and comment for this rule is unnecessary.

This rule is further excepted from the notice and comment requirement as a procedural rule. For the same reasons previously stated, the rule has no substantive impact or effect on public interest. In removing the list of VWP participating countries from the CFR, while including a reference to another location where a list can be found, the rule is technical in nature and relates only to organization, procedure, and practice. This rule only changes whether a list of designated countries is available in the CFR, making it a procedural rule exempt from notice and comment.

For the reasons above, DHS also finds that the 30-day delayed effective date requirement for substantive rules does not apply. See 5 U.S.C. 553(d). Good cause exists to make this technical amendment effective immediately under 5 U.S.C. 553(d)(2) and (d)(3).

Finally, this rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States. Designating VWP countries advances the President's foreign policy goals and directly involves relationships between the United States and its noncitizen visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing this final rule.

List of Subjects in 8 CFR Part 217

Air carriers, aliens, maritime carriers, passports, and visas.

Amendments to the Regulations

For the reasons set forth in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217) as set forth below.

PART 217—VISA WAIVER PROGRAM

■ 1. The authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

■ 2. In § 217.2(a), revise the definition of ''Designated country'' to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to any country currently designated by the Secretary for participation in the Visa Waiver Program. DHS maintains a list of designated countries at *https://www.dhs.gov/visa-waiver-program.*

* * * * *

Alejandro N. Mayorkas

Secretary of Homeland Security.

[FR Doc. 2024–31210 Filed 12–23–24; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003 and 1208

[EOIR Docket No. 025–0910; A.G. Order No. 6107–2024]

RIN 1125–AB33

Clarification Regarding Bars to Eligibility During Credible Fear and Reasonable Fear Review

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

ACTION: Interim final rule; request for comment.

SUMMARY: This interim final rule (''IFR'') makes a technical amendment to Department of Justice (''Department'') regulations to clarify that immigration judges' de novo review of asylum officers' credible fear and reasonable fear determinations shall, where relevant, include review of the asylum officer's application of any bars to asylum or withholding of removal under Department of Homeland Security (''DHS'') regulations, as well as other clarifying technical changes related to credible fear and reasonable fear processes.

DATES:

Effective date: This interim final rule is effective December 27, 2024.

Comments: Electronic comments must be submitted, and written comments must be postmarked or otherwise indicate a shipping date on or before January 27, 2025. The electronic Federal Docket Management System (FDMS) at *https://www.regulations.gov* will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1125–AB33 or EOIR Docket No. 025–0910, by one of the two methods below.

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the website instructions for submitting comments.
- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Sarah Flinn, Acting Assistant Director for Policy, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AB33 or EOIR Docket No. 025–0910 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

FOR FURTHER INFORMATION CONTACT: Sarah Flinn, Acting Assistant Director for Policy, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this IFR via one of the methods and by the deadline stated above. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this IFR. Comments that will provide the most assistance to the Department will reference a specific portion of the IFR; explain the reason for any recommended change; and include data, information, or authority that support such recommended change.

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

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

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify the confidential business information to be redacted

within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *www.regulations.gov.*

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

II. Legal Authority

The Department issues this IFR pursuant to section 103(g) of the Immigration and Nationality Act (''INA''), 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 is charged with ''such authorities and functions under [the INA] and all other laws relating to the immigration and naturalization of [noncitizens] [1] as were [previously] exercised by the Executive Office for Immigration Review [(''EOIR'')], or by the Attorney General with respect to [EOIR].'' INA 103(g)(1), 8 U.S.C. 1103(g)(1); *see also* 6 U.S.C. 521. The Attorney General also has 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. INA 103(g)(2), 8 U.S.C. 1103(g)(2). These authorities cover forms of relief or protection from removal, including asylum, statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and protection under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT'').[2]

Noncitizens who are physically present or arrive in the United States as provided in section 208 of the INA, 8 U.S.C. 1158, may apply for asylum, subject to certain exceptions in section 208(a)(2) of the INA, 8 U.S.C. 1158(a)(2). By statute, certain noncitizens are ineligible to apply for or to be granted asylum, and Congress has delegated to the Attorney General the authority to establish additional limitations and conditions, consistent with applicable statutes, under which noncitizens shall be ineligible for asylum. *See* INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A) (statutory bars to asylum); INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C) (additional limitation authority); INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B) (allowing for additional regulatory conditions or limitations on consideration of asylum applications). The Attorney General is also charged with providing a review procedure for negative credible fear determinations regarding asylum made by an asylum officer during the expedited removal process. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III).

Additionally, the United States is a party to the 1967 United Nations Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268 (''Refugee Protocol''), which incorporates Articles 2 through 34 of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (''Refugee Convention''). Article 33 of the Refugee Convention generally prohibits parties to the Convention from expelling or returning ''a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'' 19 U.S.T. at 6276. Congress codified these obligations in the Refugee Act of 1980, creating the precursor to what is now known as statutory withholding of removal.[3] The Supreme Court has long recognized that the United States implements its non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), which provides that a noncitizen may not be removed to a country where their life or freedom would be threatened because of one of the protected grounds listed in Article 33 of the Refugee Convention.[4] *See* INA 241(b)(3), 8 U.S.C. 1231(b)(3); *see also* 8 CFR 208.16, 1208.16. By statute, certain noncitizens are ineligible for statutory withholding of removal. *See* INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B) (establishing bars to statutory withholding of removal).

Separately, the Department also has authority to implement Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). The Foreign Affairs Reform and Restructuring Act of 1998 (''FARRA'') provides the Department with the authority to ''prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT], subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.'' Public Law 105–277, div. G, sec. 2242(b), 112 Stat. 2681, 2681–822 (8 U.S.C. 1231 note). The Department has implemented the United States' obligations under Article 3 of the CAT by regulation, consistent with FARRA. *See, e.g.,* 8 CFR 1208.16(c)–1208.18; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999), amended by 64 FR 13881 (Mar. 23, 1999).

III. Background

A. Asylum and Related Protection

Asylum is a discretionary form of relief for noncitizens who establish, among other things, that they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA 208(b)(1), 8 U.S.C. 1158(b)(1) (providing that the Attorney General ''may'' grant asylum to

[1] For purposes of the discussion in this preamble, the Department uses the term ''noncitizen'' synonymously with the term ''alien'' as it is used in the INA. *See* INA 101(a)(3), 8 U.S.C. 1101(a)(3); 8 CFR 1001.1(gg).

[2] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85, 114.

[3] Public Law 96–212, 94 Stat. 102 (''Refugee Act'').

[4] *See INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 426–27 (1999); *see also INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 440–41 (1987) (distinguishing between Article 33's non-refoulement prohibition, which aligns with what was then called withholding of deportation, and Article 34's call to ''facilitate the assimilation and naturalization of refugees,'' which the Court found aligned with the discretionary provisions in section 208 of the INA, 8 U.S.C. 1158). The Refugee Convention and Refugee Protocol are not self-executing. *See, e.g., Al-Fara* v. *Gonzales,* 404 F.3d 733, 743 (3d Cir. 2005) (''The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.'').

refugees); INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (defining ''refugee'').

Noncitizens who are ineligible, by statute or regulation, to apply for or to be granted asylum, or who are denied asylum as a matter of discretion, nonetheless may qualify for other forms of protection from removal.[5] Specifically, such an applicant may be eligible for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). Statutory withholding of removal prevents a noncitizen's removal to any country where the noncitizen's life or freedom would ''more likely than not'' be threatened because of a protected ground. *See generally* 8 CFR 1208.16(b)(2) (withholding of removal under the INA); *see also INS* v. *Stevic,* 467 U.S. 407, 413, 424 (1984) (holding that the ''clear probability'' or ''more likely than not'' standard applies to withholding of deportation); *INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 449 (1987) (holding that, while withholding of removal requires a showing that it is ''more likely than not'' that a noncitizen would be subject to persecution, an applicant for asylum must only demonstrate a ''well-founded fear'' of persecution).

