

# Proposed Rules

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

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

8 CFR Parts 1001, 1003, 1208, 1214, 1240, 1245, 1246, 1292

[EOIR Docket No. 18–0203; Dir. Order No. 04–2021]

RIN 1125–AA81

### Executive Office for Immigration Review Electronic Case Access and Filing

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Executive Office for Immigration Review (“EOIR”) is proposing to implement electronic filing and records applications for all cases before the immigration courts and the Board of Immigration Appeals (“BIA”). The proposed rule would update the relevant regulations necessary to implement these electronic filing and records applications, including requiring certain users to file documents electronically and changes to service of process. EOIR further proposes clarifications to the regulations regarding law student filing and accompaniment procedures.

**DATES:** Electronic comments must be submitted and written comments must be postmarked or otherwise indicate a shipping date on or before January 4, 2021. The electronic Federal Docket Management System 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 comment regarding this rulemaking, you must submit comments, identified by the agency name and reference RIN 1125–AA81 or EOIR Docket No. 18–0203, by one of the two methods below.

• *Federal eRulemaking Portal:* <https://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: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125–AA81 or EOIR Docket No. 18–0203 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

**FOR FURTHER INFORMATION CONTACT:**

Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule via the one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department of Justice (the “Department”) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the proposed rule; 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 <https://www.regulations.gov>. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your

comment, but do not want it to be posted online, you must include the phrase “PERSONALLY IDENTIFYING INFORMATION” in the first paragraph of your comment and identify what information you want redacted.

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

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

The Department may withhold from public viewing information provided in comments that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>.

#### II. Background

##### A. Introduction

Since July 2018, EOIR has been piloting a voluntary program to test electronic filing and records applications for certain cases filed with the immigration courts and the BIA. See EOIR Electronic Filing Pilot Program, 83 FR 29575 (June 25, 2018). Following this successful pilot at five immigration courts, EOIR is now proposing to permanently implement these electronic

filing and records applications at the immigration courts and the BIA. This proposed rule would amend the regulatory sections necessary to implement the electronic filing and records applications.

### B. History

In 1998, Congress passed the Government Paperwork Elimination Act (“GPEA”), which requires federal agencies to provide the public with the ability to conduct business electronically, when practicable, with the federal government. See Public Law 105–277, § 1701–10, Oct. 21, 1998, 112 Stat. 2681, 2681–749 to –751. Similarly, in 2002, Congress passed the E-Government Act of 2002, which promotes electronic government services and requires agencies to use internet-based technology to increase the public’s access to government information and services. See Public Law 107–347, Dec. 17, 2002, 116 Stat. 2899.

As a result, EOIR began pursuing a long-term agency plan to create electronic case access and filing applications for the immigration courts and BIA. See Executive Office for Immigration Review Attorney/Representative Registry, 68 FR 75160, 75161 (Dec. 30, 2003) (“The Department is . . . designing an electronic case access and filing system, to comply with the [GPEA], to achieve the Department’s vision for improved immigration adjudication processing, and to meet the public expectations for electronic government.”). Under the GPEA, where practicable, executive branch agencies are to provide for electronic submissions in lieu of paper submissions and for the use of electronic signatures. 44 U.S.C. 3504(a)(1)(B)(vi).

On April 1, 2013, EOIR completed the first portion of its public-facing electronic applications by establishing eRegistry, a mandatory electronic registry for all attorneys and fully accredited representatives who practice before the immigration courts and the BIA.<sup>1</sup> See Registry for Attorneys and Representatives, 78 FR 19400 (Apr. 1,

2013). At the same time, EOIR began allowing attorneys and accredited representatives<sup>2</sup> to electronically file the Notice of Entry of Appearance as Attorney or Representative (Form EOIR–27 and Form EOIR–28, for the BIA and immigration courts, respectively).

On May 4, 2015, EOIR launched “eInfo,” a web-based application that allows registered attorneys and accredited representatives to view their clients’ case information. See EOIR, *The Executive Office for Immigration Review Announces I*<sup>3</sup> (May 4, 2015), <https://www.justice.gov/eoir/pr/executive-office-immigration-review-announces-i>. Attorneys and accredited representatives can log into the eInfo application to view a list of cases for which they have an active Notice of Entry of Appearance (Form EOIR–27 or Form EOIR–28) and view case-related information.

Since June 2017, EOIR has been undertaking additional and more expansive initiatives to reduce its longstanding backlog of cases and working to ensure the more efficient handling of matters before the immigration court system. As part of that plan, in July 2018, EOIR launched a pilot program to allow attorneys and accredited representatives to electronically file case-related documents with the immigration courts and the BIA, and for EOIR to process cases using an electronic record of proceeding (“eROP”). See 83 FR at 29575. The pilot launched in five immigration courts between July and December 2018: San Diego, California in July; Atlanta, Georgia and Denver, Colorado in August; Baltimore, Maryland in September; and York, Pennsylvania in December.<sup>3</sup> The BIA has participated in the pilot for operational planning purposes but is not yet accepting electronic filings. As of September 2020, more than 15,000 private attorneys had volunteered to participate, representatives and immigration court staff had electronically uploaded more than 500,000 documents, and court staff had created more than 80,000 eROPs.

EOIR is continuing to expand the rollout of this system, which will eventually expand to all immigration courts and the BIA. The EOIR Courts and Appeals System (“ECAS”) is now available in several immigration courts and adjudication centers. Information regarding the full implementation schedule will be posted on EOIR’s website. EOIR, *EOIR Courts & Appeals System (ECAS)—Online Filing*, (Oct. 5, 2020) <https://www.justice.gov/eoir/ECAS>.

### III. Proposed Rule

This proposed rule would provide for EOIR’s implementation of the electronic filing and records applications that are currently in use in several immigration courts and the BIA.

Following the launch of the electronic filing and records applications in each immigration court, all cases in which the Department of Homeland Security (“DHS”) files a charging document in that court after the launch date are processed electronically, meaning that EOIR will maintain an eROP as the official record of proceeding for that case. Regardless of whether all parties are participating in the electronic filing and records applications, EOIR will maintain an eROP for such cases. If a document is filed on paper, EOIR will scan the document into the eROP and maintain the eROP as the official record of proceeding. In addition, attorneys and accredited representatives may submit bond redetermination requests electronically with that court, which EOIR will then process electronically. For more information about the privacy risks associated with the eROP, and the measures EOIR has taken to protect this information, please see EOIR, *Privacy Impact Assessment for the eWorld Adjudication System*, 19–24 (Dec. 13, 2018), <https://www.justice.gov/opcl/page/file/1120991/download>.

Appeals of immigration judge decisions filed with the BIA will similarly be processed electronically following the launch of the electronic filing and records applications system at the BIA. Appeals of immigration judge decisions, appeals from DHS officer decisions,<sup>4</sup> and motions to reopen or reconsider filed with the BIA will follow existing legal process, but will be filed and processed electronically. All cases initiated at an immigration court or the BIA before the launch of the electronic filing and records

<sup>1</sup> The EOIR regulations differentiate between “partially accredited representatives” who are only authorized to represent persons in matters pending before the Department of Homeland Security (“DHS”), and “fully accredited representatives” who are authorized to represent persons in matters pending before EOIR as well as matters pending before DHS. See 8 CFR 1292.1(a)(4). Inasmuch as this rule pertains only to practice before EOIR, the only accredited representatives who would be affected by this rule are fully accredited representatives. Accordingly, the references in this rule to “accredited representatives” refer only to fully accredited representatives in the context of their practice before EOIR.

<sup>2</sup> EOIR’s Office of Policy reviews recognized organizations’ applications for non-attorneys to become fully accredited representatives who, upon approval, can represent aliens in immigration court proceedings and before DHS. For more information, please see EOIR, *Recognition & Accreditation (R&A) Program* (June 8, 2020), <https://www.justice.gov/eoir/recognition-and-accreditation-program>.

<sup>3</sup> Charlotte was originally scheduled as a pilot location in September 2018, but the pilot there was cancelled due to Hurricane Florence. Similarly, York was moved from July 2018 to December 2018 to accommodate additional internal development to ensure ECAS functionality for detained courts.

<sup>4</sup> For appeals of DHS officer decisions that are subject to review by the BIA, the process for DHS would not change under this rule as DHS currently submits all of those materials to the BIA for adjudication, and it will continue to do so. See 8 CFR 1003.5(b).

applications in that location will continue to be processed in paper by EOIR, and will continue to require the parties to paper file documents in those cases. Similarly, if a case begins in an immigration court with an eROP, and then changes venue to an immigration court that has not yet implemented the electronic filing and records applications, that case will be converted to a paper record and processed in paper at the new court. In the future, EOIR may explore converting existing paper records into eROPs following the launch of the electronic filing and records applications at the immigration court with administrative control over the paper record of proceeding (“ROP”); such conversion would also depend on the cost and technological feasibility.

Once this proposed rule is adopted in final form, electronic filing will become mandatory for all attorneys and accredited representatives, with limited exceptions as discussed further below. This includes mandatory electronic filing of charging documents initiated by DHS, 8 CFR 1003.13 (defining charging documents), and mandatory electronic filing of other documents.<sup>5</sup> However, until this proposed rule is adopted in final form, participation in the pilot program at any court where EOIR has launched the electronic filing capabilities or the BIA will remain voluntary under the terms of the existing pilot program. Similarly, immigration courts and the BIA will continue to follow existing procedures for sending and receiving case-related materials in those cases where the attorney or accredited representative has not agreed to participate in the pilot program. In order to complete this full nationwide implementation, EOIR is proposing to make the following changes to its regulations.

<sup>5</sup> Non-documentary filings (e.g., proposed audio or video exhibits) are not contemplated under existing regulations. See, e.g., 8 CFR 1003.31, 1003.32, 1003.33 (all referring to “documents”). Nevertheless, consistent with an immigration judge’s authority to make determinations regarding removability and applications, 8 CFR 1240.1(a)(1)(i)–(ii), and an immigration judge’s authority to take action consistent with the law to decide cases before them, 8 CFR 1003.10(b), such filings may be considered subject to an immigration judge’s discretion. The proposed rule does not alter that practice. Consequently, because security protocols may prevent the direct uploading of audio or video files into ECAS as filings, parties wishing to submit non-documentary filings in cases with an eROP should continue to file them in a physical format (e.g., a CD or DVD) directly with the relevant immigration court. Such non-documentary filings, subject to the immigration judge’s discretion, may then be incorporated into the eROP as appropriate.

### A. Filing

#### 1. Who May File Electronically

This rulemaking proposes that electronic filing will become mandatory for DHS<sup>6</sup> and attorneys and accredited representatives who represent respondents, applicants, or petitioners before EOIR. By mandating electronic filing for attorneys and accredited representatives, EOIR will be able to maintain a complete electronic process for many cases from beginning to end. EOIR anticipates that this will create significant efficiencies for the parties and EOIR. For example, registered parties will be able to file documents electronically at any time of day from any location with internet access, removing concerns related to the restrictions business hours create to meet filing deadlines (i.e., representatives can file after court hours rather than appearing in person at the court or a mail delivery service office during certain hours). Once the electronic filings are accepted, the parties will be able to view all of the documents filed in their case without having to appear at an immigration court to view the paper record. Parties will be required to make all original paper copies of any electronically filed documents available for review upon request of the immigration court, BIA, or the opposing party. Similarly, EOIR will be able to quickly process filings and maintain case records through an electronic system.

To provide for possible unanticipated issues arising from mandating electronic filing, this rule proposes to allow for an extended filing deadline when the electronic filing system is unavailable due to an unplanned system outage and to provide immigration judges with the authority to accept paper filings in open court in limited circumstances, including for rebuttal or impeachment purposes; for good cause shown, provided that the filing is otherwise admissible and the immigration judge finds that any applicable filing deadline should be excused; or, when the opposing party does not object to the paper filing.

