompanied by the proper fee or if an incorrect fee is submitted); see also 8 CFR part 106 (USCIS fee regulations).

[52] 8 CFR 103.2(a)(7)(ii)(A) and 106.1(a).

[53] 8 U.S.C. 1808; INA sec. 208(d)(3), 8 U.S.C. 1158(d)(3); *see* new 8 CFR 106.2(c)(15)(ii), 8 CFR 208.3(c)(3) and (6).

[54] *Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . .").

[55] *Id.*

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routinely rejects benefit requests that do not include the proper fee.[56] This well-established framework for requiring payment of the proper fee predates H.R.1 and is reflected in existing DHS regulations.[57] As such, DHS thinks the best reading of the statute is that Congress, in enacting the AAF requirement, presumed that USCIS would apply its existing practice for fee compliance and did not see a need to codify the consequences for nonpayment explicitly in the statute. Accordingly, DHS interprets 8 U.S.C. 1808 to operate in concert with existing USCIS fee practice, under which noncompliance with fee requirements results in rejection of the benefit request.[58]

Thus, DHS believes the best interpretation of H.R.1's AAF mandate, when read together with INA sec. 208, is to require fee compliance as a condition of continued pendency and USCIS' consideration of the asylum application.[59] Interpreting INA sec. 208(d)(3) and 8 U.S.C. 1808(b) to authorize rejection of a Form I–589 for nonpayment after notice and a 30-day payment period is the best reading because Congress tied an annual fee to each year an application ''remains pending,'' thereby making ongoing pendency and USCIS' consideration of the application after such year contingent on payment.[60] 90 FR 34511 (July 22, 2025). This construction also satisfies the reasoned decisionmaking standard because it directly advances Congress's cost-recovery and deterrence objectives through a clear, administrable trigger.[61] Further, this interim final rule will not have retroactive effect because it does not ''impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed.'' [62] The triggering event is the pendency of the application for one year as of a date after enactment and the continued pendency of the application. The earliest any AAF payments became due was the close of FY 2025 and the specific consequences articulated in the rule will not be applied until an applicant receives notice of such consequences under the rule and a 30-day opportunity to fulfill the requirement. As such, timely payment is a prospective requirement, not an impermissible retroactive penalty. Accordingly, codifying rejection for AAF nonpayment implements the best interpretation of INA sec. 208(d)(3) and 8 U.S.C. 1808(b).[63]

d. Nonpayment Will Result in the Rejection or Denial of Applications for Employment Authorization or Immediate Termination of Previously Approved Employment Authorization

Under this final rule, failure to pay the AAF required by 8 U.S.C. 1808 results in rejection of the pending asylum application pursuant to new 8 CFR 106.2(c)(15)(ii) and new 8 CFR 208.3(c)(3). Consistent with that determination, rejection for failure to pay the AAF will result in the termination of accrual of time toward employment authorization eligibility under new 8 CFR 208.3(c)(3)(i) and 8 CFR 208.7(a)(1)(i). Further, rejection of the Form I–589 for failure to pay the AAF will result in the rejection or denial of any related application for employment authorization still pending under new 8 CFR 208.7(a)(1)(iii) or (iv), or the immediate termination of related employment authorization as required by 8 U.S.C. 1810(b)(1) and new 8 CFR 208.7(b)(1).[64] These consequences will require asylum applicants to meet the fee obligations in the law while still maintaining their pending asylum claims. These changes ensure that both a denial and a rejection of a Form I–589, result in the same consequence for purposes of employment authorization eligibility under 8 CFR 274a.12(c)(8).

iv. Alternative Consequences for Nonpayment of the AAF Considered

DHS evaluated several alternatives to the adopted consequence framework to ensure the rule reflects the best interpretation of H.R.1 and the INA and satisfies the Administrative Procedure Act (APA)'s requirement for reasoned decisionmaking.[65] For the reasons explained below, DHS concluded that the selected approach—rejection for nonpayment of the AAF (and possibly NTA issuance or initiation of expedited removal where applicable) best effectuates H.R.1's enforcement and deterrence purposes and is administratively superior to the following alternatives considered.

a. Denial for AAF Nonpayment in Lieu of Rejection

DHS considered treating nonpayment as grounds for denial under 8 CFR 103.2(a)(7)(ii)(D)(1) rather than a rejection tied to a statutory filing condition. Using rejection for a fee-compliance defect fits the existing 8 CFR 103.2 framework, in which filings ''must be executed and filed in accordance with the form instructions and applicable regulations,'' including fee requirements, and ''will be rejected'' if submitted with an incorrect or missing fee.[66] Further, a denial in lieu of a rejection could trigger motions processes under 8 CFR 103.3 and 103.5, adding layers of procedure and delay inconsistent with H.R.1's direction that the AAF accompany each year an application ''remains pending.'' [67] Finally, current asylum regulations [68] contemplate denial of an I–589 where the applicant is maintaining lawful immigration status or is in a valid period of parole.

b. Rejection With No NTA and a Bar on Refiling Asylum

DHS also considered an alternative where an unpaid AAF would result in rejection, with no subsequent NTA but with a prohibition on refiling a Form I–589 with USCIS. DHS rejected this alternative because a categorical bar on refiling would potentially require an administratively burdensome process for evaluating exceptions in order to maintain consistency with INA section 208(a)(1), 8 U.S.C. 1158(a)(1). Additionally, a blanket refile ban would be difficult to administer fairly and could preclude bona fide protection claims, contrary to the statute's humanitarian purpose.[69] Issuing an NTA or initiating expedited removal provides a path for aliens to present their bona fide protection claims either before an immigration judge with authority to grant withholding of removal or protection under the Convention against Torture, or an

[56] 8 CFR 103.2(a)(1) and (7)(ii); U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, Final Rule, 89 FR 6194 (Jan. 31, 2024) (reaffirming fee-compliance prerequisites).

[57] *Id.*

[58] *Id.*

[59] *Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369 (2024) (rejecting Chevron deference and requiring courts—and by extension agencies in rulemaking—to adhere to the best reading of the statute).

[60] 8 U.S.C. 1808; INA sec. 208(d)(3), 8 U.S.C. 1158(d)(3).

[61] *See Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369 (2024).

[62] *Landgraf* v. *USI Film Prods.,* 511 U.S. 244 (1994) (prospective procedural rules are not impermissibly retroactive); 8 U.S.C. 1808 (effective in FY 2025 and thereafter).

[63] INA sec. 208(d)(3), 8 U.S.C. 1158(d)(3); 8 U.S.C. 1808.

[64] *See* new 8 CFR 208.7(a)(1), and (b)(1)–(2); 8 U.S.C. 1810(b)(1).

[65] *Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369 (2024) (requiring the best interpretation of the statute); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983) (reasoned decisionmaking).

[66] 8 CFR 103.2(a)(1) and (7)(ii); 8 CFR 208.7(a)(2).

[67] 8 U.S.C. 1808.

[68] *See, e.g.,* 8 CFR 208.14(c)(d).

[69] INA sec. 208(b), 8 U.S.C. 1158(b).

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asylum officer with authority to conduct a fear screening.[70]

c. Holding Applications in Abeyance Until AAF Is Paid

DHS also considered holding applications in abeyance upon nonpayment (*i.e.,* no decision, no rejection, and no charging interest), thereby keeping the case pending until the mandatory AAF fee is paid. This approach was rejected because it would allow indefinite pendency notwithstanding noncompliance, frustrating H.R.1's requirement that the annual fee accompany each year an application ''remains pending.'' [71] The structure of the AAF also demonstrates Congress's concern with asylum applicants filing Form I–589 to baselessly avoid removal and obtain employment authorization while relying on the asylum backlog or using dilatory tactics to avoid a final adjudication of their application. Were DHS to hold Form I–589 applications in indefinite abeyance for failure to pay the AAF, this would exacerbate the very problem that Congress intended to address. Abeyance also would exacerbate backlogs and resource strain rather than advance H.R.1's enforcement and cost-recovery objectives, contrary to the APA's expectation of prompt administrative disposition.[72] In short, abeyance would preserve or worsen the very incentives H.R.1's AAF was designed to counteract and therefore not appropriate. 8. U.S.C. 1808.

D. Implementation of the Limits on Employment Authorization Based on Temporary Protected Status

1. H.R.1 Text Limiting Validity of Employment Authorization

Congress enacted H.R.1, in part, to specify new, uniform limits and fees for employment authorization and employment authorization periods in connection with TPS.[73] 8 U.S.C. 1803(c) provides that each initial TPS-based employment authorization ''shall be valid for a period of 1 year, or for the duration of the alien's temporary protected status, whichever is shorter,'' and imposes an additional fee for an alien who files an initial TPS EAD application that may not be waived or reduced. 8 U.S.C. 1811(a) likewise provides that any employment authorization for an alien granted TPS, or any renewal or extension of such authorization, ''shall be valid for a period of 1 year or for the duration of the designation of temporary protected status, whichever is shorter,'' and establishes a renewal or extension fee that may not be waived or reduced. By their terms, these provisions cap TPS-related work authorization at one year or the remaining designation, whichever is shorter, with no TPS-specific exception to exceed the cap.[74]

In its H.R.1 Fee notice, USCIS summarized these TPS employment authorization fee provisions and restated the one-year-or-duration of designation validity rules for initial and renewal/extension filings, noting the statutory prohibition on waiver of the H.R.1 fees and the separate preexisting regulatory fee that may still be waived under 8 CFR part 106. 90 FR 34511 (July 22, 2025). Thereafter, USCIS began applying the validity rules to TPS-based employment authorization.[75] This IFR updates DHS regulations at 8 CFR parts 244 and 274a to conform to the statutory mandate in H.R.1.

2. INA Sec. 244 and Prior Practice

INA sec. 244, 8 U.S.C. 1254a, authorizes the Secretary to designate countries for TPS, to grant TPS to eligible nationals, and to provide benefits to an alien in TPS status including eligibility for employment authorization. INA sec. 244(a)(1), 8 U.S.C. 1254a(a)(1) states that the Secretary ''may grant the alien temporary protected status'' and ''shall authorize the alien to engage in employment in the United States and provide the alien with an employment authorized endorsement or other appropriate work permit.'' INA sec. 244(a)(2), 8 U.S.C. 1254a(a)(2), adds that the work authorization associated with TPS ''shall be effective throughout the period the alien is in temporary protected status under this section.'' INA sec. 244(a)(4), 8 U.S.C. 1254a(a)(4), further requires provision of temporary treatment benefits—including employment authorization—to an alien who establishes a prima facie case of eligibility for TPS until a final determination is made or until a reasonable opportunity to register opens, as applicable.

DHS's regulations governing the regulations that provide the employment-authorization categories reflect the requirements of INA sec. 244(a), 8 U.S.C. 1254a(a). Under 8 CFR 274a.12(a)(12), aliens granted TPS are authorized for employment ''incident to status'' as a condition of their immigration status. An alien may request an EAD by filing Form I–765, Application for Employment Authorization, and USCIS will issue EADs in category (a)(12) to individuals who have been granted TPS and file Form I–765. Under 8 CFR 274a.12(c)(19), USCIS will grant employment authorization and issue EADs in category (c)(19) to TPS applicants whom USCIS has determined are prima facie eligible for TPS and therefore receive temporary treatment benefits while their applications are pending. The regulation at 8 CFR 244.5 mirrors INA sec. 244(a)(4), 8 U.S.C. 1254a(a)(4), by providing temporary treatment benefits, including employment authorization, for prima facie-eligible applicants during the pendency of adjudication of the TPS application. Since the inception of TPS, DHS has treated both TPS beneficiaries and prima facie-eligible TPS applicants as employment authorized continuously during the designation and through any designation extensions, using **Federal Register** notices to automatically extend the validity of existing TPS-based EADs—typically for six or twelve months—to provide continued evidence of employment authorization while re-registrants await adjudication of their Forms I–765 to obtain renewal EADs.[76]

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[70] 8 CFR 208.16(a) and (c)(4); 8 CFR 208.17(b); 8 CFR 208.18(b).

[71] 8 U.S.C. 1808. It is also consistent with past USCIS fee requirements to reject a pending request at the point the fee that was paid is determined to have been the incorrect amount. *See* 8 CFR 103.2(a)(7)(ii)(D) (providing that when USCIS begins to adjudicate a request and determines the correct fee was not paid, that request may be rejected or denied).

[72] 5 U.S.C. 555(b) (''With due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.''); see *Telecomms. Research & Action Ctr. (TRAC)* v. *FCC,* 750 F.2d 70 (D.C. Cir. 1984).

[73] 8 U.S.C. 1803(c) and 1811; INA sec. 244; 8 CFR 244.5; 8 CFR 274a.12.

[74] 8 U.S.C. 1803(c) and 1811(a).

[75] Given that some TPS designations in effect at the time H.R.1 was signed into law in July 2025 exceeded 12 months, USCIS calculated the H.R.1 caps from the date of adjudication and back-dated renewal EADs to the expiration date of the previous EAD to ensure against gaps in employment authorization documentation. Since that time, as several TPS designations have terminated and the remaining do not exceed 12 months, there is no longer a need for USCIS to continue this mitigation measure.

[76] *See, e.g.,* Extension of the Designation of El Salvador for Temporary Protected Status, 90 FR 5953 (Jan. 17, 2025) (''Accordingly, through this **Federal Register** notice, DHS automatically extends through March 9, 2026, the validity of certain EADs previously issued under the TPS designation of El Salvador. As proof of continued employment authorization through March 9, 2026, TPS beneficiaries can show their EAD with the notation A12 or C19 under Category and a 'Card Expires' date of March 9, 2025, June 30, 2024, Dec. 31, 2022, Oct. 4, 2021, Jan. 4, 2021, Jan. 2, 2020, Sept. 9, 2019, or March 9, 2018.'').

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3. H.R.1 Controls and Supersedes Prior TPS Employment Authorization Duration Practices Under INA Sec. 244

Textually, 8 U.S.C. 1803(c) and 8 U.S.C. 1811(a) appear to conflict with the phrasing of INA sec. 244(a)(2), 8 U.S.C. 1254a(a)(2) that TPS-based employment authorization is ''effective throughout'' the period of TPS, because they impose a specific one-year-or-duration of designation cap on the TPS-related employment authorization, whereas section 244(a)(2), 1254a(a)(2), speaks in status-based terms without prescribing a duration.[77] DHS must implement H.R.1's explicit caps for TPS-related employment authorization periods in a manner faithful to both the new and previously existing statutory text.

H.R.1's duration provisions are later-enacted and speak directly to the temporal scope of TPS-based employment authorization; they impose an express ceiling—one year or the duration of the designation (whichever period is shorter)—on how long employment authorization may remain valid in any single grant or renewal.[78] Reading 8 U.S.C. 1803(c) and 8 U.S.C. 1811(a) together with INA sec. 244, 8 U.S.C. 1254a, under the ordinary tools of construction, DHS gives effect to both statutes by assigning them complementary roles: INA sec. 244, 8 U.S.C. 1254a, continues to define who is eligible to be employment-authorized (TPS beneficiaries under 8 CFR 274a.12(a)(12) and prima facie–eligible applicants receiving temporary treatment benefits under 8 CFR 274a.12(c)(19) and 8 CFR 244.5), while H.R.1 supplies the maximum duration for each period of authorization across both categories.[79]

Where INA sec. 244(a)(2), 8 U.S.C. 1254a(a)(2), states that employment authorization is ''effective throughout'' TPS, DHS reads that as a status-based entitlement to be eligible for authorization during the life of the TPS designation, not as a guarantee that any single authorization period may exceed H.R.1's specific limit.[80] Applying the later-in-time canon resolves the textual tension by allowing the INA sec. 244, 8 U.S.C. 1254a entitlement to persist while H.R.1's later, more specific command regulates how long each authorization may run.[81] This harmonized reading provides a clear, administrable rule that aligns with H.R.1's structure of initial and renewal fees tied to time-limited employment authorization periods.[82]

DHS is enforcing the H.R.1 employment authorization period limits by requiring that TPS employment authorization be renewed at intervals of one year—or the remaining TPS designation, if shorter—for both 8 CFR 274a.12(a)(12) beneficiaries and 8 CFR 274a.12(a)(19) prima facie-eligible applicants.[83] DHS recognizes that, where a TPS designation is longer than 12 months, a possible impact of this renewal requirement may be that some TPS beneficiaries or prima facie-eligibility applicants could face gaps in employment authorization and suffer temporary job loss until they receive a renewal of employment authorization. At present, current TPS designation timeframes do not place TPS beneficiaries and applicants at risk of experiencing gaps in employment authorization.[84] In addition, in instances where TPS designations have been automatically extended for 6 months, USCIS has automatically extended EADs in order to prevent gaps in employment authorization. Should future TPS designations, redesignations, or extensions be set for more than 12 months, applicants seeking to avoid gaps in employment authorization and EAD validity would need to file timely renewals to maintain employment authorization for the remainder of the designation or extension, and each renewal will be approved only for the maximum period permitted under H.R.1—that is, for one year or the remaining duration of the TPS designation, whichever is shorter.[85] By requiring TPS beneficiaries and prima facie eligible applicants to regularly renew their requests for employment authorization, this approach provides predictable checkpoints for identity, eligibility, and security vetting.[86] It helps ensure that aliens do not possess facially-valid EADs based on TPS when the underlying TPS designations no longer exist, including when a designation nears conclusion or is terminated.[87] Any document evidencing employment authorization (*e.g.,* an EAD) must reflect—and may not exceed—the underlying authorization period established by H.R.1, so that documentary validity and the legal authorization it evidences remain aligned.[88]

4. Summary of Regulatory Text Changes

DHS adopts the following regulatory changes to implement H.R.1's substantive cap on employment authorization incident to TPS—1 year or the remaining duration of the TPS designation, whichever is shorter:

- New 8 CFR 244.5(d) (Prima facie applicants/temporary treatment benefits):

DHS is revising this section to (1) provide that employment authorization granted as a temporary treatment benefit to prima facie-eligible TPS applicants may not exceed 1 year or the remaining TPS designation, whichever is shorter; and (2) require the applicant to obtain a renewal of employment authorization if the TPS designation has not yet terminated to continue authorization beyond each employment authorization period.