Additionally, noncitizens who express a fear of torture may be eligible for protection under the CAT, which is available in two forms: withholding of removal or deferral of removal. *See* 8 CFR 1208.16(c) (CAT withholding of removal), 1208.17 (CAT deferral of removal), 1208.18 (CAT implementation). Both withholding of removal and deferral of removal under the CAT prevent a noncitizen's removal to any country where the noncitizen is ''more likely than not'' to be tortured. 8 CFR 1208.16(c), 1208.17, 1208.18.

The INA includes several statutory bars to asylum, which can affect a noncitizen's ability to apply for, or their eligibility for, such relief. *Compare* INA 208(a)(2), 8 U.S.C. 1158(a)(2) (bars to applying for asylum), *with* INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A) (bars to eligibility for asylum). For example, the statute contains six mandatory bars to asylum eligibility, covering any noncitizen: (1) who ''ordered, incited, assisted, or otherwise participated in the persecution of any person on account of'' a protected ground; (2) who, ''having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;'' (3) for whom ''there are serious reasons for believing'' that the noncitizen ''has committed a serious nonpolitical crime outside the United States'' prior to arrival in the United States; (4) for whom ''there are reasonable grounds for regarding'' as ''a danger to the security of the United States;'' (5) who is described in the terrorism-related inadmissibility grounds, with limited exception; or (6) who ''was firmly resettled in another country prior to arriving in the United States.'' *See* INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A).

The statute also includes four similar mandatory bars to withholding of removal eligibility for a noncitizen: (1) who ''ordered, incited, assisted, or otherwise participated in the persecution of an individual because of the individual's race, religion, nationality, membership in a particular social group, or political opinion''; (2) who, having been convicted by a final judgment of a particularly serious crime, is a danger to the community of the United States; (3) for whom ''there are serious reasons to believe'' that the noncitizen committed a serious nonpolitical crime outside the United States before their arrival in the United States; or (4) for whom ''there are reasonable grounds to believe that'' the noncitizen is a danger to the security of the United States, including for engaging in terrorist activities as described in INA 237(a)(4)(B), 8 U.S.C. 1227(a)(4)(B).[6] *See* INA 241(b)(3)(B), 8 U.S.C. 1231(b)(3)(B).

Regarding protection under the CAT, noncitizens who are subject to a bar to statutory withholding of removal pursuant to section 241(b)(3)(B) of the INA, 8 U.S.C. 1231(b)(3)(B), are likewise ineligible for withholding of removal under the CAT. *See* 8 CFR 1208.16(d)(2) (explaining that ''an application for withholding of removal . . . under the Convention Against Torture shall be denied if the applicant falls within section 241(b)(3)(B) of the Act''). However, there are no bars to deferral of removal under the regulations implementing the CAT. *See* 8 CFR 1208.17(a); *but see* 8 CFR 1208.17(d)(4), (e) and (f) (explaining instances where deferral of removal may be terminated). Thus, a noncitizen who is entitled to protection under the CAT but is subject to a mandatory bar to CAT withholding of removal ''shall be granted deferral of removal'' as a limited form of protection. 8 CFR 1208.17(a). In other words, granting deferral of removal under the CAT is mandatory for noncitizens who establish eligibility for such protection. *Id.*

B. Credible Fear and Reasonable Fear Screening Processes

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, div. C, 110 Stat. 3009, 3009–546, Congress established the expedited removal process. *See* INA 235(b)(1), 8 U.S.C. 1225(b)(1). The process is applicable to noncitizens arriving in the United States (and, in the discretion of the Secretary of Homeland Security, certain other designated classes of noncitizens) who are found to be inadmissible under certain provisions of the INA. *See* INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i) (applying the expedited removal process to noncitizens inadmissible under section 212(a)(6)(C) of the INA, 8 U.S.C. 1182(a)(6)(C) (inadmissible based on material misrepresentations), and section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7) (documentation requirements for admission)).

In the expedited removal process, such noncitizens may be ''removed from the United States without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.'' INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i). If a noncitizen indicates an intention to apply for asylum, a fear of persecution or torture, or a fear of return, DHS uses a ''credible fear'' screening to identify potentially valid claims for asylum, statutory withholding of removal, and CAT protection, so as to prevent noncitizens placed in expedited removal from being removed to a country in which they would face persecution or torture without further consideration of their fear claim. *See* INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 235.3(b)(4), 208.30(b).

To implement the credible fear screening process, such noncitizens are referred for an interview by a U.S. Citizenship and Immigration Services

[5] Applications for asylum are treated as applications for statutory withholding of removal and protection under the CAT, where relevant. *See* 8 CFR 1208.3(b) (treating an asylum application as an application for statutory withholding of removal), 1208.13(c)(1) (explaining that an asylum applicant shall also be considered for CAT protection ''if the applicant requests such consideration or if the evidence presented by the [noncitizen] indicates that the [noncitizen] may be tortured in the country of removal'').

[6] The statute sets forth another bar to withholding of removal eligibility for those who participated in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing. INA 237(a)(4)(D), 8 U.S.C. 1227(a)(4)(D). This bar does not apply to noncitizens in expedited removal, as it only applies to noncitizens who are ''deportable'' under section 237(a)(4)(D) of the INA, 8 U.S.C. 1227(a)(4)(D), *i.e.,* admitted noncitizens. However, this bar could be relevant for purposes of reasonable fear screening, as it could be applied to admitted noncitizens subject to administrative removal under section 238 of the INA, 8 U.S.C. 1228 (expedited removal of noncitizens convicted of committing aggravated felonies).

(''USCIS'') asylum officer to determine whether the noncitizen has a credible fear of persecution or torture. INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 235.3(b)(4). The term ''credible fear of persecution'' means that there is ''a significant possibility, taking into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen's] claim and such other facts as are known to the officer, that the [noncitizen] could establish eligibility for asylum under section 1158 of [the INA].'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). The credible fear screening by the asylum officer may also include consideration of certain limitations on, or presumptions against, asylum eligibility. *See, e.g.,* Circumvention of Lawful Pathways, 88 FR 31314, 31450 (May 16, 2023) (codifying the lawful pathways condition on asylum eligibility at 8 CFR 208.33 and 1208.33); Securing the Border, 89 FR 81156 (Oct 7, 2024) (codifying a limitation on asylum eligibility for certain noncitizens who enter during emergency border circumstances).

During the screening process, such cases may be referred to EOIR for the limited purpose of having an immigration judge review the asylum officer's determination that a noncitizen does not have a credible fear of persecution or torture. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.30(g)(1). Specifically, if the asylum officer determines that the noncitizen does not have a credible fear of persecution or torture, the noncitizen may request that an immigration judge review that determination. *Id.;* 8 CFR 208.30(g), 208.33(b), 208.35(b)(2)(v), 1208.30(g), 1208.33(b), 1208.35(b). This process is generally known as a ''credible fear review.'' *See, e.g.,* 8 CFR 1003.42 (''Review of credible fear determinations''). Such reviews are intended to be concluded ''as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days'' after the asylum officer's determination. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). No further appeal is available from a credible fear review.[7] *See* 8 CFR 1003.42(f).

Separately, reasonable fear proceedings involve noncitizens who have been ordered removed under section 238(b) of the INA, 8 U.S.C. 1228(b), based on an aggravated felony conviction, or whose prior orders of removal have been reinstated under section 241(a)(5) of the INA, 8 U.S.C. 1231(a)(5), but who express a fear of returning to the country of removal. *See* 8 CFR 208.31(a); 1208.31(a). The reasonable fear screening process was established by regulation to fulfill a statutory mandate to implement, in part, the United States' obligations under Article 3 of the CAT. *See* Regulations Concerning the Convention Against Torture, 64 FR at 8478 (''This rule is published pursuant to this mandate to implement United States obligations under Article 3 in the context of the Attorney General's removal of [noncitizens] . . . .''). Specifically, the reasonable fear screening process was established to provide for the fair resolution of claims to withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and protection under the regulations implementing U.S. obligations under Article 3 of the CAT, without unduly disrupting the streamlined removal processes applicable to these noncitizens. *Id.* at 8479.