EOIR also intends to make electronic filing through ECAS available on a voluntary basis to *pro se* respondents, applicants, or petitioners and to reputable individuals and accredited officials, as defined in 8 CFR 1292.1(a)(3) and (a)(5), respectively, because all of the same efficiencies

<sup>6</sup> DHS includes all relevant DHS components. See 8 CFR 1001.1(w). DHS will determine which of its employees are responsible for filing documents in ECAS in individual cases.

listed above may also flow to those individuals if they choose to use ECAS. Both reputable individuals and accredited officials may act as representatives in immigration proceedings before EOIR and are subject to the same requirements as other representatives, such as the need to file a Form EOIR–28 when making an appearance or receiving service of process in a particular case. See, e.g., 8 CFR 1292.4(a), 1292.5(a). EOIR also recognizes that both types of representatives appear sparingly in proceedings before EOIR, and both reputable individuals and accredited officials, as defined in the regulations, may not have the same sort of familiarity with EOIR’s procedures and requirements as other types of representatives. Cf. 8 CFR 1292.1(a)(3)(iv) (providing that, in order to qualify as a reputable individual, a person may not be one who “regularly engages in immigration and naturalization practice or preparation”). Although *pro se* respondents, applicants, or petitioners and reputable individuals and accredited officials are not currently able to participate in the electronic filing program, this capability will eventually be available for those who opt to use it, and EOIR will adapt its current registration system as appropriate to allow *pro se* respondents, applicants, or petitioners and reputable individuals and accredited officials to register in order to be able to utilize ECAS. The rulemaking proposes changes to allow for this future ECAS utilization capability by *pro se* respondents, applicants, or petitioners and reputable individuals and accredited officials.<sup>7</sup>

EOIR seeks comment on these considerations, including how to best register such users for electronic filing, whether the same two-factor authentication process used for attorneys and accredited representatives would similarly work for these users, whether there are other more effective methods for identity-proofing online filers who do not have the same

<sup>7</sup> Although opting in for electronic filing through ECAS is voluntary for *pro se* respondents, applicants, or petitioners and for reputable individuals and accredited officials, such individuals who choose to opt in will do so for the life of the case and may not opt out without leave from an immigration judge or, for cases pending with the BIA, from the BIA. This qualification sets clear expectations for the individual and reduces the likelihood of confusion among the individual, the opposing party, and the immigration court staff regarding documents filed multiple times through different methods, of the possible loss of documents filed in a manner inconsistent with how the official record of proceeding is being kept, and of the improper effectuation of service on the opposing party.

financial or U.S. “footprint” that can be used for remote verification of the person’s identity, and how to combat any potential fraud concerns related to expanding electronic filing capabilities to parties other than attorneys and accredited representatives. For more information on the current registration process for eRegistry, please see EOIR, *Frequently Asked Questions: Attorneys and Accredited Representatives* (Oct. 1, 2020), <https://www.justice.gov/eoir/ecas/attorney-and-ar-FAQs>.

EOIR also proposes to change how law students and law graduates, as defined in 8 CFR 1292.1(a)(2), file documents and appear before EOIR. The Immigration and Nationality Act (“INA”) provides that aliens appearing before an immigration judge “shall have the privilege of being represented, at no expense to the Government, by counsel of the alien’s choosing who is authorized to practice in such proceedings.” INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A); see also INA 292, 8 U.S.C. 1362. The Attorney General possesses a general authority to “establish such regulations . . . as the Attorney General determines to be necessary for carrying out” his authorities under the INA. INA 103(g)(2), 8 U.S.C. 1103(g)(2). Pursuant to this authority, this rule proposes to clarify the circumstances under which law students and law graduates are authorized to practice in immigration proceedings.

There is no statutory entitlement for law students and law graduates to participate as representatives in immigration proceedings. Rather, the Department has authorized law student representation subject to attorney supervision as a matter of regulatory grace since at least 1975. Representation and Appearance Before Immigration and Naturalization Service and Board of Immigration Appeals, 40 FR 23271 (May 29, 1975). Over time, the Department had modified the regulations governing law student and law graduate practice on multiple occasions. See, e.g., Representation and Appearance, 55 FR 49250 (Nov. 27, 1990) (expanding participation of law students in clinical programs at accredited law schools from only third-year law students to first and second-year students); Executive Office for Immigration Review; Representation and Appearances: Law Students and Law Graduates, 62 FR 23634 (May 1, 1997) (clarifying that law students and law graduates could participate through programs outside of law school clinics and that the prohibition on direct or indirect remuneration for law students and law graduates applies only to remuneration from respondents). The

most recent change occurred in 2008, when the Department clarified “that law students and law graduates must be students and graduates of accredited law schools in the United States” in order to practice before EOIR. Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 73 FR 76914, 76916 (Dec. 18, 2008).

As the Department moves toward electronic filing capability for all cases in immigration proceedings, it finds that additional clarifications are warranted to ensure that appropriate attorney supervision over law students and law graduates is maintained and that respondents are not prejudiced by the intrinsically transient nature of such representation. Cf. 78 FR at 19400, 19404 (declining to require law students to register with EOIR due to, among other things, “the transient nature of law students’ participation in clinical programs and the limited circumstances under which students can represent individuals before EOIR . . . the absence of any mechanism to inform EOIR when a student leaves a program . . . [and the lack of a] regulatory provision permitting a law student to appear before EOIR if not enrolled in a ‘legal aid program or clinic,’ [making] it . . . problematic for those students to remain registered after leaving a clinical program”).

The proposed rule clarifies that all filings by law students must be made through an attorney or accredited representative who is registered with EOIR pursuant to 8 CFR 1292.1(f). As currently drafted, the regulations require “direct supervision” of law students, 8 CFR 1292.1(a)(2)(ii), but do not provide a clear definition of that term. Further, this rulemaking proposes that law graduates, currently required to have “supervision” under the regulations, 8 CFR 1292.1(a)(2)(iii), would also need to file through an attorney or accredited representative registered with EOIR. Law students and law graduates often provide representation through clinics or other short-term programs, which limits the length of their representation and can create confusion that affects the respondent when such short-term representation results in a change of counsel. With electronic filing, it is critical that the court can reach the supervising attorney and that the attorney is familiar with the proceedings, similar to the requirement that the clinic’s address be provided for court communications rather than a student’s personal address.

By requiring filings be completed through a supervising attorney or

accredited representative, EOIR will be able to ensure that there is a single representative responsible for receiving electronic service from EOIR for the duration of the proceeding. For example, EOIR wants to prevent a scenario where electronic service of an important, time-sensitive document is sent to a law student who, since the last hearing, has left a law school clinic and is not expecting any EOIR-related emails. In practice, this will also increase the use of electronic filing because, under this proposed rule, the supervising attorney or accredited representative will be required to file documents electronically with EOIR. To protect the integrity of the filings, and proceedings as a whole, only registered attorneys and fully accredited representatives will be able to file electronically. The supervising attorney or accredited representative must be the filer to ensure that an attorney or representative authorized to practice before EOIR performs their supervisory role and takes ultimate responsibility for official filings. This change is also consistent with existing requirements in many states regarding law student practice. See, e.g., Ga. Sup. Ct. R. 95(4) (“An attorney who supervises a registered law student shall . . . review, approve and personally sign any document prepared by a student that is filed in any court or tribunal, and review and approve any document prepared by a student that would have binding legal effect on a person or entity receiving services in relation to activities of the student registered pursuant to this Rule”); Wash. Ad. and Prac. R. 9(f)(4) (a supervising lawyer of a licensed legal intern “must review and sign all correspondence providing legal advice to clients and all pleadings, motions, briefs, and other documents prepared by the Licensed Legal Intern and ensure that they comply with the requirements of this proposed rule, and must sign the document if it is prepared for presentation to a court”).

In addition, this rulemaking proposes that a law student or law graduate is authorized to practice only if a supervising attorney or accredited representative physically accompanies the law student or law graduate during all immigration court appearances.<sup>8</sup> The supervising attorney or accredited representative must enter an appearance in the case and be physically present

<sup>8</sup> Nothing in the proposed rule precludes a law student or law graduate from appearing telephonically provided the immigration judge has approved such appearance. In such cases, the supervising attorney or accredited representative would be expected to be present with the law student or law graduate by telephone.

and prepared to proceed in case of the inability of the law student or law graduate to do so. The current regulation requires the supervisor to accompany the law student or graduate at the request of the immigration judge or BIA but does not require the supervisor to enter an appearance in the case. As with the proposed filing change for law students, this change is similarly intended to ensure that every case has a representative who is aware of the case and proceedings and is ultimately responsible for proper representation in that case.

Moreover, this change is consistent with many state bar rules allowing the practice of law by a law student in limited situations, but with the presence of a supervising attorney for adjudicatory proceedings. *See, e.g.*, N.Y. R. Ct. 805.5(e) (“The supervising attorney shall assume personal professional responsibility for any work undertaken by a law intern and shall supervise the preparation of the intern’s work. Immediate supervision of a law intern shall mean that *the supervising attorney shall be personally present throughout the proceedings.*” (emphasis added)); Tenn. R. Sup. Ct. 7, sec. 10.03(h)(2) (“It is the responsibility of the supervising attorney to ensure that the student is properly supervised and instructed . . . and be present for administrative or adjudicatory proceedings” (emphasis added)). Additionally, by requiring the supervising attorney or representative to physically<sup>9</sup> accompany the law student or law graduate, this proposed rule intends to avoid unnecessary delays if the law student or graduate is unable to proceed with representation. The supervising attorney or representative would also need to enter an appearance in order to be able to electronically file documents as required by this proposed rule.

This rulemaking also proposes to limit who may accompany the law student or law graduate to attorneys and accredited representatives and to remove the term “supervising faculty member.” This proposed change is not intended to prevent faculty members from supervising law students, and most law school clinical supervising faculty members are already attorneys. Rather, this change would simply require supervising faculty members to be attorneys or accredited representatives authorized to practice before EOIR, in

order to support the goal that a licensed attorney or accredited representative be ultimately responsible for filings and appearances before EOIR and to avoid potentially problematic circumstances in which a law student or law graduate is being supervised by a non-attorney or non-accredited representative, possibly in contravention of relevant state bar rules.

## 2. Registration Process

In order to file electronically with EOIR, an attorney or accredited representative must be registered with EOIR. Under existing EOIR regulations, all attorneys or accredited representatives are already required to enroll in eRegistry as a condition of practice before the immigration judges or the BIA. *See* 8 CFR 1292.1(f). Accordingly, no further registration would be required under this proposed rule for attorneys or accredited representatives.

However, in the event that EOIR decides to expand electronic filing in the future to persons other than attorneys or accredited representatives, EOIR anticipates that those persons who are not currently enrolled in eRegistry would be required to complete a one-time registration through EOIR’s eRegistry application, consistent with current practice.

The eRegistry system requires the user to complete an online application and, once that application is complete, present identification in person at an immigration court or the BIA.<sup>10</sup> Once the user is registered through eRegistry, the user will receive an EOIR ID that will allow the user to log in to the electronic filing applications and view cases and file documents.<sup>11</sup>

## 3. Cases Eligible for Electronic Filing

Registered users are only able to electronically file documents in a case if that case is eligible for electronic filing. “Case eligible for electronic filing” means any case that DHS seeks to bring before an immigration court after EOIR has formally established an electronic filing system for that court or any case before an immigration court or the BIA that has an eROP. All cases that are initiated at an immigration court or the BIA after that court or the BIA begins using the electronic filing and

records applications will be processed with an eROP.