- Revised 8 CFR 244.12(a) and (d) (TPS beneficiaries):

DHS revises 8 CFR 244.12(a) to (1) establish the one-year-or-duration of the designation limit on employment authorization for TPS beneficiaries; and (2) require the beneficiary to obtain a renewal of employment authorization if the TPS designation has not yet terminated to continue authorization beyond each employment authorization period. DHS also revises 8 CFR 244.12(d) to subject extensions of employment authorization during the pendency of any renewal or appeal in administrative proceedings to the one-year-or-duration of the designation limitation described in revised 8 CFR 244.12(a).

- Conforming revisions to 8 CFR 274a.12(a)(12) and (c)(19):

DHS revises 8 CFR 274a.12(a)(12) and (c)(19) to cross-reference the validity period limitations specified in 8 CFR 244.5(d) and 244.12(a) and aligns EAD

[77] *Cf.* 8 U.S.C. 1803(c) and 1811(a), with INA sec. 244(a)(2), 8 U.S.C. 1254a(a)(2).

[78] 8 U.S.C. 1803(c) and 1811(a).

[79] INA sec. 244(a)(1), (2), (4), 8 U.S.C. 1254a(a)(1), (2), (4); 8 CFR 274a.12(a)(12) and (c)(19); 8 CFR 244.5; 8 U.S.C. 1803(c) and 1811(a).

[80] INA sec. 244(a)(2), 8 U.S.C. 1254a(a)(2); 8 U.S.C. 1803(c) and 1811(a).

[81] *See e.g., Watt* v. *Alaska,* 451 U.S. 259 (1981); *Chae Chan Ping* v. *United States* (The Chinese Exclusion Case), 130 U.S. 581 (1889) (recognizing Congress's plenary power over exclusion and applying the later-in-time rule—*i.e.,* a subsequent statute may supersede a conflicting treaty).

[82] 8 U.S.C. 1803(c) and 1811(a); 8 CFR 274a.12(a)(12), (c)(19); 8 CFR 244.5(d).

[83] 8 U.S.C. 1803(c) (initial fee); 8 U.S.C. 1811(d) (renewal/extension fee); see also 8 U.S.C. 1811(a) (renewal/extension limited to one year or designation).

[84] Of the current TPS designations, none exceed one year. The latest designation period is for TPS Ukraine, which ends on October 19, 2026. Many designations have been terminated but are subject to ongoing litigation; TPS benefits have continued for these designations. *See* USCIS Temporary Protected Status web pages at *https://www.uscis.gov/humanitarian/temporary-protected-status* (last reviewed/updated 03/17/2026).

[85] 8 U.S.C. 1811(a)–(d); 8 U.S.C. 1803(c).

[86] *See* 8 CFR 274a.12.

[87] INA sec. 244(b), 8 U.S.C. 1254a(b); 8 U.S.C. 1803(c) and 1811(a).

[88] 8 U.S.C. 1803(a), 1811(a); 8 CFR 274a.12; 8 CFR 244.5.

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validity to the underlying authorized period of employment.

E. Severability

Although DHS is not codifying a severability provision in the regulatory text, DHS intends for the provisions of this interim final rule to be fully severable. The decision not to codify a severability clause is to avoid potential confusion across multiple CFR parts amended here (8 CFR parts 103, 106, 208, 244, and 274a), which govern distinct programs, authorities, and procedures, and to keep the regulatory text concise and readable. DHS believes that the provisions in this rule can function independently of each other and the absence of a codified severability provision should not be taken to suggest any different intent than if such language were included. If any provision of this rule—or the application of any provision to any person, entity, or circumstance—is stayed or held invalid, the remainder of the rule, and the application of the affected provision to other persons, entities, or circumstances, will not be affected. Without limitation, each amended section, subsection, sentence, clause, and item (including but not limited to the fee provisions under part 106, the asylum fee provisions and AAF consequence in part 208, and the TPS employment-authorization duration and renewal requirements in parts 244 and 274a) is intended to be independently operative and severable from the others.

F. Fee Waivers and Exemptions

DHS is not changing any fee exemptions and fee waivers in 8 CFR part 106 in this rule. Fees imposed by HR–1 cannot be waived or reduced. While INA section 245(l)(7), 8 U.S.C. 1255(l)(7) requires DHS to allow a request for waiver of the fees required for certain immigration benefit requests, H.R.1 supersedes that requirement. Therefore, USCIS cannot waive such a fee required by H.R.1 and a request for such may not be submitted. The inability to waive an H.R.1 fee requires no changes to the DHS fee regulations at 8 CFR parts 103 and 106. Fee waivers and exemptions in 8 CFR 106.3(a)(3) list the USCIS fees that may be waived or are exempt, and by leaving those provisions unchanged, H.R.1 fees are neither explicitly nor implicitly included as fees that may be waived or exempt. In addition, public interest fee waivers and exemptions authorized by 8 CFR 106.3(c) must be consistent with the applicable law. Thus, that provision does not authorize relief from the payment of H.R.1 fees and no amendment or clarification is required.

The fee exemptions provided by 8 CFR part 106 do not apply to the new fees codified in this rule. Thus, for example, the fee exemptions provided for USCIS Form I–131 by 8 CFR 106.2(a)(7)(v) and (vi) apply to the base USCIS fee for Form I–131, while the H.R.1 fee for being paroled into the United States is still required.

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

1. Statutorily Required Changes

As noted elsewhere in the preamble, DHS is conforming its regulations to statutory changes that provide little agency discretion in its interpretation and promulgation. When regulations merely restate the statute they implement (*i.e.,* when the rule does not change the established legal order), the APA does not require the agency to use notice-and-comment procedures. *See* 5 U.S.C. 553(b)(B); *Gray Panthers Advocacy Comm.* v. *Sullivan,* 936 F.2d 1284, 1291 (D.C. Cir. 1991). So long as the agency does not expand the substantive reach of the statute to impose new obligations, penalties, or substantive eligibility requirements—*i.e.,* so long as the agency "merely restate[s]" the statute—notice and comment are unnecessary. *See World Duty Free Americas, Inc.* v. *Summers,* 94 F. Supp. 2d 61, 65 (D.D.C. 2000).

In addition, courts have consistently held that "good cause" under the APA's notice-and-comment exemption exists where delay would be impracticable, unnecessary, or contrary to the public interest.[89] Rulemaking procedures are deemed "unnecessary" when the use of rulemaking would be inconsequential to the industry and the rule is routine.[90] Courts have found that the unnecessary prong is satisfied if, for example, the rescission or change of a rule is needed for consistency with legislation or judicial decision and there is no room for public debate over the agency's course of action.[91]

2. Procedural Rule

The APA requires DHS to provide public notice and seek public comment on substantive regulations. *See* 5 U.S.C. 553. The APA, however, provides limited exceptions to this requirement for notice and public comment, including for "rules of agency organization, procedure or practice." 5 U.S.C. 553(b)(A).

H.R.1, signed into law on July 4, 2025, sets forth the requirement that DHS collect new statutory fees during FY 2025, limit the length of EADs, and execute enforcement of such fees.[92] This final rule both codifies statutory requirements to pay and collect fees, and provides that the fees cannot be waived or reduced. DHS acknowledges the substantive impact of new fees on the affected parties, but DHS has no discretion but to impose those fees, and must dictate their implementation, attendant processes, and consequences for failure to comply.[93] H.R.1 law was effective on enactment and DHS must implement it by providing the procedures both for applicants and for USCIS to pay, collect, and for failure to pay.[94]

While DHS began collecting many of the H.R.1 fee provisions via notice,[95] DHS also noted that some of the fees would require additional implementation. This IFR codifies a number of H.R.1 statutory requirements to pay certain fees in addition to existing fees, that the asylum application fee is required at filing and will be retained regardless of the application being rejected, and the new EAD statutory periods for asylum applicants and TPS.

[89] *See, e.g., Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 754–55 (D.C. Cir. 2001); *Hawai'i Helicopter Operators Ass'n* v. *FAA,* 51 F.3d 212, 214 (9th Cir. 1995).

[90] *See, e.g., Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 7555 (D.C. Cir. 2001); *See Nat'l Customs Brokers & Forwarders Ass'n of Am.* v. *United States,* 59 F.3d 1219, 1224 (Fed. Cir. 1995) (accepting Customs' good cause argument that, because Congress directed Customs to change the regulations in the way it did, delaying implementation by going through notice and comment procedures was unnecessary). Juan J. Lavilla, *The Good Cause Exemption to Notice and Comment Rulemaking Requirements Under the Administrative Procedure Act,* 3 Admin. L.J. 317, 354 (1989).

[91] *See EME Homer City Generation, LP* v. *EPA,* 795 F.3d 118, 134–35 (D.C. Cir. 2015) (EPA had good cause to issue interim rule rescinding agency prior regulatory approvals of certain state implementation plans under the Clean Air Act, consistent with D.C. Circuit decision holding those approvals have been erroneous, as commenters would have had little to say.").

[92] 8 U.S.C. 1801–1815.

[93] *See* 6 U.S.C. 522 ("Nothing in [the HSA], any amendment made by [the HSA], or in section 1103 of Title 8, shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.").

[94] *Id.*

[95] *See* 90 FR 34511 and 90 FR 48317.

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DHS acknowledges that not all rules that might be categorized as procedural are exempted and that the distinction between substantive and procedural rules is not a clear line.[96] Almost all procedural rules affect substantive rights to some degree and substantive rules are bounded and defined by procedural dictates.[97] A procedural rule cannot 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, and the determining factor is whether the substantive effect is enough to provide that notice and comment are needed to safeguard the policies underlying the APA.[98]

Applying the exception to this rule DHS finds that the procedures put in place to process the new statutory fee requirements are intertwined with the fees themselves and to not apply them would render the fee requirements ineffectual. Thus, DHS is of the opinion that it could bypass rulemaking altogether and could retain the asylum application fee and reject a Form I–589 for failure to pay the AAF through internal guidance. However, DHS is codifying this requirement in the interest of accessibility and public awareness. Therefore, because the procedures codified necessarily attendant to implement the fees so as to add no more requirements than the law's fee requirements themselves, they relate to agency procedure and practice (5 U.S.C. 553(b)(A)) and advance notice and comment is unnecessary.

Accordingly, DHS finds good cause to issue this rule as an IFR. Immediate effect is necessary to meet Congress's directive and in the public interest. Although H.R.1 prescribes these requirements, DHS recognizes the value of public comments and is publishing this rule as an IFR with a request for public comment. DHS intends to publish a final rule and will consider all timely comments submitted during the public comment period as described in the **ADDRESSES** section in developing that rule as well as in issuing guidance related to H.R.1.

[96] *JEM Broad. Co., Inc.* v. *FCC,* 22 F.3d 320, 326 (D.C. Cir. 1994).

[97] *Lamoille Valley R. Co.* v. *ICC,* 711 F.2d 295, 328 (D.C. Cir. 1983).

[98] *James V. Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2000).

B. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that "any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least 10 prior regulations."

The Office of Management and Budget (OMB) has not designated this rule a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, OMB has not reviewed it.

This rule is not an Executive Order 14192 regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M–25–20, "Guidance Implementing Section 3 of Executive Order 14192, titled 'Unleashing Prosperity Through Deregulation' " (Mar. 26, 2025).

1. Baseline

Generally, rulemaking begins with the articulation of a problem that needs to be solved and analysis of the mechanisms by which the amended regulations would solve the relevant issues and what the resulting impacts would be relative to the appropriate baseline. A baseline is the best assessment of the way the world would look absent the regulatory action, *i.e.,* a baseline measures the current state of the world. DHS assesses the benefits and costs of a regulatory action relative to the baseline. In this rule, DHS is updating the CFR to codify the details and changes required in H.R.1. Therefore, the proper baseline for this IFR is a statutory baseline, such as H.R.1 in this case, from which we can assess the economic impact of the rule relative to current, existing law.

As described in the preamble, this IFR implements the following regulatory changes:

1. Form I–94 Fee required by 8 U.S.C. 1807: Establishes a fee requirement that, for USCIS, is applicable to the filing of Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document. New 8 CFR 103.7(d)(4).[99]
2. Annual Asylum Fee required by 8 U.S.C. 1808: Codifies the requirement that an alien pay the AAF and establishes that, procedurally, failure to pay within 30 days of notice results in rejection of the pending asylum application and the denial of any associated application for employment authorization. New 8 CFR 106.2(c)(15)(ii) and 208.3(c)(6).
3. Retention of Asylum Application Fee required by 8 U.S.C. 1802: Codifies the fee requirement and provides that the asylum application filing fee is retained by USCIS if a Form I–589 is rejected, consistent with 8 CFR 103.2. New 8 CFR 106.2(c)(14).
4. TPS Employment Authorization Validity required by 8 U.S.C. 1803(c) and 8 U.S.C. 1811(a): Limits work authorization and any associated employment authorization document under TPS to one year, or the remaining period of designation if shorter, with conforming changes to ensure consistency across DHS regulations. New 8 CFR 274a.12(a)(12) and 274.12(c)(19).

All 4 items are explicitly required by statute. However, DHS is exercising limited discretion in the implementation of items 1–3 to set forth procedural changes required for such implementation. Therefore, this analysis discusses the impacts of how DHS implements the Form I–102 fees (for a replacement Form I–94 as required by H.R.1), the consequences of failure to pay the AAF, and the retention of the asylum application fee after Form I–589 rejection.

2. Summary

Table 2 summarizes the estimated impacts of the provisions of the IFR.

[99] USCIS notes that this fee is already collected by CBP when CBP issues a Form I–94. The provision described here is limited to USCIS' provision of Forms I–94 requested via Forms I–102.

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TABLE 2—SUMMARY OF PROVISIONS AND ECONOMIC IMPACTS OF THE IFR

Provisions	IFR regulatory text	Estimated impact of regulatory change
New Immigration Fee Required by H.R.1 Section 100008.	8 CFR 103.7(d)(4)(ii)	Quantitative: *Transfers* • Affected aliens will transfer $98,880 annually to the Federal Government through additional filing fees for Form I–102. Qualitative: *Benefits* • The Federal Government may realize some benefits from optimizing the allocation of its resources.
Consequences of Nonpayment of the Annual Asylum Fee (AAF).	8 CFR 208.3(c)(3) and 8 CFR 208.7(a)(2).	Qualitative: *Costs* • Certain aliens who fail to pay the AAF will incur time burdens (either through expedited removal proceedings or the NTA process).[100] • Certain aliens who fail to pay the AAF may lose wages due to the loss of employment authorization. • Certain employers who would have employed an affected alien may lose productivity due to the loss of employment authorization. • Affected aliens without lawful status that are placed in expedited removal may incur economic losses due to time spent in custody due to mandatory detention. • The government may incur costs associated with expedited removal proceedings, including mandatory detention of affected aliens placed in expedited removal and transportation costs. *Benefits* • Improved resource allocation as DHS will be able to focus resources on processing asylum filings. • Increased immigration enforcement.
Retention of the H.R.1 sec. 100002 Asylum Application Fee After Form I–589 is Rejected.	8 CFR 106.2(c)(14)	Qualitative: *Transfers* • Retention of asylum application fees for filed and rejected Forms I–589 will transfer administration and immigration enforcement costs from taxpayers to aliens.
Implementation of H.R.1 Section 100012 Limits on Temporary Protected Status Employment Authorization Document Va.	8 CFR 244.5, 8 CFR 244.12, 8 CFR 274a.12(a)(12) and (c)(19).	Qualitative: *Costs* • Certain aliens may incur lost wages due to the (a)(12) and (c)(19) EAD validity period being shortened. • Certain employers who would have employed an affected alien may lose productivity due to the EAD validity period being shortened. *Benefits* • Harmonized regulations provide clarity and improved operability of the rule.
Familiarization	USCIS believes a subset of future petitioners will need to familiarize themselves with the rule.	Qualitative: *Costs:* • Per person opportunity cost of time for familiarization with the rule will range from $23.79 to $53.88 depending on the wages of the affected alien. The total opportunity cost of time to become familiarized with the rule is $144.96 for lawyers.