Similar to credible fear screenings, noncitizens who express fear are referred to an asylum officer for a reasonable fear screening. *See* 8 CFR 208.31(b)–(c); *see also* Regulations Concerning the Convention Against Torture, 64 FR at 8485 (explaining that the reasonable fear process is ''modeled on the credible fear screening process''). However, unlike those in the credible fear process, noncitizens subject to the reasonable fear process are categorically ineligible for asylum by virtue of their aggravated felony conviction, INA 208(b)(2)(A)(ii), (B), 8 U.S.C. 1158(b)(2)(A)(ii), (B) (barring from asylum those convicted of an aggravated felony), or being subject to reinstatement, INA 241(b)(5), 8 U.S.C. 1231(b)(5) (rendering those whose removal orders have been reinstated ineligible and unable to apply for any ''relief''). Rather, the asylum officer determines whether the noncitizen has a reasonable fear of persecution or torture upon removal and is therefore eligible for consideration of statutory withholding of removal or CAT protection. *See* 8 CFR 208.31(c). A ''reasonable fear of persecution or torture'' means that there is a reasonable possibility that the noncitizen would be persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion, or a reasonable possibility that the noncitizen would be tortured if returned to the country of removal. 8 CFR 208.31(c).

Such cases may be referred to EOIR for the limited purpose of having an immigration judge review the asylum officer's determination that a noncitizen does not have a reasonable fear of persecution or torture. *See* 8 CFR 1208.31(g) (''Review by immigration judge''). If the asylum officer determines that the noncitizen does not have a reasonable fear of persecution or torture, the noncitizen may request that an immigration judge review that determination. *See* 8 CFR 1208.31(f). This is generally known as a ''reasonable fear review.'' Such reviews are intended to be conducted within 10 days of filing the referral with the immigration court. *See* 8 CFR 1208.31(g). No further administrative appeal is available from a negative reasonable fear determination. *See* 8 CFR 1208.31(g)(1).

During both credible fear and reasonable fear reviews, immigration judges review de novo an asylum officer's determination that a noncitizen does not have a credible fear or reasonable fear, as applicable. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III) (providing for prompt review of an asylum officer's determination that a noncitizen does not have a credible fear of persecution); 8 CFR 1003.42(a) (requiring DHS to file the written record of determination with the immigration judge for credible fear review), 1208.31(g) (same for reasonable fear review). The immigration judge's review may include consideration of certain limitations on, or presumptions against, asylum eligibility. *See, e.g.,* 8 CFR 1208.33(b) (review of the lawful pathways condition on asylum eligibility), 1208.35(b) (review of the limitation on asylum eligibility for certain noncitizens who enter during emergency border circumstances).

However, asylum officers historically have not considered the applicability of mandatory bars to asylum or withholding of removal contained in INA 208(a)(2), (b)(2)(A), 8 U.S.C. 1158(a)(2), (b)(2)(A), or INA 241(b)(3)(B), 8 U.S.C. 1241(b)(3)(B), during credible fear and reasonable fear screenings, and accordingly, immigration judges have not reviewed the application of those bars during review of credible fear and reasonable fear determinations. But in recent years, there have been a number of regulations seeking to permit or mandate the

[7] Although a noncitizen may not appeal an immigration judge's negative credible fear finding, USCIS may, in its discretion, reconsider a negative credible fear determination where such requests are available and initiated within the timeframe set forth by regulation. *See* 8 CFR 208.30(g)(1)(i); *see also* 208.33(b)(2)(v)(C) (discretionary USCIS reconsideration under Lawful Pathways rule); 208.35(b)(2)(v)(B) (same for Securing the Border rule).

consideration of some or all of these bars during the credible fear process—followed, in some cases, by regulations reversing that approach.

As one example, in 2020, DHS and DOJ amended the Departments' regulations to instruct asylum officers and immigration judges to apply certain mandatory bars during the credible fear process. *See* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 80274, 80278 (Dec. 11, 2020) (''Global Asylum Rule''). On January 8, 2021, the Global Asylum Rule was enjoined before its effective date. *Pangea Legal Servs.* v. *DHS,* 512 F. Supp. 3d 966, 977 (N.D. Cal. 2021).

Subsequently, in 2022, the Department and DHS issued a joint rule amending the credible fear regulations at 8 CFR 208.30(e)(5), 8 CFR 1003.42, and 8 CFR 1208.30, as relevant here, returning the regulatory text to the pre-Global Asylum Rule approach where asylum officers do not consider the applicability of mandatory bars for credible fear determinations, and therefore, immigration judges do not consider the applicability of bars in reviewing such determinations. *See* Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 FR 18078, 18219, 18221–22 (Mar. 29, 2022) (''Asylum Processing IFR'').

Most recently, in December 2024, DHS issued a rule to allow asylum officers to consider the potential applicability of certain bars to asylum and statutory withholding of removal during credible fear and reasonable fear screenings. See 89 FR 103370 (Dec. 18, 2024) (''DHS Mandatory Bars''). Specifically, the rule allows asylum officers to apply the mandatory asylum and withholding of removal bars relating to national security and public safety as set forth in INA 208(b)(2)(A)(i) through (v), 8 U.S.C. 1158(b)(2)(A)(i) through (v) and INA 241(b)(3)(B), 8 U.S.C. 1241(b)(3)(B), during credible fear and reasonable fear screenings in certain instances. *See id.*

IV. Description of the Interim Final Rule

A. Credible Fear and Reasonable Fear Review

The Department is issuing this IFR to make a technical amendment to EOIR's regulations in order to clarify the scope of an immigration judge's credible fear or reasonable fear review. Upon a noncitizen's request, immigration judges have always reviewed—and will continue to review—the underlying asylum officer determinations made during credible fear or reasonable fear screenings that a noncitizen could not establish potential eligibility for relief or protection. This rule clarifies that an immigration judge's de novo review of an asylum officer's credible fear or reasonable fear determination includes review of the asylum officer's application of any bars to asylum and withholding of removal considered by the asylum officer pursuant to DHS regulations. *See* 8 CFR 1003.42(d) (credible fear review), 1208.31(g) (reasonable fear review), 1208.33(b) (credible fear review after application of the lawful pathways rebuttable presumption of asylum ineligibility). This housekeeping measure ensures that immigration judges consider the asylum officers' determinations made regarding credible fear and reasonable fear, including their application of any bars to asylum and withholding of removal, consistent with the statutory scheme. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III) (statutory review role); 8 CFR 1003.42(d) (credible fear review), 1208.31(g) (reasonable fear review), 1208.33(b) (credible fear review after application of the lawful pathways rebuttable presumption of asylum ineligibility).

With respect to credible fear screenings, this housekeeping clarification accords with the statutory scheme set forth by the INA. The INA charges asylum officers with making determinations whether a noncitizen has demonstrated a credible fear of persecution, INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B), and immigration judges with reviewing negative credible fear determinations, INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). Consistent with this division of screening and review authority, the DHS regulations governing asylum officers have always addressed whether or not the bars to asylum should be taken into consideration by the asylum officer in credible fear screenings. During the long period when asylum officers did not apply any of those bars, the EOIR regulations governing immigration judges did not expressly address the issue. Instead, the EOIR regulations simply provided for de novo review of the asylum officer's determination that the noncitizen does not have a credible fear of persecution or torture, taking into account any additional evidence or testimony provided during the review.