For example, if EOIR’s electronic filing and records applications are implemented at the Los Angeles Immigration Court on November 20, 2020, all cases in which DHS files a charging document or the alien files a bond redetermination request at the Los Angeles Immigration Court on November 20, 2020 or later will be processed with an eROP and eligible for electronic filing. In contrast, all other pending proceedings at the Los Angeles Immigration Court initiated on November 19, 2020 or earlier will not be eligible for electronic filing, including motions to reopen filed in cases initiated before this date.

This rulemaking proposes to update 8 CFR 1001.1 to include this definition for “case eligible for electronic filing.” Users will be able to see whether a case has an eROP by logging into the electronic filing application and searching for the specific case. If the case allows documents to be uploaded through the electronic filing application, then the case has an eROP. If there is no upload option, then the case does not have an eROP, and all documents must be paper filed with the proper immigration court or the BIA, as appropriate.

## 4. Electronic Filing Application Availability

The proposed regulation would provide guidance for how a party subject to electronic filing requirements should proceed if EOIR’s electronic filing system is unavailable. If EOIR’s electronic filing system is unavailable due to an unplanned system outage on the last day for filing in a specific case, EOIR would evaluate the overall impact and make appropriate filing deadline adjustments (*e.g.*, extensions to the first day that the electronic filing system becomes accessible that is not a Saturday, Sunday, or legal holiday for those cases impacted). EOIR would determine whether the electronic filing system is unavailable due to a system outage sufficient to trigger the extended filing deadline, and EOIR would communicate such outages to external users through email, EOIR’s website, or other methods of communication, as available. Of course, parties maintain the ability to request an extension from the immigration court or BIA or to submit a motion to accept an untimely filing. *See* Office of the Chief Immigration Judge, Immigration Court Practice Manual 37, 39–40 (Nov. 16, 2020), <https://www.justice.gov/eoir/page/file/1258536/download> (last visited Nov. 19, 2020) (“Immigration

<sup>9</sup> If the law student or law graduate were appearing by telephone or video teleconferencing, the supervising attorney or representative would still need to be physically present with the law student or law graduate but would not need to be physically present in the immigration court.

<sup>10</sup> For more information on the eRegistry process, please see EOIR, *EOIR Courts & Appeals System (ECAS)—Online Filing* (Oct. 5, 2020), <https://www.justice.gov/eoir/ECAS>.

<sup>11</sup> For information regarding the mechanics of the actual electronic filing process, please see EOIR, *ECAS User Manual*, <https://www.justice.gov/eoir/page/file/1300086/download>.

Court Practice Manual”); Board of Immigration Appeals, Board of Immigration Appeals Practice Manual, 34, 66 (Oct. 5, 2020), <https://www.justice.gov/eoir/page/file/1324276/download> (last visited Nov. 19, 2020) (“BIA Practice Manual”). Both the immigration court and the BIA have the discretion to accept untimely filings. See Immigration Court Practice Manual, at 39–40; BIA Practice Manual, at 66. Additionally, in the event that EOIR’s electronic filing system is unavailable, parties are permitted to file paper motions or requests for extensions.

This unplanned unavailability policy tracks the federal courts’ policy for their electronic filing system. See Fed. R. Civ. P. 6(a)(3)(A); Fed. R. App. P. 26(a)(3)(A). It also follows the electronic filing requirements for many state judicial systems as well. See, e.g., Tenn. R. Sup. Ct. 46, sec. 5.02 (“In the event the e-filing system is offline for technical reasons for a significant portion of a particular day, the clerk, in his or her discretion, is authorized to issue a written declaration that the e-filing system is unavailable for filing on that day, in which event all filings due on that day from Registered Users shall be deemed to be timely if filed the following day.”).

On the other hand, if EOIR’s electronic filing system is unavailable due to a planned, previously announced<sup>12</sup> system outage on the last day for filing in a specific case, this proposed rule would provide that the user must plan accordingly to electronically file the documents during system availability or be prepared to file the documents on paper with the proper immigration court or the BIA in order to meet any applicable filing deadlines. EOIR would communicate these planned outages to external users through email, EOIR’s website, or other methods of communication, as available.

This proposed rule would not change the immigration judges’ or BIA’s authority to determine how to treat an untimely filing or prevent parties from making a motion to accept the untimely filing. See Immigration Court Practice Manual, at 39–40; BIA Practice Manual, at 33–40.

## 5. Filing Classified Information

EOIR’s electronic filing and records applications are not rated for classified information. Users should not file classified information through EOIR’s electronic filing application, and the

<sup>12</sup> Any system outage announced three or fewer business days prior to the start of the outage will be treated as an unplanned outage.

application does not change the users’ or the agency’s responsibilities related to classified information. Users would need to file any classified information by paper and follow existing procedures for the filing of classified information. See EOIR, Operating Policies and Procedures Memorandum 09–01, *Classified Information in Immigration Court Proceedings* (Feb. 5, 2009), <https://www.justice.gov/sites/default/files/eoir/legacy/2009/02/11/09-01.pdf>. EOIR immigration court staff will maintain a paper record for any filing that contains classified information.

## 6. Receipt and Rejection of Filings

EOIR also proposes to move and update the “filing” definition currently located in 8 CFR 1003.13 to the general definition section in 8 CFR 1001.1 so that it will apply to both the immigration courts and the BIA. That proposed definition further explains when both electronic and paper filings are deemed filed and makes clear that improper filings that are rejected are not deemed “filed.”<sup>13</sup> See generally Immigration Court Practice Manual, at 33–34, 38–40; BIA Practice Manual, at 31–33, 34. The bases for rejecting filings track those already applied by the BIA and the immigration courts as outlined in each’s respective practice manual. See Immigration Court Practice Manual, at 33–34, 38–40; BIA Practice Manual, at 31–334.

### B. Service

This rulemaking also proposes to change how service of process is accomplished in cases before the immigration courts and the BIA. Currently, the parties must simultaneously serve on the opposing party a copy of all documents filed with the immigration courts and the BIA. See, e.g., 8 CFR 1003.3(a)(1), (c)(1), 1003.23(b)(1)(ii), 1003.32(a). This service must be accomplished in person or by first-class mail. See 8 CFR 1003.32(a), *BIA Practice Manual*, at 36. Similarly, under the current regulations, the immigration courts and the BIA must serve copies of court documents, such as orders, notices, and decisions,

<sup>13</sup> Consistent with analogous state laws, the proposed definition also recognizes a discretionary safety valve to allow an individual whose fee waiver request is denied to either pay the fee or resubmit a new fee waiver request within 10 days before the BIA or an immigration judge will reject the filing as improper. See, e.g., Cal. Govt. Code 68634(g) (“If an application [for a fee waiver] is denied in whole or in part, the applicant shall pay the court fees and costs that ordinarily would be charged, or make the partial payment as ordered by the court, within 10 days after the clerk gives notice of the denial, unless within that time the applicant submits a new application”).

in person or by mail. See, e.g., 8 CFR 1003.1(f), 1003.37(a).

In this proposed rule, EOIR proposes to move the “service” definition currently located in 8 CFR 1003.13 to the general definition section in 8 CFR 1001.1 so that it will apply to both the immigration courts and the BIA. EOIR also proposes updates to various cross-references to service of process accordingly.

In order to provide a simpler and more efficient filing process, EOIR proposes to complete service electronically on behalf of the parties for all cases in which both parties are using electronic filing. When a party successfully uploads a document to EOIR’s electronic filing application and the other party is also using electronic filing in that case, EOIR’s application will send the parties an electronic notification that the eROP has been updated. This will simplify the filing process for electronic filers by only requiring them to file their documents with EOIR in eligible cases rather than needing to execute multiple mailings to complete service requirements.

On the other hand, if another party is not participating in electronic filing for that particular case, EOIR’s electronic filing application will alert the user that the opposing party is not participating in electronic filing for that particular case and remind the filer of the responsibility to complete service of process on the opposing party. Consistent with existing practice, the filer must include a certificate of service with each filing as proof of completed service on the opposing party.

EOIR also proposes to update the “service” definition to allow parties and EOIR the option to complete service electronically. In situations where the parties need to complete service outside of the electronic filing application, the parties may complete service electronically,<sup>14</sup> or by personal or mail service, which are the current options for completing service. EOIR anticipates that this will provide significant efficiencies to the parties by eliminating the need to print and mail documents to each other.

EOIR further proposes to serve EOIR-generated documents, such as orders, decisions, and notices, by electronic notification to parties that are participating in electronic filing. This notification will constitute completed service and begin the appeal clock, if applicable. If a party is not participating

<sup>14</sup> The DHS, Immigration and Customs Enforcement (“ICE”), Office of the Principal Legal Advisor currently accepts electronic service through their eService portal. For more information, please visit <https://eserviceregistration.ice.gov/>.

in electronic filing, EOIR will continue to serve EOIR-generated documents in person or by mail on that party.

In order for EOIR to effectuate electronic service, the parties must maintain a valid email address within the eRegistry application. If a user's email address changes, the user must immediately update the relevant eRegistry account and file a new Form EOIR-27 or EOIR-28, as applicable, in each case with the updated email address. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user, similar to the existing paper mail service provision for Notices to Appear and hearing notices. *Cf.* INA 239(c), 8 U.S.C. 1229(c) ("Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien . . .").

### C. Signatures

This rulemaking proposes to provide standards for signatures. With this proposed rule, EOIR proposes to allow four types of signatures, depending on the document being filed and the method by which the document is being filed: (1) Original, handwritten ink signatures; (2) encrypted, digital signatures; (3) electronic signatures; and (4) conformed signatures.<sup>15</sup> Thus, this proposed rule would incorporate existing EOIR policy regarding signatures, Policy Memorandum 20-11, *Filings and Signatures* (Apr. 3, 2020), <https://www.justice.gov/eoir/page/file/1266411/download> (last visited Nov. 19, 2020), while also allowing conformed signatures in certain circumstances.

First, EOIR proposes to accept documents with original, handwritten ink signatures, encrypted digital signatures, or electronic signatures, whether filing electronically or on paper. If filed electronically, the document may be signed with an encrypted, digital signature; an electronic signature; or an original, handwritten ink signature and then scanned for upload to the electronic

filing application. If a user signs a document using an encrypted digital signature but EOIR's electronic filing application is unavailable, the user may print the document with the digital signature and paper file the document with the immigration court.

Second, EOIR proposes to allow users to sign their own name with a conformed signature on documents filed through EOIR's electronic filing application. Conformed signatures will not be accepted for anyone other than the user who is submitting the document. Conformed signatures typically consist of the user typing "/s/" and the user's name into the signature block. For example: "/s/John Smith." By signing into the electronic filing application, the user has demonstrated that they have completed identity verification through the eRegistry process described in Section III.A.2., thereby allowing the use of a conformed signature. EOIR seeks public comment as to whether this safeguard, which employs all Department-mandated information security protocols, is sufficient, whether there are other more effective methods for identity-proofing online filers who do not have the same financial or U.S. "footprint" that can be used for remote verification of the person's identity, or whether the user should need to re-input credentials at the time of each electronic filing.

These proposed signature rules would be subject to any specific form, application, or document signature requirements. For example, if an application's instructions require an original, handwritten ink signature, then the user must follow the application instructions instead of the proposed signature allowances in this proposed rule. In practice, if the user was electronically filing, the user would sign the application in ink and then scan and electronically file the application with EOIR. The user would also be required to make the original available upon request.

### D. Electronic Payments

EOIR imposes a fee for filing many types of documents. *See generally* 8 CFR 1103.7. Currently, the immigration courts do not directly accept fee payments for any documents that require a fee. Instead, filers must make these fee payments to DHS and then provide proof of the payment to the immigration courts. This proposed rule does not change this payment structure at the immigration courts. Under this proposed rule, electronic filers would be able to submit a scanned copy of the

filing fee receipt as part of their electronic submission.