Source: USCIS analysis.

In additionto the impacts summarized above, and as required by OMB Circular A–4, DHS presents in Table 3 the accounting statement showing the anticipated costs, benefits, and transfers associated with this regulation.[101]

TABLE 3—OMB A–4 ACCOUNTING STATEMENT ($ MILLIONS, 2024)
[Time period: FY 2025 through FY 2033]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, RFA, SEA, preamble, etc.)
Benefits:				
Monetized Benefits	N/A	N/A	N/A	
Annualized quantified, but un-monetized benefits	N/A	N/A	N/A	

[100] The population of aliens that would experience additional costs due to failure to the pay the AAF are aliens that would have otherwise been approved but for failure to pay the AAF.

[101] OMB, Circular A–4, "Regulatory Analysis," p. 44 (Sep. 17, 2003), *https://trumpwhitehouse.archives.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

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TABLE 3—OMB A–4 ACCOUNTING STATEMENT ($ MILLIONS, 2024)—Continued
[Time period: FY 2025 through FY 2033]

Category	Primary estimate	Minimum estimate	Maximum estimate	Source citation (RIA, RFA, SEA, preamble, etc.)
Unquantified benefits	The Federal Government may realize some benefits from optimizing the allocation of its resources, given that CBP already has an operational and effective substitute for Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, filings. The government may also be able to better optimize resource allocation if the required fees reduce frivolous filings and the resources used on them are reallocated to genuine asylum filings. This IFR may also increase compliance with immigration laws and regulations by providing DHS more resources. This rule will make the affected regulations more consistent and clearer thereby improving the functioning of the immigration system.			RIA.
Costs:				
Annualized monetized costs	N/A	N/A	N/A	RIA.
Annualized quantified, but un-monetized costs for 10-year period starting in FY 2025 through FY 2034.	N/A	N/A	N/A	RIA.
Qualitative (unquantified) costs	Affected aliens may incur costs due to legal proceedings stemming from failure to pay the required fees or lost wages due to the loss of employment authorization and shortened EAD validity periods. Affected employers may also lose productivity due to the loss of employment authorization and shortened EAD validity periods. Affected aliens may incur costs due to time spent in mandatory detention as a result of expedited removal proceedings. The government may face increased costs associated with mandatory detention and transportation of aliens placed in expedited removal proceedings. Affected stakeholders may also need to spend time familiarizing themselves with the rule.			
Transfers:				
Annualized monetized transfers:				
From Aliens to the Federal Government	$0.1	$0.1	$0.1	RIA.
Miscellaneous Analyses/Category	Effects.			
Effects on State, local, and/or Tribal governments	None.			N/A.
Effects on small businesses	None.			N/A.
Effects on wages	None.			N/A.
Effects on growth	None.			N/A.

3. Background and Purpose of the IFR

H.R.1 was signed into law on July 4, 2025, and mandated specific fees for various immigration-related forms, benefits, statuses, petitions, applications, and requests administered by multiple government agencies. In furtherance of enacting the text of H.R.1, USCIS and DHS published multiple FRNs (90 FR 34511 (July 22, 2025), 90 FR 42025 (Aug. 28, 2025), 90 FR 43223 (Sept. 8, 2025), and 90 FR 48317 (Oct. 16, 2025)) announcing some of the new fees that are administered by USCIS, to whom those fees apply, when the new fees take effect, instructions on their payment, when and if the fees may be waived, and consequences of the failure to pay. The purpose of this IFR is to expand upon the prior FRNs and codify the statutory requirements of H.R.1, and this Regulatory Impact Analysis (RIA) analyzes the impacts of this regulatory action.

4. Population

This IFR codifies the implementation of fees for several alien populations at the direction of Congress, as stated in H.R.1. The relevant populations are described below.

Section 1807 of 8 U.S.C. requires a $24 fee for any alien who ''submits an application for a Form I–94.'' Because USCIS implements this fee through the filing of Form I–102, the plain language application of this portion of H.R.1 for USCIS indicates that the appropriate affected population is filers of USCIS Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document. Table 4 shows data on Form I–102 filings for FY 2021 through FY 2025, including the 5-year average.

TABLE 4—HISTORICAL FORMS I–102, APPLICATION FOR REPLACEMENT/INITIAL NONIMMIGRANT ARRIVAL-DEPARTURE DOCUMENT, FY 2021–FY 2025

Fiscal year	Receipts	Approvals	Denials	Completions
2021	4,282	2,436	629	3,065
2022	4,272	3,017	1,295	4,312
2023	3,737	3,505	1,813	5,318
2024	3,855	3,391	1,268	4,659
2025 *	4,454	2,940	868	3,808

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TABLE 4—HISTORICAL FORMS I–102, APPLICATION FOR REPLACEMENT/INITIAL NONIMMIGRANT ARRIVAL-DEPARTURE DOCUMENT, FY 2021–FY 2025—Continued

Fiscal year	Receipts	Approvals	Denials	Completions
5-year Average	4,120	3,058	1,175	4,232

Source: Data are compiled from annual USCIS ''Quarterly All Forms'' datasets. See the following data sets for fiscal years 2021–2025, respectively: *https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2021Q4.csv, https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.csv, https://www.uscis.gov/sites/default/files/document/reports/quarterly_all_forms_fy2023_q4.csv, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2025_q2.xlsx.*

* Data for FY2025 are calculated. Receipts, Approvals, Denials, and completions are estimated by doubling the actual values through the end for Q2, FY 2025.

The estimated population for affected Form I–102 filers is 4,120 aliens per year.

H.R.1 requires new fees for aliens seeking asylum. First, H.R.1 requires the payment of a $100 fee by any alien who files an application for asylum at the time such application is filed. 8 U.S.C. 1802. Table 5 shows historical data for Form I–589 filings for fiscal years 2021 through 2025 including the 5-year average of the historical data.

TABLE 5—HISTORICAL POPULATION OF FORM I–589 FILINGS

Fiscal year	Receipts*	Approvals	Denials	Completions	Pending
2021	61,158	7,118	17,888	39,681	412,796
2022	195,279	10,099	17,059	41,160	571,628
2023	455,054	15,468	5,848	54,211	1,022,163
2024	419,825	16,932	4,600	126,660	1,344,743
2025**	557,500	13,256	14,652	191,818	1,710,425
5-year Average	337,763	12,575	12,009	90,706	1,012,351

Source: Data are compiled from annual USCIS ''Quarterly All Forms'' datasets. See the following data sets for fiscal years 2021–2025, respectively: *https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2021Q4.csv, https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.csv, https://www.uscis.gov/sites/default/files/document/reports/quarterly_all_forms_fy2023_q4.csv, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx,* and *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2025_q2.xlsx.*

* Receipts do not equal approval, denials, and completions in any particular fiscal year as cases may have been adjudicated in a later fiscal year than the one in which they were received.

** Data for FY 2025 are calculated. Receipts, Approvals, Denials, and Completions are estimated by doubling the actual values through the end for Q2, FY2025. The Pending population is calculated by adding the estimated FY2025 receipts to the actual FY2024 pending population and then subtracting the estimated FY 2025 completions.

USCIS estimates that the applicable population for the asylum application fee will be 337,763 aliens annually.

Second, Section 100009 of H.R.1, 8 U.S.C. 1808, requires USCIS to collect the AAF for FY 2025 and beyond.[102] 90 FR 34511 (July 22, 2025). This entails that all asylum applicants with pending applications must pay a minimum $100 annual fee for each calendar year the application ''remains pending,'' in addition to any other applicable fee. 8 U.S.C. 1808. Therefore, the relevant population subject to this fee is all current and future aliens that have filed or will file Form I–589, respectively, with USCIS.

Table 6 shows the estimated population over the analysis period, with a total 10-year population of 30,692,385 aliens required to pay the congressionally mandated annual asylum fee.[103]

TABLE 6—ESTIMATED NUMBER OF FORM I–589 FILINGS, FY 2026–FY 2035

Fiscal year	Receipts	Approvals	Denials	Completions	Pending
2026	337,763	12,575	12,009	90,706	1,957,482
2027	337,763	12,575	12,009	90,706	2,204,539
2028	337,763	12,575	12,009	90,706	2,451,596
2029	337,763	12,575	12,009	90,706	2,698,653
2030	337,763	12,575	12,009	90,706	2,945,710
2031	337,763	12,575	12,009	90,706	3,192,767
2032	337,763	12,575	12,009	90,706	3,439,824
2033	337,763	12,575	12,009	90,706	3,686,881
2034	337,763	12,575	12,009	90,706	3,933,938
2035	337,763	12,575	12,009	90,706	4,180,995
Total					30,692,385

Source: USCIS Analysis.

[102] USCIS Immigration Fees Required by H.R.1, Public Law 119–21 (2025).

[103] The total 10-year population represents a possible scenario based on the continuation of recent trends. It represents a reasonable baseline estimate given historical information and does *not* represent a prospective estimate that accounts for all possible behavioral responses to this IFR and other possible regulatory changes. As such, USCIS notes that the pending asylum population may be less if this IFR, or other regulatory changes, causes asylum filings to substantially drop.

Note: The Pending population is calculated by adding the estimated previous fiscal year's receipts to the estimated fiscal year pending population and then subtracting the estimated fiscal year's completions. The pending population for FY2026 is based on the estimated pending population from FY2025, as shown in Table 5.

Finally, H.R.1 also amends the validity period of employment authorization for aliens who have applied for TPS or who have been granted TPS such that the validity period of employment authorization and the resultant Employment Authorization Document (EAD) is limited to a year or the duration of the temporary status, whichever is shorter. This provision would affect two separate employment authorization categories:[104] (a)(12) for individuals who have been granted TPS and (c)(19) for applicants who USCIS has determined are prima facie eligible for TPS. Table 7 and Table 8 show historical data for both the (a)(12) and the (c)(19) classifications for fiscal year 2021 through fiscal year 2025, including the 5-year averages.

TABLE 7—HISTORICAL FORM I–765 APPLICATIONS, (A)(12) CLASSIFICATION

Fiscal year	Receipts	Approvals	Denials
2021	41,159	14,145	393
2022	51,459	41,068	840
2023	267,863	80,613	3,538
2024	240,947	362,645	8,238
2025 *	418,192	20,262	2,930
5-year Average	203,924	103,747	3,188

Source: Data are compiled from annual USCIS ''Quarterly All Forms'' datasets. See the following data sets for fiscal years 2021–2025, respectively: *https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2021Q4.csv, https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.csv, https://www.uscis.gov/sites/default/files/document/reports/quarterly_all_forms_fy2023_q4.csv, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2025_q2.xlsx*.

* Data for FY2025 are calculated. Receipts, Approvals, and Denials, are estimated by doubling the actual values through the end for Q2, FY2025.

TABLE 8—HISTORICAL FORM I–765 APPLICATIONS WITH (C)(19) CLASSIFICATION, FY 2021–FY 2025

Fiscal year	Receipts	Approvals	Denials
2021	107,927	4,859	106
2022	49,022	74,601	1,089
2023	61,624	82,520	6,733
2024	155,748	136,200	4,992
2025 *	76,450	11,472	700
5-year Average	90,154	61,930	2,724

Source: Data are compiled from annual USCIS ''Quarterly All Forms'' datasets. See the following data sets for fiscal years 2021–2025, respectively: *https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2021Q4.csv, https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.csv, https://www.uscis.gov/sites/default/files/document/reports/quarterly_all_forms_fy2023_q4.csv, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx, https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2025_q2.xlsx*.

* Data for FY2025 are calculated. Receipts, Approvals, and Denials, are estimated by doubling the actual values through the end for Q2, FY2025.

Given that employment authorization must be approved for there to be a validity period, the appropriate population for both classifications is approved Forms I–765. Assuming that historical trends continue to be stable in the future, the affected estimated populations are 103,747 for (A)(12) EADs and 61,930 for (C)(19) EADs (see Table 7 and Table 8).

5. Cost-Benefit Analysis

The background and population sections above describe the populations affected by this rule. In most instances, the impacts to these populations come directly from changes Congress articulated in H.R.1 and therefore are not considered impacts from this rulemaking. In other instances, however, USCIS seeks to codify aspects of H.R.1 where congressional direction was ambiguous or missing through the promulgation of this IFR. The costs, benefits, cost savings, and transfers (whether quantitative or qualitative) are described below.

i. Costs

Aspects of this IFR may impose qualitative costs. Aliens without lawful status who fail to pay the AAF in a timely manner (within 30 days) will have their Form I–589 rejected and will either be placed in expedited removal proceedings or will be issued an NTA. This necessarily entails time engaging in those processes, though USCIS cannot properly assess the actual costs given the fact-specific nature of each individual proceeding.

Furthermore, aliens who fail to pay the AAF in a timely manner (within 30 days) could experience disruptions to employment authorization and therefore, both the alien and a hypothetical employer would experience economic losses (in the form of lost wages for the alien and lost productivity for the employer). Similarly, the EAD validity period for some TPS recipients may have been shortened by H.R.1. This would entail economic losses (in the form of lost wages for the affected alien and lost productivity for an affected employer). These impacts are fact specific (including the duration and nature of

[104] USCIS provides for employment authorization in multiple categories. Please see *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* for information regarding the specifics of the different categories.

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proceedings, lost wages for aliens, lost productivity for employers, etc.).

The relative increase in the usage of expedited removal (for certain aliens) may also increase costs to affected populations because of the additional time in mandatory detention and transportation costs if removed. Affected aliens will realize costs due to lost wages due to additional time in detention (subject to the wage ranges discussed above). The government will also face increased costs in this instance because of increased infrastructure, administration, and oversight costs required by the increased prevalence of mandatory detention. Increased use of expedited removal may also increase transportation costs. DHS cannot accurately estimate these costs because it lacks sufficient data regarding the possibly affected population and rate of non-compliance with the AAF.

Additionally, DHS expects that aliens (or their representatives in some circumstances) will need to read and understand this rule in order to successfully understand and be responsive to the regulatory changes. As a result, we expect this rule will impose familiarization costs associated with reading this rule.

To estimate the costs of rule familiarization, we estimate the time it would take to read and understand the IFR by assuming a reading speed of 250 words per minute.[105] This rule has approximately 17,000 words. Using a reading speed of 250 words per minute, DHS estimates it will take approximately 1.13 hours to read and understand this rule.

To properly calculate these costs, USCIS must account for the opportunity cost of time for the affected population, which requires information regarding the relevant wages. The Federal minimum wage is currently $7.25 per hour,[106] but many states have implemented higher minimum wage rates.[107] However, the Federal Government does not track a nationwide population-weighted minimum wage estimate. Individuals in the population of interest for an analysis could be located anywhere within the United States and may be subject to a range of minimum wage rates depending on the state or city in which they live.

For this IFR, DHS uses the most recent wage data from the U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS), National Occupational Employment and Wage Estimates. More specifically, we use the 10th percentile hourly wage estimate for all occupations as a reasonable proxy for the effective minimum wage when estimating the opportunity cost of time for individuals in populations of interest who are likely to earn an entry-level wage.[108] We also use the 10th percentile hourly wage estimate for individuals who are unemployed, or for individuals who cannot, or choose not to, participate in the labor market, as these individuals incur opportunity costs, assign valuation in deciding how to allocate their time, or both.

Due to the wide variety of non-paid activities an individual could pursue, such as childcare, housework, or other activities without paid compensation, it is difficult to estimate the value of that time, and even when an individual is not working for wages, their time still has value. In addition, using a percentile of the hourly wage estimate for all occupations allows DHS the flexibility to adjust its estimates, when necessary, depending on the population(s) of interest for regulatory impact analyses. Moreover, BLS estimates account for changes in wages across the United States labor market, which includes any future changes to state minimum wage rates.

Furthermore, DHS does not rule out the possibility that some portion of the population might earn higher wages. Given that DHS lacks detailed information on the affected population, it is reasonable to use a range of wages to calculate the cost of the IFR's provisions to the affected populations. The aforementioned 10th percentile wage serves as the lower for the affected population, while DHS utilizes the mean wage from BLS as the upper bound. DHS will continue to evaluate the most appropriate wage assumptions for the populations of interest in its regulatory impact analyses.

The 10th percentile hourly wage estimate for all occupations is currently $14.42, not accounting for worker benefits while the mean hourly wage estimate for all occupations is $32.66.[109] Furthermore, DHS recognizes that affected aliens may have chosen to hire a lawyer or accredited representative during their immigration proceedings. The BLS estimates that the average hourly wage for a lawyer is $87.86.