Similarly, with respect to reasonable fear screenings, this rule maintains consistency with the existing regulatory scheme, where asylum officers ''determine'' whether the noncitizen has a reasonable fear of persecution or torture, 8 CFR 208.31(c), and immigration judges may review negative reasonable fear determinations. 8 CFR 1208.31(g). This housekeeping measure clarifies that, going forward, the immigration judge may continue to review the entirety of an asylum officer's negative reasonable fear determination, including application of bars during a reasonable fear screening under DHS regulations. This rule also adds the words ''de novo'' to state that an ''asylum officer's negative decision regarding reasonable fear shall be subject to de novo review by an immigration judge,'' 8 CFR 1208.31(g), to explicitly codify the standard by which the immigration judge reviews the asylum officer's determination.

This rulemaking is intended to prevent future confusion regarding whether an immigration judge's credible fear or reasonable fear review will encompass review of the asylum officer's application of bars to asylum or withholding of removal, consistent with existing review requirements. *See* INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B) (charging DHS with making credible fear determinations and the Department with review of those determinations); 8 CFR 1208.31(g) (authorizing immigration judges to conduct reasonable fear reviews). This clarification is particularly important in light of DHS's December 2024 rule to allow asylum officers to consider the potential applicability of certain bars to asylum and withholding of removal during credible fear and reasonable fear screenings. See DHS Mandatory Bars, 89 FR 103370.

Moreover, the Department found recent rulemakings regarding the credible fear screening process instructive on providing clarity regarding immigration judge review during that process. *See, e.g.,* Circumvention of Lawful Pathways, 88 FR at 31314; Securing the Border, 89 FR at 81156. In these rulemakings, DHS and DOJ provided specific regulatory provisions regarding immigration judge review of the limitation on asylum eligibility or rebuttable presumption of asylum ineligibility contained in those rules during credible fear reviews. *See, e.g.,* 8 CFR 1208.33(b) (review of the lawful pathways rebuttable presumption of asylum ineligibility); 1208.35(b) (review of the limitation on asylum eligibility for certain noncitizens who enter during emergency border circumstances). The Department believes that providing clarity in this rule regarding immigration judge review of any bars to asylum or withholding of removal the asylum officer applied

during the credible fear and reasonable fear process would be similarly beneficial.

Specifically, the Department is modifying EOIR's credible fear review regulations to state: ''This determination shall, where relevant, include review of the asylum officer's application of any bars to asylum and withholding of removal pursuant to 8 CFR 208.30(e)(5).'' *See* 8 CFR 1003.42(d). The Department is also amending the Circumvention of Lawful Pathways regulatory section to clarify that immigration judges' de novo review under 8 CFR 1208.33(b) includes review of the asylum officer's application of any bars to withholding of removal pursuant to 8 CFR 208.33(b)(2).[8] *See* 8 CFR 1208.33(b)(1). Similarly, the Department is adding an affirmative sentence stating that, during reasonable fear review before EOIR, ''[t]he immigration judge's review shall, where relevant, include review of the asylum officer's application of any bars pursuant to 8 CFR 208.31(c).'' *See* 8 CFR 1208.31(g).

In making these changes, the Department notes that, while the immigration judge's role is to conduct a de novo review of the asylum officer's credible or reasonable fear determination, both the statute and the regulations contemplate that the immigration judge may make their ultimate de novo determination based on the record the asylum officer provides, as well as evidence or testimony that was not available to the asylum officer. *See, e.g.,* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225 (b)(1)(B)(iii)(III) (explaining that a credible fear review ''shall include an opportunity for the [noncitizen] to be heard and questioned by the immigration judge. . . .''); 8 CFR 1003.42(d) (noting that, during a credible fear review, the immigration judge will ''tak[e] into account the credibility of the statements made by the [noncitizen] in support of the [noncitizen's] claim, and such other facts as are known to the immigration judge''); Immigration Court Practice Manual, Chapter 7.4(e)(4)(E) (October 25, 2023) (stating that, during a reasonable fear review, ''[e]ither party may introduce oral or written statements''). This rule, therefore, honors the statutory screening and review scheme, while also preserving the existing statutory and regulatory recognition that additional evidence or testimony may be provided that implicates the noncitizen's credible or reasonable fear.

The Department also notes that there may be instances where review of an asylum officer's application of a bar may be unnecessary to make a determination as to whether a noncitizen has a credible or reasonable fear. For example, if the immigration judge finds that the noncitizen could not establish a credible fear or reasonable fear for a separate reason unrelated to any bars to asylum or withholding of removal, the immigration judge does not need to then conduct further review of the asylum officer's application of any bars. *See INS* v. *Bagamasbad,* 429 U.S. 24, 25 (1976) (''As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.''). This ensures that such reviews are ''concluded as expeditiously as possible,'' consistent with the statute. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III).

Further, the Department notes that this rulemaking does not itself modify or alter the substantive standards applicable in credible fear or reasonable fear screenings. *See, e.g.,* 8 CFR 1003.42(d) (credible fear standards), 1208.31(c) (reasonable fear standards), 1208.33(b)(2) (credible fear standards under the Circumvention of Lawful Pathways rule), 1208.35(b)(2)(iii) (credible fear standards under Securing the Border rule). Nor does this rulemaking alter the procedures that immigration judges currently follow during credible fear or reasonable fear reviews. *See generally* 8 CFR 1003.42, 1208.30(g), 1208.31(g), 1208.33(b), 1208.35(b). In short, during credible fear and reasonable reviews, immigration judges will continue to make a de novo determination as to whether the noncitizen has made a threshold showing under the relevant standard that they could establish eligibility for asylum, statutory withholding of removal, or protection under the CAT, as applicable. This rulemaking simply clarifies that, as part of these existing reviews, immigration judges shall, where relevant, review the asylum officer's application of any bars to asylum or withholding of removal.

Additionally, the changes in this rulemaking do not affect the ability of a noncitizen to pursue or receive deferral of removal under the CAT, 8 CFR 1208.16(c)(4) and 1208.17, or the existing processes for referring noncitizens with a fear of torture for adjudication of their deferral claim, where applicable. *See* 1208.30(g)(2)(iv)(B) (referrals from positive credible fear review); 1208.31(g)(2)(i) (further consideration from positive reasonable fear review). There are no bars to deferral of removal under the CAT, and noncitizens who demonstrate the requisite credible or reasonable fear of torture will continue to be able to pursue deferral of removal under the CAT, regardless of an asylum officer's application of any bars to asylum or withholding of removal specified in DHS regulations. Noncitizens who are referred for further proceedings after positive credible or reasonable fear determinations, and who then make the requisite showing that they are more likely than not to be tortured, will therefore receive deferral of removal, without any consideration of those bars.

B. Other Technical Changes

This rulemaking is also making minor technical edits for consistency in the EOIR regulations amended by this rule. For example, in 8 CFR 1003.42, the rule decapitalizes the words ''Immigration Court'' and ''Immigration Judge'' to read ''immigration court'' and ''immigration judge.'' Similarly, the rule replaces outdated references to ''the Service'' with ''DHS'' and updates references to form titles in 8 CFR 1003.42 and 1208.31. The rule also makes two non-substantive corrections to inadvertent