In contrast, the BIA directly accepts payments for certain documents that require a fee. *See generally* 8 CFR 1003.8. In October 2020, EOIR launched the EOIR Payment Portal, which allows users to make electronic payments for filings at the BIA, as provided in 8 CFR 1003.8. *See* EOIR, *EOIR Payment Portal* (Nov. 19, 2020), <https://epay.eoir.justice.gov/>. As a result, this rulemaking proposes to broaden the references to payments at the BIA in 8 CFR 1003.2 and 1003.3 in order to account for these changes.

### E. Duplicate Copies

This rulemaking proposes to update 8 CFR 1003.23 to remove the requirement for parties to file multiple "in duplicate" copies of a motion to reopen or a motion to reconsider if they are filing electronically. However, in duplicate copies would still be required for paper filings.

### F. Technical Amendments

When updating existing regulatory sections, this rulemaking also proposes a number of technical amendments. These include updating outdated references from "the Service," "Service counsel," and "Office of the District Counsel" to "DHS," "DHS counsel," and "ICE Office of the Principal Legal Advisor" in 8 CFR 1001.1, 1003.1, 1003.2, 1003.3, 1003.23, 1003.31, 1214.2, 1240.2, 1240.10, 1240.11, 1240.13, 1240.26, 1240.32, 1240.33, 1240.48, 1240.49, 1240.51, 1245.21, and 1246.5, and lowercasing terms "Immigration Judge" and "Immigration Court" in 8 CFR 1003.2, 1003.17, 1003.23, 1003.31, 1003.32, 1003.37, 1003.38, and 1208.4 consistent with regulatory style guidelines. The rulemaking also proposes to update a reference at 8 CFR 1003.1(f) regarding service on a representative from part 292, which is a DHS regulation, to part 1292, which is an EOIR regulation.

## IV. Regulatory Requirements

### A. Regulatory Flexibility Act

The Department has reviewed this proposed rule in accordance with the Regulatory Flexibility Act and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). As proposed, this rulemaking regulates attorneys and accredited representatives, most of whom qualify as "small entities" under the Regulatory Flexibility Act. *See* 5 U.S.C. 601(3)-(4), (6). However, all attorneys and

<sup>15</sup> Digital signatures are defined as signatures performed via a recognized system that provides Personal Key Infrastructure (PKI) from the signer at the time of signing. EOIR Policy Memorandum 20-11, *Filings and Signatures* (Apr. 3, 2020), <https://www.justice.gov/eoir/page/file/1266411/download> (last visited Nov. 19, 2020). Electronic signatures are defined as signatures performed using a device that does not provide PKI at the time of signing (e.g., stylus and touchpad). *Id.* at 1 n.2. Any type of signature—wet, digital, or electronic—may be subject to a challenge in immigration proceedings to its authenticity, though EOIR expects that any such challenge will be brought only in good faith. *Id.* at 2. Additionally, any type of signature may be authenticated, as necessary, using any means identified in Federal Rule of Evidence 901. *Id.*

accredited representatives already are required to enroll in eRegistry in order to practice before EOIR. Thus, they are already eligible to participate in the electronic filing process, which is currently being made available in many locations through a voluntary pilot program. This proposed rule, when finalized, would make the use of electronic filing mandatory in eligible cases.

The Department anticipates that the adoption of electronic filing will lead to substantial net cost savings for these attorneys and accredited representatives because they would no longer be required to bear the burdens and expenses of mailing or serving paper copies in each of their cases for filings submitted to the immigration court or to the BIA or for service of process on opposing counsel. Therefore, this proposed rule will not have an adverse economic effect on attorneys or accredited representatives, but instead is expected to result in significant cost savings. A more detailed analysis of the costs and benefits of this proposed rule are detailed in Section IV.D.

*B. Unfunded Mandates Reform Act of 1995*

This proposed 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, 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.

*C. Congressional Review Act*

This proposed rule is not a major rule as defined by section 804 of the Congressional Review Act, 5 U.S.C. 804(2). This proposed rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*D. Executive Order 12866 and Executive Order 13563 (Regulatory Planning and 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). The Office of Information and Regulatory Affairs of the Office of Management and Budget (“OMB”) has determined that this proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. It will neither result in an annual effect on the economy greater than \$100 million nor adversely affect the economy or sectors of the economy. It does not pertain to entitlements, grants, user fees, or loan programs, nor does it raise novel legal or policy issues. It does not create inconsistencies or interfere with actions taken by other agencies. Accordingly, this proposed rule is not a significant regulatory action subject to review by OMB pursuant to Executive Order 12866.

Executive Order 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, and other advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 13563.

1. ECAS-Related Costs and Savings

The Department estimates that implementation of ECAS will result in a total savings of \$68,105,250 over the first 10 years of its implementation.<sup>16</sup> Specifically, the Department estimates that electronic filing will cost EOIR \$32,896,179 over 10 years, primarily due to increased technology costs to implement and maintain the new technology infrastructure. These costs are outweighed, however, by the predicted savings to the public—\$101,001,429, which primarily relate to cost savings from no longer having to file documents via mail or in person. These costs and savings for EOIR and the public are discussed in further detail individually below.

<sup>16</sup> All dollar amounts cited in this discussion are calculated to correspond with what would have been the value in December 2016 using the U.S. Bureau of Labor Statistics (BLS) Consumer Price Index inflation calculator found at [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited Nov. 19, 2020).

TABLE 1—OVERVIEW OF TOTAL COST AND SAVINGS: EOIR AND THE PUBLIC<sup>17</sup>

Entity	Savings/costs
EOIR .....	(\$32,896,179)
OCIJ .....	12,910,888
BIA .....	2,710,950
OIT .....	(51,275,937)
OGC .....	2,757,920
Public .....	101,001,429
Total .....	68,105,250

Despite the financial cost to EOIR to develop and maintain the technology for ECAS, the Department believes that electronic filings will be a net benefit for the agency. During the electronic filing pilot program, EOIR has already begun to realize efficiencies in case processing. For example, in Fiscal Year (“FY”) 2019 DHS initiated 37,074 cases electronically (out of 465,790 cases initiated in the same time period), and 161 bond proceedings were initiated electronically. According to internal pilot metrics, charging documents filed electronically at the pilot sites are being processed nearly 10 times faster than charging documents filed in paper. Similarly, the time it takes to receive and process a non-charging supporting document is approximately 25 percent faster than processing a paper-filed supporting document. This represents a significant savings in terms of court staff time and in terms of the overall processing time for the 2,574 electronically filed motions that EOIR has received during the ECAS pilot program. This proposed rule will only increase these time savings when all attorneys and accredited representatives begin filing documents electronically.

a. Office of the Chief Immigration Judge

The Department estimates that implementation of the proposed rule will reduce the immigration courts’ costs by the equivalent of approximately \$12.9 million over the first 10 years of implementation. This reduction includes the cost of labor that will be reallocated to other tasks due to the more efficient processing of electronic documents. Cost changes for the courts will be realized primarily in initial case processing; individual hearing processing; and processing and shipping costs for changes of venue, appeals, and records retirement.

To reach its estimates, the Department determined the costs for adjudicating a

<sup>17</sup> Savings listed are an overestimation as they include all filings, rather than only those filings that can be done electronically at this time (i.e., the savings include filings by *pro se* respondents who cannot yet use ECAS).



typical case after the implementation of the proposed regulation. Using this methodology, the Department identified and analyzed three separate scenarios: (1) Legacy paper ROPs that were started but not completed before this proposed rule; (2) eROPs for *pro se* respondents that are submitted in paper and scanned by court staff; and (3) eROPs for represented respondents that are completely electronic.

The Department then estimated the economic impact of the proposed regulation on the immigration courts for each of the next 10 years by calculating the average costs for each of the three scenarios above; multiplying each scenario's average cost by the expected annual number of cases received for the immigration courts and expected annual hearings for the immigration courts in each scenario over the next decade; separately calculating the baseline cost (*i.e.*, the cost without mandatory electronic filing), using existing time estimates and labor rates, for the next 10 years; and subtracting the post-regulation cost from the baseline cost for each of the next 10 years.

This economic impact reflects labor hours that will be saved in terms of dollars. In actuality, labor can be reallocated to higher-impact tasks, and more efficient labor usage could offset future hiring and resource needs, which may lead to more quantifiable realized savings. As shown in Table 2, the expected cost savings increase every year. This is a result of legacy paper ROPs leaving the system as cases are adjudicated and a higher percentage of the future pending cases having mandatory eROPs as a result of this regulation.

TABLE 2—OFFICE OF THE CHIEF IMMIGRATION JUDGE COST SAVINGS

Year	Expected cost savings
1 .....	\$140,304
2 .....	526,622
3 .....	816,841
4 .....	1,115,708
5 .....	1,320,399
6 .....	1,500,104
7 .....	1,666,355
8 .....	1,816,269
9 .....	1,947,925
10 .....	2,060,361
Total .....	12,910,888

Since all paper-filed documents, per this new regulation, will be scanned and maintained in an eROP, initial case processing is estimated to become marginally more expensive as court staff

must scan the paper documents into the eROP. However, this increase in cost will be outweighed by the time savings, calculated in terms of the cost of labor, for individual hearing processing and change of venue processing, as filing becomes more expeditious for court staff in each individual case. Additionally, annual shipping costs will be reduced, since changes of venue, appeals, and records retirement transfers will occur electronically instead of manually shipping the paper ROP to another court, the BIA, or the Federal Records Center.

Cost changes have been calculated with the assumption that all other processes remain the same. However, eROPs enable the possibility of further cost savings through more efficient case adjudication. For example, widely available eROPs may enable immigration judges to hear a case via video teleconference (“VTC”) almost instantly. Under the current paper ROP system, the ROP needs to be shipped to the immigration judge’s location before a VTC hearing can be held. In contrast, an eROP could enable a judge to open any eROP and hear a case immediately. This new paradigm has the potential to improve the efficiency of workload adjudication by judges and their staff.

EOIR may also realize savings through the reduced growth of storage requirements at court locations. EOIR currently stores paper ROPs at immigration courts, utilizing valuable storage space in courtrooms, offices, and hallways. Conversion to an eROP system may ease the strain on the system as new pending cases will have an eROP that will not require physical storage space. With the information currently available, storage space utilization and savings cannot be specifically calculated. However, this regulation will likely reduce costs for the immigration courts by allowing current space to be used for functional purposes, rather than storage.

b. Board of Immigration Appeals

The Department also estimates that implementation of the proposed regulation will reduce the BIA’s costs by approximately \$2.7 million over the first 10 years of implementation. Cost changes for the BIA will be realized in three main process areas: Scanning *pro se* ROPs; receiving ROPs from the immigration courts; and returning ROPs to the immigration courts.

TABLE 3—BIA COSTS SAVINGS

Year	Expected cost savings
1 .....	(\$23,064)
2 .....	176,822
3 .....	201,808
4 .....	250,818
5 .....	285,414
6 .....	314,243
7 .....	342,112
8 .....	367,098
9 .....	388,240
10 .....	407,459
Total .....	2,710,950

The impacts to the BIA largely mirror the immigration courts in that scanning paper filings into the eROP is likely to increase costs by increasing staff workload. Further, the largest cost savings are likely to come from reduced shipping. The BIA’s process requires that all ROPs sent to the BIA from the immigration court must be shipped back to the court upon completion of the appeal. Shipping costs will be eliminated for future eROPs because they will be transferred electronically, reducing costs for the BIA.

c. Office of Information Technology

The Department estimates that the implementation of the proposed rule will increase EOIR’s Office of Information Technology’s (“OIT”) costs by a total of approximately \$51.3 million across the first 10 years of implementation. These costs are due to the additional effort required to develop, deploy, and maintain the electronic infrastructure that serves as the backbone for electronic filing.