DHS also must account for worker benefits when estimating the opportunity cost of time by calculating a benefits-to-wage multiplier. The benefits-to-wage multiplier is calculated using the most recent BLS report detailing average total employee compensation for all civilian U.S. workers.[110] DHS estimates the benefits-to-wage multiplier to be 1.46, which incorporates employee wages and salaries and the full cost of benefits, such as paid leave, insurance, and retirement.[111] Therefore, using the benefits-to-wage multiplier, DHS calculates the lower bound of total compensation for individuals as $21.05 per hour for this IFR, where the 10th percentile hourly wage estimate is $14.42 per hour and the average benefits are $6.63 per hour.[112] Similarly, the upper bound for total compensation is $47.68, where the mean wage is $32.66 per hour and the average benefits are $15.02 per hour.[113] Similarly, DHS estimates the average total hourly compensation for a lawyer is $128.28.[114]

As discussed above, the hourly total compensation for aliens earning the 10th percentile wage is $21.05, the total hourly compensation of aliens earning the average wage is $47.68, and total hourly compensation for lawyers is $128.28. Therefore, the estimated opportunity cost of time for each type of applicant to read and understand the rule for non-working petitioners is approximately $23.79 for aliens earning the 10th percentile wage, $53.88 for aliens earning the average wage, and $144.96 for lawyers.[115]

[105] *See https://www.healthguidance.org/entry/13263/1/what-is-the-average-reading-speed-and-the-best-rate-of-reading.html.*

[106] *See* DOL, ''Minimum Wage,'' *https://www.dol.gov/general/topic/wages/minimumwage* (last visited Nov. 6, 2025).

[107] *See* DOL, ''State Minimum Wage Laws,'' *https://www.dol.gov/agencies/whd/minimum-wage/state* (last updated July 31, 2025).

[108] *See* BLS, ''Occupational Employment and Wage Statistics,'' May 2024, United States, All Occupations (SOC #00–0000), *https://www.bls.gov/oes/2024/may/oes_nat.htm#00-0000* (last updated July 23, 2025).

[109] *Id.*

[110] *See* BLS, Economic News Release, ''Employer Costs for Employee Compensation Summary—December 2024,'' Table 1, Employer costs for employer compensation by ownership, p. 4 (Mar. 14, 2025), *https://www.bls.gov/news.release/archives/ecec_03142025.pdf.*

[111] The benefits-to-wage multiplier is calculated as follows: (Total Employee Compensation per hour) ÷ (Wages and Salaries per hour) = $47.92 ÷ $32.92 = 1.46 (rounded). See BLS, Economic News Release, ''Employer Costs for Employee Compensation—December 2024,'' Table 1, Employer costs for employer compensation by ownership, p. 4 (June 13, 2025), *https://www.bls.gov/news.release/archives/ecec_06132025.pdf.*

[112] The calculation of the benefits-weighted 10th percentile hourly wage estimate: $14.42 per hour × 1.46 benefits-to-wage multiplier = $21.05 (rounded) per hour.

[113] The calculation of the benefits-weighted 10th percentile hourly wage estimate: $32.66 per hour × 1.46 benefits-to-wage multiplier = $47.68 (rounded) per hour.

[114] The calculation of the benefits-weighted Lawyer wage estimate: $87.86 per hour × 1.46 benefits-to-wage multiplier = $128.28 (rounded) per hour.

[115] Calculation, 10th percentile wage = $21.05 hourly total compensation * 1.13 hours = $23.79 (rounded).

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ii. Benefits

DHS believes that there are several benefits to this rule. First, this IFR benefits the Federal Government by improving the ability to allocate scarce resources. Because the consequence for failure to pay the AAF in this rule is rejection of the pending request, for instance, it could reduce the number of asylum applications USCIS must process to approval or denial. By reducing the number of pending asylum applications, rejection for failure to pay the AAF will also reduce filings of USCIS Form I–765, Application for Employment Authorization, from an applicant for asylum or their derivatives. USCIS processes a Form I–765 from asylum applicants for free.[116] Thus, because some level of nonpayment of the AAF is quite likely, USCIS will benefit by being able to shift resources from processing Forms I–589 and I–765 for asylum applicants who will be rejected after this rule takes effect to requests from those who pay their AAF as required. Such a shift will facilitate better allocation of scarce resources for USCIS.

Another important benefit of the IFR is the general strengthening of the immigration system. Rejection for failure to pay the AAF and the retention of the Form I–589 filing fee if the form is rejected advances H.R.1's deterrence and enforcement objectives by ensuring that noncompliance results in swift and predictable consequences consistent with DHS' mission to enforce the immigration laws and ensure the security of the Nation's borders.

iv. Transfers

This IFR will likely impact transfer payments between various populations. Some of these transfers can be quantified, while others can be described only qualitatively.

a. Quantitative Transfers

This IFR codifies that Form I–102 filings must include the statutorily mandated $24 fee for any alien who ''submits an application for a Form I–94''. As such, an estimated 4,120 Form I–102 filers per year (see Table 4) will be required to submit this fee in addition to any fees required for Form I–102 itself. Therefore, annual transfers from affected aliens to the Federal Government under the rule are estimated to be $98,880 per year.[117] Total transfers from affected aliens to the Federal Government are estimated to be $988,800 over the entire analysis period.[118]

b. Qualitative Transfers

This IFR codifies that the asylum application fee required by H.R.1 will be retained by the Federal Government if a Form I–589 is rejected. The decision to retain such fees does represent a transfer from asylum applicants to the Federal Government. The rule itself does not *create* or *change* such transfers, but only clarifies their treatment in the case of rejected applications. While filing fees are typically thought of as transfers since USCIS sets fees so that they properly cover the cost of adjudication and administrative burdens associated with the form, the retention of the asylum application fee represents a transfer because the transfer occurs irrespective of the filing's acceptance. In this instance, the IFR's provision furthers H.R.1's goal of shifting immigration enforcement and oversight costs from taxpayers to aliens. USCIS cannot reliably quantify the amount of these transfers since the implementation of the asylum application fee is new and there is a lack of information to estimate the rate of noncompliance or the rate of rejected filings that would include the asylum application fee.[119]

6. Alternatives Considered

As discussed above, this rule largely serves to codify the changes that Congress dictated by the passage of H.R.1. Therefore, this rule generally does *not* represent an independent action by USCIS to assert its discretion to amend the CFR.

As discussed above, DHS evaluated several alternatives to the procedural provisions described in this IFR. Each option was evaluated with the goal of ensuring that the rule reflects the best interpretation of H.R.1 and the INA and satisfies the APA's requirement for reasoned decisionmaking.[120] For the reasons explained in this analysis, DHS concluded that the selected approaches—applicability of the Form I–94 fee to the Form I–102, rejection of a nonpaying I–589 resulting in an NTA or expedited removal where applicable and the loss of employment authorization, retention of the asylum application fees in the event of rejection, and harmonization of EAD validity periods for certain TPS applicants and recipients—best effectuate H.R.1's enforcement and deterrence purposes and are administratively superior to the following alternatives considered.

C. Regulatory Flexibility Act (Certification)

The Regulatory Flexibility Act of 1980 (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. 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.[121]

The 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. While some employers could experience costs or transfer effects, these impacts would be indirect. As discussed previously, the no-action baseline for this IFR *includes* the fees mandated by H.R.1 so any behavioral response from those fees would not be attributable to this IFR. For instance, any reduction in the number of aliens requesting Forms I–765 under either (a)(12) or (c)(19) classifications would be attributable to H.R.1 and not to this IFR. In any case, this rule would not impact the ability to employ eligible aliens and also would not impact the actual eligibility criteria

Calculation, mean wage = $47.68 hourly total compensation * 1.13 hours = $53.88 (rounded).

Calculation, lawyer = $128.28 hourly total compensation * 1.13 hours = $144.96 (rounded).

[116] 8 CFR 106.2(a)(44(ii)(G).

[117] Calculation: 4,120 affected aliens × $24 filing fee for Form I–94 = $98,880 in transfers. Also note that these calculations do not include inflation adjustments as described in H.R.1.

[118] Calculation: $98,880 in annual transfers due to Form I–94 filing fees × 10 years = $988,800 in new transfers due to the rule.

[119] As discussed above, USCIS estimates that approximately 337,763 Forms I–589 will be filed annually over the 10-year analysis period. Internal data show that, for the first half of FY2026, USCIS rejected approximately 42% of Forms I–589 that were filed. These data indicate that, should these rates remain constant over the analysis period, USCIS would reject approximately 141,860 Forms I–589 annually. USCIS notes, however, that the historical rate of rejection applied to historical filing population is an unreliable proxy for the rate of rejection after complete implementation of the fees (and consequences for lack thereof) described by H.R.1 because the establishment of fees for Forms I–589 represents a significant change from past practice and disincentivizes frivolous filing. USCIS presents these datapoints as context but does not believe that they should be relied upon in and of themselves.

[120] *Loper Bright Enters.* v. *Raimondo,* 603 U.S. 369 (2024) (requiring the best interpretation of the statute); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983) (reasoned decision-making).

[121] A small business is defined as any independently owned and operated business not dominant in its field of operation that qualifies as a small business per the Small Business Act, 15 U.S.C. 632.

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for employment authorization. As such, the impact of this rule on small entities will be negligible.

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. DHS nonetheless welcomes comments regarding potential impacts on small entities, which DHS may consider as appropriate in a final rule.

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 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 a $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.[122]

The inflation adjusted value of $100 million in 1995 is approximately $206 million in 2024 based on the Consumer Price Index for All Urban Consumers (CPI–U).[123] This IFR does not contain a Federal mandate as the term is defined under UMRA.[124] The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

E. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

The Congressional Review Act (CRA) was included as part of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) by subtitle E of SBREFA, Public Law 104–121, title II, 110 Stat. 847, 868, *et seq.* While this IFR does not meet the criteria set forth in 5 U.S.C. 804(2) because it is not likely to result in an annual effect on the economy of $100 million or more, DHS has complied with the CRA's reporting requirements and has sent this rule to Congress and the Comptroller General as required by 5 U.S.C. 801(a)(1).

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 E.O. 13132, Federalism, 64 FR 43255 (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 is drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This IFR was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and ambiguities so as to minimize litigation and undue burden on the Federal Court system. DHS has determined that this rule meets the applicable standards provided in section 3 of E.O. 12988.

H. Family Assessment

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999.[125] DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family, particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has no data that indicate that this IFR will have any impacts on disposable income or the poverty of certain families and children, including U.S. citizen children. DHS acknowledges that this rule would increase the fees that some families must submit and thus may affect the disposable income for certain families. However, the IFR would provide USCIS and the Federal Government with funds that would be used to administer the affected programs and meet the intent of H.R.1. DHS is required to collect the subject fees and is authorized to make adjustments to them to effectuate the policy and funding goals of the law. While the new fees could have a financial impact on a family that chooses to submit an immigration benefit request, DHS has few alternatives other than this rulemaking. DHS also determined that this rule would not have any impact on the autonomy or integrity of the family as an institution.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This IFR does not have Tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it will 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

DHS and its components analyze final actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 "Implementing the National Environmental Policy Act" (Dir. 023–01 Rev. 01) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) [126] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows Federal agencies to establish, in their NEPA implementing procedures, categories of actions ("categorical exclusions") that experience has shown do not, individually or cumulatively, have a

[122] *See* 2 U.S.C. 1532(a).

[123] *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-202412.pdf* (last visited Nov. 6, 2025). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2024); (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; and (4) Multiply by 100 = [(Average monthly CPI–U for 2024–Average monthly CPI–U for 1995) ÷ (Average monthly CPI–U for 1995)] × 100 = [(313.689 − 152.383) ÷ 152.383] = (161.306/152.383) = 1.059 × 100 = 105.86% percent = 106 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars × 2.06 = $206 million in 2024 dollars.

[124] The term "Federal mandate" means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

[125] *See* Public Law 105–277, 112 Stat. 2681 (1998).

[126] The Instruction Manual contains DHS's procedures for implementing NEPA and was issued November 6, 2014, *https://www.dhs.gov/ocrso/eed/epb/nepa* (last updated July 29, 2025).

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significant effect on the human environment and, therefore, do not require an environmental assessment or environmental impact statement.[127] The Instruction Manual, Appendix A lists the DHS Categorical Exclusions.[128]

Under DHS NEPA implementing procedures, 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.[129]

This IFR implements and clarifies certain immigration fees that DHS is required to collect under H.R.1, provides consequences from non-payment of certain fees, and allows USCIS to retain the Form I–589 filling fee, if the application is rejected. The rule is intended to provide the regulations authorized and required by H.R.1 and to clarify and fully carry out its requirements for USCIS fees.

This IFR is strictly administrative and procedural. DHS has reviewed this IFR and finds that no significant impact on the environment, or any change in environmental effect, will result from the amendments being promulgated in this IFR.

Accordingly, DHS finds that the promulgation of this IFR's amendments to current regulations clearly fits within categorical exclusion A3 established in DHS's NEPA implementing procedures as an administrative change with no change in environmental effect, that is not part of a larger Federal action, and that does not present extraordinary circumstances that create the potential for a significant environmental effect. Therefore, this IFR is categorically excluded from further NEPA review.

K. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the Office of Management and Budget (OMB) for review and approval any reporting requirements inherent in a rule, unless they are exempt. This rule does not impose any new reporting or recordkeeping requirements under the PRA.

This rule addresses the submission of USCIS Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, (OMB control number 1615–0079) but it makes no substantive changes in the estimated completion burden for or the estimated annual number of respondents who would submit the collection.

H.R.1 provides that each initial employment authorization for an alien with parole or TPS shall be valid for a period of 1 year or for the duration of the alien's parole or TPS. 8 U.S.C. 1803(b)(1), (c)(1), 1809(a). USCIS policy has previously provided for longer authorization periods or automatic renewal of an EAD.[130] Thus, the shorter periods of employment authorization may result in more Forms I–765 being submitted. USCIS will analyze and revise, as necessary, the approved information collection for Form I–765 (OMB Control No. 1650–0040) as required by the PRA to account for the change in respondents. This revision project is independent of and being conducted outside of this rulemaking.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Freedom of information, Immigration, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 106

Citizenship and naturalization, Fees, Immigration.

8 CFR Part 208

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

8 CFR Part 244

Administrative practice and procedure, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR parts 103, 106, 208, 244, and 274a as follows:

PART 103—IMMIGRATION BENEFIT REQUESTS; USCIS FILING REQUIREMENTS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1365b, 1372, 1801–1815; 8 U.S.C. 1185 note; 31 U.S.C. 9701; 48 U.S.C. 1806; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; 31 CFR part 223.

■ 2. Amend § 103.7 by revising the introductory text of paragraph (d) and paragraph (d)(4) to read as follows:

§ 103.7 Fees.

* * * * *

(d) *Other DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

* * * * *

(4) *Form I–94 fee.* (i) For issuance of an Arrival/Departure Record at a land border port-of-entry: $6.00.

(ii) Each applicant requesting an Arrival/Departure Record from USCIS, must submit the fee required by 8 U.S.C. 1807.

* * * * *

PART 106—USCIS FEE SCHEDULE

■ 3. The authority citation for part 106 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1254a, 1254b, 1304, 1356, 1801—1815; 48 U.S.C. 1806; Pub. L. 107–609, 115 Stat. 1012; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 101 note).

■ 4. Amend § 106.2 by revising the section heading and the introductory text of paragraph (c) and adding paragraphs (c)(14) and (15) to read as follows:

§ 106.2 USCIS fees.

* * * * *

(c) *G Forms, statutory fees, and non-form fees.* A schedule of all USCIS fees including fees required by law can be viewed on the USCIS website.

* * * * *

(14) *Application for Asylum and for Withholding of Removal, I–589.* To apply for asylum under 8 U.S.C. 1158, the applicant must submit the fee required by 8 U.S.C. 1802. The fee will be retained and not returned or refunded when a filed asylum application is rejected consistent with 8 CFR 103.2(a).

(15) *Annual asylum fee.* For each calendar year that a Form I–589 remains pending, the applicant must pay an

[127] *See* 42 U.S.C. 4336(a)(2), 4336e(1).

[128] *See* Instruction Manual, Appendix A, Table 1.

[129] Instruction Manual at V.B(2)(a)–(c).

[130] *See* 8 CFR 274A.12(a). USCIS may, in its discretion, determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States.

APPENDIX A (continued)

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annual asylum fee as required by 8 U.S.C. 1808 within 30-days of the date the notice is sent.

(i) DHS will send each applicant a notice informing them that their annual asylum fee is due, when it is due, and how it must be paid; and

(ii) If the annual asylum fee is not paid, the asylum application will be rejected.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 5. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282, 1802, 1808; 48 U.S.C. 1806; 8 CFR part 2.

■ 6. Amend § 208.3 by:
■ a. Revising paragraph (c)(3);
■ b. Removing the word ''and'' at the end of paragraph (c)(4);
■ c. Removing the period at the end of paragraph (c)(5) and adding ''; and'' in its place; and
■ d. Adding paragraph (c)(6).

The revision and addition read as follows:

§ 208.3 Form of application.

* * * * *

(c) * * *

(3) An asylum application must be signed and include a response to each of the questions contained in the application, the materials required by paragraph (a)(1) of this section, and any required fee; otherwise, it will be deemed an incomplete filing. An incomplete application will be rejected and will:

(i) Not commence the period after which the applicant may file an application for employment authorization in accordance with § 208.7;

(ii) Be returned by mail (if the request is filed on paper) to the applicant within 30 days of the receipt of the application by the Service. If the Service has not mailed the incomplete application back to the applicant within 30 days, it will be deemed complete; and

(iii) Be resubmitted by the applicant as a complete application if he or she wishes to have the application considered;

* * * * *

(6) If an applicant does not pay the annual asylum fee required by § 106.2(c)(15) of this chapter within 30 days of the fee notice date, the application will be rejected and this paragraph (c) shall not apply.