[8] In amending these regulatory sections, the Department has determined that it is unnecessary to also amend the Securing the Border regulatory section at 8 CFR 1208.35. First, noncitizens who are not subject to that rule's limitation on asylum eligibility during the credible fear process are instead screened by asylum officers pursuant to the procedures outlined in 8 CFR 208.30 or 208.33, as applicable. Accordingly, in those cases, immigration judges will continue to review negative credible fear determinations under 8 CFR 1003.42 or 1208.33(b), as applicable, and this rule amends both of those sections to clarify immigration judges' authority to review the asylum officer's application of any of the mandatory bars to asylum or withholding of removal during the credible fear process. Second, noncitizens who are subject to the Securing the Border rule's limitation on asylum eligibility during the credible fear process will receive a negative credible fear determination with respect to the noncitizen's asylum claim because of that rule's limitation on asylum, not because of the application of any mandatory bar. These individuals are further screened for potential eligibility for statutory withholding of removal and CAT protection, but the Securing the Border rule does not create a free-standing process for such screenings. Rather, such noncitizens are screened for a reasonable probability of establishing eligibility for statutory withholding of removal or CAT protection under the procedures outlined in the existing Circumvention of Lawful Pathways regulatory section at 8 CFR 208.33(b)(2)(ii), *see* 8 CFR 208.35(b)(2)(iii), and this rule amends the Circumvention of Lawful Pathways provision at 8 CFR 1208.33(b) to clarify immigration judges' authority to consider the asylum officer's application of any mandatory bars to withholding of removal during credible fear reviews. Accordingly, the Department believes this rule's amendments to 8 CFR 1208.33 and 1003.42 are sufficient to clarify that immigration judges have authority to review an asylum officer's application of any of the mandatory bars even if the noncitizen is subject to the limitation on, or presumption against, asylum eligibility under the Circumvention of Lawful Pathways or the Securing the Border rules.

errors in cross-references to the definition of ''victim of a severe form of trafficking in persons'' in 8 CFR 1208.33(a)(3)(i)(C) and 1208.35(a)(2)(i)(C).

This rulemaking also replaces the term ''alien'' with ''noncitizen'' in 8 CFR 1003.42, 1208.31, and 1208.33. Similarly, in 8 CFR 1208.33(a)(2)(i), this rulemaking replaces the phrase ''unaccompanied alien child as defined in 6 U.S.C. 279(g)(2)'' with the phrase ''unaccompanied child as defined in 8 CFR 1001.1(hh).'' These changes are consistent with recent terminology usage changes at EOIR. *See* 8 CFR 1001.1(gg) (defining ''noncitizen'' as equivalent to the statutory term '' 'alien,' as defined in section 101(a)(3) of the Act,'' 8 U.S.C. 1101(a)(3)), 1001.1(hh) (defining ''unaccompanied child'' as equivalent to the statutory term '' 'unaccompanied alien child' as defined in 6 U.S.C. 279(g)(2)''); *see also* Efficient Case and Docket Management in Immigration Proceedings, 89 FR at 46787 (adding new 8 CFR 1001.1(gg)–(hh)).

This rule also removes and reserves 8 CFR 1208.31(b) through (d). These paragraphs were duplicated from 8 CFR 208.31 as part of the reorganization of title 8 following the transfer of functions from the former Immigration and Naturalization Service to DHS due to the HSA. Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824, 9834 (Feb. 28, 2003). Because these paragraphs refer to DHS operations performed by asylum officers, not EOIR immigration judges, they are therefore unnecessary to maintain in EOIR's regulations. The Departments always regarded this duplication as temporary and have periodically taken steps to eliminate unnecessary duplication. *E.g., id.* at 9825–26; Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 FR 4743, 4749 & n.7 (Jan. 31, 2005); Inflation Adjustment for Civil Monetary Penalties Under Sections 274A, 274B, and 274C of the Immigration and Nationality Act, 73 FR 10130, 10132 (Feb. 26, 2008).

The rule also makes clarifying, technical changes to 8 CFR 1003.42(a) and 8 CFR 1208.31(g) regarding the record forwarded by DHS to the immigration court for credible fear or reasonable fear reviews. These technical edits are designed to emphasize that the immigration judge's review of the asylum officer's determination will consist of the ''complete'' record, as described by statute in the credible fear context, and as described by regulation in the reasonable fear context, respectively.[9] In other words, these edits are intended to provide clarity for all parties by emphasizing that it is particularly important for immigration judges to have the complete record to review an asylum officer's application of any bars pursuant to 8 CFR 208.30(e) and 8 CFR 208.31(c). *See* 8 CFR 1003.42(a), (d), 1208.31(g). These edits to the EOIR regulations do not, however, substantively or procedurally change the content or items that DHS provides to DOJ for the record of a credible fear or reasonable fear determination.[10]

Next, the rule makes two clarifying edits to the EOIR regulations at 8 CFR 1003.42(e). First, the rule amends the regulatory text for specificity to include the form number—Form I–869—for the Record of Negative Credible Fear Finding and Request for Review. 8 CFR 1003.42(e). Second, the rule clarifies that the immigration judge's review of the negative credible fear determination will conclude no later than 7 days after the supervisory asylum officer has ''concurred with''—rather than ''approved''—the asylum officer's negative credible fear determination for conformity with DHS's terminology regarding its internal processes for supervisory review. *Id.; see, e.g.,* 8 CFR 208.30(b) (''after supervisory *concurrence*'') (emphasis added), (e)(6)(i) (''[i]f the asylum officer, with *concurrence* from a supervisory asylum officer'') (emphasis added), (e)(7)(i)(A) (same).

Additionally, this rule makes technical changes to the EOIR regulations at 8 CFR 1003.42(d) and 1208.33(b)(2)(i) and (ii) to correct two inadvertent omissions and clarify the appropriate countries to consider for screenings related to statutory withholding of removal and CAT protection. First, at 8 CFR 1003.42(d) and 1208.33(b)(2)(i), the Department is adding ''withholding'' and ''deferral'' to the list of the forms of relief and protection considered during an immigration judge's credible fear review to ensure that immigration judges are instructed to screen for both forms of CAT protection. This omission was inadvertent in both instances, and amending the provisions in this way is thus a mere technical change.

Relatedly, the Department is also amending 8 CFR 1003.42(d) and 1208.33(b)(2)(i) and (ii) to make clear that, when screening for statutory withholding of removal and both withholding of removal and deferral of removal under the CAT, the immigration judge considers those forms of protection as to the country or countries of removal identified pursuant to section 241(b) of the Act, 8 U.S.C. 1231(b).[11] This is a housekeeping measure to add clarity to the regulation and to ensure it is applied consistently with the statute. This is because under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and the regulations implementing the CAT, both forms of protection prevent removal to a specific country only—the proposed country of removal. *See* INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 1208.16(c)(2) (providing that it is the noncitizen's burden to establish that they are more likely than not to be tortured in the ''proposed country of removal'').

For a noncitizen subject to expedited removal, the identification of the country or countries of removal pursuant to section 241(b) of the Act takes place as part of DHS's removal process and occurs before any potential referral for a credible fear screening or subsequent EOIR credible fear review. *See* INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i); 8 CFR 235.3(b)(2)(i) (explaining removability determinations made during expedited removal process). And thus, it is before DHS—not EOIR—that the country or countries of removal will be identified pursuant to section 241(b) of the Act, 8 U.S.C. 1231(b). This country designation is not reviewable during a credible fear review by the immigration judge, who is

[9] In the credible fear context, by statute, the asylum officer ''prepare[s] a written record of a determination'' that ''include[s] a summary of the material facts as stated by the applicant, such additional facts (if any) relied upon by the officer, and the officer's analysis of why, in the light of such facts, the [noncitizen] has not established a credible fear of persecution'' and ''[a] copy of the officer's interview notes.'' INA 235(b)(1)(B)(iii)(II), 8 U.S.C. 1225(b)(1)(B)(iii)(II). Jurisdiction for an immigration judge to review an asylum officer's determination commences when DHS files this written record, as defined by the Act, and a copy of the noncitizen's request for review, if any, with EOIR. 8 CFR 1003.42(a). There is not a corresponding statutory provision regarding the record in the reasonable fear context, but the regulations require the asylum officer to provide EOIR with ''[t]he record of determination, including copies of the Notice of Referral to the Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based. . . .'' 8 CFR 1208.31(g).