Because OIT developed the tools and processes necessary for the implementation of mandatory electronic filing throughout EOIR, it is the largest driver of quantifiable costs from mandatory electronic filing implementation. The deployment and training for mandatory electronic filing will be particularly resource-intensive for OIT, as it will be responsible for the deployment and maintenance of the hardware and software necessary to digitize and store documents along with delivering training to court staff. Costs related to electronic filing deployment are estimated to be approximately \$21.7 million, including \$2.3 million in hardware purchases, \$1.7 million in travel to deliver training and install systems, and \$3.4 million in external services, software, and licensing for necessary cloud computing services.

TABLE 4—OIT ELECTRONIC FILING DEPLOYMENT COSTS

Category	Year 1	Year 2	Total
External Services (e.g., MS Azure Premier Access) .....	\$999,429	\$999,429	\$1,998,858
Software .....	625,988	726,171	1,352,159
Travel .....	830,295	830,295	1,660,590
Labor/Hardware <sup>18</sup> .....	11,316,689	5,355,028	16,671,717
Support Labor:			
Program Support .....	1,717,020	900,298	2,617,318
Training .....	754,782	431,820	1,186,602
Service Desk/Operations .....	482,417	482,417	964,834
Product Labor:			
eROP .....	2,699,130	1,322,681	4,021,811
Electronic Filing .....	3,741,362	1,833,416	5,574,778
Hardware .....	1,921,978	384,396	2,306,374
<b>Total .....</b>	<b>13,772,401</b>	<b>7,910,923</b>	<b>21,683,324</b>

Costs are estimated to be highest in the first year of the deployment, as hardware is purchased, software systems are finalized and implemented, and training is delivered to court staff. Costs are estimated to decrease by over 40 percent in the second deployment year as OIT completes training court staff and transitions to a steady state of software and hardware maintenance. The cost reductions in the second year of deployment will be driven by a 47

percent reduction in labor costs and an 80 percent reduction in hardware costs.

Once training and deployment are complete, OIT's costs will stabilize. While OIT will no longer incur costs related to training court staff, OIT will be using more labor than before mandatory electronic filing. This is due to the additional staff necessary to provide help desk support to the courts and IT services related to the electronic filing system. OIT will also continually accrue expenses for cloud computing

platform licensing and hardware repairs, upgrades, and replacements required to support electronic filing. OIT estimates that overall costs will increase by approximately 1 percent each year, primarily driven by increases in labor costs. These ongoing expenses will represent the new steady state for OIT. The eight years following completion of the deployment phase are estimated to cost an additional \$29.6 million due to mandatory electronic filing.

TABLE 5—OIT ELECTRONIC FILING STEADY STATE COSTS

Category	Year 3	Year 4	... <sup>19</sup>	Year 10	Total
External Services (e.g., MS Azure Premier Access) .....	\$999,429	\$999,429		\$999,429	\$7,995,430
Software .....	366,521	366,521		366,521	2,932,169
Travel .....	0	0		0	0
Labor/Hardware .....	2,227,541	2,255,993		2,443,930	18,665,013
Support Labor:					
Program Support .....	239,564	239,564		239,564	1,916,512
Training .....	172,728	172,728		172,728	1,381,825
Service Desk/Operations .....	482,417	482,417		482,417	3,859,334
Products Labor:					
eROP .....	466,808	480,812		573,312	4,150,211
Electronic Filing .....	481,628	496,076		591,513	4,281,966
Electronic Filing Hardware .....	384,396	384,396		384,396	3,075,166
<b>Total .....</b>	<b>3,593,491</b>	<b>3,621,943</b>		<b>3,809,880</b>	<b>29,592,613</b>

As mandatory filing is implemented and electronic filing progresses, the Department anticipates that this will lead to significant additional efficiencies in case processing. This may include more expeditious case scheduling and adjudication, improved data quality, increased performance monitoring and tracking, augmented data analytics capabilities, and better alignment with information storage best practices. There may also be further

impacts to EOIR's internal data-informed decision-making process, as the digitization of the data may allow for increased analysis of the relationship between various practices, procedures, and outcomes.

d. Office of General Counsel

The Department estimates that the implementation of the proposed rule will increase efficiencies for the EOIR Office of the General Counsel ("OGC") programs. For example, digitization of

files will allow for more expeditious compliance with Freedom of Information Act ("FOIA") and other requests for information, reducing the time burden of such activities on EOIR staff. Specifically, the Department estimates that costs associated with FOIA compliance will decrease by approximately \$2.8 million across the first 10 years of implementation. These savings will be realized through reduced shipping costs in the FOIA response process as more ROPs are accessible

<sup>18</sup> Labor/Hardware represents a total of the individual categories of support labor, product labor, and hardware.

<sup>19</sup> Years 5 through 9 are not included in this visual, but are factored into the totals calculation. OIT estimates that labor costs will increase by 3

percent per year. Non-labor costs, such as hardware, software, and external services, remain constant through each year.

electronically instead of requiring storage retrieval and shipping.

As electronic filing becomes more widespread, the proportion of FOIA requests that can be satisfied through electronic records searches will proportionally increase. A higher percentage of the future pending caseload will have mandatory eROPs as a result of this regulation, which will cause the ratio of eROPs to paper ROPs, and thus expected cost savings, to increase over time, as detailed in Table 6.

TABLE 6—OGC COST SAVINGS

Year <sup>20</sup>	Expected cost savings
1 .....	\$0
2 .....	0
3 .....	60,052
4 .....	203,084
5 .....	295,661
6 .....	360,279
7 .....	404,478
8 .....	443,370
9 .....	479,318
10 .....	511,678
Total .....	2,757,920

The public may also see the added qualitative benefit of more expeditious FOIA compliance, as OGC will not have to wait for records to be shipped between locations to satisfy FOIA requests and will instead be able to search and access the records electronically.

#### e. The Public

The benefits to the public are high as well. Parties will be able to file documents at any time of day from any location with internet, thereby reducing postage costs and the need to physically appear at an immigration court during business hours. For many parties, this will be a substantial benefit, as the nearest immigration court may be hours away. The parties will also be able to view the eROP electronically, providing instant access to necessary documents and eliminating the need to appear at the immigration court to view the paper record. Further, parties will save on paper and toner costs required to print copies of filings, and costs associated with required process service.

The Department believes that the biggest savings to the parties before EOIR will be from reduced costs associated with mailing or hand-delivering filings that would have been incurred without the implementation of

electronic filing. In FY 2018, EOIR's immigration courts received 311,761 paper filings and 2,555 electronic filings,<sup>21</sup> and the BIA received 49,522 paper filings.<sup>22</sup> While EOIR does not keep data regarding what methods (e.g., Federal Express ("FedEx"), United States Postal Service ("USPS"), hand delivery by an attorney's office or a *pro se* party, or local courier) are used to file paper documents with EOIR and to serve those filings on the opposing party, anecdotal evidence points to filings with the immigration courts and the BIA and service on the opposing party typically being sent using FedEx or courier to ensure filings are timely. This is particularly true for filings with the BIA, because the filer must ensure actual receipt by the BIA in Falls Church, Virginia no later than the close of business of the clerk's office on the established deadline.

To analyze the cost savings related to these filings that electronic filing would have on the public, EOIR considered the average costs of sending filings through FedEx and USPS, the hourly rates for couriers and immigration attorneys, and the time savings from avoiding use of the immigration courts' intra-office mailing systems. Based on these preliminary estimates and filings from the previous year, if filers used FedEx for one-third of filings and used USPS for two-thirds of filings, electronic filing would have saved filers \$38,778.55 in FedEx and USPS costs in the five pilot courts in FY 2018.<sup>23</sup> This is compared to a cost of \$1,959,360.15 in FedEx costs<sup>24</sup> and \$2,772,396.55 in USPS filing costs<sup>25</sup> (assuming one-third filings via FedEx and two-thirds filings via USPS) in the other 55 courts. These estimates are based on an \$18.85

<sup>21</sup> These numbers represent the paper and electronic filing of initial Forms I-862, Notice to Appear, and I-863, Notice of Referral to the Immigration Judge, by DHS at the immigration courts nationwide for the fiscal year. EOIR does not have data regarding the number of paper vs. electronic filings directly by aliens in proceedings or their representatives, such as the relative number of paper vs. electronically filed motions, applications for relief or protection, or evidence packets. Accordingly, this analysis uses the number of electronic and paper filings by DHS as a proxy for those by the aliens and their representatives since EOIR does not have similar data for that population but would expect the percentage of paper and electronic to be the same for both.

<sup>22</sup> See EOIR, *Statistics Yearbook: Fiscal Year 2018* (Aug. 30, 2019), <https://www.justice.gov/eoir/file/1198896/download> (last visited Nov. 19, 2020). As with the immigration courts, the Department uses the number of cases filed at the BIA as a proxy for the number of filings at the BIA because the Department does not have specific data regarding the number of individual filings by the parties.

<sup>23</sup> 852 filings \* \$18.85 average FedEx cost + 1,703 filings \* \$13.34 average USPS cost.

<sup>24</sup> 103,920 filings \* \$18.85 average FedEx cost.

<sup>25</sup> 207,841 filings \* \$13.34 average USPS cost.

average FedEx filing rate (\$8.57 average Express Saver cost + \$20.03 average second day cost + \$27.97 overnight cost, divided by three) and a \$13.34 average USPS filing rate (\$7.75 average priority mail + \$28.59 average priority mail express + \$3.68 first-class parcel, divided by three). The Department notes that this savings is likely an underestimate due to the tendency for many filers to use next day service.

According to the U.S. Bureau of Labor Statistics, the mean hourly wage for couriers, such as those the individuals law firms may hire to delivery documents to the immigration court, is \$14.13. U.S. Bureau of Labor Statistics, *Occupational Employment Statistics: Occupational Employment and Wages, May 2018: 43-5021 Couriers and Messengers*, <https://www.bls.gov/oes/2018/may/oes435021.htm> (last updated Mar. 29, 2019).<sup>26</sup> Further, if an attorney makes the trip to the immigration court or to the BIA to handle the filing, the average cost would be \$66.54 for one hour of work.<sup>27</sup> Assuming that approximately one-quarter of paper filings are handled via a courier, one-quarter of paper filings are handled via an attorney,<sup>28</sup> and one-half are filed using USPS or FedEx, with two-thirds of those via USPS and one-third via FedEx, the cost savings to the public of eFiling in the five pilot courts was approximately \$70,917.24 (\$8,028.85 for FedEx<sup>29</sup> + \$11,360.42 for USPS<sup>30</sup> + \$42,502.43 for the attorneys<sup>31</sup> + \$9,025.54 for the couriers<sup>32</sup>).

Overall, the Department's estimates predict an annual savings to the public from electronic filing before the immigration courts and the BIA of approximately \$10,100,142.88 (\$70,917.24/2,555 filings = \$27.76; \$27.76 \* (311,761 + 2,555 + 49,522 = 363,838 total filings)). Over the course of 10 years, these savings would equal \$101,001,428.80 if the annual number of filings remains constant. The Department, however, expects that the true savings will be higher as EOIR hires additional immigration judges and

<sup>26</sup> \$14.72 in May 2018 is equivalent to \$14.13 in December 2016.

<sup>27</sup> U.S. Bureau of Labor Statistics, *Occupational Employment Statistics: Occupational Employment and Wages, May 2018: 23-1011 Lawyers*, <https://www.bls.gov/oes/2018/may/oes231011.htm> (last visited Nov. 19, 2020) (stating the mean hourly wage in May 2018 was \$69.34). \$69.34 in May 2018 is equivalent to \$66.54 in December 2016.

<sup>28</sup> This calculation further assumes that the filings would require one hour of time by the attorney or courier.

<sup>29</sup> 426 filings \* \$18.85 average FedEx cost.