■ 7. Amend § 208.7 by revising paragraphs (a)(1) and (b)(1) and (2) and adding paragraph (b)(3) to read as follows:

§ 208.7 Employment authorization.

(a) * * *

(1) Subject to the restrictions contained in sections 208(d) and 236(a) of the Act, an applicant for asylum who is not an aggravated felon shall be eligible pursuant to 8 CFR 274a.12(c)(8) and 274a.13(a) to request employment authorization subject to the following conditions:

(i) Except in the case of an alien whose asylum application has been recommended for approval, or in the case of an alien who filed an asylum application prior to January 4, 1995, the application shall be submitted no earlier than 150 days after the date on which a complete asylum application submitted in accordance with §§ 208.3 and 208.4 has been received. The 150-day period will not start if the asylum application is rejected as incomplete in accordance with § 208.3(c)(3).

(ii) In the case of an applicant whose asylum application has been recommended for approval, the applicant may apply for employment authorization when he or she receives notice of the recommended approval.

(iii) USCIS will reject an application for employment authorization submitted by an applicant whose asylum application has been denied or rejected.

(iv) If an asylum application is denied or rejected prior to a decision on a pending application for employment authorization, the application for employment authorization shall be denied.

* * * * *

(b) * * *

(1) If the asylum application is denied or rejected by USCIS, the employment authorization shall terminate immediately. This termination does not apply where USCIS refers the asylum application to an immigration judge pursuant to § 208.14(c)(1) or (c)(4).

(2) If the asylum application is denied or rejected by an immigration judge, the employment authorization shall terminate immediately on the date that is 30 days after the date on which an immigration judge denies or rejects an asylum application, unless the alien submits an appeal to the Board of Immigration Appeals as provided by 8 CFR 1003.38.

(3) If Board of Immigration Appeals denies an appeal of a denial or rejection of an asylum application, employment authorization shall terminate immediately.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

■ 8. The authority citation for part 244 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 1803, 1811; 8 CFR 2.9.

■ 9. Amend § 244.5 by adding paragraph (d) to read as follows:

§ 244.5 Temporary treatment benefits for eligible aliens.

* * * * *

(d) *Employment authorization validity for prima facie–eligible aliens.* Initial employment authorization provided under this section to an applicant afforded temporary treatment benefits based on a prima facie showing of eligibility will be valid for a period of 1 year or for the remaining duration of the country's designation of Temporary Protected Status, whichever is shorter. If the country's designation of Temporary Protected Status has not terminated by the expiration of the authorized period of employment authorization, the alien must obtain a renewal to continue employment authorization. The renewal will be valid for 1 year or for the remaining duration of the country's designation of Temporary Protected Status, whichever is shorter.

■ 10. Amend § 244.12 by revising paragraphs (a) and (d) to read as follows:

§ 244.12 Employment authorization.

(a) Upon approval of an application for Temporary Protected Status, USCIS shall grant employment authorization and, subject to 8 CFR 274a.12(a), issue an employment authorization document valid for a period of 1 year or for the remaining duration of the country's designation of Temporary Protected Status, whichever is shorter. If the country's designation of Temporary Protected Status has not terminated by the expiration of the employment authorization period, the alien must obtain a renewal to continue employment authorization, which will be valid for 1 year or for the remaining duration of the country's designation of Temporary Protected Status, whichever is shorter.

* * * * *

(d) If the application is renewed or appealed in deportation or exclusion proceedings, or pending administrative appeal pursuant to § 244.18(b), employment authorization will be extended during the pendency of the renewal and/or appeal, subject to the limitation in section paragraph (a) of this section.

APPENDIX A (continued)

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 11. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 28 U.S.C. 2461; 8 CFR part 2.

■ 12. Amend § 274a.12 by revising paragraphs (a)(12) and (c)(19) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(12) An alien granted Temporary Protected Status under section 244 of the Act for the period of time described in 8 CFR 244.12, as evidenced by an employment authorization document issued by the Service;

* * * * *

(c) * * *

(19) An alien applying for Temporary Protected Status pursuant to section 244 of the Act must apply for employment authorization in accordance with the procedures set forth in 8 CFR part 244. Employment authorization and any document evidencing employment authorization issued under this paragraph (c)(19) are subject to the limitations described in 8 CFR 244.5.

* * * * *

Markwayne Mullin,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2026–08333 Filed 4–28–26; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket ID OCC–2025–0141]

RIN 1557–AF33

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Docket No. R–1876]

RIN 7100–AH08

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 324

RIN 3064–AG17

Regulatory Capital Rule: Community Bank Leverage Ratio Framework

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

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation are adopting a final rule that lowers the community bank leverage ratio (CBLR) requirement from 9 percent to 8 percent, consistent with the lower bound provided in section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. The final rule also extends the length of time that certain depository institutions and depository institution holding companies can remain in the CBLR framework while not meeting all of the qualifying criteria for the CBLR framework from two consecutive quarters to four consecutive quarters, subject to a limit of eight quarters in the previous five-year period.

DATES: The final rule is effective July 1, 2026.

FOR FURTHER INFORMATION CONTACT:

OCC: Benjamin Pegg, Technical Expert, Capital Policy, (202) 649–6370; or Carl Kaminski, Assistant Director, Ron Shimabukuro, Senior Counsel, Daniel Perez, Counsel, or Scott Burnett, Counsel, Bank Advisory Group, Chief Counsel's Office, (202) 649–5490, 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.

Board: Juan Climent, Deputy Associate Director, (202) 872–7526; Morgan Lewis, Manager, (202) 407–5093; Missaka Nuwan Warusawitharana, Manager, (202) 452–3461; Lars Arnesen, Senior Financial Institution Policy Analyst, (202) 868–0546; James Caldera, Senior Economist (202) 843–4017, Division of Supervision and Regulation; or Jay Schwarz, Deputy Associate General Counsel, (202) 731–8852; Mark Buresh, Senior Special Counsel, (202) 499–0261; Jasmin Keskinen, Counsel, (202) 853–7872, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Benedetto Bosco, Chief, Capital Policy Section; Michael Maloney, Senior Policy Analyst; Kyle McCormick, Senior Policy Analyst; Keith Bergstresser, Senior Policy Analyst; Matthew Park, Financial Analyst; Capital Markets and Accounting Policy Branch, Division of Risk Management Supervision; Catherine Wood, Counsel; Merritt Pardini, Counsel; Nicholas Soyer, Attorney; Legal Division, *regulatorycapital@fdic.gov,* (202) 898–6888; Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2025, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) published in the **Federal Register** a notice of proposed rulemaking (the proposal) to amend the community bank leverage ratio (CBLR) framework.[1] The proposal would have lowered the CBLR requirement from 9 percent to 8 percent and would have extended the length of time that certain depository institutions and depository institution holding companies can remain in the CBLR framework while not meeting one or more of the qualifying criteria from two consecutive quarters to four consecutive quarters, subject to a limit of eight quarters in the previous five-year period. Following review of the comments received on the proposal, the agencies are finalizing the proposal without revision. Elements of the final rule also address comments received from the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) review.[2]

A. Economic Growth, Regulatory Relief, and Consumer Protection Act

The CBLR framework[3] implements section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), which requires the agencies to establish a CBLR requirement of not less than 8 percent and not more than 10 percent

[1] 90 FR 55048 (Dec. 1, 2025).

[2] The agencies, together with the Federal Financial Institutions Examination Council, commenced a review of their prescribed regulations under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 in 2024 to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. The agencies have reviewed and considered these comments. Public Law 104–208, Div. A, Title II, section 2222, 110 Stat. 3009–414, (1996) (codified at 12 U.S.C. 3311). *See also* Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 90 FR 35241 (Jul. 25, 2025).

[3] 12 CFR 3.12 (OCC); 12 CFR 217.12 (Board); 12 CFR 324.12 (FDIC).

APPENDIX B (see summary on page 754)

and device functionality over the intended shelf life.

(v) Documentation of software verification, validation, and hazard analysis.

(2) The labeling required under § 801.109(c) of this chapter must include:

(i) An explanation of the device and the mechanism of operation;

(ii) Validated methods and instructions for reprocessing of any reusable components;

(iii) Disposal instructions; and

(iv) A shelf life for all sterile components.

Grace R. Graham,

Deputy Commissioner for Policy, Legislation, and International Affairs.

[FR Doc. 2026–08424 Filed 4–29–26; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 68

[Docket No. 19–0312; Dir. Order No. 05–2026]

RIN 1125–AB06

Office of the Chief Administrative Hearing Officer, Chief Administrative Law Judge

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

ACTION: Final rule.

SUMMARY: On October 7, 2020, the Department of Justice (''Department'') published an interim final rule (''IFR'') amending the regulations governing the Office of the Chief Administrative Hearing Officer (''OCAHO''). The amendments reflected changes related to the creation of the position of the Chief Administrative Law Judge (''CALJ'') and made additional related technical changes. This final rule adopts the provisions of the IFR with minor technical corrections.

DATES: This rule is effective April 30, 2026.

FOR FURTHER INFORMATION CONTACT: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500 Falls Church, VA 22041, telephone (703) 305–0289.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Department is issuing this final rule pursuant to section 103(g) of the Immigration and Nationality Act (''INA'' or ''Act''), 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 (''HSA''), Public Law 107–296, 116 Stat. 2135 (as amended). Under the HSA, the Attorney General retains the 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'' the Attorney General's authorities under the INA. HSA 1102, 116 Stat. at 2274 (codified at 8 U.S.C. 1103(g)(2)). In Attorney General Order Number 6260–2025, pursuant to 28 U.S.C. 509 and 510, the Attorney General has delegated authority to issue regulations related to immigration matters within the jurisdiction of the Executive Office of Immigration Review (''EOIR'') to EOIR's Director.

II. Summary of the IFR

On October 7, 2020, the Department published an IFR amending the regulations governing OCAHO. Office of the Chief Administrative Hearing Officer, Chief Administrative Law Judge, 85 FR 63204 (Oct. 7, 2020).

The IFR revised §§ 68.2, 68.3, 68.8, 68.15, 68.26, 68.29, 68.30, 68.33, 68.55, and 68.57 in title 28 of the Code of Federal Regulations (''CFR'').[1]

A. Chief Administrative Law Judge

The IFR amended part 68 of chapter I of title 28 of the CFR to reflect the creation of a CALJ position within OCAHO and to delineate the responsibilities and authorities of the CALJ and the Chief Administrative Hearing Officer (''CAHO''). *See* 85 FR 63205. Specifically, the IFR provided that the CALJ will serve as an Administrative Law Judge (''ALJ'') while also serving as the direct supervisor of the other OCAHO ALJs and ALJ support staff. *Id.* The CAHO, in turn, will supervise the CALJ and the non-ALJ support staff. *Id.* In addition, in order to avoid recusal issues resulting from OCAHO's increasing size, the IFR directed that (1) if an ALJ is disqualified from adjudicating a case, the CALJ will reassign the case to another ALJ; (2) if the CALJ is disqualified from adjudicating a case, the CAHO will reassign the case to another ALJ; (3) if the CAHO is disqualified from reviewing an interlocutory order under 28 CFR 68.53 or a final order under 28 CFR 68.54, the review will be reassigned to the EOIR Director; and (4) the disqualification procedures for ALJs in 28 CFR 68.30 also apply to the CAHO conducting an administrative review under 28 CFR 68.53 or 68.54. *See* 28 CFR 68.30.

B. Technical Changes

The IFR also made a variety of related technical edits to 28 CFR part 68.

First, the IFR amended various references to the ''Chief Administrative Hearing Officer'' to read ''Chief Administrative Law Judge'' in 28 CFR part 68 to reflect the division of responsibility described above. *See, e.g.,* 28 CFR 68.26, 68.29.

Second, the IFR made technical changes at 28 CFR 68.15, 68.33, 68.55, and 68.57 that replaced outdated references to the former Immigration and Naturalization Service (''INS'') with references that reflect the current agency organization in the Department of Homeland Security (''DHS''). *See* HSA, Pub. L. 107–296, 116 Stat. 2135, as amended.

Third, the IFR italicized defined terms in 28 CFR 68.2 to improve clarity, made stylistic changes in 28 CFR 68.2, and amended a typographical error in the cross-reference at 28 CFR 68.33(c)(3)(iv).[2]

III. Public Comments on the IFR

The Department received no comments from the public on the IFR.[3]

IV. Provisions of the Final Rule

After receiving no public comments, the Department adopts the provisions of the IFR as final with minor technical corrections set forth in this section of the preamble.

First, the final rule further amends the definition of ''pleading'' in 28 CFR 68.2. The IFR defined ''pleading'' to include the following documents submitted to the ALJ or, when no judge is assigned, the CALJ: the complaint, the answer, any motions (including any supplements or amendments to the motions or amendments), and any permitted replies to any of the aforementioned documents. 28 CFR 68.2. Upon further consideration, the Department believes that the IFR's definition could be interpreted as inconsistent with other provisions of 28 CFR part 68.

Certain provisions of 28 CFR part 68 require specific pleadings to be filed with the CAHO rather than with an ALJ or CALJ, as set forth in the IFR's

---

[1] The preamble to the IFR incorrectly stated that it included an amendment to 28 CFR 68.23. *See* 85 FR 63205.

[2] The preamble to the IFR incorrectly stated that the section including the updated cross-reference was at 28 CFR 68.33(d)(iv). *See* 85 FR 63205.

[3] The record reflects one comment received, but this comment is a test comment submitted by the Department itself and not a comment from the public.

definition of ''pleading.'' For example, 28 CFR 68.6(a) provides that ''[a]n original and four copies of the complaint shall be filed with the [CAHO].'' Moreover, 28 CFR 68.11(a) states that ''[t]he [CAHO] is authorized to act on non-adjudicatory matters relating to a proceeding prior to the appointment of an [ALJ].'' That provision explicitly authorizes the CAHO to act upon all motions or other similar documents related to non-adjudicatory matters, such as a motion to withdraw or substitute counsel, which a party may file before the assignment of an ALJ. Thus, logically, parties should file such documents with the CAHO, not the CALJ.

Given those regulatory provisions, the final rule revises the definition of ''pleading'' to reference the CAHO. This change will account for the fact that some types of pleadings listed in 28 CFR 68.2 may be—and sometimes must be—submitted to the CAHO rather than to an ALJ or the CALJ.

Second, the IFR revised the definition of ''complainant'' in 28 CFR 68.2, but this definition was inadvertently included in duplicate upon publication in the CFR. *Compare* 85 FR 63206–207, *with* 28 CFR 68.2 (Oct. 7, 2020). Accordingly, this final rule amends 28 CFR 68.2 to remove the second, superfluous entry for the definition of ''complainant.''

Third, the IFR inadvertently replaced ''Chief Administrative Hearing Officer'' with ''Chief Administrative Law Judge'' in 28 CFR 68.29 instead of adding ''Chief Administrative Law Judge.'' Thus, this final rule amends 28 CFR 68.29 to correct this error so that, in the event of the CALJ's unavailability, the CAHO would have the authority to reassign cases to another ALJ.

V. Regulatory Review Requirements

A. Administrative Procedure Act

As in the IFR, 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 the regulatory changes creating and defining the responsibilities of the CALJ position because it is a ''matter relating to agency management or personnel'' and a rule of ''agency organization, procedure, or practice.'' 5 U.S.C. 553(a)(2), (b)(A). The Department also finds good cause to issue the technical changes made in this final rule without notice and comment or a delay in effective date, as those procedures are unnecessary under 5 U.S.C. 553(b)(B), (d)(3). These changes are non-substantive; they simply reflect the current government organization as determined by Congress in 2002 and follow other similar amendments by the Department to the regulations governing EOIR. *See, e.g.,* Retrospective Regulatory Review Under E.O. 13563, 77 FR 59567, 59568–69 (Sept. 28, 2012) (describing similar updated references to DHS in chapter V of 8 CFR).

The Department nonetheless promulgated this rule as an IFR, providing the public with opportunity for post-promulgation comment. 85 FR 63204. The Department received no comments and now issues this final rule adopting the provisions of the IFR with four technical amendments. This final rule is exempt from the 30-day delay in effective date for the reasons described above that the IFR was exempt from notice and comment requirements. 5 U.S.C 553(a)(2), (b)(A)–(B), (d)(3).

B. Regulatory Flexibility Act

The Department has reviewed this rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

C. Unfunded Mandates Reform Act of 1995

This final rule 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 (adjusted annually for inflation), 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, codified at 2 U.S.C. 1501 *et seq.*

D. Congressional Review Act

Reports to Congress and the Government Accountability Office (''GAO'') specified by 5 U.S.C. 801 are not required for this rule. This final rule does not fall under the definition of a ''major rule'' or ''rule'' as defined in section 804 of the Congressional Review Act. 5 U.S.C. 804(2)–(3). As discussed in Section V.C. of this preamble, this rule will not result in an annual effect on the economy of $100 million or more and will not result in major cost or price increases or have significant adverse effects on United States-based enterprises. 5 U.S.C. 804(2). Further, this action pertains to agency management or personnel and is a rule of agency organization that does not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Accordingly, it is not a ''major rule'' or ''rule'' as those terms are defined in 5 U.S.C. 804(2) – (3) and such reporting to Congress and the GAO is not required.