[10] *See id.*

[11] *See also Matter of A–S–M–,* 28 I&N Dec. 282, n. 4 (BIA 2021) (''DHS has the discretion under section 241(b)(2)(E) of the Act to conceivably remove [a noncitizen] to any country that is willing to accept him or her, if [sic] unable to remove the [noncitizen] to a country designated under sections 241(b)(2)(A) through (D) of the Act. However, where the DHS states that an applicant in withholding-only proceedings may be removed to a country where he or she fears persecution or torture, an Immigration Judge needs to fully consider whether the applicant is eligible to have his or her removal withheld from that country under the Act and the Convention Against Torture.'').

authorized to review only ''a determination . . . that the [noncitizen] does not have a credible fear of persecution'' with respect to identified countries of removal. INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III). *See also Matter of A–S–M–,* 28 I&N Dec. 282, 285 (BIA 2021) (recognizing, in the reasonable fear context, that DHS '''retains discretion' to determine the proper country of removal under section 241(b)(2) of the Act,'' 8 U.S.C. 1231(b)(2), and that determination is unreviewable by an immigration judge or the Board of Immigration Appeals). Thus, this change makes clear that the immigration judge reviews the screening eligibility determinations with respect to the country or countries of removal identified pursuant to section 241(b) of the Act, 8 U.S.C. 1231(b).

V. Statutory and Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act (''APA'') generally requires agencies to publish notice of a proposed rulemaking in the **Federal Register** and allow for a period of public comment. 5 U.S.C. 553(b) through (c). The APA's notice-and-comment requirements, however, do not apply to ''rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). Courts ''have used the term 'procedural exception' as shorthand for that exemption.'' *Am. Fed'n of Lab. & Cong. of Indus. Orgs.* v. *Nat'l Lab. Rels. Bd.,* 57 F.4th 1023, 1034 (D.C. Cir. 2023) (citing *Pub. Citizen* v. *Dep't of State,* 276 F.3d 634, 640 (D.C. Cir. 2002) (quoting *JEM Broad. Co., Inc.* v. *FCC,* 22 F.3d 320, 328 (D.C. Cir. 1994))). ''[T]he critical feature of a rule that satisfies the . . . procedural exception is that it covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.'' *Id.* (citing *James V. Hurson Assocs., Inc.* v. *Glickman,* 229 F.3d 277, 280 (D.C. Cir. 2000) (internal quotations omitted)); *cf. Texas* v. *United States,* 809 F.3d 134, 176 (5th Cir. 2015) (holding that a rule is not procedural when it ''modifies substantive rights and interests'' (quoting *U.S. Dep't of Lab.* v. *Kast Metals Corp.,* 744 F.2d 1145, 1153 (5th Cir. 1984))).

To determine whether a rule is procedural or substantive, courts ''must look at [the rule's] effect on those interests ultimately at stake in the agency proceeding.'' *Neighborhood TV Co., Inc.* v. *FCC,* 742 F.2d 629, 637 (D.C. Cir. 1984). That said, ''an otherwise-procedural rule does not become a substantive one, for notice-and-comment purposes, simply because it imposes a burden on regulated parties.'' *James V. Hurson Assocs., Inc.,* 229 F.3d at 281. Even ''a rule with a 'substantial impact' upon the persons subject to it is not necessarily a substantive rule under'' the APA. *Elec. Priv. Info. Ctr.* v. *U.S. Dep't of Homeland Sec.,* 653 F.3d 1, 5 (D.C. Cir. 2011) (citing *Pub. Citizen* v. *Dep't of State,* 276 F.3d at 640–41).

The Department has determined that this rule regulates agency procedure and is therefore exempt from notice-and-comment procedures under the APA, 5 U.S.C. 553(b)(A). The amendments adopted through this IFR do not alter individuals' rights or interests nor do they alter any eligibility requirements for relief or protection from removal. *See JEM Broad. Co.,* 22 F.3d at 326. Instead, these amendments clarify that an immigration judge's review of the determinations made by an asylum officer at the credible fear or reasonable fear screening will include, where relevant, review of the asylum officer's application of any bars to asylum and withholding of removal under DHS regulations. An immigration judge's review of an asylum officer's credible or reasonable fear determination will remain, as it has always been, de novo, and thus the clarifications made in this rule are merely procedural and do not place any new, ''substantive burden[s]'' on regulated parties. *Elec. Priv. Info. Ctr.,* 653 F.3d at 6.

EOIR's current regulations provide immigration judges with the broad authority to conduct de novo review of an asylum officer's credible or reasonable fear determination, and do not expressly limit the ability of immigration judges to consider any relevant bars to asylum or withholding of removal, should DHS provide for them by regulation. *See, e.g.,* 8 CFR 1003.42(d); 1208.31(g). However, rather than risk the potential confusion regarding consideration of the applicability of bars at the immigration judge's review stage, this rule explicitly states that immigration judges shall, where relevant, review the asylum officer's application of such bars. Because this modification is a housekeeping measure, including terminology updates for internal consistency of usage within EOIR's regulations and additions for clarity regarding review of protection claims relating to the designated country of removal, the Department believes that this IFR is an efficient means of making this procedural clarification. *See James V. Hurson Assocs., Inc.,* 229 F.3d at 282 (''We have, therefore, consistently recognized that 'agency housekeeping rules often embody a judgment about what mechanics and processes are most efficient.' This does not convert a procedural rule into a substantive one.'') (citations omitted).

As noted, the Department has previously made conforming changes to its regulations jointly with DHS when DHS modified its own regulations governing whether the asylum officer may consider the mandatory bars to asylum and withholding of removal in credible fear determinations. *See, e.g.,* 85 FR at 80278 (Global Asylum Rule). However, the Department has determined that, in the interest of administrative efficiency, the Department will simply codify in the EOIR regulations that the immigration judge will review the asylum officer's credible fear or reasonable fear determination, including, as directed by DHS regulations, the asylum officer's application of any bars to eligibility, de novo. This language will ensure that EOIR regulations sufficiently cover any scenario where asylum officers may consider the bars to asylum and withholding of removal in a screening determination, and will not require further EOIR rulemaking action should DHS make future regulatory changes to the applicability of any bars to asylum or withholding of removal during the credible fear or reasonable fear screening processes.

Although prior notice-and-comment is not required, the Department invites public comment on this IFR, and will, before issuing a final rule, consider any such comments submitted in accordance with the requirements herein.

Additionally, the Department has also determined that, because this is a procedural rule under the APA, the rule is not subject to the APA's requirement of a 30-day delay in the effective date. *See* 5 U.S.C. 553(d)(3) (providing that ''[t]he required publication or service of a *substantive* rule shall be made not less than 30 days before its effective date . . . except as otherwise provided by the agency for good cause found and published with the rule'') (emphasis added).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, generally requires an agency to prepare and make available to the public a final regulatory flexibility analysis that describes the effect of a rule on small entities (*i.e.,* small businesses, small organizations,

and small governmental jurisdictions) when the agency is required ''to publish a general notice of proposed rulemaking'' prior to issuing the final rule. *See* 5 U.S.C. 603(a), 604(a).

This IFR is not subject to the regulatory flexibility analysis requirement because, as explained above, the Department is not required to publish a proposed rule before publishing this IFR. Such analysis is not required when a rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553(b) or other law. Because this is a rule of agency procedure and therefore is exempt from notice-and-comment rulemaking, no RFA analysis under 5 U.S.C. 603 or 604 is required. The Department nonetheless welcomes comments regarding potential impacts on small entities, which the Department may consider as appropriate.

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

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

The Office of Management and Budget, Office of Information and Regulatory Affairs (''OIRA'') has designated this IFR a ''significant regulatory action'' under Executive Order 12866, as amended. Accordingly, OIRA has reviewed this regulation. Further, the Department certifies that this IFR has been drafted in accordance with the principles of Executive Orders 12866, 13563, and 14094.

Overall, the Department believes that the changes adopted in this IFR will not have a significant impact on adjudicators, the parties, and the broader public. This rule is a housekeeping measure that clarifies existing credible fear and reasonable fear review processes, including the review of the asylum officer's application of the bars to asylum and withholding of removal pursuant to 8 CFR 208.30(e)(5).