<sup>30</sup> 852 filings \* \$13.34 average USPS cost.

<sup>31</sup> 639 filings \* \$66.54 mean hourly attorney wage.

<sup>32</sup> 639 filings \* \$14.13 mean hourly courier wage.

<sup>20</sup> FOIA volume is estimated at 50,000 per year, an approximation based on EOIR's FY 2018 FOIA volume.

opens additional immigration courts, expanding the annual case processing capacity. *See, e.g.*, EOIR, Executive Office for Immigration Review Adjudication Statistics: New Cases and

Total Completions (Oct. 13, 2020), <https://www.justice.gov/eoir/page/file/1060841/download> (last visited Nov. 19, 2020) (showing that initial case completions increased from 195,106 in

FY 2018 to 276,918 in FY 2019). Further, additional savings are expected based on gas and tolls, paper, toner, and other office supplies.

TABLE 7—COST AND SAVINGS FOR PUBLIC (FY18)<sup>33</sup>

FedEx envelope rates <sup>34</sup>	FedEx express saver	FedEx 2 day	FedEx standard overnight
FedEx Local (0–150 miles) .....	\$7.64	\$17.83	\$23.53
FedEx Regional (151–600 miles) .....	8.16	19.34	25.80
FedEx National (601+ miles) .....	9.90	22.92	34.57
Average Cost .....	8.57	20.03	27.97
Costs of 1/3 OCIJ Paper Filings (103,920) .....	890,250.86	2,081,524.28	22,906,305.32
Total Costs of 1/3 BIA Paper Filings (16,507) .....	141,412.82	330,641.89	461,655.09
Savings from eFilings (2,555) .....	21,887.83	51,176.65	71,454.83
USPS rates by zone <sup>35</sup>	Priority mail <sup>36</sup>	Priority express <sup>37</sup>	First-class parcel <sup>38</sup>
USPS Zone 1&2 (0–150 miles) .....	\$6.95	\$24.43	\$3.52
USPS Zone 3 (151–300 miles) .....	7.28	24.66	3.57
USPS Zone 4 (301–600 miles) .....	7.42	25.50	3.62
USPS Zone 5 (601–1,000 miles) .....	7.65	28.47	3.66
USPS Zone 6 (1,001–1,400 miles) .....	7.83	30.37	3.71
USPS Zone 7 (1,401–1,800) .....	8.21	32.27	3.76
USPS Zone 8 (1,801+) .....	8.90	34.45	3.89
Average Cost .....	7.75	28.59	3.68
Costs of 2/3 OCIJ Paper Filings (207,841) .....	1,610,468.25	5,942,758.49	763,962.91
Costs of 2/3 BIA Paper Filings (16,507) .....	255,816.50	943,983.65	121,352.48
Savings from eFilings (2,555) .....	19,767.6	73,054.75	9,391.45

Documents will also be served by electronic notification where applicable, which will provide near-instantaneous service. This will particularly benefit the parties when EOIR electronically serves orders and decisions on parties participating in electronic filing, as the appeal clock begins to run when the order is sent. This will allow the parties to begin preparing for any potential appeals immediately without having to wait for the order or decision to arrive in the mail as is currently the practice.

These potential benefits are reflected in the private bar's long-standing requests for electronic filing with EOIR. *See, e.g.*, EOIR, *EOIR/AILA Liaison Meeting* (Sept. 26, 2002), <https://www.justice.gov/eoir/eoir-aila-sep26-2002>. (last visited Nov. 19, 2020). In addition, since the July 2018 launch of the electronic filing pilot program, more than 15,000 attorneys have signed up for ECAS, indicating a strong interest in electronic filing. Moreover, at the pilot

sites, approximately half of all active attorneys and accredited representatives in those sites have signed up for the pilot despite having no obligation to participate.

## 2. Costs and Savings Related to Rules Regarding Law Student and Law Graduate Filings

This rulemaking also proposes changes to law student and law graduate filing and accompaniment rules. First, EOIR believes that there will be minimal, if any, costs associated with requiring the supervisor to electronically file documents with EOIR, rather than the law student or law graduate filing on paper. And, if there are any associated costs, they will be outweighed by the substantial benefits of electronic filing, including immediate access to the eROP and the ability to file at any time of day from any location with internet access without the cost or reliance on mail carriers.

As to the proposed accompaniment change, EOIR does not maintain data on how many law students appear in immigration court or how many of those appear without a supervisor present, though it understands that in most cases, a supervisor does accompany the law student. Moreover, regardless of EOIR's rules, in many cases a supervisor is required to accompany the law student or graduate in order to comply with applicable state bar rules. *See, e.g.*, Cal. R. 9.42(d)(3) (allowing certified California law students to appear "on behalf of the client in any public trial, hearing, arbitration, or proceeding, or before any arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer, to the extent approved by such arbitrator, court, public agency, referee, magistrate, commissioner, or hearing officer," provided that, among other requirements, the certified law student "[p]erforms the activity under the direct

<sup>33</sup> In order to estimate these costs for the public, the Department looked to FedEx and USPS rates as a general representation for the costs of paper filing via mail or delivery service as they are the two most commonly used delivery services for filings with the Department.

<sup>34</sup> *See* FedEx, *FedEx One Rate Pricing* (effective Jan. 7, 2019), available at [https://www.fedex.com/content/dam/fedex/us-united-states/services/OneRate-Pricing\\_2019.pdf](https://www.fedex.com/content/dam/fedex/us-united-states/services/OneRate-Pricing_2019.pdf) (last visited Nov. 19, 2020). As noted, *supra*, in Footnote 16, these FedEx

prices have been discounted to reflect their values as of December 2016.

<sup>35</sup> This chart does not include the USPS rates for zone 9 as there are no immigration court locations in the Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands. *See* USPS Office of Inspector General, *Audit Report Management of Postal Zones*, at 4 (March 25, 2019), available at [\[library-files/2020/19RG009MS000-20.pdf\]\(https://www.uspsig.gov/sites/default/files/document-library-files/2020/19RG009MS000-20.pdf\) \(last visited Nov. 19, 2020\).](https://www.uspsig.gov/sites/default/files/document-</a></p>
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<sup>36</sup> These rates correspond with the USPS priority mail rates for letters, large envelopes, and parcels that do not exceed one pound.

<sup>37</sup> These rates correspond with the USPS priority mail express rates for letters, large envelopes, and parcels that do not exceed 0.5 pound.

<sup>38</sup> These rates correspond with the USPS first class package service rates for retail parcels that do not exceed one ounce.

and immediate supervision and in the personal presence of the supervising attorney”).

EOIR recognizes that in rare cases in which a law school clinic or similar program does not currently send a supervising attorney to every hearing at which a law student or law graduate appears, there may be some increased cost. EOIR expects those increased costs to be minimal, however, due to the rarity of cases in which law students and law graduates appear unsupervised, as well as the availability of telephonic appearances.<sup>39</sup> Further, EOIR believes that the benefits of ensuring that every case has a single licensed representative responsible for service of process and ultimate representation in the case outweighs the potential costs associated with the increased accompaniment requirements.<sup>40</sup>

#### E. Executive Order 13132 (Federalism)

This proposed rule 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, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### F. Executive Order 12988 (Civil Justice Reform)

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

<sup>39</sup> Due to the current outbreak of COVID-19, many immigration judges have adopted standing orders allowing practitioners to appear by telephone without the need for filing a motion. See *Immigration Court Practice Manual*, at Appx. R. Although EOIR cannot predict how long such standing orders will remain in effect, it reiterates that nothing in this proposed rule precludes a law school clinic from filing a motion for a telephonic appearance in order to reduce the need for in-person appearances.

<sup>40</sup> Although most law school clinics and similar programs only take cases at immigration courts that are located in nearby geographic proximity, both to minimize operational and logistical difficulties and to avoid the complications of complying with practice rules for different state jurisdictions, EOIR also recognizes that there may be unique situations in which a law school clinic takes a case that requires atypical travel arrangements. In that situation, coupled with the similarly unique situation of an unsupervised law student appearing alone on behalf of a respondent, EOIR acknowledges there may be an increase in cost associated with this rule, but the benefit of the rule outweighs any cost associated with this highly unlikely situation.

#### G. Paperwork Reduction Act

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

#### List of Subjects

##### 8 CFR Part 1001

Administrative practice and procedure, Immigration.

##### 8 CFR Part 1003

Administrative practice and procedure, Immigration.

##### 8 CFR Part 1208

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

##### 8 CFR Part 1214

Administrative practice and procedure, Aliens.

##### 8 CFR Part 1240

Administrative practice and procedure, Immigration.

##### 8 CFR Part 1245

Aliens, Immigration, Reporting and recordkeeping requirements.

##### 8 CFR Part 1246

Administrative practice and procedure, Aliens, Immigration.

##### 8 CFR Part 1292

Administrative practice and procedure, Immigration.

Accordingly, for the reasons set forth in the preamble, and by the authority vested in the Director, Executive Office for Immigration Review, by the Attorney General Order Number 410–2020, the Department proposes to amend parts 1001, 1003, 1208, 1214, 1240, 1245, 1246, and 1292 of the Code of Federal Regulations as follows:

#### PART 1001—DEFINITIONS

■ 1. The authority citation for part 1001 continues to read as follows:

**Authority:** 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107–296, 116 Stat. 2135; Title VII of Pub. L. 110–229.

■ 2. Amend § 1001.1 by revising paragraph (s) and adding paragraphs (cc), (dd), and (ee) to read as follows:

##### § 1001.1 Definitions.

\* \* \* \* \*

(s) The terms *government counsel* or *DHS counsel*, in the context of

proceedings in which DHS has appeared, mean any officer assigned to represent the DHS in any proceeding before an immigration judge or the Board of Immigration Appeals.

\* \* \* \* \*

(cc) The term *case eligible for electronic filing* means any case that DHS seeks to bring before an immigration court after EOIR has formally established an electronic filing system for that court, or any case before an immigration court or the Board of Immigration Appeals that has an electronic record of proceeding. Any reference to a record of proceeding in this chapter shall include an electronic record of proceeding.

(dd) The term *filing* means the actual receipt of a document by the appropriate immigration court or the Board of Immigration Appeals.

(1) An electronic filing that is accepted by the Board or an immigration court will be deemed filed on the date it was submitted. A paper filing that is accepted by the Board or an immigration court will be deemed filed on the date it was received by the Board or the immigration court. A filing that is rejected by the Board or the immigration court as an improper filing will not be deemed filed on the date it was submitted or received.

(2) For purposes of paragraph (dd)(1) of this section, an improper filing includes, but is not limited to:

(i) If a fee is required, failure to submit a fee receipt or fee waiver request;

(ii) If a fee is required, the denial of a fee waiver request by the Board or an immigration judge, provided that the Board or immigration judge, in the adjudicator’s discretion and no more than once per case, may, before rejecting a filing as improper under this paragraph, grant an individual whose fee waiver request is denied up to a maximum of 10 days to either pay the required fee or to file a new request if the initial request was incomplete or insufficient and may toll any applicable deadline by up to a maximum of 10 days accordingly;

(iii) Failure to include a proof of service upon the opposing party;

(iv) Failure to comply with the language, signature, and format requirements;

(v) Insufficient postage or incorrect courier billing information; or

(vi) Illegibility of the filing.

(vii) If a document is improperly filed but not rejected, the Board or immigration judge retains the authority to take appropriate action.

(ee) The term *service* means physically presenting, mailing, or

electronically providing a document to the appropriate party or parties; except that an Order to Show Cause or Notice of Deportation Hearing shall be served in person to the alien, or by certified mail to the alien or the alien's attorney, and a Notice to Appear shall be served to the alien in person, or if personal service is not practicable, shall be served by regular mail to the alien or the alien's attorney of record.

### PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 3. 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.

■ 4. Amend § 1003.1 by revising paragraph (f) to read as follows:

#### § 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

\* \* \* \* \*

(f) *Service of Board decisions.* The decision of the Board shall be in writing. The Board shall transmit a copy to DHS and serve a copy upon the alien or the alien's representative, as provided in part 1292 of this chapter.

\* \* \* \* \*

■ 5. Amend § 1003.2 by:

- a. Revising the introductory text of paragraph (g);
- b. Revising paragraphs (g)(1) and (g)(2)(i) through (iii); and
- c. Adding paragraphs (g)(4) through (8).

The revisions and additions read as follows:

#### § 1003.2 Reopening or reconsideration before the Board of Immigration Appeals.

\* \* \* \* \*

(g) *Filing procedures.* This paragraph applies to the filing of documents related to reopening and reconsideration before the Board.

(1) *English language and entry of appearance.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If the moving party, other than DHS, is represented, Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the motion.

(2) \* \* \*

(i) A motion to reopen or motion to reconsider a decision of the Board pertaining to proceedings before an immigration judge shall be filed directly with the Board. Such motion must be accompanied by a payment in a manner authorized by EOIR or fee waiver request in satisfaction of the fee requirements of § 1003.8. The record of proceeding pertaining to such a motion shall be forwarded to the Board upon the request or order of the Board.

(ii) A motion to reopen or a motion to reconsider a decision of the Board pertaining to a matter initially adjudicated by an officer of DHS shall be filed with the officer of DHS having administrative control over the record of proceeding.

(iii) If the motion is made by DHS in proceedings in which DHS has administrative control over the record of proceedings, the record of proceedings in the case and the motion shall be filed directly with the Board. If such motion is filed directly with an office of DHS, the entire record of proceeding shall be forwarded to the Board by the DHS officer promptly upon receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs.

\* \* \* \* \*

(4) *Filing parties.* DHS and all alien attorneys and accredited representatives are required to electronically file all documents with the Board through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents, applicants, or petitioners, reputable individuals, and accredited officials may electronically file documents with the Board through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented individual, reputable individual, or accredited official who elects to use EOIR's electronic filing application shall be required to register in conformity with § 1292.1(f) as a condition of using that application. If an unrepresented respondent, applicant, or petitioner or reputable individual or accredited official opts to use EOIR's electronic filing application for a case, the individual must electronically file all documents with the Board for that case unless the Board, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. An unrepresented individual, reputable individual, or accredited official who has been granted leave to opt out of using EOIR's electronic filing application for a case

may not subsequently opt in again to use that application for the same case.

(5) *Filing requirements.* Parties must make the originals of all filed documents available upon request to the Board or the opposing party for review. If EOIR's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced three or fewer business days prior to the start of the outage will be treated as an unplanned outage. The Board retains discretion to accept paper filings in all cases.

(6) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(7) *Signatures.* All documents filed with the Board that require a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph is subject to the requirements of the application or document being submitted.

(8) *Service.* The service of filings with the Board depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(i) *Service of electronic filings.* If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties by email. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (g)(7)(ii) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (g)(7)(iii) of this section.

(ii) *Valid Email Address.* Use of EOIR's electronic filing application

requires a valid email address for electronic service. The Board will use the email address provided through eRegistry for electronic service on participating parties. Users must immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR-27 with the Board if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(iii) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the Board must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing. If the moving party is not DHS, service of the motion shall be made upon the ICE Office of the Principal Legal Advisor for the field location in which the case was completed before the immigration judge.

\* \* \* \* \*

■ 6. Amend § 1003.3 revising paragraphs (a)(2), (a)(3), and (c)(2) and adding paragraph (g) to read as follows:

**§ 1003.3 Notice of appeal.**

(a) \* \* \*

(2) *Appeal from decision of a DHS officer.* A party affected by a decision of a DHS officer that may be appealed to the Board under this chapter shall be given notice of the opportunity to file an appeal. An appeal from a decision of a DHS officer shall be taken by filing a Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer (Form EOIR-29) directly with the DHS office having administrative control over the record of proceeding within 30 days of the service of the decision being appealed. An appeal is not properly filed until it is received at the appropriate DHS office, together with all required documents, and the fee provisions of § 1003.8 are satisfied.

(3) *General requirements for all appeals.* The appeal must be accompanied by a payment in a manner authorized by EOIR or fee waiver request in satisfaction of the fee requirements of § 1003.8. If the respondent or applicant is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Board (Form EOIR-27) must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

\* \* \* \* \*

(c) \* \* \*

(2) *Appeal from decision of a DHS officer.* Briefs in support of or in opposition to an appeal from a decision of a DHS officer shall be filed directly with the DHS office having administrative control over the file. The alien and DHS shall be provided 21 days in which to file a brief, unless a shorter period is specified by the DHS officer from whose decision the appeal is taken, and reply briefs shall be permitted only by leave of the Board. Upon written request of the alien, the DHS officer from whose decision the appeal is taken or the Board may extend the period for filing a brief for good cause shown. The Board may authorize the filing of briefs directly with the Board. In its discretion, the Board may consider a brief that has been filed out of time. All briefs and other documents filed in conjunction with an appeal, unless filed by an alien directly with a DHS office, shall include proof of service on the opposing party.

\* \* \* \* \*

(g) *Filing.* This paragraph applies to the filing of documents related to appeals before the Board.

(1) *Filing parties.* DHS and all attorneys and accredited representatives are required to electronically file all documents with the Board through EOIR's electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents, applicants, or petitioners, reputable individual, and accredited officials may electronically file documents with the Board through EOIR's electronic filing application in cases eligible for electronic filing. An unrepresented individual, reputable individual, or accredited official who elects to use EOIR's electronic filing application shall be required to register in conformity with § 1292.1(f) as a condition of using that application. If an unrepresented respondent, applicant, or petitioner, reputable individual, or accredited official opts to use EOIR's electronic filing application for a case, the individual must electronically file all documents with the Board for that case unless the Board, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. An unrepresented individual, reputable individual, or accredited official who has been granted leave to opt out of using EOIR's electronic filing application for a case may not subsequently opt in to use that application for the same case.

(2) *Filing requirements.* Parties must make the originals of all filed documents available upon request to the

Board or to the opposing party for review. If EOIR's electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced three or fewer business days prior to the start of the outage will be treated as an unplanned outage. The Board retains discretion to accept paper filings in all cases.

(3) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(4) *Signatures.* All documents filed with the Board that require a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph is subject to the requirements of the application or document being submitted.

(5) *Service.* The service of filings with the Board depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(i) *Service of electronic filings.* If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties by email. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (g)(5)(ii) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (g)(5)(iii) of this section.

(ii) *Valid Email Address.* Use of EOIR's electronic filing application requires a valid email address for electronic service. The Board will use the email address provided through eRegistry for electronic service on participating parties. Users must

immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR–27 with the Board if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(iii) *Service of paper filings.* If electronic filing is not being used in a particular case, the party filing with the Board must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing.

■ 7. Amend § 1003.13 by removing the “Filing” and “Service” definitions.

■ 8. Amend § 1003.17 by revising paragraph (a) to read as follows:

**§ 1003.17 Appearances.**

(a) In any proceeding before an immigration judge in which the alien is represented, the attorney or representative shall file a Notice of Entry of Appearance on Form EOIR–28 with the immigration court, and shall serve a copy of the Notice of Entry of Appearance on DHS as required by § 1003.32. The entry of appearance of an attorney or representative in a custody or bond proceeding shall be separate and apart from an entry of appearance in any other proceeding before the immigration court. An attorney or representative may file a Form EOIR–28 indicating whether the entry of appearance is for custody or bond proceedings only, any other proceedings only, or for all proceedings. Such Notice of Entry of Appearance must be filed and served even if a separate Notice of Entry of Appearance(s) has previously been filed with DHS for appearance(s) before DHS.

\* \* \* \* \*

■ 9. Amend § 1003.23 by revising paragraph (b)(1)(ii) to read as follows:

**§ 1003.23 Reopening or reconsideration before the immigration court.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) *Filing.* Motions to reopen or reconsider a decision of an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding. If necessary under § 1003.32, a motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments. If the moving party is not DHS, service of the motion shall be made upon the ICE Office of the Principal Legal Advisor for the field location in which the case was

completed. If the moving party, other than DHS, is represented, a Form EOIR–28, Notice of Appearance as Attorney or Representative Before an Immigration Judge must be filed with the motion. If filed in paper, the motion must be filed in duplicate with the immigration court, accompanied by a fee receipt.

\* \* \* \* \*

■ 10. Revise § 1003.31 to read as follows:

**§ 1003.31 Filing documents and applications.**

This section applies to the filing of all documents, including motions and applications, before the immigration courts.

(a) *Filing parties.* DHS and all attorneys and accredited representatives are required to electronically file all documents, including charging documents, with the immigration courts through EOIR’s electronic filing application in all cases eligible for electronic filing. Although not required, unrepresented respondents or applicants, reputable individuals, and accredited officials may electronically file documents with the immigration courts through EOIR’s electronic filing application in cases eligible for electronic filing. An unrepresented individual, reputable individual, or accredited official who elects to use EOIR’s electronic filing application shall be required to register in conformity with § 1292.1(f) as a condition of using that application. If an unrepresented respondent or applicant, reputable individual, or accredited official opts to use EOIR’s electronic filing application for a case, the individual must electronically file all documents with the immigration court for that case unless an immigration judge, only upon a motion filed by the individual with good cause shown, grants leave to opt out of using the electronic filing application. An unrepresented individual, reputable individual, or accredited official who has been granted leave to opt out of using EOIR’s electronic filing application for a case may not subsequently opt in to use that application for the same case.

(b) *Filing requirements.* If EOIR’s electronic filing application is unavailable due to an unplanned system outage on the last day for filing in a specific case, then the filing deadline will be extended to the first day that the electronic filing application becomes accessible that is not a Saturday, Sunday, or legal holiday. For planned system outages, parties must electronically file documents during system availability within the applicable filing deadline or paper file

documents within the applicable filing deadline. EOIR will issue public communications for planned system outages ahead of the scheduled outage. Any planned system outage announced three or fewer business days prior to the start of the outage will be treated as an unplanned outage. In all other situations in cases eligible for electronic filing, an immigration judge may accept paper filings from a party otherwise required to file electronically, but only in open court and only:

(i) For rebuttal or impeachment purposes,

(ii) Upon good cause shown, provided that the filing is otherwise admissible and the immigration judge finds that any applicable filing deadline should be excused, or

(iii) When the opposing party does not object to the paper filing.

(c) *Originals.* Parties must make the originals of all filed documents available upon request to the immigration court or the opposing party for review.

(d) *Classified information.* Notwithstanding any other provision of this chapter, classified information is never allowed to be electronically filed.

(e) *Where to file.* All documents that are to be considered in a proceeding before an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding.

(f) *Fees.* Except as provided in § 1240.11(f), all documents or applications filed with the immigration courts requiring the payment of a fee must be accompanied by a fee receipt from DHS or a fee waiver application pursuant to § 1103.7(c). Except as provided in § 1003.8, any fee relating to immigration judge proceedings shall be paid to, and accepted by, any DHS office authorized to accept fees for other purposes pursuant to § 1103.7(a).

(g) *Filing deadlines.* The immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived.

(h) *Filing under seal.* DHS may file documents under seal by including a cover sheet identifying the contents of the submission as containing information which is being filed under seal. Documents filed under seal shall only be examined by persons with authorized access to the administrative record.

(i) *Signatures.* All documents filed with the immigration courts that require



a signature must have an original, handwritten ink signature, an encrypted digital signature, or an electronic signature. Electronic filings submitted through EOIR's electronic filing application that require the user's signature may have a conformed signature. This paragraph is subject to the requirements of the application or document being submitted.