E. 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 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 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 final rule 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 rule 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 final rule will not have substantial direct effects 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. 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 final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act of 1995

This rule does not propose a new collection or revisions to an existing ''collection of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

APPENDIX (continued)

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I. Executive Order 14219 (Ensuring Lawful Governance and Implementing the President's 'Department of Government Efficiency' Deregulatory Initiative)

This final rule is ''an[ ] action related to a[n] . . . immigration-related function of the United States'' and is therefore exempt from the requirements of Executive Order 14219 under section 7(a) of that Order.

J. Executive Order 14294 (Overcriminalization of Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not adopt a criminal regulatory offense and is thus exempt from Executive Order 14924 requirements.

List of Subjects in 28 CFR Part 68

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

Accordingly, the interim rule amending 28 CFR part 68 which was published at 85 FR 63204 on October 7, 2020, is adopted as final with the following change:

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; and Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

■ 2. Amend § 68.2 by:
■ a. Removing the second entry for the definition of ''Complainant''; and
■ b. Revising the definition of ''Pleading''.

The revision reads as follows:

§ 68.2 Definitions.

* * * * *

Pleading means the complaint, the answer thereto, any motions, any supplements or amendments to any motions or amendments, and any reply that may be permitted to any answer, supplement, or amendment submitted to the Administrative Law Judge or, when no judge is assigned, the Chief Administrative Law Judge or the Chief Administrative Hearing Officer;

* * * * *

■ 3. Revise § 68.29 to read as follows:

§ 68.29 Unavailability of Administrative Law Judge.

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge or the Chief Administrative Hearing Officer may designate another Administrative Law Judge for the purpose of further hearing or other appropriate action.

Daren K. Margolin,
Director, Executive Office for Immigration Review, Department of Justice.

[FR Doc. 2026–08484 Filed 4–29–26; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3700

[Docket No. BLM–2025–0268; A2407–014–004–065516, #O2509–014–004–125222]

RIN 1004–AF51

Waste Prevention, Production Subject to Royalties, and Resource Conservation; Extension of Phase-In Requirements

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule; response to comments.

SUMMARY: Due to the receipt of significant adverse comments on the December 15, 2025, direct final rule (DFR) extending certain phase-in deadlines of the Bureau of Land Management's (BLM) Waste Prevention and Resource Conservation regulations, the Department of the Interior, through the BLM, is issuing a new final rule that responds to those comments.

DATES: The effective date of February 13, 2026, for the direct final rule that published on December 15, 2025, (90 FR 57921) is confirmed. This final rule is effective on June 1, 2026.

FOR FURTHER INFORMATION CONTACT: Amanda Fox, Petroleum Engineer, Division of Fluid Minerals, phone 907–538–2300, email: *afox@blm.gov.* 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: On December 15, 2025, the BLM published a DFR extending the phase-in deadlines for the Leak Detection and Repair (LDAR) and gas measurement requirements of 43 CFR subpart 3179. Those requirements were added in 2024, when the Department, through the BLM, promulgated a rule entitled, Waste Prevention, Production Subject to Royalties, and Resource Conservation, 89 FR 25378 (April 10, 2024) (the ''2024 WPR''). The BLM stated in the DFR that if significant adverse comments were received by January 14, 2026, the BLM would withdraw the DFR or issue a new final rule that responds to the comments. The BLM received nine public comments. Eight of these comments were unique and responsive to the request and one was not germane. Of the eight, seven provided substantive comments, four opposed to the rule and three were in favor. After considering those comments, the BLM is electing to issue this final rule without change and is responding to the significant adverse comments by explaining why those comments do not warrant withdrawal of or amendment to the extension of the compliance deadlines provided for in the DFR.

One group of commenters contended that the DFR amends the 2024 WPR in violation of the Administrative Procedure Act (APA) and the Mineral Leasing Act. Another group makes essentially the same APA claim, contending that an agency may only forego formal notice and comment where such procedures ''are impracticable, unnecessary, or contrary to the public interest.'' That group of commenters also described the regulatory requirements that are being postponed as ''critical pollution control regulations.'' We disagree with these contentions and characterizations for the reasons explained below.

Regarding the assertion that the DFR did not comply with the APA, the DFR itself provided an opportunity for the public to submit comments about the BLM's decision to postpone two compliance deadlines by 1 year each. The commenters availed themselves of that opportunity. The BLM has now considered the comments and is responding to the comments in this final

APPENDIX C (see summary on page 755)

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

21070 Federal Register / Vol. 91, No. 75 / Monday, April 20, 2026 / Notices

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #21505 and #21506; ALASKA Disaster Number AK–20018]

Administrative Disaster Declaration of a Rural Area for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is notice of an Administrative disaster declaration of a rural area for the state of Alaska dated April 15, 2026.

Incident: Severe Storms, Flooding and Remnants of Typhoon Halong.

DATES: Issued on April 15, 2026.

Incident Period: October 8, 2025 through October 13, 2025.

Physical Loan Application Deadline Date: June 15, 2026.

Economic Injury (EIDL) Loan Application Deadline Date: January 15, 2027.

ADDRESSES: Visit the MySBA Loan Portal at *https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Jennifer Talarico, Office of Disaster Recovery and Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given as a result of the Administrator's disaster declaration of a rural area applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or in person at locally announced locations. For further assistance please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Bering Strait Regional Educational Attendance Area.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	6.000
Homeowners without Credit Available Elsewhere	3.000
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Private Non-Profit Organizations with Credit Available Elsewhere	3.625
Private Non-Profit Organizations without Credit Available Elsewhere	3.625
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Private Non-Profit Organizations without Credit Available Elsewhere	3.625

The number assigned to this disaster for physical damage is 215056 and for economic injury is 215060.

The state which received an SBA Administrative rural declaration is Alaska.

(Catalog of Federal Domestic Assistance Number 59008)

(Authority:13 CFR 123.(b).)

James Stallings,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2026–07632 Filed 4–17–26; 8:45 am]

BILLING CODE 8026–09–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2025–0037]

Privacy Act of 1974; System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Rescindment of a system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to discontinue an existing system of records notice entitled, Hearing Office Tracking System of Claimant Cases (60–0010), last published on January 11, 2006.

DATES: This rescindment is applicable upon its publication in today's **Federal Register**. We invite public comment on this rescindment. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by May 20, 2026.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Head of Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *https://www.regulations.gov.* Please reference docket number SSA–2025–0037. All comments we receive will be available for public inspection at the above address and we will post them to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Privacy and Disclosure Policy, Law and Policy, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–1727, email: *OGC.OPD.SORN@ssa.gov.*

SUPPLEMENTARY INFORMATION: SSA is discontinuing the system of records 60–0010, entitled Hearing Office Tracking System of Claimant Cases, which was created to track hearing office workload information. The records will be combined and managed through an existing system of records currently titled, Hearings and Appeals Case Control System (60–0009), last published in full at 91 FR 754 (January 8, 2026). SSA will rely upon the Hearings and Appeals Case Control System to track and manage hearing office workload information, from the receipt of a request for hearing until the final hearing level disposition (decision or dismissal).

SYSTEM NAME AND NUMBER:

Hearing Office Tracking System of Claimant Cases, 60–0010

HISTORY:

71 FR 1806 (January 11, 2006), Hearing Office Tracking System of Claimant Cases.

72 FR 69273 (December 10, 2007), Hearing Office Tracking System of Claimant Cases.

83 FR 54969 (November 1, 2018), Hearing Office Tracking System of Claimant Cases.

Matthew Ramsey,

Head of Privacy and Disclosure Policy, Law and Policy.

[FR Doc. 2026–07603 Filed 4–17–26; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 12997]

United States Passports Moving to Single-Sized Passport Book

ACTION: Notice.

SUMMARY: The U.S. Department of State currently issues two passport book sizes—a 26-page book and a 50-page book. A determination was made to shift

APPENDIX (continued)

the U.S. passport book to a single-sized, 38-page passport book, with the release of the next redesign.

DATES: Submit comments by June 22, 2026.

ADDRESSES: You may submit comments by the following method: Comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: ''DOS–2026–0496'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

FOR FURTHER INFORMATION CONTACT: Amber Long, Bureau of Consular Affairs, Passport Services, Modernization and Systems Liaison, tel.: (202) 485–6520, email: *AskPPTInternationalAffairs@state.gov.*

SUPPLEMENTARY INFORMATION: Currently, the Next Generation Passport (NGP) is available in 26-page and 50-page book sizes. Previously, the legacy ePassport was available in a 28-page and 52-page book. The U.S passport Series B is being redesigned for an anticipated rollout in 2028, and this will include a shift to a single-sized book with 38 pages. All passport book types will change with the exception of the Emergency Passport, which will remain a 12-page book.

In 2024, a feasibility study was conducted on the impacts of moving to a single sized passport book. The results of the study determined a 38-page book would increase efficiencies and reduce waste within the production of the passport at the Government Publishing Office (GPO) and within the issuance process at the U.S. Department of State. On average, 92 percent of customers applying for a passport book request the 26-page book. Of the 8 percent of customers receiving the 50-page book, most do so due to a policy practice to issue 50-page books to special-issuance and overseas applicants. In other words, while some frequent international travelers, U.S. citizens residing abroad, and special-issuance passport holders will need to renew more frequently once the 50-page option becomes unavailable, the Department expects those applicants to make up a small percentage of all passport applicants. Switching to a single-sized, 38-page book will allow more visa pages for the majority of applicants. Planned enhancements to the Department's Online Passport Renewal (OPR) platform that will allow overseas applicants to renew their passports online are also expected to introduce new efficiencies for those customers and may mitigate this burden.

The Department seeks input from stakeholders on the potential burdens of eliminating the 50-page book as an option. The Department appreciates and values all feedback and will give due consideration to the comments received. However, at this time, the Department does not plan to respond to the comments in the **Federal Register**.

Matthew D. Pierce,

Deputy Assistant Secretary, Passport Services, Bureau of Consular Affairs, U.S. Department of State.

[FR Doc. 2026–07670 Filed 4–17–26; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Operating Limitations at Chicago O'Hare International Airport, Order Establishing Scheduling Limits

AGENCY: Department of Transportation (DOT), Federal Aviation Administration (FAA).

ACTION: Order establishing scheduling limits at Chicago O'Hare International Airport.

I. Introduction

Following delay reduction meetings conducted under 49 U.S.C. 41722, this Order establishes a temporary limit on the number of scheduled operations at Chicago O'Hare International Airport (ORD). It allocates those operations based on Summer 2025 (*i.e.,* March 30, 2025, through October 25, 2025) approved schedules under standard International Air Transportation Association (IATA) Level 2 schedule facilitation guidelines. Unapproved air carrier schedules published at ORD well after the conclusion of the standard Level 2 facilitation process and proximate to the beginning of the Summer 2026 scheduling season (''Summer 2026'', *i.e.,* March 29, 2026, through October 24, 2026) will exceed the airport's capacity throughout Summer 2026 based on current factors such as airport construction and competitive scheduling dynamics occurring between the two largest carriers at the airport. Therefore, the Federal Aviation Administration (FAA) has determined that 2,708 operations per day is the level that will maximize capacity at the airfield in the Summer of 2026 without resulting in delays that are worse than those experienced in the Summer of 2025.

By establishing this scheduling limit, this Order will achieve significant public benefits in Summer 2026 by improving airspace and airfield safety and efficiency, reducing surface movement in the constrained taxiway environment, mitigating the substantial inconvenience to the traveling public caused by excessive flight delays at the airport, and will meet a serious transportation need by preventing widespread operational disruption at ORD and throughout the National Airspace System (NAS) during Summer 2026. This Order takes effect on May 17, 2026, and expires on October 24, 2026. As discussed further below, the FAA believes that significant progress on airfield construction through the Summer 2026 season will reduce the likelihood of the need for the scheduling limit beyond the end of the season.

II. Background

Authority

In this matter, using authority provided in 49 U.S.C. 41722, the Secretary of Transportation requested that the Administrator convene meetings involving air carriers serving ORD to reduce overscheduling and flight delays during hours of peak operation in Summer 2026. Consistent with the statutory standards, the Secretary determined that the meetings were necessary to meet a serious transportation need or achieve an important public benefit, and the Administrator conducted the meetings.

The U.S. Government has exclusive sovereignty over the airspace of the United States,[1] and the Department of Transportation, including the FAA, has broad authorities to address safety, efficiency, economic, and competitive issues affecting the airline industry. As part of these broad authorities, the Administrator may assign by regulation or order the use of the airspace as necessary to ensure the safety of aircraft and the efficient use of the airspace.[2] The Administrator may modify or revoke an assignment when required by the public interest.[3] The Administrator considers as being in the public interest, among other things, controlling the use of the navigable airspace and regulating operations in that airspace in the

[1] 49 U.S.C. 40103.

[2] 49 U.S.C. 40103(b)(1), as previously codified in 49 U.S.C. App. § 307(a). Title 49 was recodified by Public Law 103–222, 108 Stat. 745 (1994). The textual revisions were not intended to result in substantive changes to the law. The recodification stated that the words in § 307(a) ''under such terms, conditions, and limitations as he may deem'' were omitted as surplus. H. Rpt. 103–180 (103d Cong., 1st Sess. 1993) at 262.

[3] Id.

Appendix D (see summary on page 755)

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

ICE Directive 19009. 3: **Firearms and Use of Force**

Issue Date: May 26, 2023
Effective Date: May 26, 2023
Superseded: ICE Directive 19009.2, Firearms and Use of Force (Aug. 2, 2021).

1. **Purpose/Background.** This Directive establishes the U.S. Immigration and Customs Enforcement (ICE) Firearms and Use of Force policy. This Directive assigns responsibilities for agency employees and, in conjunction with the ICE Firearms and Use of Force Handbook, establishes procedures and protocols concerning firearms and the use of force, including (but not limited to) training and proficiency, the reporting of use of force incidents, and the proper maintenance, storage, and accounting of firearms and intermediate force weapons.

2. **Policy.** ICE's law enforcement mission brings with it the authority to use force when necessary. To this end, it is the policy of ICE that its Authorized Officers use force only when no reasonably effective, safe, and feasible alternative appears to exist,[1] and may use only the level of force that is objectively reasonable in light of the totality of facts and circumstances confronting the Authorized Officer at the time force is applied. The use of excessive force by ICE employees is strictly prohibited. In the performance of their law enforcement duties, Authorized Officers may only carry firearms and intermediate force weapons that have been approved by ICE and when in compliance with all qualification and/or certification requirements. The accompanying ICE Firearms and Use of Force Handbook serves as the authoritative guidance to ICE employees regarding firearms and use of force-related issues. As such, ICE employees are expected to be familiar with the contents of this Directive and the accompanying Handbook and are required to take appropriate action to comply with its policies and procedures. Violation of the policies and procedures contained in the Directive or Handbook may be grounds for disciplinary action or other appropriate action. Nothing in this Directive or the accompanying Handbook shall be construed as interfering with the right that Authorized Officers may have as private citizens to carry a personally-owned firearm off-duty for personal use. Authorized Officers must comply with all applicable federal, state, and local laws when exercising this right.

3. **Definitions.** See the ICE Firearms and Use of Force Handbook for definitions.

4. **Responsibilities.**

[1] The requirement that force be used only when no reasonably effective, safe, and feasible alternative appears to exist does not create a duty to retreat, a requirement to wait for an attack before using force, an obligation to meet force with equal or lesser force, or a continuum or checklist of alternative steps that must be tried before resorting to force. This requirement is only meant to convey the importance of de-escalation, and that such techniques should be employed when reasonable and practical to do so.

APPENDIX (continued)

4.1. The **Executive Associate Directors for Homeland Security Investigations, Enforcement and Removal Operations,** and **Management and Administration** and the **Associate Director for the Office of Professional Responsibility** are responsible for:

1) Ensuring that all Authorized Officers within their respective Directorates or Program Offices comply with this Directive and the accompanying ICE Firearms and Use of Force Handbook;

2) Determining which of their employees are designated as Authorized Officers;

3) Approving in writing, in consultation with the Assistant Director for the Office of Firearms and Tactical Programs, the firearms, intermediate force weapons, and related use of force equipment that their respective Authorized Officers are permitted to carry;

4) Suspending, revoking, or denying the authorization to carry firearms and approved intermediate force weapons by their Authorized Officers; and

5) Fulfilling all other obligations and responsibilities assigned to them in this Directive and the accompanying ICE Firearms and Use of Force Handbook.