In sum, any changes contemplated by the IFR would not impact the public in a way that would render the IFR in tension with the principles of Executive Orders 12866 or 13563.

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, or a private sector mandate, by requiring the preparation of an UMRA analysis for a rule that may directly result in a $100 million or more expenditure (adjusted annually for inflation) in any one year.

This IFR is not subject to the written statement requirement because no general notice of proposed rulemaking was published prior to issuance of this IFR. 2 U.S.C. 1532(a). In addition, this IFR does not contain such a mandate because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects on such entities would arise solely due to their voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this IFR. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. The requirements of title II of UMRA, therefore, do not apply, and the Department has not prepared a statement under UMRA.

E. Executive Order 13132 (Federalism)

This IFR will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This IFR meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, 61 FR 4729 (Feb. 5, 1996).

G. Family Assessment

The Department has reviewed this IFR in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999, *see* 5 U.S.C. 601 note, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. Public Law 105–277, 112 Stat. 2681 (1998). The Department has 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.

The Department has determined that the implementation of this IFR does not impose a negative impact on family well-being or the autonomy or integrity of the family as an institution.

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

This IFR will not have ''tribal implications'' because it will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Accordingly, Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) requires no further agency action or analysis for this rulemaking.

I. National Environmental Policy Act

The Department and its components analyzed this rulemaking action to determine whether the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (''NEPA''), applies to these actions and, if so, what level of NEPA review is required. 42 U.S.C. 4336.

Federal agencies may establish categorical exclusions for categories of actions they determine normally do not

significantly affect the quality of the human environment, and, therefore, do not require an Environmental Assessment or Environmental Impact Statement. 42 U.S.C. 4336(a)(2), 4336e(1); 40 CFR 1501.4, 1507.3(c)(8). DHS has established its categorical exclusions through Appendix A of the DHS's Directive 023–01, Revision 01,[12] and Instruction Manual 023–01–001–01, Revision 01 (''Instruction Manual''),[13] which establishes the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations [14] for implementing NEPA, 40 CFR parts 1500 through 1508.

Under DHS's 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. *See* Instruction Manual at V–4 through V–6. The CEQ NEPA regulations allow an agency to adopt another agency's determination that a categorical exclusion applies to a proposed action if the action covered by the original categorical exclusion determination and the adopting agency's proposed action are substantially the same. 40 CFR 1506.3(a), (d).

As discussed in more detail throughout this rule, the Department is modifying EOIR regulations applicable to noncitizens who have been placed into the credible fear and reasonable fear processes to clarify that immigration judges have the authority to review any mandatory bars to asylum or withholding of removal applied by asylum officers during such processes. This clarification in the EOIR regulations is particularly important in light of DHS's December 2024 rule that allows asylum officers to consider the potential applicability of certain bars to asylum and statutory withholding of removal during credible fear and reasonable fear screenings. See DHS Mandatory Bars, 89 FR 103370. DHS has determined that promulgation of the DHS rule, which allows asylum officers to apply the mandatory bars in the first instance during such screenings, qualifies for a categorical exclusion because it fits entirely within DHS categorical exclusion A3, is a standalone rule, and DHS is not aware of any extraordinary circumstances that would cause a significant environmental impact. See DHS Mandatory Bars, 89 FR 103412–413.

The Department is adopting DHS's categorical exclusion determination. *See* 42 U.S.C. 4336c; 40 CFR 1506.3(d) (setting forth the ability of an agency to adopt another agency's categorical exclusion determination). The Department has determined that this IFR fits within categorical exclusion A3 for the promulgation of rules that interpret or amend an existing regulation without changing its environmental effect. *See* Instruction Manual at A–1 through A–2. This rule does not alter any asylum or withholding of removal eligibility criteria. Instead, this rule clarifies certain procedures, specifically, to make explicit that immigration judges will review de novo any credible or reasonable fear determination, including, where relevant, whether a mandatory bar to asylum or withholding of removal is implicated.

Additionally, this IFR is not a piece of a larger action and serves to clarify the Department's regulations. The Department is not aware of any extraordinary circumstances that would cause an environmental impact. Nothing in the IFR, which clarifies EOIR's existing regulations and authorities, will have a significant effect on the human environment that would necessitate the preparation of an environmental assessment or an environmental impact statement. The Department has also determined that the DHS action, which allows asylum officers to consider certain statutory bars to asylum and statutory withholding of removal during the credible fear and reasonable fear process, and the action covered by this IFR, which clarifies that immigration judges have authority to review asylum officers' application of any such bars during the credible fear and reasonable process, are substantially the same. Therefore, the Department is adopting DHS's categorical exclusion determination. 42 U.S.C. 4336c; 40 CFR 1506.3(d).

J. Paperwork Reduction Act

This IFR does not propose new or revisions to existing ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

K. Congressional Review Act

The Department has determined that this action is a rule relating to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (5 U.S.C. 801). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Noncitizens.

8 CFR Part 1208

Administrative practice and procedure, Noncitizens, Immigration.

Accordingly, for the reasons set forth in the preamble, the Department amends 8 CFR parts 1003 and 1208 as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Amend § 1003.42 by:

■ a. As shown in the following table, removing the words in the left column and adding in their place the words in the right column wherever they appear:

an alien	a noncitizen.
The alien	The noncitizen.
the alien	the noncitizen.
the alien's	the noncitizen's.
an alien's	a noncitizen's.
Aliens	Noncitizens.
same alien	same noncitizen.
the Service	DHS.

■ b. Revising paragraphs (a), (d) and (e); and

[12] DHS, Implementation of the National Environmental Policy Act, Directive 023–01, Revision 01 (Oct. 31, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Directive%20023-01%20Rev%2001_508compliantversion.pdf.*

[13] DHS, Implementation of the National Environmental Policy Act (NEPA), Instruction Manual 023–01–001–01, Revision 01 (Nov. 6, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

[14] The Department is aware of the November 12, 2024 decision in *Marin Audubon Society* v. *Federal Aviation Administration,* No. 23–1067 (D.C. Cir. Nov. 12, 2024). To the extent that a court may conclude that the CEQ regulations implementing NEPA are not judicially enforceable or binding on this agency action, the Department has nonetheless elected to follow those regulations at 40 CFR parts 1500–1508 to meet the agency's obligations under NEPA, 42 U.S.C. 4321 *et seq.*

■ c. In paragraph (b), (c), and (f) through (i), removing the words ''Immigration Court'' and ''Immigration Judge'' and adding in their place ''immigration court'' and ''immigration judge'', respectively.

The revisions read as follows:

§ 1003.42 Review of credible fear determinations.

(a) *Referral.* Jurisdiction for an immigration judge to review a negative credible fear determination by an asylum officer pursuant to section 235(b)(1)(B) of the Act shall commence with the filing by DHS of Form I–863, Notice of Referral to Immigration Judge, and a complete copy of the record of determination as defined in section 235(b)(1)(B)(iii)(II) of the Act with the immigration court.

* * * * *

(d) *Standard of review.* The immigration judge shall make a de novo determination as to whether there is a significant possibility, taking into account the credibility of the statements made by the noncitizen in support of the noncitizen's claim, and such other facts as are known to the immigration judge, that the noncitizen could establish eligibility for asylum under section 208 of the Act, or could establish eligibility for withholding of removal under section 241(b)(3)(B) of the Act, or withholding or deferral of removal under the Convention Against Torture with respect to the country or countries of removal identified pursuant to section 241(b) of the Act. This determination shall, where relevant, include review of the asylum officer's application of any bars to asylum and withholding of removal pursuant to 8 CFR 208.30(e)(5).

(e) *Timing.* The immigration judge shall conclude the review to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date the supervisory asylum officer has concurred with the asylum officer's negative credible fear determination issued on the Form I–869, Record of Negative Credible Fear Finding and Request for Review.