■ 11. Revise § 1003.32 to read as follows:

§ 1003.32 Service and size of documents.

The service of filings with the immigration courts depends on whether the documents are filed through EOIR's electronic filing application or in paper.

(a) Service of electronic filings. If all parties are using EOIR's electronic filing application in a specific case, the parties do not need to serve a document that is filed through EOIR's electronic filing application on the opposing party. If all parties are using EOIR's electronic filing application in a specific case, EOIR's electronic filing application will effectuate service by providing a notification of all electronically filed documents on all parties. Upon successful upload by one of the parties, EOIR will email a notification to the email addresses provided in paragraph (b) of this section. If one or more parties are not filing through EOIR's electronic filing application in a specific case, the parties must follow the service procedures in paragraph (c) of this section.

(b) Valid email address. Use of EOIR's electronic filing application requires a valid email address for electronic service. The immigration courts will use the email address provided through eRegistry for electronic service on participating parties. Users must immediately update their eRegistry account if their email address changes. Representatives must additionally file a new Form EOIR-28 with the immigration court if their email address changes. EOIR will consider service completed when the electronic notification is delivered to the last email address on file provided by the user.

(c) Service of paper filings. If electronic filing is not being used in a particular case, the party filing with the immigration court must serve a copy of the filing on the opposing party and include a certificate of service showing service on the opposing party with their filing. The immigration judge will not consider any documents or applications that do not contain a certificate of service unless service is made on the record during a hearing.

(d) Size and format of documents. Unless otherwise permitted by the

immigration judge, all written material presented to immigration judges including offers of evidence, correspondence, briefs, memoranda, or other documents must be submitted on 8½" x 11" size pages, whether filed electronically or in paper. The immigration judge may require that exhibits and other written material presented be indexed, paginated, and that a table of contents be provided.

■ 12. Amend § 1003.37 by revising paragraph (a) to read as follows:

§ 1003.37 Decisions.

(a) A decision of the immigration judge may be rendered orally or in writing. If the decision is oral, it shall be stated by the immigration judge in the presence of the parties and a memorandum summarizing the oral decision shall be served on the parties. If the decision is in writing, it shall be served on the parties by personal service, mail, or electronic notification.

■ 13. Amend § 1003.38 by revising paragraph (b) to read as follows:

§ 1003.38 Appeals.

(b) The Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an immigration judge's oral decision or the mailing or electronic notification of an immigration judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR-26) may not be filed by any party who has waived appeal.

■ 14. Amend § 1003.63 by revising the last sentence in paragraphs (f)(1) and (2), to read as follows:

§ 1003.63 Applications.

(f) (1) A comment or recommendation not sent to the Director electronically must include proof of service on the applicant.

(2) All responses must be filed with the Director and include proof of service of a copy of such response on the commenting party.

■ 15. Amend § 1003.64 by revising the last sentence in paragraph (b) to read as follows:

§ 1003.64 Approval and denial of applications.

(b) The written notice shall be served at the address provided on the

application unless the applicant subsequently provides a change of address pursuant to § 1003.66, or shall be transmitted to the applicant electronically.

■ 16. Amend § 1003.65 by revising the first sentence in paragraph (d)(3) to read as follows:

§ 1003.65 Removal of a provider from the List.

(d) (3) Response. The provider may submit a written answer within 30 days from the date the notice is served or is sent to the provider electronically.

■ 17. Amend § 1003.106 by revising the second sentence in paragraph (a)(2)(ii) and the seventh sentence in paragraph (b) to read as follows:

§ 1003.106 Right to be heard and disposition.

(ii) When designating the time and place of a hearing, the adjudicating official shall provide for the service of a notice of hearing on the practitioner or the authorized officer of the recognized organization and the counsel for the government.

(b) The adjudicating official shall provide for service of a written decision or memorandum summarizing an oral decision on the practitioner or, in cases involving a recognized organization, on the authorized officer of the organization and on the counsel for the government.

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 18. 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.

■ 19. Amend § 1208.4 by revising the fifth sentence of paragraph (a)(2)(ii) to read as follows:

§ 1208.4 Filing the application.

(ii) For cases before the immigration court, the application is considered to have been filed on the date it is received by the immigration court.

**PART 1214—REVIEW OF NONIMMIGRANT CLASSES**

- 20. The authority citation for part 1214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

**§ 1214.2 [Amended]**

- 21. Amend § 1214.2 (a) by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”;
  - c. Removing the words “Service custody” and adding, in their place, the words “DHS custody”.

**PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES**

- 22. The authority citation for part 1240 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

**§ 1240.2 [Amended]**

- 23. Amend § 1240.2 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”;
  - c. Removing the words “Service attorney” and adding, in their place, the words “DHS counsel”.

**§ 1240.10 [Amended]**

- 24. Amend § 1240.10 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “an Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.11 [Amended]**

- 25. Amend § 1240.11 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.13 [Amended]**

- 26. Amend § 1240.13 by removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.26 [Amended]**

- 27. Amend § 1240.26 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.32 [Amended]**

- 28. Amend § 1240.32 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.33 [Amended]**

- 29. Amend § 1240.33 by removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.48 [Amended]**

- 30. Amend § 1240.48 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.49 [Amended]**

- 31. Amend § 1240.49 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**§ 1240.51 [Amended]**

- 32. Amend § 1240.51 by removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.
- 33. Amend § 1240.53 by revising paragraph (a) to read as follows:

**§ 1240.53 Appeals.**

(a) Pursuant to 8 CFR part 1003, an appeal shall lie from a decision of an immigration judge to the Board, except that no appeal shall lie from an order of deportation entered in absentia. The procedures regarding the filing of a Form EOIR–26, Notice of Appeal, fees, and briefs are set forth in §§ 1003.3, 1003.31, and 1003.38 of this chapter. An appeal shall be filed within 30 calendar days after the mailing or electronic notification of a written decision, the stating of an oral decision, or the service of a summary decision. The filing date is defined as the date of receipt of the Notice of Appeal by the Board. The

reasons for the appeal shall be stated in the Form EOIR–26, Notice of Appeal, in accordance with the provisions of § 1003.3(b) of this chapter. Failure to do so may constitute a ground for dismissal of the appeal by the Board pursuant to § 1003.1(d)(2) of this chapter.

\* \* \* \* \*

**PART 1245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE**

- 34. The authority citation for part 1245 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1255; section 202, Pub. L. 105–100, 111 Stat. 2160, 2193; section 902, Pub. L. 105–277, 112 Stat. 2681; Title VII of Pub. L. 110–229.

- 35. Amend § 1245.21 by:
  - a. Removing the words “the Service” and adding, in their place, the word “DHS”;
  - b. Removing the words “the Service’s” and adding, in their place, the word “DHS’s”;
  - c. Removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**PART 1246—RECISSION OF ADJUSTMENT OF STATUS**

- 36. The authority citation for part 1246 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1254, 1255, 1256, 1259; 8 CFR part 2.

**§ 1246.5 [Amended]**

- 37. Amend § 1246.5 by removing the words “Service counsel” and adding, in their place, the words “DHS counsel”.

**PART 1292—REPRESENTATION AND APPEARANCES**

- 38. The authority citation for part 1292 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1362.

- 39. Amend § 1292.1 by revising paragraphs (a)(2)(ii) through (iv), and adding paragraph (a)(2)(v) to read as follows:

**§ 1292.1 Representation of others.**

- (a) \* \* \*
- (2) \* \* \*

(ii) In the case of a law student, he or she has filed a statement that he or she is participating, under the direct supervision of an EOIR-registered licensed attorney or accredited representative, in a legal aid program or clinic conducted by a law school or non-profit organization, and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iii) In the case of a law graduate, he or she has filed a statement that he or she is appearing under the supervision of a licensed attorney or accredited representative and that he or she is appearing without direct or indirect remuneration from the alien he or she represents;

(iv) An attorney or accredited representative physically accompanies the law student or law graduate who is appearing. The accompanying attorney or accredited representative must be authorized to practice before EOIR and be prepared to proceed with the case at all times; and

(v) All filings by law students and law graduates are made through an EOIR-registered attorney or accredited representative.

\* \* \* \* \*

**James R. McHenry,**

*Director, Executive Office for Immigration Review, Department of Justice.*

[FR Doc. 2020-26115 Filed 12-3-20; 8:45 am]

BILLING CODE 4410-30-P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

#### 12 CFR Parts 24, 25, 35, and 192

[Docket ID OCC-2020-0025]

RIN 1557-AE96

#### Community Reinvestment Act Regulations

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC) is issuing a notice of proposed rulemaking to request comment on the OCC's proposed approach to determine the Community Reinvestment Act (CRA) evaluation measure benchmarks, retail lending distribution test thresholds, and community development minimums under the general performance standards. The proposal further explains how the OCC would assess significant declines in CRA activities levels in connection with performance context following the initial establishment of the benchmarks, thresholds, and minimums. Finally, the proposed rule would make clarifying and technical amendments to the CRA final rule.

**DATES:** Comments must be received on or before February 2, 2021.

**ADDRESSES:** Commenters are encouraged to submit comments through the Federal

eRulemaking Portal, if possible. Please use the title "Community Reinvestment Act Regulations" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- **Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta**  
*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter "Docket ID OCC 2020-0025" in the Search Box and click "Search." Click on "Comment Now" to submit public comments. For help with submitting effective comments please click on "View Commenter's Checklist." Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

- **Regulations.gov Beta:** Go to <https://beta.regulations.gov/> or click "Visit New Regulations.gov Site" from the *Regulations.gov* classic homepage. Enter "Docket ID OCC-2020-0025" in the Search Box and click "Search." Public comments can be submitted via the "Comment" box below the displayed document information or click on the document title and click the "Comment" box on the top-left side of the screen. For help with submitting effective comments please click on "Commenter's Checklist." For assistance with the *Regulations.gov* Beta site please call (877)-378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or email to [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

- **Mail:** Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

- **Hand Delivery/Courier:** 400 7th Street SW, Suite 3E-218, Washington, DC 20219.

**Instructions:** You must include "OCC" as the agency name and "Docket ID OCC-2020-0025" in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this

rulemaking action by the following method:

- **Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta:**

*Regulations.gov Classic:* Go to <https://www.regulations.gov/>. Enter "Docket ID OCC-2020-0025" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on "View all documents and comments in this docket" and then using the filtering tools on the left side of the screen. Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

*Regulations.gov Beta:* Go to <https://beta.regulations.gov/> or click "Visit New Regulations.gov Site" from the *Regulations.gov* classic homepage. Enter "Docket ID OCC-2020-0025" in the Search Box and click "Search." Click on the "Comments" tab. Comments can be viewed and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen. Supporting Materials can be viewed by clicking on the "Documents" tab and filtered by clicking on the "Sort By" drop-down on the right side of the screen or the "Refine Results" options on the left side of the screen." For assistance with the *Regulations.gov* Beta site please call (877)-378-5457 (toll free) or (703) 454-9859 Monday-Friday, 9am-5pm ET or email to [regulations@erulemakinghelpdesk.com](mailto:regulations@erulemakinghelpdesk.com).

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Ioan Voicu, Director, Compliance Risk Analysis Division, at (202) 649-5550; or Daniel Borman, Senior Attorney, Daniel Sufanski, Attorney, or Jean Xiao, Attorney, Chief Counsel's Office, (202) 649-5490, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On June 5, 2020, the OCC published a final rule in the **Federal Register** (2020 final rule) to update the regulatory framework implementing the Community Reinvestment Act of 1977 (CRA)<sup>1</sup> for national banks and savings

<sup>1</sup> Community Reinvestment Act of 1977, Public Law 95-128, 91 Stat. 1147 (1977), codified at 12 U.S.C. 2901 *et seq.*