4.2. The **Assistant Director** for the **Office of Firearms and Tactical Programs (OFTP)** is responsible for:

1) Overseeing the development and implementation of ICE firearms and use of force policies and procedures;

2) Directing the technical aspects and evaluation of the ICE firearms and use of force program;

3) Leading the development of the use of force training curriculum;

4) Establishing procedures for the selection, training, and certification of Firearms Instructors, Firearms Coordinators, Defensive Tactics Instructors, Defensive Tactics Coordinators, Field Armorers, and other related trainers;

5) Reporting lessons learned from Firearms and Use of Force Incident Review Committee reviews regarding use of force policies, training, law enforcement administrative matters, and oversight to the DHS Law Enforcement Coordination Council;

6) Approving all firearms, defensive tactics, and use of force training obtained through other agencies or contract sources;

7) Establishing and overseeing the procedures for requesting, processing, and approving personally-owned handguns for use by Authorized Officers in the performance of official duties;

8) Approving firearms, intermediate force weapons, holsters, ammunition, equipment, and accessories for use by Authorized Officers;

9) Acquiring all ICE-owned firearms, ammunition, other ordnance and munitions, and intermediate force weapons for ICE;

10) Overseeing the collection and storage of qualification and certification records for ICE firearms and intermediate force weapons;

11) Maintaining a complete inventory of all ICE firearms and ensuring that all sensitive equipment, including firearms, protective equipment and ammunition, is tracked;

12) Overseeing the control and accountability of all ICE firearms, ammunition, other ordnance and munitions, intermediate force weapons, and use of force equipment;

13) Overseeing the development and implementation of ICE tactical doctrine and directing the development and presentation of training for ICE tactical teams;

14) Operating and overseeing all ICE national, field, and academy armories and directing the maintenance, repair, and alteration of all ICE firearms; and

15) Managing the ICE Board of Survey.

4.3. The **Board of Survey** is responsible for:

1) Meeting quarterly, or as necessary, to review the circumstances that led to the loss, theft, damage, or destruction of an ICE-issued firearm, intermediate force weapon, ammunition, body armor, or other sensitive asset accounted for in the Firearms, Armor, and Credentials Tracking System (as established by the Assistant Director of OFTP); the actions to find or repair the item, the accounting procedures followed and documented; and to determine if the loss, theft, damage, or destruction of the sensitive asset was attributable to the failure of the Authorized Officer to exercise the degree of precaution, attention, and vigilance needed to protect the sensitive asset; and

2) Providing a report of its findings and recommendations.

4.4. The **Firearms and Use of Force Incident Review Committee** is responsible for:

1) Reviewing all reported use of force incidents and enforcement-related officer safety issues as needed; and

2) Examining all reported use of force incidents to determine if tactics, training, and policy were sufficient to address the incidents.

4.5. **Responsible Officials** are responsible for:

1) All aspects of the ICE firearms and use of force program within their area of responsibility;

2) Ensuring that all Authorized Officers within their area of responsibility comply with this Directive and the accompanying ICE Firearms and Use of Force Handbook;

3) Suspending, revoking, or denying their Authorized Officers' permission to carry firearms and approved intermediate force weapons;

4) Ensuring that Authorized Officers within their area of responsibility fulfill the training requirements for firearms, intermediate force and tactical training and exercises;

5) Overseeing the inventory control, maintenance, and security of all ICE use of force equipment within their area of responsibility, including ICE firearms, ammunition, and intermediate force weapons. This includes conducting an annual inventory in accordance with DHS personal property guidelines;

6) Designating, in writing, a Firearms Coordinator and a Defensive Tactics Coordinator for their area of responsibility;

7) Assigning, in writing, Firearms Instructors and Defensive Tactics Instructors to serve for a minimum of five years, either as full-time or collateral duties, assuming that the Authorized Officer remains assigned to that area of responsibility; and

8) Seeking approval from the Assistant Director for OFTP, through their respective Directorate EAD or Program Office Head, before obtaining any firearms, defensive tactics, tactics, or other use of force training through another agency or contract source.

4.6. **Defensive Tactics Coordinators** are responsible for:

1) Providing instruction to Authorized Officers on defensive tactics, de-escalation techniques, and intermediate force weapons through a variety of techniques including integrated scenario-based training, and classroom and training room exercises;

2) Managing the overall field office defensive tactics, de-escalation techniques, intermediate force weapons, and related use of force training programs within their area of responsibility;

3) Scheduling and directing the Defensive Tactics Instructors;

4) Ensuring that all defensive tactics, de-escalation techniques, intermediate force weapons, and related use of force training are accurately recorded in the system of record;

5) Maintaining sufficient quantities of supplies and equipment to conduct the defensive tactics training program; and

6) Coordinating the scheduling of Authorized Officers to participate in the required defensive tactics, de-escalation techniques, intermediate force weapons, and related use of force training.

4.7. Defensive Tactics Instructors are responsible for:

1) Providing instruction to Authorized Officers on defensive tactics, intermediate force weapons, de-escalation, and other techniques consistent with their certification level;

2) Taking all reasonable steps to ensure the safety and security of all personnel and property involved; and

3) Removing from training any person who refuses to comply with safety instructions or otherwise poses a safety risk.

4.8. Firearms Coordinators are responsible for:

1) Managing the field office firearms and related use of force training, practice, and qualification programs;

2) Overseeing the shipment, receipt, issuance, and the periodic inventory of firearms, ammunition, other ordnance and munitions, and intermediate force weapons;

3) Overseeing the firearms and related use of force program within their area of responsibility;

4) Scheduling and directing the Firearms Instructors;

5) Ensuring that firearms and other use of force equipment, qualification scores, and use of force training are accurately recorded in the system of record;

6) Maintaining sufficient quantities of supplies to conduct the firearms program; and

7) Coordinating the scheduling of Authorized Officers to participate in the required firearms qualifications and all applicable training, including use of force and tactical exercises.

4.9. Firearms Instructors are responsible for:

1) Range operations and range safety;

2) Determining proficiency for all participating personnel, including the scoring of targets for official record; and

3) Removing from training any person who refuses to comply with safety instructions or otherwise poses a safety risk.

4.10. Authorized Officers are responsible for:

APPENDIX (continued)

1) Reading, understanding, and complying with the policies, procedures, and requirements contained in this Directive and the ICE Firearms and Use of Force Handbook;

2) Maintaining their ICE firearms and other ICE-issued use of force equipment in proper working order through general care and approved levels of maintenance;

3) Safeguarding all firearms and related use of force equipment and protecting them against theft or unauthorized use;

4) Maintaining proficiency in the use of firearms, intermediate force weapons, and other related use of force equipment;

5) Successfully completing all required firearms, use of force and tactical training and exercises;

6) Seeking approval from the Assistant Director for OFTP, through their respective Responsible Official, before obtaining any firearms, defensive tactics, tactics, or other use of force training through another agency or contract source;

7) Ensuring that all of their ICE firearms and intermediate force weapons are recorded in the system of record;

8) Reporting use of force incidents in accordance with the requirements set forth in the ICE Firearms and Use of Force Handbook;

9) Annually reviewing ICE use of force reporting procedures; and

10) Meeting all other requirements and standards set forth in this Directive and the ICE Firearms and Use of Force Handbook.

5. Procedures/Requirements. See the ICE Firearms and Use of Force Handbook for detailed procedures and requirements.

5.1. General Guidelines.

1) An Authorized Officer may use force only when no reasonably effective, safe, and feasible alternative appears to exist and may use only the level of force that is objectively reasonable in light of the totality of facts and circumstances confronting the officer at the time force is applied.

   a) This standard does not require Authorized Officers to meet force with equal or lesser force.

   b) Authorized Officers do not have a duty to retreat to avoid the reasonable use of force, nor are they required to wait for an attack before using reasonable force to stop a threat.

APPENDIX (continued)

2) Use of force is necessary when it is reasonably required to carry out the Authorized Officer's law enforcement duties in a given situation, considering the totality of facts and circumstances of a particular situation, and there appears to be no reasonably effective, safe, and feasible alternative to the use of force in carrying out the Authorized Officer's law enforcement duties in a given situation. *See* Chapter 1.B. of the ICE Firearms and Use of Force Handbook for more information.

3) When feasible, Authorized Officers must employ tactics to de-escalate by the use of communication or other techniques during an encounter to stabilize, slow, or reduce the intensity of a potentially violent situation without using physical force, or with a reduction in force. Recognizing that it is not always possible to obtain a subject's voluntary compliance, these tactics should be attempted only when feasible and when a delay is not likely to create a greater threat to the safety of the Authorized Officer or others.

4) Authorized Officers have a duty to intervene to prevent or stop a perceived use of excessive force by another Authorized Officer when it is safe to do so. Authorized Officers shall report any such incident to the Office of Professional Responsibility. Failure to intervene and/or report will be considered misconduct and may result in adverse action.

5) An Authorized Officer may have to rapidly increase or decrease force and employ varying use of force options, depending on the totality of circumstances present and the evolving situation.

6) Based on the totality of facts and circumstances, different Authorized Officers may have different responses to the same situation, any of which may be both reasonable and necessary. The level of force applied must reflect the totality of facts and circumstances surrounding the situation, including the presence of imminent danger to the Authorized Officer or others;

7) The supervisor of any ICE employee involved in a use of force incident must ensure the employee is provided psychological first aid services from the Peer Support Response Team or an ICE Operational Behavioral Health Professional as soon as possible and on scene, if practical;

8) When an Authorized Officer uses deadly force, either on or off duty, the Authorized Officer, following verbal report of the incident, must immediately be placed on administrative leave for three consecutive workdays. This period of absence is not for disciplinary purposes. The Office of Human Capital's Employee and Labor Relations and the Office of the Principal Legal Advisor must be consulted regarding any extensions of administrative leave.

9) Following any use of force incident and when safe to do so, Authorized Officers must seek medical assistance for any person who appears or claims to be injured.

10) Every use of force incident and any discharge of an ICE firearm by an Authorized Officer (other than intentional discharges in a training activity where no injury or property damage occurs) must be properly reported and reviewed in accordance with

APPENDIX (continued)

the procedures and guidelines set forth in the Chapter 4 of the ICE Firearms and Use of Force Handbook.

11) ICE firearms and authorized intermediate force weapons may only be carried by Authorized Officers who have successfully demonstrated proficiency by qualifying in accordance with the requirements in the Use of Force Handbook. Authorized Officers, their supervisors, and their managers will be provided training and guidance on the issuance, use, safeguarding, and maintenance of ICE firearms, intermediate force weapons, and related use of force equipment.

12) All ICE employees who are not Authorized Officers or who are not otherwise authorized by ICE to transport firearms are prohibited by federal law from carrying any firearm into a government-owned/leased vehicle or a federally-owned, rented, or leased facility.

13) Every Authorized Officer must, at the appropriately designated intervals, demonstrate proficiency with each ICE firearm, intermediate force weapons, and restraining devices they are authorized to carry (e.g., handcuffs, belly chains, and leg irons).

14) Every Authorized Officer must be trained in the ICE Use of Force Policy, at least annually. Training shall include scenario-based learning that simulates operating conditions, such as shooting scenarios and the application of force, including deadly force, and such training must include:

    a) Related legal updates;

    b) Discretion in using deadly force and less lethal force;

    c) De-escalation techniques;

    d) The prohibition on carotid restraints unless the legal standard for deadly force is met;

    e) The affirmative duty to request and/or render medical aid following the use of force; and

    f) The affirmative duty to intervene if an LEO is misusing force or using excessive force.

15) While performing law enforcement duties, Authorized Officers must carry ICE firearms and at least one approved intermediate force weapon unless operational circumstances preclude the carriage of firearms or intermediate force weapon.

5.2. Objectively Reasonable and the Totality of Facts and Circumstances

1) The "reasonableness" of a particular use of force will be reviewed based on the totality of the facts and circumstances confronting the Authorized Officer at the time of the use of force. Reasonableness is an objective standard viewed from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight.

2) The totality of the facts and circumstances are all factors existing in each individual case which are used to determine the reasonableness of an Authorized Officer's actions. These factors include, but are not limited to:

   a) The seriousness of the offense at issue;

   b) Whether the subject poses an imminent threat to the safety of the Authorized Officer or others;

   c) Whether the subject is actively resisting or attempting to evade arrest by flight;

   d) Whether circumstances are uncertain and rapidly evolving;

   e) The foreseeable risk of injury to subject(s) involved and others;

   f) The level of training, strength, and size of the Authorized Officer;

   g) The apparent level of training, strength, size, and age of the subject(s);

   h) The weapons involved and/or available;

   i) The presence of other officers, subjects, or bystanders; and

   j) Environmental conditions.

5.3. Use of Intermediate Force

1) Intermediate force is physical force that is neither likely nor intended to cause death or serious bodily injury. Authorized Officers may use force, including intermediate force, only when no reasonably effective, safe, and feasible alternative appears to exist and use only the level of force that is objectively reasonable in light of the totality of facts and circumstances confronting the Authorized Officer at the time force is applied. The use of force must be both objectively reasonable and necessary in order to carry out the Authorized Officer's law enforcement duties.

2) Where no reasonably effective, safe, and feasible alternative to the use of force appears to exist, intermediate force weapons may be used in situations where empty-hand techniques are not sufficient to bring a disorderly or violent subject under control, but where deadly force is not deemed justified.

5.4. Use of Deadly Force

1) Deadly force is force that is likely to cause death or serious bodily injury.

2) The *DHS Update to the Department Policy on the Use of Force* (Feb. 6, 2023), or as amended or superseded, governs the use of deadly force by all DHS law enforcement officers.

3) Authorized Officers may use deadly force only when the officer has a reasonable belief that the subject of such force poses an imminent danger of serious bodily injury or death to the officer or to another person. Deadly force is not authorized against a person whose actions are only a threat to themselves or property.

4) Deadly force is not authorized solely to prevent the escape of a fleeing suspect. Deadly force against a fleeing subject is only authorized if there is probable cause to believe that the escape of the subject would pose an imminent danger of death or serious bodily injury to the officer or another person.

5) If feasible, and if to do so would not increase the danger to the Authorized Officer or others, a verbal warning to submit to the authority of the Authorized Officer must be given before the use of deadly force.

6) An Authorized Officer is not limited to the use of authorized weapons/devices if the Authorized Officer or others are faced with imminent threat of death or serious bodily injury and if authorized weapons are not readily accessible or inoperable.

7) The use of firearms to discharge chemical munitions or specially designed breaching munitions against structures does not constitute the use of deadly force unless there is reason to believe that the chemical munitions or specially designed breaching munitions are likely to cause the death of a person or serious bodily injury (e.g., may cause a fire).

8) Force, including deadly force, may be used against an animal if the animal poses an immediate danger to the officer or others in close proximity to the animal. These incidents shall be reported in accordance with the requirements set forth in the ICE Firearms and Use of Force Handbook. A firearm may also be used to humanely euthanize an animal that appears to be seriously injured or diseased.

5.5. ICE Use of Force Continuum

1) The ICE Use of Force Continuum describes and categorizes the application of various levels of force an Authorized Officer may use to gain control over a resistant subject.

2) An Authorized Officer may have to rapidly intensify or diminish force and employ varying use of force options through the Continuum depending on the totality of facts and circumstances present.

3) Outlined below are the 5 levels of the Continuum (with associated non-exhaustive examples of each):

a) The first level (Officer Presence):

   i) Professional, courteous demeanor;

   ii) Positive attitude; physical condition;

   iii) Confident posture and body language; and

iv) Professional attire, or clean, neat attire appropriate to the work being performed.

b) Second level (Verbal Commands):

i) Professional, firm voice;

ii) Instructions that are simple, easy to understand, and repeated as necessary; and

iii) Only one officer issuing verbal commands at any given time.

c) Third level (Soft Techniques):

i) Empty-hand techniques with a minimal chance of injury;

ii) Escort position;

iii) "Come-along" holds, to include the use of impact weapons that involve the application of pressure to move noncompliant subjects;

iv) Use of touch pressure points; and

v) Use of chemical agents.

d) Fourth level (Hard Techniques):

i) Techniques that have a greater possibility of injury to subjects;

ii) Strikes with a hand, arm, foot, leg, head, or the whole body;

iii) Throws;

iv) Take-downs;

v) Specified electronic control weapons;

vi) Impact weapons when used for striking; and

vii) Specialty impact weapons.

e) Fifth level (Deadly Force):

i) Discharge of firearms against persons or animals;

ii) Any use of impact weapons to strike the neck or head;

iii) Any strangulation techniques, including chokeholds or carotid restraints;

iv) Any strikes to the throat; and

v) Use of any edged weapons.

6. **Recordkeeping.** All relevant documents produced or provided in accordance with this Directive must be maintained in accordance with an applicable National Archives and Records Administration (NARA) General Records Schedule or a NARA-approved agency-specific records control schedule. If the records are not subject to a records schedule, they must be maintained indefinitely by the agency. In the event the records are subject to a litigation hold, they may not be disposed of under a records schedule until further notification.

7. **Authorities/References.**

7.1. 8 U.S.C. § 1103. *Powers and duties of the Secretary, the Under Secretary, and the Attorney General*.

7.2. 8 U.S.C. § 1357. *Powers of immigration officers and employees*.

7.3. 19 U.S.C. § 1589a. *Enforcement authority of customs officers*.