* * * * *

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 3. The authority citation for part 1208 continues to read as follows:

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

§ 1208.31 [Amended]

■ 4. Amend § 1208.31 by:

■ a. Revising the section heading;

■ b. Removing and reserving paragraphs (b), (c), and (d);

■ c. Revising paragraph (g) introductory text; and

■ d. In the additions to the amendments set forth above, as shown in the following table, remove the words in the left column and add in their place the words in the right column wherever they appear:

an alien	a noncitizen.
the alien	the noncitizen.
any alien	any noncitizen.
alien's	noncitizen's.
aliens	noncitizens.
the Service	DHS.

The revisions read as follows:

§ 1208.31 Reasonable fear of persecution or torture determinations involving noncitizens ordered removed under section 238(b) of the Act and noncitizens whose removal is reinstated under section 241(a)(5) of the Act.

* * * * *

(g) *Review by immigration judge.* The asylum officer's negative decision regarding reasonable fear shall be subject to de novo review by an immigration judge upon the noncitizen's request. The immigration judge's review shall, where relevant, include review of the asylum officer's application of any bars to withholding of removal pursuant to 8 CFR 208.31(c). If the noncitizen requests review of the asylum officer's negative decision regarding reasonable fear, the asylum officer shall serve the noncitizen with a Form I–863, Notice of Referral to Immigration Judge. The record of determination, including copies of the Form I–863, Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. In the absence of exceptional circumstances, such review shall be conducted by the immigration judge within 10 days of the filing of the Form I–863, Notice of Referral to Immigration Judge, and the complete record of determination with the immigration court. Upon review of the asylum officer's negative reasonable fear determination:

* * * * *

■ 5. Amend § 1208.33 by:

■ a. As shown in the following table, removing the words in the left column and adding in their place the words in the right column wherever they appear; and

An alien	A noncitizen.
an alien	a noncitizen.
The alien	The noncitizen.
the alien	the noncitizen.
alien's	noncitizen's.

■ b. Removing the words ''unaccompanied alien child as defined in 6 U.S.C. 279(g)(2)'' in paragraph (a)(2)(i) and adding, in their place, the words ''unaccompanied child as defined in 8 CFR 1001.1(hh)'';

■ c. Removing the reference to ''8 CFR 214.201(a)'' in paragraph (a)(3)(i)(C) and adding in its place ''8 CFR 214.201''; and

■ d. Revising paragraphs (b)(1), (b)(2)(i), and (b)(2)(ii).

The revisions read as follows:

§ 1208.33 Lawful pathways condition on asylum eligibility.

* * * * *

(b) * * *

(1) Where an asylum officer has issued a negative credible fear determination pursuant to 8 CFR 208.33(b), and the noncitizen has requested immigration judge review of that credible fear determination, the immigration judge shall evaluate the case de novo, as specified in paragraph (b)(2) of this section. In all cases under paragraph (b)(2), the immigration judge's review shall, where relevant, include review of the asylum officer's application of any bars to withholding of removal pursuant to 8 CFR 208.33(b)(2). In doing so, the immigration judge shall take into account the credibility of the statements made by the noncitizen in support of the noncitizen's claim and such other facts as are known to the immigration judge.

(2) * * *

(i) Where the immigration judge determines that the noncitizen is not covered by the presumption, or that the presumption has been rebutted, the immigration judge shall further determine, consistent with § 1208.30, whether the noncitizen has established a significant possibility of eligibility for asylum under section 208 of the Act, or has established a significant possibility of eligibility for withholding of removal under section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture with respect to the country or countries of removal identified by DHS pursuant to section 241(b) of the Act. Where the immigration judge determines that the noncitizen has established a significant possibility of eligibility for one of those forms of relief or protection, the immigration judge shall issue a positive credible fear finding. Where the immigration judge determines that the noncitizen has not established a significant possibility of eligibility for

any of those forms of relief or protection, the immigration judge shall issue a negative credible fear finding.

(ii) Where the immigration judge determines that the noncitizen is covered by the presumption and that the presumption has not been rebutted, the immigration judge shall further determine whether the noncitizen has established a reasonable possibility of persecution (meaning a reasonable possibility of being persecuted because of their race, religion, nationality, political opinion, or membership in a particular social group) or torture with respect to the country or countries of removal identified by DHS pursuant to section 241(b) of the Act. Where the immigration judge determines that the noncitizen has established a reasonable possibility of persecution or torture, the immigration judge shall issue a positive credible fear finding. Where the immigration judge determines that the noncitizen has not established a reasonable possibility of persecution or torture, the immigration judge shall issue a negative credible fear finding.

* * * * *

§ 1208.35 [Amended]

■ 6. Amend § 1208.35 by removing the reference to ''§ 214.11 of this title'' in paragraph (a)(2)(i)(C) and adding in its place ''§ 214.201 of this title''.

Dated: December 17, 2024.

Merrick B. Garland,

Attorney General.

[FR Doc. 2024–30500 Filed 12–26–24; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Parts 207, 218, 429, 431, 490, 501, 601, 810, 820, 824, 851, 1013, 1017, and 1050

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Office of the General Counsel, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (''DOE'') publishes this final rule to adjust DOE's civil monetary penalties (''CMPs'') for inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (collectively referred to herein as ''the Act''). This rule adjusts CMPs within the jurisdiction of DOE to the maximum amount required by the Act.

DATES: This rule is effective on December 27, 2024.

FOR FURTHER INFORMATION CONTACT: Preeti Chaudhari, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–0319, *preeti.chaudhari@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In order to improve the effectiveness of CMPs and to maintain their deterrent effect, the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (''the Inflation Adjustment Act''), as further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Pub. L. 114–74) (''the 2015 Act''), requires Federal agencies to adjust each CMP provided by law within the jurisdiction of the agency. The 2015 Act required agencies to adjust the level of CMPs with an initial ''catch-up'' adjustment through an interim final rulemaking and to make subsequent annual adjustments for inflation, notwithstanding 5 U.S.C. 553. DOE's initial catch-up adjustment interim final rule was published June 28, 2016 (81 FR 41790), and adopted as final without amendment on December 30, 2016 (81 FR 96349). The 2015 Act also provides that any increase in a CMP shall apply only to CMPs, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect.

In accordance with the 2015 Act, the Office of Management and Budget (OMB) must issue annually guidance on adjustments to civil monetary penalties. This final rule to adjust civil monetary penalties for 2025 is issued in accordance with applicable law and OMB's guidance memorandum on implementation of the 2025 annual adjustment.[1]

II. Method of Calculation

The method of calculating CMP adjustments applied in this final rule is required by the 2015 Act. Under the 2015 Act, annual inflation adjustments subsequent to the initial catch-up adjustment are to be based on the percent change between the October Consumer Price Index for all Urban Consumers (CPI–U) preceding the date of the adjustment, and the prior year's October CPI–U. Pursuant to the aforementioned OMB guidance memorandum, the adjustment multiplier for 2025 is 1.02598. In order to complete the 2025 annual adjustment, each CMP is multiplied by the 2025 adjustment multiplier. Under the 2015 Act, any increase in CMP must be rounded to the nearest multiple of $1.

III. Summary of the Final Rule

The following list summarizes DOE authorities containing CMPs, and the penalties before and after adjustment.

DOE authority containing civil monetary penalty	Before adjustment	After adjustment
10 CFR 207.7	$12,937	$13,273.
10 CFR 218.42	$28,020	$28,748.
10 CFR 429.120	$560	$575.
10 CFR 431.382	$560	$575.
10 CFR 490.604	$10, 846	$11,128.
10 CFR 501.181	—$114,630	—$117,608
	—$9/mcf	—$9/mcf.
	—$45/bbl	—$46/bbl.
10 CFR 601.400 and appendix A	—minimum $24,496	—minimum $25,132.
	—maximum $244,958	—maximum $251,322.

[1] OMB's annual guidance memorandum was issued on December 17, 2024, providing the 2025 adjustment multiplier and addressing how to apply it.