7.4. 8 C.F.R. § 1.2. *Definitions*.

7.5. 8 C.F.R. § 2.1. *Authority of the Secretary of Homeland Security*.

7.6. 8 C.F.R. Part 287. *Field Officers; Powers and Duties*.

7.7. 49 C.F.R. § 175.10. *Exceptions for passengers, crewmembers, and air operators*.

7.8. 49 C.F.R. § 1540.111. *Carriage of weapons, explosives, and incendiaries by individuals*.

7.9. 49 C.F.R. § 1544.219. *Carriage of accessible weapons*.

7.10. 49 C.F.R. § 1544.221. *Carriage of prisoners under the control of armed law enforcement officers*.

7.11. 49 C.F.R. § 1544.223. *Transportation of Federal Air Marshals*.

7.12. 5 C.F.R. § 339, *et. seq*. *Medical Qualification Determinations*.

7.13. DHS Policy Statement 044-05 (Revision 01), *Department Policy on the Use of Force* (Feb. 6, 2023), or as amended or superseded.

7.14. DHS Manual 119-03-001-01, *Personal Property Asset Management Program Manual* (Sept. 26, 2013), or as amended or superseded.

7.15. Policy Statement #045-06, Memorandum from Acting Deputy Secretary Russell Deyo, *Required Reporting of Off-Duty Contact with Law Enforcement by DHS Law Enforcement Personnel and the Suspension and/or Revocation of Authority to Carry a Firearm or other*

Appendix (continued)

Weapon and Perform Law Enforcement Duties (Jan. 10, 2017), or as amended or superseded.

7.16. ICE Directive 19001 (former number: 5-1.0), *ICE Body Armor Policy* (Feb. 4, 2005), or as amended or superseded.

7.17. ICE Directive 3002.1, *ICE Badge and Credential Program* (Jan. 12, 2010), or as amended or superseded.

7.18. ICE Directive 1044.2, *Response to and Evaluation of Critical Incidents Involving ICE Employees, Non-Employee Status Individuals, and Officers Acting Pursuant to ICE Authority* (March 3, 2023), or as amended or superseded.

7.19. ICE Directive 1005.2, *Domestic Violence: Lautenberg Amendment Compliance Policy* (Nov. 23, 2012), or as amended or superseded.

7.20. ICE Directive 1040.1, *ICE Premium Pay Guide* (May 7, 2015), or as amended or superseded.

7.21. Memorandum from the Associate Director for OPR and the Assistant Director for OFTP, *New Use of Force, Assaults and Discharges Reporting Process* (Oct. 15, 2015), or as amended or superseded.

7.22. *ICE Firearms Remedial Training Guidelines* (Feb. 2013), or as amended or superseded.

7.23. U.S. Customs and Border Protection Handbook 4400-01B, *Seized Asset Management and Enforcement Procedures Handbook* (July 2011), or as amended or superseded.

8. Attachments.

8.1. ICE Firearms and Use of Force Handbook (Aug. 2, 2021), or as amended or superseded.

9. No Private Right. This document provides only internal ICE policy guidance, which may be modified, rescinded, or superseded at any time without notice. These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.

5/26/23

Tae D. Johnson
Deputy Director and Senior Official
Performing the Duties of the Director

DATE

APPENDIX E (see summary on page 755)

U.S. Department of Labor
Employment and Training Administration
OFFICE OF FOREIGN LABOR CERTIFICATION
Emergency Declaration for the Commonwealth of the Northern Mariana Islands
Due to Typhoon Sinlaku
Frequently Asked Questions
April 21, 2026

COMMUNICATION

1. o i t e iceo o ei n o e ti ic tion ( ) tion oce in **Centers (NPC) communicate with employers and their authorized attorneys or agents affected by the emergency disaster declaration for Typhoon Sinlaku?**

   OFLC will continue to contact employers and their authorized attorneys or agents primarily using email and will use U.S. mail where email addresses are not available. Employers are reminded to routinely check their email for information related to their OFLC applications. Additionally, email addresses used on applications must be the same as the email address regularly used by employers and, if applicable, their authorized attorneys or agents; specifically, the address used for business operations through which they can send and receive electronic communications from OFLC regarding application processing. If an employer is impacted by internet and power outages, they may contact OFLC using the phone numbers listed below.

2. **How should employers and/or their authorized attorneys or agents provide updated contact information to OFLC when their business operations are temporarily affected by the emergency disaster declaration for Typhoon Sinlaku?**

   OFLC understands that some employers and/or their authorized attorneys or agents may take necessary precautions due to Typhoon Sinlaku, such as temporarily closing offices or requiring employees to telework, and will need to update their contact information to ensure receipt of correspondence related to an application. In these circumstances, employers and/or their authorized attorneys or agents should contact the applicable OFLC NPC using the information provided below. For each of OFLC's programs, the most effective means of communicating with OFLC is through the established Foreign Labor Application Gateway (FLAG) which should be used whenever possible. In the event an employer or its authorized attorney or agent is unable to communicate with OFLC through FLAG, alternative methods of contacting OFLC for each program are listed below.

   Prevailing Wage Programs**:** General questions related to the processing of applications for prevailing wage determination, requests for extensions in replying to Requests for Information and other official correspondence, and changes of contact information (mailing or email addresses, phone number) should be directed to the OFLC National Prevailing Wage Center using the following contact methods:

   Email: flc.pwd@dol.gov

   Include the phrase "Emergency Disaster Typhoon Sinlaku" followed by the full case number in the email subject line.

   H-2B, and CW-1 Temporary Visa Programs**:** General questions related to the processing

APPENDIX (continued)

of applications, re uests for e tensions in replying to au its an other official correspon ence, an changes of contact information mailing or email a resses, phone num er shoul e irecte to the OFLC Chicago C using the follo ing contact metho s

Online	For pen ing applications, please access your Foreign La or pplication ate ay FL System account an uploa a change re uest for responsive document using the "Ad Hoc Document" function for the specific application
mail	oflc tlc ol gov nclu e the phrase " mergency isaster Typhoon Sinlaku" followed by the full case num er in the email su ect line

H-1B, H-1B1, and E-3 Temporary Visa Programs eneral uestions relate to the processing of applications an changes of contact information email a ress, phone num er shoul e irecte to the OFLC C using the follo ing contact metho s

Online	For pen ing applications, please access your Foreign La or pplication ate ay FL System account an uploa a change re uest or responsive ocument using the "Ad oc Document" function
mail	oflc tlc ol gov nclu e the phrase " mergency isaster Typhoon Sinlaku" follo e y the full case num er in the email su ect line

Permanent Labor Certification Program (PERM Program) eneral uestions relate to the processing of applications, re uests for e tensions relate to au its an supervise recruitment instructions, an changes of contact information mailing or email a resses, phone num er shoul e irecte to the OFLC C using the follo ing contact metho s

Online	For changes of a ress, phone num er, or email a ress, etc please access your Foreign La or pplication ate ay FL System account, or y mo ifying the Form T
mail	oflc plc ol gov nclu e the phrase " mergency isaster Typhoon Sinlaku" followed by the full case num er in the email su ect line

DEADLINE / TIMEFRAME FLEXIBILITY

i e it e ue t o e ten ion to de d ine o e ot e e on e cco od tion o e o e nd o t ei ut o i ed tto ne o ent i cted e e enc di te dec tion o oon in u

es OFLC recogni es that Typhoon Sinlaku may have a significant impact on usinesses an un erstan s that some employers an or their authori e attorneys or agents may not e a le to timely respon to OFLC re uests for information an other correspon ence regar ing the processing of applications or comply ith applica le ea lines ccor ingly, OFLC ill grant e tensions of time an ea lines for employers an or their authori e attorneys or agents affecte y Typhoon Sinlaku, inclu ing for elays cause y Typhoon Sinlaku an those that occurre as a result of usinesses preparing to a ust their normal operations ue to Typhoon Sinlaku

APPENDIX (continued)

Pre ai ing age, H- B, C -1, and PERM Programs – Response Dead ine E tension

OFLC ill make accommo ations relate to ea lines for employers an their authori e attorneys or agents impacte y Typhoon Sinlaku to respon to the applica le OFLC C tensions ill e grante for any re uest for information issue y OFLC containing a response ea line regar ing the processing of applications for prevailing age eterminations an la or certification, inclu ing re uests for au it ocumentation, a response to a otice of eficiency, su missions of recruitment reports, usiness verification an sponsorship ocumentation, supervise recruitment, an re uests for reconsi eration of a

f the specific ea line falls uring the ay perio from pril , the employer s su mission ill e consi ere timely if receive y the appropriate C y uly ,

PERM Program – Fi ing Date E tension

n er CF e , employers are re uire to egin their recruitment efforts no more than ays efore filing an *Application for Permanent Labor Certification* Form T , an to complete most recruitment measures at least ays efore filing mployers ho have alrea y complete the recruitment steps uring the re uire ay timeframe an are capa le of filing their application s un er e isting regulatory re uirements espite the impact of Typhoon Sinlaku shoul o so o ever, OFLC un erstan s that some employers may e elaye from completing these re uirements an or su mitting the Form T ithin this ay timeframe ue to Typhoon Sinlaku Therefore, provi e that the employer initiate its recruitment ithin the ays prece ing pril , , OFLC ill accept recruitment complete ithin ays after the regulatory ea lines to provi e Typhoon Sinlaku impacte employers ith sufficient time to complete the man atory recruitment an file their applications

ote The e tension applies only to areas for which a "emergency disaster declaration" has een ma e ith respect to Typhoon Sinlaku m e r g e n c y isaster eclarations may e amen e or ne ly eclare , so employers, agents, an attorneys shoul continue to monitor the F e site for up ates for their uris iction These e tensions apply even if the employer, attorney, or agent has relocate an resume operations outsi e the isaster area The list of counties, parishes, an territories esignate y F as ma isaster areas eligi le for n ivi ual or u lic ssistance as a result of Typhoon Sinlaku is availa le at https fema gov isaster

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APPENDIX (continued)

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OFLC may e ten ea line fle i ility to employers an or their authori e attorneys or agents ho are outsi e a F esignate "ma or disaster" area ut are impacte in such a ay as to affect their a ility to meet OFLC ea lines Such employers an or attorneys or agents may su mit a ritten re uest for e tension fle i ility, follo ing the communication proce ures in a separate Fre uently ske uestion in this Typhoon Sinlaku gui ance

OFLC ill evaluate such re uests on a case y case asis ntil OFLC notifies such employers, attorneys, an agents that they are eligi le for ea line fle i ility un er this Typhoon Sinlaku gui ance, they shoul make every effort to meet all applica le OFLC ea lines

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Such employers an or attorneys or agents shoul contact OFLC using the communication proce ures in a separate Fre uently ske uestion in this Typhoon Sinlaku gui ance OFLC ill ork ith stakehol ers covere y an e tension, as provi e in this gui ance, ho may receive ritten communications applying an earlier ea line or a ea line that iffers from this gui ance

H-1B, H-1B1, and E-3 Programs

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n employer ith an approve Form T , La or Con ition pplication LC for onimmigrant orkers, may move an , , or orker to other orksite locations that ere uninten e at the time of filing the LC , ithout nee ing to file a ne LC , provi e that the orksite locations are ithin the same area of inten e employment covere y the approve LC an the move oes not inclu e a change in the material terms an con itions of employment

n employer ith an approve LC may also move o e to uninten e orksite locations outsi e of the area s of inten e employment on the LC ithin the parameters of the short term placement provisions, ithout nee ing to file a ne LC , provi e that the move oes not inclu e a change in the material terms an con itions of employment

See CF ***As t e s ort-term p acement pro isions on y app y to H-1B or ers, an emp oyer o d a e to fi e a ne LCA before p acing an H-1B1 or E-3 or er at a ne or site o tside t e area(s) of intended emp oyment on t e LCA***

APPENDIX (continued)

e inde

oti e he employer must provide either electronic or hard copy notice at any new wor site locations meeting the notice content re uirements *See* a otice is re uired to be provided on or before the date any wor er on an H H or visa employed under the approved A begins wor at the new wor site locations

or ing Conditions – mployers attest on the orm A section that the employment of H H or nonimmigrant wor ers in the named occupation will not adversely affect the wor ing conditions of similarly employed wor ers and that nonimmigrant wor ers will be afforded wor ing conditions on the same basis and in accordance with the same criteria as offered to wor ers similarly employed *See* his means that if an employer offers its foreign wor ers the fle ibility to telewor from a home location within the area of intended employment for e ample the employer must offer the same fle ibility to its wor ers similarly employed

Alternatively if the employer is offering to move a foreign wor er to a new location outside of the area of intended employment the employer must offer the same option to its wor ers similarly employed

Materia C anges to Terms and Conditions – Depending on the fle ibility offered an employer may be re uired to file a new A *e* where the fle ibility offered constitutes a change to the material terms and conditions of the original A or although not technically re uired an employer may wish to file a new A to cover new wor site s and fle ibilities offered t is important to note that if the move includes a material change in the terms and conditions of employment the employer may need to file an amended petition with the iti enship and mmigration ervices

estions/Comp aints – or ers or employers who have uestions or would li e to file complaints with the age and Hour Division HD should visit https www dol gov whd or call allers will be directed to the nearest HD office for assistance HD staffs offices throughout the country with trained professionals who have access to interpretation services to accommodate more than languages pecific information on how to file a complaint is available on 's website All assistance from HD is free and confidential

t e t e ete o o t te ce ent o n o e t o ite out ide t e e ( ) o intended e o ent on t e A

he conditions for short term placement of an H wor er are fully discussed in the H regulations at and summari ed as follows

he employer is in compliance with wages wor ing conditions stri e re uirements and notice for wor sites covered by the approved A

he employer's short term placement is not at a wor site where there is a stri e or loc out

or every day the H wor er is placed outside the area of intended employment the employer continues to pay the re uired wages and

he employer pays lodging costs costs of travel meals and e penses for both wor days and non wor days

APPENDIX (continued)

n er the short term placement provisions, an employer may place the orker at the ne orksite location for up to ork ays in one year an , in certain circumstances, up to ork ays in one year mployers ill nee to etermine, on a case y case asis, hether the ork ay an or ork ay provisions may apply mployers shoul e

aware that if the wor er s place of residence is outside the area of intended employment the ork ay provision oul not apply ***T e s ort-term p acement pro isions on y app y to H-1B or ers, an emp oyer o d a e to fi e a ne LCA before p acing an H-1B1 or E-3 or er at a ne or site o tside t e area(s) of intended emp oyment on t e LCA***

intend to i e n A o t e o o nd c nnot o ide d co notice o t e A i in due to t e e e enc di te dec tion o oon in u o do o ide notice o t e A i in

On or ithin ays efore the ate of an LC filing, employers must provi e notice of the LC filing to their employees in the occupational classification in the area s of inten e employment here a argaining representative e ists, the employer must provi e notice of the LC filing to the argaining representative

n the a sence of a argaining representative, the employer may provi e har copy or electronic notice to its employees, hich must e availa le to employees for calen ar ays The har copy notice must e poste in t o conspicuous locations at each orksite or place of employment , hich may not e possi le un er these circumstances o ever, the regulations allo employers to provi e electronic notice of an LC filing, instea of har copy notice For electronic notice, employers may use any means or inarily use to communicate ith their employees a out o vacancies or promotion opportunities, inclu ing their e site, electronic ne sletter, intranet, or email f employees are provi e in ivi ual irect notice, such as y email, notification is only re uire once an oes not have to e provi e for calen ar ays

The notice must e rea ily availa le to the affecte employees The notice must also contain the re uire content an comply ith the notice provisions of CF The employer must ocument an retain evi ence of the notice provi e in its pu lic access file in accor ance ith CF The employer must provi e a copy of the certifie LC to the , , or orker s no later than the ate the nonimmigrant orker reports to ork at the orksite location

PERM Program

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APPENDIX (continued)

yphoon inla u will also accept s posted within days after the deadlines have passed in order to provide sufficient time for employers to file their applications provided the employer initiated its recruitment within the days preceding the ma or disaster declaration on April

H-2B and CW-1 Programs

ue to t e i ct o t e e e enc di te dec tion o oon in u no on e e u ine need o t e o e e o ed unde t e te o o ce ti ic tion ecei ed t do do

mployers who received temporary labor certification under the H or visa programs may re uest approval from the ertifying fficer to terminate wor under the ob order and or wor contracts before the end date of wor due to the impact of yphoon inla u An employer may submit a re uest for "contract impossibility" to the Chicago C Certifying Officer using the follo ing metho

mail oflc tlc ol gov

nclude the phrase " mergency isaster Typhoon Sinlaku" follo e y the full OFLC case num er in the email su ect line

mportant emin ers

- n employer continues to e responsi le for its o ligations un er the ork contract until receiving a favora le "contract impossibility" etermination from the Certifying Officer
- n the event that the Certifying Officer makes a fin ing of contract impossi ility, the employer shoul ocument its efforts to comply ith each aspect of the contract impossi ility provision un er the regulatory re uirements applica le to the CF o , CF g , or C CF g visa programs